PLANNING COMMISSION
MEETING AGENDA

TUESDAY, OCTOBER 18, 2022 AT 6:30 PM

CITY HALL COUNCIL CHAMBERS
1600 WEST BEVERLY BOULEVARD
MONTEBELLO, CALIFORNIA

PLANNING COMMISSION MEMBERS
PRISCILLA DEL RIO, PLANNING COMMISSIONER
NATALIA LOMELI, PLANNING COMMISSIONER
VICTOR CUEVAS, PLANNING COMMISSIONER
BERJ ALIKSANIAN, PLANNING COMMISSIONER
VACANT, PLANNING COMMISSIONER

CITY STAFF
JOSEPH PALOMBI, DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT
MONICA MERCADO-RODRIGUEZ, PLANNING MANAGER
GLORIA V. RAMIREZ, DEPUTY CITY ATTORNEY
SAMANTHA NEVAREZ, SENIOR ADMINISTRATIVE ASSISTANT

NOTICES

COVID-19 NOTICE: The City Council rescinded the Declaration of the Local Emergency and the continuation of teleconferencing open meetings pursuant to AB 361 by adopting Resolution No. 22-21 on Wednesday, April 13, 2022. This Planning Commission Meeting will be held in person and will meet at **City Hall – City Council Chambers, 1600 West Beverly Boulevard, Montebello, California**. The meeting will be live streamed and can be watched on the City's website at: https://cityofmontebello.com/government/live-streaming.html.

AMERICANS WITH DISABILITIES ACT: In compliance with the Americans with Disabilities Act (ADA) any person with a disability who requires special accommodations in order to participate in a meeting should contact Senior Administrative Assistant, Samantha Nevarez at (323) 887-1200 Ext: 493 Monday-Thursday from 7:30 a.m.-5:30 p.m. Please call 48 hours prior to the meeting to ensure that reasonable arrangements can be made to provide accessibility to this meeting (28 CFR 35.102-35.104 ADA Title II 1203). If you require translation services, please contact us 24 hours before this meeting.

PUBLIC COMMENTS:
In-Person: For those interested in participating during the Public Comment period(s) or public testimony period for Public Hearings of the Planning Commission meetings, you may address the Planning Commission in person the day of the meeting. Speakers will be required to complete a speaker card provided at the door and submit it to the Senior Administrative Assistant, Samantha Nevarez prior to each Public Comment announcement period. Staff will number and call each speaker card in the order received.

Via Email: The public may also submit emailed comments via the following email address: *pcpubliccomment@cityofmontebello.com* up until the day of the meeting, Tuesday, October 18, 2022 by 6:30 p.m. These comments will be submitted to all members of the Planning Commission and will not be read aloud, but will be entered into the record of the proceedings to the extent they relate to matters listed on the posted agenda or otherwise address matters/issues within the subject matter jurisdiction of the Planning Commission. Any requests to provide public comment which is submitted after the deadlines indicated above will not be submitted to the Planning Commission, with the exception of non-agenda written item comments which will be held over for the next regularly scheduled meeting.

AGENDA MATERIALS: The agenda and agenda packet related to items on this agenda are available for public inspection at City's website at: *https://cityofmontebello.hosted2.civiclive.com*. The agenda cover sheets may also be emailed upon request.

IN CONSIDERATION OF OTHERS, PLEASE TURN OFF, OR MUTE, ALL CELL PHONES AND PAGERS
THANK YOU FOR YOUR COOPERATION

OPENING CEREMONIES

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

CORRECTIONS TO THE AGENDA

PRESENTATIONS

PUBLIC COMMENTS (30 MINUTES)

At this time, the general public may address the Commission/Committee on any items listed on the Agenda, including items not listed on the Agenda (Non-Agenda Items) that are within subject matter jurisdiction. Please be aware that the maximum time allotted for members of the public to speak shall not exceed three (3) minutes per person. State Law prohibits the City Council from taking action or entertaining extended discussion on a topic not listed on the agenda. Please show courtesy to others and direct all of your comments to the Chairperson.

STAFF COMMUNICATIONS

MINUTES

1. **August 16, 2022**

RECOMMENDATION: Approval of the Minutes from the Planning Commission held on August 16, 2022.

PUBLIC HEARING

2. **Development Agreement ("DA") Nos. 02-22, 03-22, and 04-22 to relocate in place five existing double-faced static outdoor advertising signs with an enhanced outdoor advertising sign with digital display faces for the property located at 1720 Bluff Road (DA No. 02-22), 1633 Washington Blvd. (DA No. 03-22), and 1915 W. Whittier Blvd. (DA No. 04-22)**

RECOMMENDATION: It is recommended that the Planning Commission take the following action:

1. Adopt Resolution No. 10-22 recommending the City Council approve the Development Agreement between the City of Montebello and Clear Channel Outdoor, LLC for the property located at 1720 S. Bluff Road (Attachment A);

2. Adopt Resolution No. 11-22 recommending the City Council approve the Development Agreement between the City of Montebello and Clear Channel Outdoor, LLC for the property located at 1633 Washington Blvd. (Attachment B); and

3. Adopt Resolution No. 12-22 recommending the City Council approve the Development Agreement between the City of Montebello and Clear Channel Outdoor, LLC for the property located at 1915 W. Whittier Blvd. (Attachment C).

3. **Case No. PC-2022-0006-CUP-PMP for a Conditional Use Permit ("CUP") and a Parking Management Plan ("PMP") to allow the conversion of an existing office building to a medical office/clinic (dialysis clinic) as well as to propose tandem parking in conjunction with the proposed dialysis clinic at the property located at 2120 West Beverly Boulevard ("Project Site").**

RECOMMENDATION: It is recommended that the Planning Commission ("Planning Commission") of the City of Montebello ("City") conduct a public hearing and take the following action:

1. ADOPT the Resolution approving Case No. PC-2022-0006-CUP-PMP with conditions to allow a medical office/clinic (dialysis clinic) and approve a parking management plan to allow tandem parking at the Project Site, and

2. ADOPT California Environmental Quality Act (CEQA) Exemption §15301 (Existing Facilities) (for ENV No. 06-22-CE).

PLANNING COMMISSION ORALS

Planning Commission member announcements; requests for future agenda items; conference/meetings reports.

ADJOURNMENT

The City of Montebello Planning Commission will adjourn to the next Regular Meeting on November 1, 2022 at 6:30 p.m. at City Hall Council Chambers located at 1600 W. Beverly Boulevard, Montebello, CA 90640.

I, Samantha Nevarez, Senior Administrative Assistant for the City of Montebello hereby certify that a copy of this agenda has been posted on or before Thursday, October 13, 2022 by 5:30 p.m.

Samantha Nevarez

Samantha Nevarez, Senior Administrative Assistant

MONTEBELLO PLANNING COMMISSION
MEETING AGENDA

M I N U T E S

TUESDAY, AUGUST 16, 2022 AT 6:30 P.M.

CITY HALL COUNCIL CHAMBERS
1600 WEST BEVERLY BOULEVARD
MONTEBELLO, CA 90640

CALL TO ORDER – Commissioner Del Rio called the meeting to order at 6:32 p.m.

ROLL CALL – Commissioner Aliksanian, Commissioner Cuevas, Commissioner Del Rio & Commissioner Lomeli

PLEDGE OF ALLEGIANCE – Commissioner Cuevas

PLANNING COMMISSION REORGANIZATION – Director Palombi opened up the floor for Chairperson nominations. Commissioner Aliksanian nominated Commissioner Cuevas and was seconded by Commissioner Lomeli. Director Palombi took roll and the motion passed 4-0. Director Palombi opened up the floor for Vice-Chairperson nominations. Commissioner Lomeli nominated Commissioner Del Rio and was seconded by Commissioner Aliksanian. Director Palombi took roll and the motion passed 4-0.

CORRECTIONS TO THE AGENDA – PLANNING AND COMMUNITY DEVELOPMENT DIRECTOR – None.

PUBLIC COMMENTS/STATEMENT OF PUBLIC ORAL COMMUNICATIONS

Speakers wishing to address the Planning Commission on an item that is not on the agenda will be called upon in the order that their speaker card was received. Those persons not accommodated during this period will have an opportunity to speak under "Oral Communications – Continued" after all scheduled matters have been discussed.

Please be aware that the maximum time allotted for members of the public to speak shall not exceed three (3) minutes per person. State Law prohibits the Planning Commission from taking action or entertaining extended discussion on a topic not listed on the agenda. Please show courtesy to others and direct all of your comments to the Planning Commission Chairperson.

STAFF COMMUNICATIONS – Update on the City's certified Housing Element provided by Director Palombi.

MINUTES

1. APPROVAL OF MINUTES – JUNE 21, 2022

Motion to approve the meeting minutes motioned by Commissioner Lomeli and Seconded by Commissioner Aliksanian. Director Palombi took roll and the item was approved 4-0.

CONSENT ITEM(S)

2. COMPLIANCE REVIEW FOR CONDITIONAL USE PERMIT ("CUP") NO. PC-2020-0014-CUP FOR THE SALE OF A FULL-LINE OF ALCOHOL (TYPE 41 LICENSE – ON-SALE BEER AND WINE - EATING PLACE) WITHIN AN EXISTING FOOD INCUBATOR (BLVD MRKT) LOCATED AT 520 WEST WHITTIER BOULEVARD ("PROJECT SITE").

Director Palombi introduced the item. Assistant Planner, Daniel Ruiz provided a presentation on CUP No. PC-2020-0014-CUP on BLVD Market's Compliance Review. The Applicant Barney Santos was in attendance to answer any questions the Planning Commission may have. Upon Mr. Ruiz's presentation the Commissioners had no questions for staff or the applicant. A motion to review, receive and file the item was motioned by Commissioner Lomeli and Seconded by Commissioner Aliksanian. Director Palombi took roll and the item was approved 4-0.

3. COMPLIANCE REVIEW FOR CONDITIONAL USE PERMIT ("CUP") NO. 24-19 FOR THE SALE OF BEER AND WINE (TYPE 20 – OFF-SALE BEER & WINE) AT A CONVENIENCE STORE OPERATED BY 7-ELEVEN, INC. AND LOCATED AT 2900 WEST BEVERLY BOULEVARD, SUITES A-B.

Director Palombi introduced the item. Assistant Planner, Michael Donovan provided a presentation on CUP No. 24-19 on 7-Eleven's Compliance Review. Upon Mr. Donovan's presentation the Commissioners had no questions for staff on this item. A motion to review, receive and file the item was motioned by Commissioner Aliksanian and Seconded by Commissioner Lomeli. Director Palombi took roll and the item was approved 4-0.

PLANNING COMMISSIONER ORALS

1. **Chair, Victor Cuevas**
2. **Vice-Chair, Priscilla Del Rio**
3. **Commissioner, Berj Aliksanian**
4. **Commissioner, Natalia Lomeli**

ADJOURNMENT

The City of Montebello Planning Commission adjourned at 7:03 p.m. to the next regularly scheduled meeting on September 6, 2022 at 6:30 p.m.

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Joseph Palombi, Planning Commission Secretary

ITEM # 2

CITY OF MONTEBELLO
PLANNING COMMISSION AGENDA STAFF REPORT

TO: Members of the Planning Commission

FROM: Joseph Palombi, Director of Planning & Community Development

BY: Joseph Palombi, Director of Planning & Community Development

SUBJECT: **Development Agreement ("DA") Nos. 02-22, 03-22, and 04-22 to relocate in place five existing double-faced static outdoor advertising signs with an enhanced outdoor advertising sign with digital display faces for the property located at 1720 Bluff Road (DA No. 02-22), 1633 Washington Blvd. (DA No. 03-22), and 1915 W. Whittier Blvd. (DA No. 04-22)**

DATE: October 18, 2022

RECOMMENDATION(S):

It is recommended that the Planning Commission take the following action:

1. Adopt Resolution No. 10-22 recommending the City Council approve the Development Agreement between the City of Montebello and Clear Channel Outdoor, LLC for the property located at 1720 S. Bluff Road (Attachment A);

2. Adopt Resolution No. 11-22 recommending the City Council approve the Development Agreement between the City of Montebello and Clear Channel Outdoor, LLC for the property located at 1633 Washington Blvd. (Attachment B); and

3. Adopt Resolution No. 12-22 recommending the City Council approve the Development Agreement between the City of Montebello and Clear Channel Outdoor, LLC for the property located at 1915 W. Whittier Blvd. (Attachment C).

FISCAL IMPACT:

In addition to the five (5) static sign faces removed under the Take Down Program, the

City would receive the following community benefits: 1) a one-time Development Agreement signing bonus totaling $100,000 (signing bonus of $20,000 per sign face); 2) an annual development fee totaling $50,000 per year ($10,000 per sign face) for the five (5) digital signs; 3) a one-time processing fee of $10,000 per digital sign; and 4) City use of the digital signs for advertising public service announcements and City-related public messages at no charge to the City, subject to available space.

<u>BACKGROUND:</u>

Clear Channel Outdoor, LLC (the "Applicant") currently operates 24 existing poster panel (or static) outdoor advertising sign faces on 13 structures located along city streets within the City of Montebello (the "City"). This request for a proposed relocation in place relates to three locations for a total of six (6) existing static sign faces located on three separate dual-faced sign poles. These existing static sign faces are currently located at 1720 S. Bluff Road, 1633 Washington Blvd., and 1915 W. Whittier Blvd. (collectively "the Properties"). The proposed relocation in place would call for the removal of an existing static sign face for every digital face conversion with a 1:1 net reduction in static signage. As part of this request, the Applicant would relocate in-place five (5) existing static signs with five replacement digital signs for outdoor advertising. It is important to note that none of the sign structures associated with this request will need to be rebuilt in connection with the proposed replacement. With the exception of minor electrical upgrades, the replacement would be seamless and result in a sign that is approximately 700 pounds lighter and much more efficient to operate as it will include remote access capabilities. As a result, the converted digital signage could be used, if needed, for immediate emergency and community messaging along internal corridors by the City, County, and State agencies. The takedown program associated with this request will include the removal of five existing static signs within the City.

The five (5) signs targeted for takedown include: 1) a double-faced 12' x 25' outdoor advertising sign with printed display faces located on the property at 8105 Slauson Ave.; 2) the double-faced 12' x 25' outdoor advertising sign with printed display faces located on the property at 249 E. Beverly Blvd.; and 3) the single-faced 12' x 25' outdoor advertising sign with printed display face located on the property at 303 W. Whittier Blvd (collectively the "Takedown Program").

On September 28, 2022, the Applicant requested to enter into three (3) separate Development Agreements ("DA Nos. 02-22, 03-22, and 04-22") with the City to allow the removal and replacement of the existing outdated double-faced static outdoor advertising signs with new double-faced digital outdoor advertising signs pursuant to Montebello Municipal Code ("MMC") Section 17.62.105.B(C)(2) and Government Code Sections 5200, 5412, 5443.5, and 65865 *et seq*.

<u>ENVIRONMENTAL IMPACT:</u>

The Project is exempt from the California Environmental Quality Act (CEQA) pursuant to the "Common Sense" exemption set forth under Section 15061(b)(3), which provides that CEQA applies only to projects which have the potential for causing a significant effect on the environment and also states that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In addition, the Project is also exempt from CEQA under the Class 3 categorical exemption set forth under to Section 15303 of the CEQA Guidelines which exempts new construction or conversion of small structures where only minor modifications are made in the exterior of the structure. The proposed relocation and replacement of an existing off-premise dual-faced static sign with a new off-premises dual-faced digital sign including, among other things, minor modifications to the exterior structure as well as enhancement to include the most current technology does not have the potential to degrade the quality of the environment or have a significant effect on the environment.

ANALYSIS:

The following project description is intended to provide an overview for each Development Agreement based on the subject site and will be referred to in this report collectively as the “Project” for purposes of describing the following requests:

I. 1720 S. Bluff Road – Development Agreement No. 02-22
The Applicant currently owns and operates an existing double-faced 12’ x 25’ outdoor advertising sign with printed display faces at 1720 S. Bluff Road. The subject property is currently zoned M-1 (Light Manufacturing Zone) with a General Plan land use designation of Industrial. The Applicant is proposing to relocate the existing sign in place as a double-faced 12’ x 25’ outdoor advertising sign with digital display faces. With the exception of electrical upgrades, there would be no structural changes needed to the existing sign pole/structure in connection with this request. In addition, the Applicant will remove one single faced 12’ x 25’ outdoor advertising sign with a printed display face located at 8105 Slauson Ave. within the City.

II. 1633 Washington Blvd. – Development Agreement No. 03-22
The Applicant currently owns and operates an existing double-faced 12’ x 25’ outdoor advertising sign with printed display faces at 1633 Washington Blvd. The subject property is currently zoned M-1 (Light Manufacturing Zone) with a General Plan land use designation of Industrial. The Applicant is proposing to relocate the existing sign in place as a double-faced 12’ x 25’ outdoor advertising sign with digital display faces. With the exception of electrical upgrades, there would be no structural changes needed to the existing sign pole/structure in connection with this request. In addition, the Applicant will remove one single faced 12’ x 25’ outdoor advertising sign with a printed display face located at 249 E. Beverly Blvd. within the City.

III. 1915 W. Whittier Blvd. – Development Agreement No. 04-22
The Applicant currently owns and operates an existing double-faced 12’ x 25’ outdoor advertising sign with printed display faces at 1915 W. Whittier Blvd. The subject property is currently zoned C-2 (General Commercial Zone) with a General Plan land use designation of General Commercial. The Applicant is proposing to relocate the existing sign in place as a double-faced 12’ x 25’ outdoor advertising sign with one digital display face and one printed/static display face. With the exception of electrical upgrades, there would be no structural changes needed to the existing sign pole/structure in connection with this request. In addition, the Applicant will remove one single faced 12’ x 25’ outdoor

advertising sign with a printed display face located at 303 W. Whittier Blvd. within the City.

The subject properties (or "Project Sites") are currently improved with industrial/commercial uses. As described above, the replacement signage from static to digital would include five (5) new digital sign faces. This request would also include the takedown of five existing static outdoor advertising signs located at three (3) separate locations within the City. As previously mentioned, the Takedown Program will occur at 8105 Slauson Ave., 249 E. Beverly Blvd., and 303 W. Whittier Blvd. The proposed replacement of the existing static dual-faced billboards with state-of-the-art technology would also reduce vehicle trips to the subject location through the implementation of remote access capabilities associated with the new digital technology. In addition, there would be a reduction in materials used to manually change the static sign face eliminating the need to replace the poster signs that are inherent in the static signs. Furthermore, each panel would come equipped with light sensors that automatically control the illumination at a pre-set illumination level of .3 footcandles over ambient light.

DEVELOPMENT AGREEMENT

The State Legislature adopted the "Development Agreement Statute," sections 65864 et seq. of the Government Code to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development. The City of Montebello, a general law city, is authorized pursuant to the Development Agreement Statute to enter into development agreements with persons having legal or equitable interests in real property for the purpose of establishing predictability for both the City and the owner of the property during the development process.

The Applicant has requested that the City enter into Development Agreement No. 02-22 (Agreement No. 4032, please see Attachment D), Development Agreement No. 03-22 (Agreement No. 4033, please see Attachment E), and Development Agreement No. 04-22 (Agreement No. 4034, please see Attachment F), for the Properties to allow completion of the replacement and relocation program. In accordance with its standard procedures, the Applicant and the City have engaged in negotiations.

The Development Agreement Statute provides that the Planning Commission and the City Council must each hold a public hearing on the proposal prior to approving a development agreement. Development Agreements must be adopted by an ordinance approved by the City Council and cannot be approved unless the legislative body finds that the request/project conforms to the General Plan and any applicable specific plan.

Pursuant to MMC Section 17.62.105(C)(2), the relocation of an off-premises sign, and its replacement with a new off-premises digital sign, is allowed upon the approval of a Development Agreement by the City Council, containing appropriate standards and public benefits to be negotiated between the sign owner and the City, and in compliance with all other imposed standards.

All City fiscal decisions, including the financial aspects and specific deal points of the

Development Agreement, are solely the jurisdiction of the Montebello City Council, and it is the City Council's exclusive authority to review and take action upon any such Agreement.

The Project as authorized in the proposed Development Agreements are consistent with the General Plan because the Development Agreements meet the Goals and Objectives of the Land Use Element.

GENERAL PLAN

The Project conforms with the Montebello General Plan, Land Use Element as it will provide a plan for enhanced advertising opportunities for businesses in an effort to increase the taxable revenue from these properties as well as the potential for increased sales tax revenues to the City and eliminates blight through the removal, replacement, and relocation of older signs and the construction of new state-of-the-art digital signs.

Goal #1: To Formulate a plan which is responsive to the needs of the community and which permits the orderly arrangement of land uses, permitting sufficient areas for reasonable development. Commercial Policy #5: The City should contain ample commercial facilities to meet the needs of its residents as well as provide taxable revenues to the City. Industrial Policy #1: The City's industrial area should be preserved and maintained.

DISCUSSION:

None.

SUMMARY:

Clear Channel Outdoor, LLC (the "Applicant") currently operates 24 existing poster panel (or static) outdoor advertising sign faces on 13 structures located along city streets within the City of Montebello (the "City"). This request for a proposed relocation in place relates to three locations for a total of six (6) existing static sign faces located on three separate dual-faced sign poles. These existing static sign faces are currently located at 1720 S. Bluff Road, 1633 Washington Blvd., and 1915 W. Whittier Blvd. (collectively "the Properties"). The proposed relocation in place would call for the removal of an existing static sign face for every digital face conversion with a 1:1 net reduction in static signage. As part of this request, the Applicant would relocate in-place five (5) existing static signs with five replacement digital signs for outdoor advertising. It is important to note that none of the sign structures associated with this request will need to be rebuilt in connection with the proposed replacement. With the exception of minor electrical upgrades, the replacement would be seamless and result in a sign that is approximately 700 pounds lighter and much more efficient to operate as it will include remote access capabilities. As a result, the converted digital signage could be used, if needed, for immediate emergency and community messaging along internal corridors by the City, County, and State agencies. The takedown program associated with this request will include the removal of five existing static signs within the City.

PUBLIC NOTIFICATION

Pursuant to MMC Section 17.78 (Public Hearings, Notices, and Appeals), the following notification was completed as follows:

On October 7, 2022, the Public Hearing Notices were published in the Daily Journal (Whittier Daily News);
On October 6, 2022, the Public Hearing Notices were mailed to owners/occupants within the 300-foot radius from the exterior boundaries of the Properties.

ATTACHMENT(S)

1. ATTACHMENT A - MONTEBELLO PC RESOLUTION - DA 02-22 DIGITAL SIGN
2. ATTACHMENT B - MONTEBELLO PC RESOLUTION - DA 03-22 DIGITAL SIGN
3. ATTACHMENT C - MONTEBELLO PC RESOLUTION - DA 04-22 DIGITAL SIGN
4. ATTACHMENT D - DA 02-22_City of Montebello Development Agt. - 1720 Bluff Road
5. ATTACHMENT E - DA 03-22 City of Montebello Development Agt. - 1633 Washington Blvd.
6. ATTACHMENT F - DA 04-22 City of Montebello Development Agt. 1915 W Whittier Blvd.

NEXT STEPS:

MONTEBELLO PLANNING COMMISSION
RESOLUTION NO. 10-22

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MONTEBELLO RECOMMENDING THAT THE CITY COUNCIL OF THE CITY OF MONTEBELLO APPROVE DEVELOPMENT AGREEMENT NO. 02-22 BETWEEN THE CITY OF MONTEBELLO AND CLEAR CHANNEL OUTDOOR, INC. FOR A DIGITAL SIGN

WHEREAS, on September 28, 2022, the Applicant requested to enter into a Development Agreements ("DA No. 02-22") with the City to allow the removal and replacement of the existing outdated double-faced static outdoor advertising sign with new double-faced digital outdoor advertising sign pursuant to Montebello Municipal Code Section 17.62.105.B(C)(2) and Government Code Sections 5200, 5412, 5443.5, and 65865 *et seq*.

WHEREAS, The Development Agreement Statute provides that the Planning Commission and the City Council must each hold a public hearing on the proposal prior to approving a development agreement. Development Agreements must be adopted by an ordinance approved by the City Council and cannot be approved unless the legislative body finds that the request/project conforms to the General Plan and any applicable specific plan.

WHEREAS, California Government Code Sections 65864, *et seq*., ("Development Agreement Law") authorizes cities to enter into binding development agreements with persons having a legal or equitable interest in real property for the development of such property, all for the purposes of strengthening the public planning process, encouraging private participation and comprehensive planning, and identifying the economic costs of such development; and

WHEREAS, Development Agreement 02-22 between the City of Montebello ("City") and Clear Channel Outdoor, Inc., ("Developer") is being recommended to the City Council for approval; and

WHEREAS, Developer has a leasehold interest in that certain portion of real property located at 1720 Bluff Road. in the City of Montebello, CA 90640, Assessor Parcel Number 6369-008-001 upon which Developer currently owns and operates an existing lawfully permitted -double- faced 12' x 25' outdoor advertising sign with printed display faces and seeks to relocate such sign in place as a double-faced 12' x 25' outdoor advertising sign with digital display faces in consideration for the additional removal of the double-faced 12' x 25' outdoor advertising sign located on the real property; and

WHEREAS, section 17.62.105(C)(2) of the Montebello Municipal Code requires a development agreement be approved by the city council for relocation of an off-premises sign, and its replacement with a new off-premises digital display sign; and

WHEREAS, such development agreement as required by section 17.62.105(C)(2) must contain appropriate standards and public benefits to be negotiated between the sign owner and the city, and compliance with all other standards imposed by the Montebello Municipal Code.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. The foregoing recitals are true and correct and are hereby incorporated as substantive findings in this Resolution.

Section 2. The Planning Commission hereby recommends that the City Council of the City of Montebello certify that the Project is exempt from the California Environmental Quality Act (CEQA) pursuant to the "Common Sense" exemption set forth under Section 15061(b)(3), which provides that CEQA applies only to projects which have the potential for causing a significant effect on the environment and also states that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Section 3. The Planning Commission hereby recommends that the City Council of the City of Montebello certify that the Project conforms with the Montebello General Plan, Land Use Element as it will provide a plan for enhanced advertising opportunities for businesses in an effort to increase the taxable revenue from these properties as well as the potential for increased sales tax revenues to the City and eliminates blight through the removal, replacement, and relocation of older signs and the construction of new state-of-the-art digital signs.

Section 4. The Planning Commission has found that: this Agreement is in the best public interest of the City and its residents; adopting this Agreement constitutes a present exercise of the City's police power; the terms of the Agreement will not be detrimental to the public's health, safety, or general welfare; and this Agreement is consistent with the City's General Plan and Municipal Code. This Agreement and the proposed Project (as hereinafter defined) will achieve a number of City objectives including the reduction of visual clutter, elimination of non-conforming signage, and facilitation of the orderly development, relocation and distribution of existing displays to more appropriate locations within the City, while allowing for the incorporation of modern technology into relocated displays and an overall reduction in the number of outdoor advertising signs in the City as part of the City's planned development.

Section 5. The Planning Commission Secretary shall certify the adoption of this Resolution and it shall go into effect immediately upon its adoption.

APPROVED AND ADOPTED BY THE MONTEBELLO PLANNING COMMISSION on this _____ day of October 2022.

____

VICTOR CUEVAS, CHAIR
MONTEBELLO PLANNING COMMISSION

ATTEST:

I, _________________, Secretary of the City of Montebello Planning Commission, **DO HEREBY CERTIFY** that the foregoing Resolution, being Resolution No. **22-XX** has been duly signed by the Chair, and attested by the Secretary, all at a meeting of the Montebello Planning Commission, held October _______, 2022, and that same was approved and adopted by the following vote to wit:

AYES:
NOES:
ABSENT:

____

JOSEPH PALOMBI, SECRETARY
MONTEBELLO PLANNING COMMISSION

MONTEBELLO PLANNING COMMISSION
RESOLUTION NO. 11-22

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MONTEBELLO RECOMMENDING THAT THE CITY COUNCIL OF THE CITY OF MONTEBELLO APPROVE DEVELOPMENT AGREEMENT NO. 03-22 BETWEEN THE CITY OF MONTEBELLO AND CLEAR CHANNEL OUTDOOR, INC. FOR A DIGITAL SIGN

WHEREAS, on September 28, 2022, the Applicant requested to enter into a Development Agreements ("DA No. 03-22") with the City to allow the removal and replacement of the existing outdated double-faced static outdoor advertising sign with new double-faced digital outdoor advertising sign pursuant to Montebello Municipal Code Section 17.62.105.B(C)(2) and Government Code Sections 5200, 5412, 5443.5, and 65865 *et seq*.

WHEREAS, The Development Agreement Statute provides that the Planning Commission and the City Council must each hold a public hearing on the proposal prior to approving a development agreement. Development Agreements must be adopted by an ordinance approved by the City Council and cannot be approved unless the legislative body finds that the request/project conforms to the General Plan and any applicable specific plan.

WHEREAS, California Government Code Sections 65864, *et seq*., ("Development Agreement Law") authorizes cities to enter into binding development agreements with persons having a legal or equitable interest in real property for the development of such property, all for the purposes of strengthening the public planning process, encouraging private participation and comprehensive planning, and identifying the economic costs of such development; and

WHEREAS, Development Agreement 03-22 between the City of Montebello ("City") and Clear Channel Outdoor, Inc., ("Developer") is being recommended to the City Council for approval; and

WHEREAS, Developer has a leasehold interest in that certain portion of real property located at 1633 Washington Blvd. in the City of Montebello, CA 90640, Assessor Parcel Number 6353-015-023 upon which Developer currently owns and operates an existing lawfully permitted -double- faced 12' x 25' outdoor advertising sign with printed display faces and seeks to relocate such sign in place as a double-faced 12' x 25' outdoor advertising sign with digital display faces in consideration for the additional removal of the double-faced 12' x 25' outdoor advertising sign located on the real property; and

WHEREAS, section 17.62.105(C)(2) of the Montebello Municipal Code requires a development agreement be approved by the city council for relocation of an off-premises sign, and its replacement with a new off-premises digital display sign; and

WHEREAS, such development agreement as required by section 17.62.105(C)(2) must contain appropriate standards and public benefits to be negotiated between the sign owner and the city, and compliance with all other standards imposed by the Montebello Municipal Code.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. The foregoing recitals are true and correct and are hereby incorporated as substantive findings in this Resolution.

Section 2. The Planning Commission hereby recommends that the City Council of the City of Montebello certify that the Project is exempt from the California Environmental Quality Act (CEQA) pursuant to the "Common Sense" exemption set forth under Section 15061(b)(3), which provides that CEQA applies only to projects which have the potential for causing a significant effect on the environment and also states that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Section 3. The Planning Commission hereby recommends that the City Council of the City of Montebello certify that the Project conforms with the Montebello General Plan, Land Use Element as it will provide a plan for enhanced advertising opportunities for businesses in an effort to increase the taxable revenue from these properties as well as the potential for increased sales tax revenues to the City and eliminates blight through the removal, replacement, and relocation of older signs and the construction of new state-of-the-art digital signs.

Section 4. The Planning Commission has found that: this Agreement is in the best public interest of the City and its residents; adopting this Agreement constitutes a present exercise of the City's police power; the terms of the Agreement will not be detrimental to the public's health, safety, or general welfare; and this Agreement is consistent with the City's General Plan and Municipal Code. This Agreement and the proposed Project (as hereinafter defined) will achieve a number of City objectives including the reduction of visual clutter, elimination of non-conforming signage, and facilitation of the orderly development, relocation and distribution of existing displays to more appropriate locations within the City, while allowing for the incorporation of modern technology into relocated displays and an overall reduction in the number of outdoor advertising signs in the City as part of the City's planned development.

Section 5. The Planning Commission Secretary shall certify the adoption of this Resolution and it shall go into effect immediately upon its adoption.

APPROVED AND ADOPTED BY THE MONTEBELLO PLANNING COMMISSION on this _____ day of October 2022.

____
VICTOR CUEVAS, CHAIR
MONTEBELLO PLANNING COMMISSION

ATTEST:

I, _________________, Secretary of the City of Montebello Planning Commission, **DO HEREBY CERTIFY** that the foregoing Resolution, being Resolution No. **22-XX** has been duly signed by the Chair, and attested by the Secretary, all at a meeting of the Montebello Planning Commission, held October _______, 2022, and that same was approved and adopted by the following vote to wit:

AYES:
NOES:
ABSENT:

____
JOSEPH PALOMBI, SECRETARY
MONTEBELLO PLANNING COMMISSION

MONTEBELLO PLANNING COMMISSION
RESOLUTION NO. 12-22

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MONTEBELLO RECOMMENDING THAT THE CITY COUNCIL OF THE CITY OF MONTEBELLO APPROVE DEVELOPMENT AGREEMENT NO. 04-22 BETWEEN THE CITY OF MONTEBELLO AND CLEAR CHANNEL OUTDOOR, INC. FOR A DIGITAL SIGN

WHEREAS, on September 28, 2022, the Applicant requested to enter into a Development Agreements (“DA No. 04-22”) with the City to allow the removal and replacement of the existing outdated double-faced static outdoor advertising sign with new double-faced digital outdoor advertising sign pursuant to Montebello Municipal Code Section 17.62.105.B(C)(2) and Government Code Sections 5200, 5412, 5443.5, and 65865 *et seq*.

WHEREAS, The Development Agreement Statute provides that the Planning Commission and the City Council must each hold a public hearing on the proposal prior to approving a development agreement. Development Agreements must be adopted by an ordinance approved by the City Council and cannot be approved unless the legislative body finds that the request/project conforms to the General Plan and any applicable specific plan.

WHEREAS, California Government Code Sections 65864, *et seq*., (“Development Agreement Law”) authorizes cities to enter into binding development agreements with persons having a legal or equitable interest in real property for the development of such property, all for the purposes of strengthening the public planning process, encouraging private participation and comprehensive planning, and identifying the economic costs of such development; and

WHEREAS, Development Agreement 04-22 between the City of Montebello (“City”) and Clear Channel Outdoor, Inc., (“Developer”) is being recommended to the City Council for approval; and

WHEREAS, Developer has a leasehold interest in that certain portion of real property located at 1915 W Whittier Blvd. in the City of Montebello, CA 90640, Assessor Parcel Number 6337-007-033 upon which Developer currently owns and operates an existing lawfully permitted -double- faced 12’ x 25’ outdoor advertising sign with printed display faces and seeks to relocate such sign in place as a double-faced 12’ x 25’ outdoor advertising sign with one east facing digital display face and one west facing printed display face in consideration for the additional removal of the single-faced 12’ x 25’ outdoor advertising sign located on the real property; and

WHEREAS, section 17.62.105(C)(2) of the Montebello Municipal Code requires a development agreement be approved by the city council for relocation of an off-premises sign, and its replacement with a new off-premises digital display sign; and

WHEREAS, such development agreement as required by section 17.62.105(C)(2) must contain appropriate standards and public benefits to be negotiated between the sign owner and the city, and compliance with all other standards imposed by the Montebello Municipal Code.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. The foregoing recitals are true and correct and are hereby incorporated as substantive findings in this Resolution.

Section 2. The Planning Commission hereby recommends that the City Council of the City of Montebello certify that the Project is exempt from the California Environmental Quality Act (CEQA) pursuant to the "Common Sense" exemption set forth under Section 15061(b)(3), which provides that CEQA applies only to projects which have the potential for causing a significant effect on the environment and also states that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Section 3. The Planning Commission hereby recommends that the City Council of the City of Montebello certify that the Project conforms with the Montebello General Plan, Land Use Element as it will provide a plan for enhanced advertising opportunities for businesses in an effort to increase the taxable revenue from these properties as well as the potential for increased sales tax revenues to the City and eliminates blight through the removal, replacement, and relocation of older signs and the construction of new state-of-the-art digital signs.

Section 4. The Planning Commission has found that: this Agreement is in the best public interest of the City and its residents; adopting this Agreement constitutes a present exercise of the City's police power; the terms of the Agreement will not be detrimental to the public's health, safety, or general welfare; and this Agreement is consistent with the City's General Plan and Municipal Code. This Agreement and the proposed Project (as hereinafter defined) will achieve a number of City objectives including the reduction of visual clutter, elimination of non-conforming signage, and facilitation of the orderly development, relocation and distribution of existing displays to more appropriate locations within the City, while allowing for the incorporation of modern technology into relocated displays and an overall reduction in the number of outdoor advertising signs in the City as part of the City's planned development.

Section 5. The Planning Commission Secretary shall certify the adoption of this Resolution and it shall go into effect immediately upon its adoption.

APPROVED AND ADOPTED BY THE MONTEBELLO PLANNING COMMISSION on this _____ day of October 2022.

____
VICTOR CUEVAS, CHAIR
MONTEBELLO PLANNING COMMISSION

ATTEST:

I, _________________, Secretary of the City of Montebello Planning Commission, **DO HEREBY CERTIFY** that the foregoing Resolution, being Resolution No. **22-XX** has been duly signed by the Chair, and attested by the Secretary, all at a meeting of the Montebello Planning Commission, held October _______, 2022, and that same was approved and adopted by the following vote to wit:

AYES:
NOES:
ABSENT:

____
JOSEPH PALOMBI, SECRETARY
MONTEBELLO PLANNING COMMISSION

RECORDING REQUESTED BY AND
AFTER RECORDING MAIL TO:

CITY OF MONTEBELLO
1600 West Beverly Boulevard
Montebello, CA 90640
Attn: City Clerk

Space above this line reserved for recorder's use
[Exempt From Recording Fee Per Gov. Code §6103]

DEVELOPMENT AGREEMENT NO. 4032

This Development Agreement (hereinafter "Agreement") is entered into by and between the CITY OF MONTEBELLO (hereinafter "City") and CLEAR CHANNEL OUTDOOR, INC., a Delaware corporation (hereinafter "Developer").

RECITALS

A. California Government Code Sections 65864, *et seq.*, ("Development Agreement Law") authorizes cities to enter into binding development agreements with persons having a legal or equitable interest in real property for the development of such property, all for the purposes of strengthening the public planning process, encouraging private participation and comprehensive planning, and identifying the economic costs of such development.

B. Developer has a leasehold interest in that certain portion of real property located at 1720 Bluff Road in the City of Montebello, CA 90640, Assessor Parcel Number 6369-008-001, as more specifically described in Exhibit "A" (the "Site") upon which Developer currently owns and operates an existing lawfully permitted double-faced 12' x 25' outdoor advertising sign with printed display faces and seeks to relocate such sign in place as a double-faced 12' x 25' outdoor advertising sign with digital display faces, as more fully described in Exhibit "B" hereto ("New Digital Billboard"), in consideration for the additional removal of the double-faced 12' x 25' outdoor advertising sign located on the real property described on Exhibit "C" hereto (the "Removed Sign" and together with the New Digital Billboard, the "Project").

C. Notwithstanding anything to the contrary in Section 17.62.105 of the City's Zoning Ordinance, the City has determined that the Project contemplated herein complies with Section 17.62.105.C of the Zoning Ordinance, as amended by the Ordinance approving this Agreement (the "Code"), and will provide public benefits among other things, resulting in a net reduction in outdoor advertising signage in the City.

D. City and Developer agree and acknowledge that the outdoor advertising sign relocation contemplated herein complies with, and serves the purposes enumerated in,

California Business & Professions Code Sections 5200 *et seq*. (the "California Outdoor Advertising Act"), including, but not limited to, Sections 5412 and 5443.5.

E. In exchange for the approvals sought to convert the existing double-faced billboard with printed display faces to the New Digital Billboard, as described above, Developer has offered to:

1. Pay to the City an annual Development Fee, as defined and provided in Section 2.6 below, for the cost to the City to ameliorate the impact of the installation of the digital sign panels on the New Digital Billboard; and

2. Provide advertising space free of charge to City on a space available basis as further described below.

3. Pay to the City a signing bonus of Twenty Thousand Dollars ($20,000) per digital display face under this agreement to be used to refurbish the City's existing on-premise sign located at 1600 W Beverly Blvd., Montebello CA 90640, (the "Signing Bonus").

F. Developer and City agree that a development agreement should be approved and adopted to memorialize the expectations of City and Developer as more particularly described herein.

G. On _________, 2022, the City Council of the City, pursuant to Government Code sections 65867 and 65867.5 and other applicable law, held a duly noticed public hearing to consider the approval of this Agreement and, after hearing public testimony thereon, considered the proposal and introduced Ordinance No. _____.

H. The City Council has found that: this Agreement is in the best public interest of the City and its residents; adopting this Agreement constitutes a present exercise of the City's police power; the terms of the Agreement will not be detrimental to the public's health, safety, or general welfare; and this Agreement is consistent with the City's General Plan and Municipal Code. This Agreement and the proposed Project (as hereinafter defined) will achieve a number of City objectives including the reduction of visual clutter, elimination of non-conforming signage, and facilitation of the orderly development, relocation and distribution of existing displays to more appropriate locations within the City, while allowing for the incorporation of modern technology into relocated displays and an overall reduction in the number of outdoor advertising signs in the City as part of the City's planned development.

I. On _____ 2022, the City Council held the second reading of Ordinance No.__, thereby approving this Agreement.

J. City finds and determines that all actions required of City precedent to approval of this Agreement by Ordinance No. ______ of the City Council have been duly and regularly taken.

K. In exchange for the benefits to the City described in the Agreement, together with other public benefits that will result from the development of the Project (as defined below), Developer will receive by this Agreement assurance that it may proceed with the Project in accordance with Land Use Regulations (as defined below), and therefore desires to enter into this Agreement.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. This Agreement uses a number of terms having specific meanings, as defined below. These specially defined terms are distinguished by having the initial letter capitalized when used in the Agreement. In addition to the terms defined in the Recitals above and elsewhere in this Agreement, the defined terms include the following:

1.1.1 " Site Lease" means the lease agreement by and between Developer and Bluff Road East LLC, a Limited Liability Company, the owner of the Site.

1.1.2 "Agreement" means this Development Agreement and all attachments and Exhibits hereto.

1.1.3 "City" means the City of Montebello, a California municipal corporation.

1.1.4 "City Council" means the City Council of the City.

1.1.5 "Developer" means Clear Channel Outdoor, LLC, a Delaware limited liability company and its successors and assigns, duly existing and operating, and doing business at 19320 Harborgate Way, Torrance, CA 90501.

1.1.6 "Development Approvals" means any and all permits and approvals which may be required by City, affected utility agencies, or any other governmental agency for the construction and/or operation of the Project by Developer pursuant to the Scope of Development, including but not limited to, necessary building permits and all approvals required under the California Environmental Quality Act ("CEQA") and from the California Department of Transportation ("Caltrans"), if any.

1.1.7 "Effective Date" is when the Agreement is signed by both the Developer and City and when the Agreement is approved by Ordinance No. ____, but shall be no sooner than 30 days following approval of this Agreement by Ordinance No. _____, and after expiration of all applicable appeals periods.

1.1.8 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations and official policies of City, including, but not limited to, the City's General Plan, Municipal Code and Zoning Code, which govern development and use of the Site, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the Site which are in full force and effect as of the Effective Date of this Agreement, subject to the terms of this Agreement. Land Use Regulations shall also include NPDES regulations and approvals from the California Department of Transportation Outdoor Advertising Division, to the extent applicable.

1.1.9 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device, including each of their respective successors and assigns.

1.1.10 "New Digital Billboard" means the new double-faced digital sign, as described in Exhibit "B" hereto located on the Site, and a relocation in place of the existing lawfully permitted double faced outdoor advertising structure 12' x 25' foot printed display faces on the Site.

1.1.11 "Operational" means the New Digital Billboard is capable, legally and functionally, of displaying advertising on the digital displays with a permanent source of power.

1.1.12 "Project" means the complete removal of the Removed Sign and the removal of the existing printed display faces and , and the installation of digital display faces on the New Digital Billboard ".

1.1.13 "Removed Sign" means the sign to be completely removed as more fully described on Exhibit "C" hereto.

1.1.14 "Scope of Development" means the Scope of Development attached hereto as Exhibit "D" and incorporated herein.

1.1.15 "Signing Bonus" means the upfront payment to be used by the City to refurbish its existing on-premise sign as provided in Recital E.3 above.

1.1.16 "Subsequent Land Use Regulations" means any Land Use Regulations effective after the Effective Date of this Agreement which governs development and use of the Project and/or the Site.

1.1.17 "Subsequent Development Approvals" means any and all permits and approvals which may be required by City, affected utility, or any other governmental agency for repair, maintenance, construction, reconstruction, enhancement, development, operation, or other work to be performed by Developer, including but not limited to, necessary building permits and all approvals required under the California Environmental Quality Act ("CEQA"), that occurs after the Project has been constructed and become operational. Consistent with the Outdoor Advertising Act (Bus. & Profs. Code, § 5200 et seq.), the performance of customary maintenance does not require local approvals.

1.1.18 "Term" shall have the meaning provided in Section 2.4, unless earlier terminated as provided in this Agreement.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of this Agreement: Exhibit "A" (Legal Description of Site), Exhibit "B" (Description of New Billboard), Exhibit "C" (Removed Billboards), and Exhibit "D" (Scope of Development)

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. From and following the Effective Date, actions by the City and Developer with respect to the Site, the Project, or the New Digital Billboard, including actions by the City on applications for Subsequent Development Approvals affecting the

Site, shall be subject to the terms and provisions of this Agreement; provided, however, that nothing in this Agreement shall be deemed or construed (i) to modify or amend the Site Lease, or any of Developer's obligations thereunder; (ii) bind or restrict the owner of the Site with respect to its ownership or operation of the Site; or (iii) to impose any obligation whatsoever on the owner of the Site, including without limitation any obligation with respect to the Project, except as expressly set forth in this Agreement.

2.2 Interest in the Site. City and Developer acknowledge and agree that Developer has a legal or equitable interest in the Site and thus is qualified to enter into and be a party to this Agreement under California Government Code 65864 *et. seq*. If Developer's leasehold interest is prematurely terminated by the owner of the Site, then Developer shall have no further obligations under Section 3.2 4 or Exhibit "D" of this Agreement relative to the construction or maintenance of the sign thereon, including but not limited to any payments under Section 2.6 or elsewhere hereunder. Additionally, if Developer's leasehold interest is prematurely terminated by owner of the Site, then this Agreement shall be terminated and Developer shall have no further obligations under this Agreement, except as provided under Section 4.1 with respect to Developer's responsibility to remove the digital display faces on the New Digital Billboard as provided therein.

2.3 No Assignment. Except as set forth herein, neither party may sublet, assign or otherwise transfer this Agreement, or any interest herein, either voluntarily or by operation of law, without the other party's prior written consent, which the other party shall not unreasonably withhold, condition, or delay. Notwithstanding the above, the consent of City shall not be required: (a) for Developer to assign its rights and duties under this Agreement to any type of legal entity, including but not limited to a limited liability company, corporation, or limited partnership, controlling, controlled by or under common control with Developer or to any entity that acquires a majority of Developer's assets in the Southern California market; or (b) in the event any such entity to which this Agreement has been so assigned thereafter merges with another company, reorganizes its stock, or undergoes a similar corporate restructuring, changes ownership or sells any of its assets or stock. Any security posted by Developer may be substituted by the assignee or transferee. After a transfer or assignment as permitted by this Section, the City shall look solely to such assignee or transferee for compliance with the provisions of this Agreement which have been assigned or transferred.

2.4 Term of Agreement. Unless earlier terminated as provided in this Agreement, this Agreement shall continue in full force and effect until the earlier of: (a) twenty (20) years after the date the digital display faces on the New Digital Billboard become Operational; or (b) the earlier termination of this Agreement and Site Lease and the permanent removal of the digital display faces on the New Digital Billboard constructed pursuant to the terms hereof. If one digital face is removed permanently and replaced with a printed face, then this Agreement will remain in full force and effect as to the second digital face and the annual Development Fee under Section 2.6 shall be reduced to one-half of such payments accordingly. This Agreement may be extended at Developer's option at the end of the initial term by delivery of written notice from Developer to the City not less than ninety (90) days prior to expiration of the initial term of this Agreement Within thirty (30) days after the expiration or termination of this Agreement, the parties shall execute a written cancellation of this Agreement which shall be recorded with the County Recorder pursuant to Section 9.1 below. The term of this Agreement supersedes any amortization period that may apply under the Montebello Municipal Code as to any non-conformity as applied to the Site.

2.5 Processing Fee. Upon submission of its application for the Project approvals, Developer will pay to City a processing ("Processing Fee") in the amount of Ten Thousand Dollars ($10,000). This fee is in addition to the payment of customary building plan check or building permit fees. The City shall retain and use the Processing Fee, or any part thereof, for payment of any and all standard fees applicable for the necessary City review, evaluation, and analysis pertaining to the New Digital Billboard, including, but not limited to, legal fees and feasibility analysis incurred by the City in negotiation and preparation of this Agreement.

2.6 Development Fee. The potential impacts of the Project on the City and surrounding community are difficult to identify and calculate. Developer and City agree that an annual development fee paid by Developer to City would adequately ameliorate all such potential impacts. The parties therefore agree that Developer shall pay an annual development fee in the amount of Ten Thousand Dollars ($10,000.00) per digital display face to City, ("Development Fee"),payable in monthly installments, with the first installment due within thirty (30) days after the display faces on the New Digital Billboard become Operational (the "Commencement Date"), and within thirty (30) days of the year anniversary of such Commencement Date throughout the Term of this Agreement, as follows:

2.7 Notification of Operational Date. Developer shall notify the City in writing when the digital display faces on the New Digital Billboard becomes Operational for the purpose of determining the Commencement Date. The City's issuance of a building permit shall not be unreasonably withheld, provided the issuance of a building permit is done in compliance with the terms of this Agreement and said permit is issued in full compliance with applicable building codes and standards.

2.8 Community Benefits. Developer shall also provide the following community benefits during the entire Term of this Agreement:

2.8.1 **City's Use of Digital Sign**. Developer shall also provide, free of charge to City on a space available basis, advertising space on the digital display faces on the New Digital Billboard for purposes of posting public service announcements and City-related advertising or announcements ("City Messages"). The City shall submit all proposed copy of City Messages to Developer not less than five (5) business days prior to the date the copy is proposed to be displayed, and, with the exception of Public Service Messages described in Section 2.8.3, the City shall notify Developer in writing not less than 30 calendar days prior to a requested display date. All proposed copy shall be subject to Developer's standard advertising copy rejection and removal policies, which allow Developer to approve or disapprove copy and remove copy once posted or displayed. City represents and warrants that all copy, content and materials supplied by City to Developer for display under this Agreement: (i) are owned or duly licensed by City and do not infringe or misappropriate the rights of any other person or entity; (ii) comply with all applicable federal, state, and local laws, rules and regulations and any industry codes or rules by which City and/or Developer may be bound and do not contain any obscene, libelous, slanderous or otherwise defamatory materials or refer in an offensive manner to the gender, race or ethnicity of any individual or group; (iii) are accurate and that all claims contained therein have been substantiated; and (iv) do not infringe upon any copyright, trademark or other intellectual property or privacy right of any third party. Any content provided by City shall be owned and belong exclusively to the City, and Developer shall not reproduce, sell, or give away any such content without the advance written consent of the City. It is expressly understood and agreed that, absent approval from Developer, City Messages shall not include any names, logos or marks associated with any third-party non-governmental person or entity, or any products or services associated with any third-party non-governmental person or entity.

2.8.2 **Indemnification for City Messages**. The City shall, and hereby does agree to, indemnify, defend and hold harmless Developer for, from and against, any claims, costs (including, but not limited to, court costs and reasonable attorneys' fees), losses, actions or liabilities arising from or in connection with any third party allegation that any portion of any City Message infringes or violates the rights, including, but not limited to, copyright, trademark, trade secret or any similar right, of any third party. This indemnity shall not include Developer's lost profits or consequential damages or any similar right, of any third party.

2.8.3 **Public Service Messages**. During the entire Term of this Agreement and any extension, Developer shall make advertising space on the digital display faces on the New Digital Billboard Faces available to the appropriate agencies for the purposes of displaying "Amber Alert" or other emergency messages, at no cost, and in accordance with local and regional emergency protocols.

2.9 Prohibited Use. Developer shall not utilize the digital display faces on the New Digital Billboard to advertise tobacco, marijuana, hashish, "gentlemen's clubs," adult entertainment businesses, "obscene matter," as that term is defined in California Penal Code section 311, or any matter that is prohibited by any City ordinance existing as of the Effective Date of this Agreement or as may be amended or implemented from time-to-time after the Effective Date and equally applicable to all billboard displays. In addition, the Developer shall at all times comply with Article 7 § 5402 of the Outdoor Advertising Act from the Business and Professions Code. Developer shall immediately remove any prohibited content upon notice from the City. If there is a dispute between Developer and City as to whether any such content is prohibited, Developer shall remove the disputed content until the dispute is resolved.

2.10 Signing Bonus. Developer shall pay to City the Signing Bonus on the Commencement Date.

3. DEVELOPMENT AND IMPLEMENTATION OF THE PROJECT.

3.1 Vested Right to Develop The Site. Developer shall have the right to develop the Project on the Site in accordance with, and to the extent of, the Development Approvals, the Subsequent Development Approvals, and this Agreement pursuant to the Land Use Regulations including, without limitation, Developer's vested right to develop the Project on the Site; provided that nothing in this Agreement shall be deemed to modify or amend the Site Lease. In the event of any conflict or inconsistency between (i) the Agreement, any Project conditions of approval, and terms for issuance of a Project-related building permit, and (ii) the Land Use Regulations, this Agreement and any Project conditions of approval, and terms for issuance of a Project-related building permit shall prevail and control.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement: the rules, regulations and official policies governing permitted uses of the Site; the density and intensity and use of the Site; the maximum height, bulk, and size of proposed structures; the general location of public utilities; the design, and improvement and construction standards and specifications applicable to development of the Site; and other terms and conditions of development applicable to the Project, are set forth in the Land Use Regulations which are in full force and effect as of the Effective Date of this Agreement, subject to the terms of this Agreement.

3.3 Development Approvals. Developer shall, at its own expense and before commencement of demolition, construction or development of any structures or other work of

improvement upon the Site, secure or cause to be secured all necessary Development Approvals. Not by way of limiting the foregoing, in developing and constructing the Project, Developer shall comply with all (1) applicable development standards in City's Municipal Code, (2) applicable NPDES requirements pertaining to the Project, (3) all applicable building and fire codes, except as may be permitted through approved variances and modifications. Developer shall pay all normal and customary fees and charges applicable to such permits, and any fees and charges hereafter imposed by City in connection with the Project which are standard and uniformly-applied to similar projects in the City.

3.4 Purpose. The purpose of this Agreement is to set forth the rules and regulations applicable to the Project, which shall be accomplished in accordance with this Agreement, including the Scope of Development (Exhibit "D") which sets forth a description of the Project.

3.5 Changes and Amendments. Developer may determine that changes to the Agreement are appropriate and desirable. In the event Developer makes such a determination, Developer may apply in writing for an amendment to the Agreement to effectuate such change(s). The Parties acknowledge that City shall be permitted to use its inherent land use authority in deciding whether to approve or deny any such amendment request; provided, however, that in exercising the foregoing reasonable discretion, the City shall not apply a standard different than that used in evaluating requests of other developers, and the City must comply with Paragraph 9.18 of this Agreement. Accordingly, under no circumstance shall City be obligated in any manner to approve any amendment to the Agreement. Notwithstanding the foregoing, the City Manager shall be authorized, with the written consent of Developer, to approve any non-substantive amendment to the Agreement without processing a formal amendment to this Agreement. All other amendments shall require the approval of the City Council. The parties acknowledge that any extension of the Term for no more than twenty-four (24) months total is an example of a non-substantive change, which the City Manager, in his or her sole discretion, may approve in writing. Nothing herein shall cause Developer to be in default if it upgrades the digital display installed pursuant to this Agreement during the Term of this Agreement to incorporate newer technology; provided Developer shall secure all applicable ministerial permits to do so and ensure that such upgrade is consistent with the dimensions and standards for the displays, as provided under this Agreement and the Land Use Regulations.

3.6 Reservation of Authority.

3.6.1 **Limitations, Reservations and Exceptions**. Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations shall apply to the development of the Site:

(a) Processing fees and charges of every kind and nature imposed by the City to cover the estimated actual costs to City of processing applications for Subsequent Development Approvals to the extent such fees are assessed on a City-wide basis.

(b) Procedural regulations consistent with this Agreement relating to hearing bodies, petitions, applications, notices, findings, records, hearing, reports, recommendations, appeals and any other matter of procedure. Notwithstanding the foregoing, if such change materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice.

(c) Changes adopted by the International Conference of Building Officials, or other similar body, as part of the then most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, or National Electrical Code, as adopted by City as Subsequent Land Use Regulations, if adopted prior to the issuance of a building permit for development of the digital display faces on the New Digital Billboard on the Site. Notwithstanding the foregoing, if such change materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice.

(d) Regulations that are not in conflict with the Development Approvals or this Agreement, and do not (1) reduce the size of the Project as permitted under the Land Use Regulations; (2) interfere with the operation of the New Digital Billboard as permitted under the Land Use Regulations; (3) change the land use designation or permitted or conditionally permitted use of the Site as described in the Land Use Regulations; (4) require the issuance of permits, approvals or entitlements by City other than those required under the Existing Land Use Regulations; or (5) materially limit the processing or procuring of applications and approvals of Subsequent Development Approvals.

(e) Regulations that are in conflict with the Development Approvals or this Agreement, provided Developer has given written consent to the application of such regulations to the Development of the Site.

(f) Applicable Federal, State, County, and multi-jurisdictional law and regulations which City is required to enforce as against the Site and that do not have an exception for existing signs or legal nonconforming uses.

3.6.2 **Future Discretion of City**. This Agreement shall not prevent City from denying or conditionally approving any application for a Subsequent Development Approval on the basis of the Land Use Regulations.

3.6.3 **Modification or Suspension by Federal or State Law**. In the event that applicable federal or state laws or regulations enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, and there is no exception for the legal nonconforming use, each party shall provide the other party with written notice of such state or federal law or regulation, a copy of such law or regulation, and a statement concerning the conflict with the provisions of this Agreement. The parties shall, within thirty (30) days, meet and confer in good faith in a reasonable attempt to modify this Agreement so as to comply with such state or federal law or regulation. This Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provision impractical to enforce. Notwithstanding the foregoing, if such change materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice.

3.7 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not subject to control by City may possess authority to regulate aspects of the development of the Site as contemplated herein, and this Agreement does not limit the authority of such other public agencies. Developer acknowledges and represents that, in addition to the Land Use Regulations, Developer shall, at all times, comply with all applicable federal, State and local laws and regulations applicable to the New Digital Billboard and Site that do not have an exception for a legal nonconforming use. To the extent such other public agencies

preclude development or maintenance of the Project and that do not have an exception for a legal nonconforming use, Developer shall not be further obligated under this Agreement except as provided in Section 4.1. Notwithstanding the foregoing, if such action by another public agency materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice

3.8 Public Improvements. Notwithstanding any provision herein to the contrary, the City shall retain the right to condition any Subsequent Development Approvals to require Developer to pay any required development fees, and/or to construct the required public infrastructure ("Exactions") at such time as City shall determine subject to the following conditions.

3.8.1 The payment or construction must be to alleviate an impact caused by the Project or be of benefit to the Project; and

3.8.2 The timing of the Exaction should be reasonably related to the development of the Project and said public improvements shall be phased to be commensurate with the logical progression of the Project development as well as the reasonable needs of the public.

3.8.3 It being understood, however, that if the there is a material increase in cost to Developer or such action by City otherwise materially impacts Developer's its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice.

3.9 Fees, Taxes and Assessments. During the Term of this Agreement, the City shall not, without the prior written consent of Developer, impose any additional fees, taxes or assessments on all or any portion of the Project, except such fees, taxes and assessments as are described in or required by this Agreement and/or the Development Approvals. However, this Agreement shall not prohibit the application of fees, taxes or assessments upon the Site only and not the New Digital Billboard or Developer directly as follows:

3.9.1 Developer shall be obligated to pay those fees, taxes or City assessments and any increases in same which exist as the Effective Date or are included in the Development Approvals;

3.9.2 Developer shall be obligated to pay any fees or taxes, and increases thereof, imposed on a City-wide basis such as, but not limited to, business license fees or taxes or utility taxes;

3.9.3 Developer shall be obligated to pay all fees applicable to a permit application as charged by City at the time such application is filed by Developer;

3.9.4 Developer shall be obligated to pay any fees imposed pursuant to any Uniform Code that existed when the application is filed by the Developer or that exists when the Developer applies for any Subsequent Development Approval.

3.10 Additional Fees; Termination. Notwithstanding anything to the contrary herein, if there is a change in such fees to those charged as of the full execution hereof, or any additional fees are charged and such additional or increased fees materially change Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice.

3.11 Term. The term of any Development Approvals and Subsequent Development Approvals shall be automatically extended for the longer of the Term of this Agreement or the term otherwise applicable to the Development Approvals and Subsequent Development Approvals.

4. REMOVAL OF BILLBOARD DISPLAY FACES.

4.1 Removal by Developer. If an extension of the Term is not granted by the City according to the provisions of paragraph 2.4, above, the New Digital Billboard digital display faces will be removed and the displays may be converted back to printed displays. In the event that the digital displays are not converted back to printed displays according to the terms of this paragraph, Developer shall within sixty (60) days from expiration of the Term, at its sole cost and expense, be required to demolish and remove the New Digital Billboard digital display faces.

4.2 City's Right to Removal. Provided Developer is not in material breach hereof past any applicable notice and cure period, City will not have the right to remove the New Digital Billboard digital display faces . Should Developer be in material breach of this Agreement past any applicable notice and cure period, and subject to due process, City may only require removal of the New Digital Billboard digital display faces. If City requires the New Digital Billboard digital display faces to be removed pursuant to the terms of this paragraph, Developer shall, at its sole cost and expense, remove the digital displays upon the New Digital Billboard and convert the displays to printed displays within ninety (90) days of City's notice to Developer of such breach.

5. REVIEW FOR COMPLIANCE.

5.1 Annual Reviews. At least once every twelve (12) months, Developer shall demonstrate its good faith compliance with the terms hereof by providing written correspondence addressed to the City Manager demonstrating such good faith compliance. "Good faith compliance" shall mean that Developer has sufficiently followed the terms of this Agreement so as to carry out the intent of the parties in entering into it. After receiving and reviewing Developer's written submission, if the City Manager finds that Developer is not acting in good faith compliance with this Agreement, the City Manager shall schedule a hearing before the Planning Commission in order to evaluate Developer's good faith compliance with the terms of the Agreement. The City shall provide Developer with notice of such hearing and a copy of all staff reports and related exhibits as soon as available, but in no event later than five days prior to the hearing. The Planning Commission's determination following such hearing shall be based on substantial evidence, and shall be subject to appeal to the City Council. If the Planning Commission or City Council, as applicable, finds that the Developer is not in good faith compliance with the terms of this Agreement, the provisions of Section 6 shall govern the parties rights.

5.2 City Right of Access. The City, its officers, employees, agents and contractors, shall, in the exercise of the City's police power, have the right, at their sole risk and expense, to enter the Site consistent with any rights the City has obtained by virtue of recorded easement or other property interests or, if no such interests exist, upon execution of a license or other applicable written agreement in a form mutually acceptable to the owner of the Site and upon written notice to Developer. The access to the Site described in this paragraph shall be for the purpose of conducting the inspection, maintenance, repair, service, construction, or relocation of any public improvements or public facilities located on the Site, or to exercise its rights under section 4.2. If an emergency repair to a public improvement or public facility on the Site is required and the City does not possess and has not obtained the foregoing access rights, Developer

acknowledges that the City may exercise its police power to enter the Site and conduct such repair after providing Developer and the Site owner with reasonable advance notice, with the reasonableness of such notice to be determined from the circumstances necessitating the entry. Any damage or injury to the Site or to the improvements constructed thereon resulting from such entry shall be promptly repaired at the sole expense of the City. The City also may access the Site in order to implement any of its lawful police powers to address any nuisance, dangerous condition, or other condition prohibited under the City's ordinances, so long as the City conducts the foregoing activities in a manner consistent with and protective of Developer's and the Site owner's due process rights. Except as explicitly provided for in this Agreement (including without limitation in this Section and Section 4.2 above), the City shall have no right whatsoever to enter the Site.

5.3 Procedure. Each party shall have a reasonable opportunity to assert matters which it believes have not been undertaken in accordance with the Agreement, to explain the basis for such assertion, and to receive from the other party a justification of its position on such matters. If, on the basis of the parties' review of any terms of the Agreement, either party concludes that the other party has not complied with the terms of the Agreement, then such party may issue a written "Notice of Non-Compliance" specifying the grounds therefore and all facts demonstrating such non-compliance. The party receiving a Notice of Non-Compliance shall have forty-five (45) days to cure or remedy the non-compliance identified in the Notice of Non-Compliance, or if such cure or remedy is not reasonably capable of being cured or remedied within such forty-five (45) days period, to commence to cure or remedy the non-compliance and to diligently and in good faith prosecute such cure or remedy to completion. If the party receiving the Notice of Non-Compliance disputes that it is in non-compliance with the terms of this Agreement, that party shall respond in writing to the Notice of Non-Compliance within forty-five (45) days after receipt of the Notice of Non-Compliance. If a Notice of Non-Compliance is disputed, the parties shall, for a period of not less than fifteen (15) days following receipt of the response to the Notice of Non-Compliance, seek to arrive at a mutually acceptable resolution of the dispute. In the event that a cure or remedy is not timely effected or, if the Notice of Non-Compliance is disputed and the parties are not able to arrive at a mutually acceptable resolution of the matter(s) by the end of the fifteen (15) day period described above, the party alleging the non-compliance may thereupon pursue the remedies provided in Section 6. Neither party hereto shall be deemed in breach if the reason for non-compliance is due to a "force majeure" event as defined in, and subject to the provisions of, Section 9.10.

6. DEFAULT AND REMEDIES.

6.1 Termination of Agreement.

6.1.1 **Termination of Agreement for Material Default of Developer**. City, in its discretion, may terminate this Agreement upon written notice to Developer for any material failure of Developer to perform any material duty or obligation of Developer hereunder or to comply with the terms of this Agreement (hereinafter referred to as "default" or "breach"); provided, however, City may terminate this Agreement pursuant to this Section only after following the procedure set forth in Section 5.3. In the event of a termination by City under this Section 6.1.1, Developer acknowledges and agrees that, unless otherwise set forth below, City may retain all fees, including the Processing Fee and the Development Fee paid up to the date of termination, and Developer shall pay the prorated amount of the Development Fee within sixty (60) days after the date of termination and removal of the New Digital Billboard that equates to the percentage of time elapsed in the year of the Term at the time of termination. In the event that City terminates this Agreement under this Section 6.1.1 before the New Digital Billboard

digital display faces become Operational, City shall refund any portion of the Processing Fee that the City has not reasonably expended at the time of such termination after payment to City of the fees and costs described in Section 2.5.

6.1.2 **Termination of Agreement for Material Default of City**. Developer, in its discretion, may terminate this Agreement upon written notice to City for any material failure of City to perform any material duty or obligation of City hereunder or to comply in with the terms of this Agreement; provided, however, Developer may terminate this Agreement pursuant to this Section only after following the procedure set forth in Section 5.3. In addition, Developer may terminate this Agreement upon written notice to City, if despite Developer's good faith efforts, it is unable to secure the Development Approvals and any other necessary approvals and/or compliance with requirements under laws necessary to effectuate the Project is not feasible. In the event of a termination by Developer under this Section 6.1.2, Developer acknowledges and agrees that, unless otherwise set forth below, City may retain all fees, including the Processing Fee and the Development Fee, paid up to the date of termination, and Developer shall pay the prorated amount of the Development Fee within sixty (60) days after the date of termination and removal of the New Digital Billboard digital display faces that equates to the percentage of time elapsed in the year of the Term at the time of termination. In the event that Developer terminates this Agreement under this Section 6.1.2 before the New Digital Billboard digital display faces become Operational, City shall refund any portion of the Processing Fee that the City has not reasonably expended at the time of such termination after payment to City of the fees and costs described in Section 2.5.

6.1.3 **Rights and Duties Following Termination**. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to (i) any default in the performance of the provisions of this Agreement which has occurred prior to said termination, (ii) Developer's obligation to remove the digital display faces on the New Digital billboard pursuant to Section 4.1 or (iii) any continuing obligations to indemnify other parties.

6.2 <u>Remedies</u>. In addition to the rights of termination set forth above, in the event of a default by either party, the non-defaulting party shall have the right to: (a) bring any proceeding in the nature of specific performance, injunctive relief, declaratory relief, or mandamus and/or; (b) bring any action at law or in equity to compensate the non-defaulting party for all the detriment proximately caused by the defaulting party's default; provided, however, that Developer's sole and exclusive remedy shall be specific performance and Developer shall not have the right to recover monetary damages (compensatory, consequential, or punitive) against the City other than attorneys' fees to the extent provided in Section 9.13 below, and the City shall only have the right to recover actual, direct damages (and not consequential or punitive damages) against Developer, as well as attorneys' fees to the extent provided in Section 9.13 below.

7. INSURANCE, INDEMNIFICATION AND WAIVERS.

7.1

7.1.1 Types of Insurance.

(a) Liability Insurance. Beginning on the Effective Date hereof and until completion of the Term, Developer shall, at its sole cost and expense, keep or cause to be kept in force for the mutual benefit of City, as additional insured, and Developer comprehensive broad form general liability insurance covering Developer's possession and use of the Site and providing protection of at least Two Million Dollars ($2,000,000) for bodily injury or death to any one person, at least Four Million Dollars ($4,000,000) in the aggregate for any accidents or occurrences, and at least One Million Dollars ($1,000,000) for property damage. Developer shall also furnish or cause to be furnished to City evidence that any contractors with whom Developer has contracted for the performance of any work for which Developer is responsible maintains the same limits of coverage, as specified above. Developer shall provide to the City annual proof of insurance consistent with terms and conditions of this agreement.

(b) Worker's Compensation. Developer shall also furnish or cause to be furnished to City evidence that any contractor with whom Developer has contracted for the performance of any work for which Developer is responsible hereunder carries worker's compensation insurance as required by law.

(c) Insurance Policy Form, Sufficiency, Content and Insurer. All insurance required by express provisions hereof shall be carried only by responsible insurance companies qualified to do business by California with an AM Best Rating of no less than "A". All such policies shall be non-assignable and shall contain language, to the extent obtainable, to the effect that (i) the policies are primary and noncontributing with any insurance that may be carried by City, but only with respect to the liabilities assumed by Developer under this Agreement; and (ii) the policies cannot be canceled or materially changed by Developer except after written notice by Developer to City or City's designated representative and the City's approval thereof. Developer shall furnish City with certificates of insurance evidencing that Developer has complied with the requirements of this paragraph 7.1.1.

7.1.2 Failure to Maintain Insurance and Proof of Compliance. Developer shall deliver to City, in the manner required for notices, copies of certificates of all insurance policies required of each policy within the following time limits:

(1) For insurance required above, within seven (7) days after the Effective Date or consistent with the requirements of Exhibit "C" (Schedule of Performance), Item No. 8.

(2) The City can request current certificates of all insurance policies as required. The City reserves the right to obtain copies of relevant policy forms and endorsements of the required insurance policies.

Developer's failure or refusal to procure or maintain insurance as required herein or failure or refusal to furnish City with proof that the required insurance has been procured and is in full force and effect may, after complying with the requirements of Section 5.3, be deemed a default under the terms of this Agreement.

7.2 <u>Indemnification</u>.

7.2.1 **General**. Developer shall indemnify the City, and its respective officers, employees, and/or agents against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions, or liabilities (herein "claims or liabilities") that may be asserted or claimed by any person(s), firm, or entity arising out of or in connection with this Agreement and/or the work, operations, or activities of Developer, its agents, employees, subcontractors, and/or invitees, hereunder, upon the Site.

(a) Developer will defend any action or actions filed in connection with any of said claims or liabilities covered by the indemnification provisions herein and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith, which attorneys will be the attorneys hired by the insurance company where insurance coverage applies.

(b) Developer will promptly pay any judgment rendered against the City or its respective officers, agents, or employees that falls within the scope of Developer's indemnity obligations, as defined above in paragraph 7.2.1.

7.2.2 **Exceptions**. The foregoing indemnity shall not include claims or liabilities arising from the sole negligence or willful misconduct of the City, its officers, agents, or employees or contractors. The foregoing indemnity shall also not include claims or liabilities arising from City's use of Developer's advertising space pursuant to paragraph 2.9.1 above.

7.2.3 **Additional Coverage**. Without limiting the generality of the foregoing, Developer's indemnity obligation shall include any liability arising by reason of any accident or other occurrence caused by Developer in or on the Site causing injury to any person or property;

(a) Loss and Damage. Except as set forth below, City shall not be liable for any damage to property of Developer or others located on the Site, nor for the loss of or damage to any property of Developer or others by theft or otherwise. Except as set forth below, City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain, dampness or leaks from any part of the Site or from the pipes or plumbing, or from the street, or from any environmental or soil contamination or hazard, or from any other latent or patent defect in the soil, subsurface or physical condition of the Site, or by any other cause of whatsoever nature. The provisions of this subparagraph (a) shall not apply (i) to the extent City or its agents, employees, subcontractors, invitees or representatives causes such injury or damage, or (ii) to the extent covered in any permit to enter the Site executed by the City.

(b) Period of Indemnification. The obligations for indemnity under this Section 7.2 shall begin upon the Effective Date and shall survive termination of Development Agreement.

8. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Site or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Site. City acknowledges that the lenders providing such financing may require certain Agreement modifications and City agrees upon request, from time to time, to meet with Developer, the owner of the Site, and representatives of such lenders to negotiate in good faith any such request for modification. Subject to compliance with applicable laws, City will not unreasonably withhold its consent to any such requested modification provided City determines such modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Site shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Project or the Site made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Project or the Site, or any part thereof, which Mortgagee has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Developer in the performance of Developer's obligations under this Agreement.

(c) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Developer under the terms of this Agreement, City shall make a good faith effort to provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Developer. The Mortgagee shall have the right, but not the obligation, to cure the default during the period that is the longer of (i) the remaining cure period allowed such party under this Agreement, or (ii) sixty (60) days.

(d) Any Mortgagee who comes into possession of the Project or the Site, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Project or the Site, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Developer's obligations or other affirmative covenants of Developer hereunder, or to guarantee such performance; except that (i) to the extent that any covenant to be performed by Developer is a condition precedent to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder, and (ii) in the event any Mortgagee seeks to develop or use any portion of the Project or the Site acquired by such Mortgagee by foreclosure, deed of trust, or deed in lieu of foreclosure, such Mortgagee shall strictly comply with all of the terms, conditions and requirements of this Agreement and the Development Approvals applicable to the Project or the Site or such part thereof so acquired by the Mortgagee.

9. MISCELLANEOUS PROVISIONS.

9.1 Recordation of Agreement. This Agreement shall be recorded with the County Recorder by the City Clerk within ten (10) days of execution, as required by Government Code Section 65868.5. Amendments approved by the parties, and any cancellation, shall be similarly recorded.

9.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties with respect to the subject matter set forth herein, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

9.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, then that term, provision, covenant or condition of this Agreement shall be stricken and the remaining portion of this Agreement shall remain valid and enforceable if that stricken term, provision, covenant or condition is not material to the main

purpose of this agreement, which is to allow the Project to be permitted and operated and to provide the Development Fee to the City; otherwise, this Agreement shall terminate in its entirety, unless the parties otherwise agree in writing, which agreement shall not be unreasonably withheld.

9.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning, to achieve the objectives and purposes of the parties hereto. The rule of construction, to the effect that ambiguities are to be resolved against the drafting party or in favor of the non-drafting party, shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and hereof.

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

9.6 Singular and Plural. As used herein, the singular of any word includes the plural.

9.7 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

9.8 Waiver. Failure of a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

9.9 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit for the parties and their owner, successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

9.10 Force Majeure. Notwithstanding the contrary herein, neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other acts of God, fires, rains, winds, wars, pandemics, epidemics, terrorism, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the party's employment force), government actions and regulations (other than those of the City), court actions (such as restraining orders or injunctions), or other causes beyond the party's reasonable control. If any such events shall occur, the term of this Agreement and the time for performance shall be extended for the duration of each such event, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years and further provided that if such delay is longer than six (6) months, Developer may terminate this Agreement upon written notice to City and City shall return to Developer any portion of the Development fee paid for any period after the effective date of such termination.

9.11 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

9.12 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same affected as if all of the parties had executed the same instrument.

9.13 Litigation. Any action at law or in equity arising under this Agreement or brought by any party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Los Angeles, State of California, or such other appropriate court in said county. Service of process on City shall be made in accordance with California law. Service of process on Developer shall be made in any manner permitted by California law and shall be effective whether served inside or outside California. In the event of any action between City and Developer seeking enforcement or interpretation of any of the terms and conditions to this Agreement, the prevailing party in such action shall be awarded, in addition to such relief to which such party is entitled under this Agreement, its reasonable litigation costs and expenses, including without limitation its expert witness fees and reasonable attorneys' fees.

9.14 Covenant Not To Sue. The parties to this Agreement, and each of them, agree that this Agreement and each term hereof are legal, valid, binding, and enforceable. The parties to this Agreement, and each of them, hereby covenant and agree that each of them will not commence, maintain, or prosecute any claim, demand, cause of action, suit, or other proceeding against any other party to this Agreement, in law or in equity, which is based on an allegation, or assert in any such action, that this Agreement or any term hereof is void, invalid, or unenforceable.

9.15 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the Development of the Project is a private Development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Developer is that of a government entity regulating the Development of private property, on the one hand, and the holder of a legal or equitable interest in such property on the other hand. City agrees that by its approval of, and entering into, this Agreement, that it is not taking any action which would transform this private Development into a "public work" project, and that nothing herein shall be interpreted to convey upon Developer any benefit which would transform Developer's private project into a public work project, it being understood that this Agreement is entered into by City and Developer upon the exchange of consideration described in this Agreement, including the Recitals to this Agreement which are incorporated into this Agreement and made a part hereof, and that City is receiving by and through this Agreement the full measure of benefit in exchange for the burdens placed on Developer by this Agreement.

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

9.17 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain or Developer's right to seek and collect just compensation or any other remedy available to it.

9.18 Amendments in Writing/Cooperation. This Agreement may be amended only by written consent of both parties specifically approving the amendment and in accordance with the Government Code provisions for the amendment of Development Agreements. The parties shall cooperate in good faith with respect to any amendment proposed in order to clarify the intent and application of this Agreement, and shall treat any such proposal on its own merits, and not as a basis for the introduction of unrelated matters. Minor, non-material modifications may be approved by the City Manager upon approval by the City Attorney.

9.19 Corporate Authority. The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party, if not an individual, is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

9.20 Notices. All notices under this Agreement shall be effective when delivered by United States Postal Service mail, registered or certified, postage prepaid return receipt requested; and addressed to the respective parties as set forth below or as to such other address as the parties may from time to time designate in writing by providing notice to the other party:

To City:	City of Montebello 1600 West Beverly Boulevard Montebello, CA 90640 Attn: City Manager
To Developer:	Clear Channel Outdoor, Inc. 19320 Harborgate Way Torrance, CA 90501 Attn: Vice President, Real Estate & Public Affairs
With Copy To:	Clear Channel Outdoor, LLC 2325 E. Camelback Road, Suite 250 Phoenix, AZ 85016 Attn: Operations Counsel

9.21 Nonliability of City Officials. No officer, official, member, employee, agent, and/or representatives of City shall be liable for any amounts due hereunder, and no judgment or execution thereon entered in any action hereon shall be personally enforced against any such officer, official, member, employee, agent, and/or representative.

9.22 No Brokers. City and Developer represent and warrant to the other that neither has employed any broker and/or finder to represent its interest in this transaction. Each party agrees to indemnify and hold the other free and harmless from and against any and all liability, loss, cost, or expense (including court costs and reasonable attorneys' fees) in any manner connected with a claim asserted by any individual or entity for any commission or finder's fee in connection with this Agreement or arising out of agreements by the indemnifying party to pay any commission or finder's fee.

9.23 No Amendment of Lease. Nothing contained in this Agreement shall be deemed to amend or modify any of the terms or provisions of the Lease. Nothing contained in this Agreement shall constitute or be deemed to constitute a limit on any of Developer's

obligations under the Lease, or any of Owner's rights or remedies against Developer under the Lease.

WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

City: CITY OF MONTEBELLO

By: ______________________________

Mayor

ATTEST:

____

City Clerk

APPROVED AS TO FORM:

____

City Attorney

Developer:

Clear Channel Outdoor, LLC a Delaware limited liability company

____

Bryan Parker, Executive Vice President

[end of signatures]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

On ____________________, before me, ____________________________, a Notary Public, personally appeared _______________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ________________________________

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

On ____________________, before me, ____________________________, a Notary Public, personally appeared _______________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

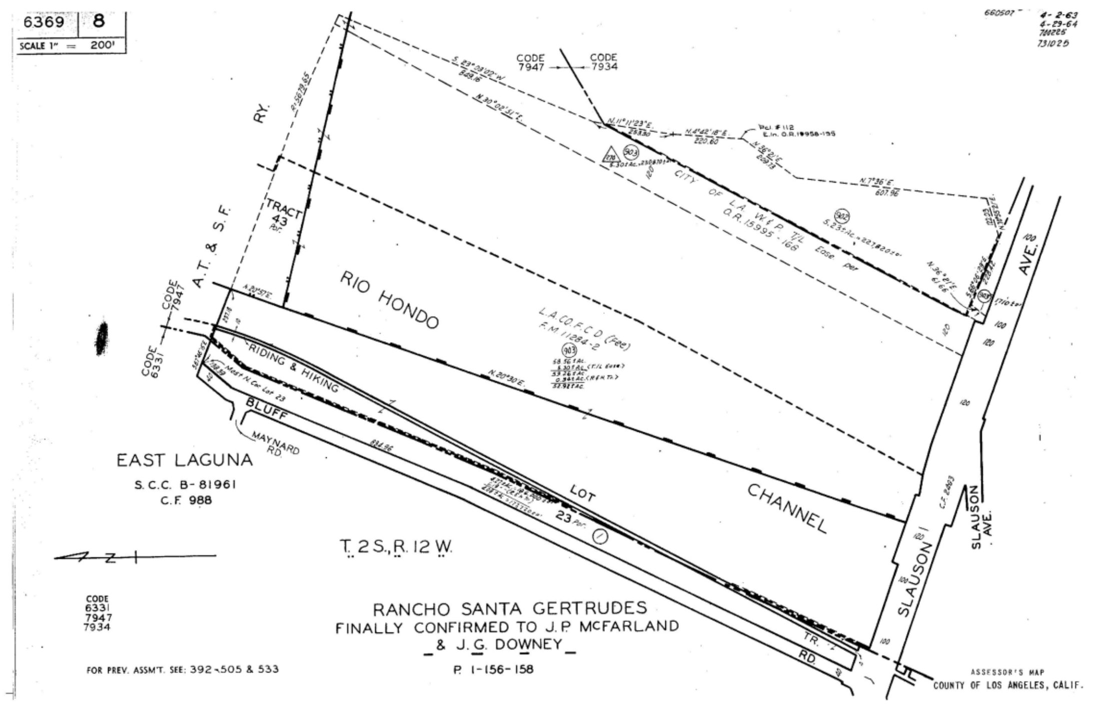
WITNESS my hand and official seal.

Signature ________________________________

EXHIBIT "A"

LEGAL DESCRIPTION OF SITE

EAST LAGUNA LOT EX OF HIKING AND RIDING TRAIL COM AT MOST N COR OF LOT 23 TH S 6746'15" E TO SE BDRY LINE OF MONTEBELLO CITY TH SW THEREON TO NE LINE OF SLAUSONAVE TH NW ON SD NE LINE BEG PART OF LOT 23



22

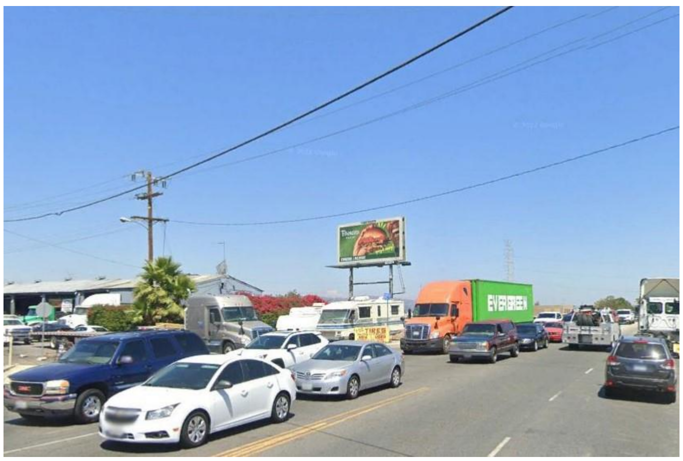
EXHIBIT “B”

Description of New Digital Billboard

CCO will be removing the existing Deck and External Lights

CCO will be relocating the existing printed display faces in place as a double-faced 12’ x 25’ outdoor advertising sign with digital display faces

Existing West Face



Existing East Face

Digital Panel Sample

EXHIBIT “C”
Billboard Structure and Faces To Be Removed

8105 Slauson Ave., Montebello, CA 90640 (Panels #5272 & #5273)

East Face

West Face

EXHIBIT "D"

SCOPE OF DEVELOPMENT INCLUDING SIGN PLANS

Developer and City agree that the Development shall be undertaken in accordance with the terms of the Agreement, which include the following:

1. Project. Developer shall relocate in place the existing printed sign faces and shall convert it to the New Digital Billboard with digital display faces in accordance with the terms of this Agreement. The existing structure will have two (2) new digital display faces (each display face measuring approximately 12' x 25') within the Site.

2. Building Fees. Developer shall pay all applicable City building fees, as described in this Agreement, at the time that a building permit is issued for the installation of the New Digital Billboard Faces on the Site.

3. Maintenance and Access. Developer, for itself and its successors and assigns, hereby covenants and agrees to be responsible for the following:

(a) Maintenance and repair of the New Digital Billboard and Site (where authorized pursuant to the Site Lease) including but not limited to, the displays installed thereon, and all related on-Site improvements, easements, rights-of-way at its sole cost and expense. Developer's maintenance and repair obligation shall include, without limitation, maintaining any poles, lighting, signs and walls in good repair and free of graffiti, rubbish, debris and other hazards to persons using the same. Developer shall maintain and repair the New Digital Billboard digital display faces in accordance with all applicable laws, rules, ordinances and regulations of all federal, State, and local bodies and agencies having jurisdiction over the Site [unless those federal, State, and local bodies have an exception for a legal nonconforming use]. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal related to the Project; (ii) replacement of any fixtures, equipment or property damaged by the Project to the extent required by this Agreement or applicable law; (iii) the ongoing maintenance by the Developer of any access points to the New Digital Billboard to minimize dust caused by the Project; and (iv) the repair, replacement and repainting of the New Digital Billboard structure and display faces as necessary to maintain such billboard in good condition and repair.

(b) Maintenance of the Site (where authorized pursuant to the Site Lease) in such a manner as to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance of the New Digital Billboard digital display faces or structure such as to be detrimental to the public health, safety or general welfare or that such a condition of deterioration or disrepair causes appreciable harm or is materially detrimental to property or improvements within three hundred (300) feet of Site.

4. Other Rights of City. In the event of any violation or threatened violation of any of the provisions of this Exhibit "D," then in addition to, but not in lieu of, any of the rights or remedies the City may have to enforce the provisions of this Agreement, the City shall have the

right, after complying with Section 5.3 of this Agreement, (i) to enforce the provisions hereof by undertaking any maintenance or repairs required by Developer under Paragraph 3 above (subject to the execution of a permit to enter in form reasonably acceptable to Owner) and charging Developer for any actual maintenance costs incurred in performing same, and (ii) to withhold or revoke in the manner proscribed by law, after giving written notice of said violation, any building permits, occupancy permits, certificates of occupancy, business licenses and similar matters or approvals pertaining to the New Digital Billboard digital display faces.

5. No City Liability. The granting of a right of enforcement to the City does not create a mandatory duty on the part of the City to enforce any provision of this Agreement. The failure of the City to enforce this Agreement shall not give rise to a cause of action on the part of any person. No officer or employee of the City shall be personally liable to the Developer, its successors, transferees or assigns, for any default or breach by the City under this Agreement.

6. Conditions of Approval. The following additional conditions shall apply to the installation of the New Digital Billboard digital display faces and, where stated, on the Site, shall conform to all applicable provisions of the Montebello Municipal Code (MMC) and the following conditions, in a manner subject to the approval of the Planning Manager or designee:

(a) A building permit will be required and structural calculations shall be prepared by a licensed civil engineer and approved by the City Building Official.

(b) The New Digital Billboard shall remain located in the portion of the Site as described in attached Exhibit A and as set forth herein and based on dimensions described in Section 1, above.

(c) The size of each digital display face of the New Digital Billboard shall not exceed a maximum area of 300 square feet with no extensions or borders.

(d) Plans and specifications for the proposed installation of the New Digital Billboard digital display faces, including all utility plans, shall be submitted to the City Planning and Building Departments for plan check and approval prior to the issuance of building permits.

(e) Prior to the approval of the final inspection, all applicable conditions of approval and all mandatory improvements shall be completed to the reasonable satisfaction of the City.

(f) Developer shall maintain the Site and use thereof in full compliance with all applicable codes, standards, policies and regulations imposed by the City, County, State or federal agencies by any duly and valid city, county or state ordinance with jurisdiction over the facilities, unless the Project is exempted as a legal nonconforming use.

(g) The Developer shall pay any and all applicable fees due to any public agency pertaining to the New Digital Billboard digital display faces prior to the final issuance of the building permits.

(h) The activities proposed in this Agreement shall be conducted completely upon the Site and shall not use or encroach on any public right-of-way.

(i) All graffiti shall be adequately and completely removed or painted over within 48 hours of notice to Developer of such graffiti being affixed on the New Digital Billboard.

(j) Developer shall comply with the standards as adopted by the Outdoor Advertising Association of America, Inc. (OAAA), including but not limited to, the 0.3 foot-candles limitation over ambient light levels at 250 feet, and ensuring additional flexibility in reducing such maximum light level standard given the lighting environment, the obligation to have automatic diming capabilities, as well as providing the City's Planning Manager or designee with a designated Developer employee's phone number and/or email address for emergencies or complaints that will be monitored 24 hours a day/7 days per week. Upon any reasonable complaint by the City's Planning Manager or designee, Developer shall perform a brightness measurement of the display using OAAA standards and provide City with the results of same within 15 days of the City's complaint. Developer shall dim the display to the appropriate setting immediately upon the conclusion of any such measurement that concluding that the light standards were exceeded.

(k) In the event ten percent (10%) or more of the digital sign face is not operating correctly or in the event of a malfunction, Developer shall immediately turn the entire display off, or show a one hundred percent (100%) black image on the display until corrected.

(l) The interval between the change in digital content shall be a minimum of eight (8) seconds and the images shall change instantaneously, without special transitional effects.

RECORDING REQUESTED BY AND
AFTER RECORDING MAIL TO:

CITY OF MONTEBELLO
1600 West Beverly Boulevard
Montebello, CA 90640
Attn: City Clerk

Space above this line reserved for recorder's use
[Exempt From Recording Fee Per Gov. Code §6103]

DEVELOPMENT AGREEMENT NO. 4033

This Development Agreement (hereinafter "Agreement") is entered into by and between the CITY OF MONTEBELLO (hereinafter "City") and CLEAR CHANNEL OUTDOOR, INC., a Delaware corporation (hereinafter "Developer").

RECITALS

A. California Government Code Sections 65864, *et seq*., ("Development Agreement Law") authorizes cities to enter into binding development agreements with persons having a legal or equitable interest in real property for the development of such property, all for the purposes of strengthening the public planning process, encouraging private participation and comprehensive planning, and identifying the economic costs of such development.

B. Developer has a leasehold interest in that certain portion of real property located at 1633 Washington Blvd in the City of Montebello, CA 90640, Assessor Parcel Number 6353-015-023, as more specifically described in Exhibit "A" (the "Site") upon which Developer currently owns and operates an existing lawfully permitted double-faced 12' x 25' outdoor advertising sign with printed display faces and seeks to relocate such sign in place as a double-faced 12' x 25' outdoor advertising sign with digital display faces, as more fully described in Exhibit "B" hereto ("New Digital Billboard"), in consideration for the additional removal of the double-faced 12' x 25' outdoor advertising sign located on the real property described on Exhibit "C" hereto (the "Removed Sign" and together with the New Digital Billboard, the "Project").

C. Notwithstanding anything to the contrary in Section 17.62.105 of the City's Zoning Ordinance, the City has determined that the Project contemplated herein complies with Section 17.62.105.C of the Zoning Ordinance, as amended by the Ordinance approving this Agreement (the "Code"), and will provide public benefits among other things, resulting in a net reduction in outdoor advertising signage in the City.

D. City and Developer agree and acknowledge that the outdoor advertising sign relocation contemplated herein complies with, and serves the purposes enumerated in,

California Business & Professions Code Sections 5200 *et seq*. (the "California Outdoor Advertising Act"), including, but not limited to, Sections 5412 and 5443.5.

E. In exchange for the approvals sought to convert the existing double-faced billboard with printed display faces to the New Digital Billboard, as described above, Developer has offered to:

1. Pay to the City an annual Development Fee, as defined and provided in Section 2.6 below, for the cost to the City to ameliorate the impact of the installation of the digital sign panels on the New Digital Billboard; and

2. Provide advertising space free of charge to City on a space available basis as further described below.

3. Pay to the City a signing bonus to be used to refurbish the City's existing on-premise sign located at 1600 W Beverly Blvd., Montebello CA 90640, (the "Signing Bonus") with refurbishment costs not to exceed Twenty Thousand Dollars ($20,000) per digital display face under this Agreement.

F. Developer and City agree that a development agreement should be approved and adopted to memorialize the expectations of City and Developer as more particularly described herein.

G. On _________, 2022, the City Council of the City, pursuant to Government Code sections 65867 and 65867.5 and other applicable law, held a duly noticed public hearing to consider the approval of this Agreement and, after hearing public testimony thereon, considered the proposal and introduced Ordinance No. _____.

H. The City Council has found that: this Agreement is in the best public interest of the City and its residents; adopting this Agreement constitutes a present exercise of the City's police power; the terms of the Agreement will not be detrimental to the public's health, safety, or general welfare; and this Agreement is consistent with the City's General Plan and Municipal Code. This Agreement and the proposed Project (as hereinafter defined) will achieve a number of City objectives including the reduction of visual clutter, elimination of non-conforming signage, and facilitation of the orderly development, relocation and distribution of existing displays to more appropriate locations within the City, while allowing for the incorporation of modern technology into relocated displays and an overall reduction in the number of outdoor advertising signs in the City as part of the City's planned development.

I. On _____ 2022, the City Council held the second reading of Ordinance No.__, thereby approving this Agreement.

J. City finds and determines that all actions required of City precedent to approval of this Agreement by Ordinance No. ______ of the City Council have been duly and regularly taken.

K. In exchange for the benefits to the City described in the Agreement, together with other public benefits that will result from the development of the Project (as defined below), Developer will receive by this Agreement assurance that it may proceed with the Project in accordance with Land Use Regulations (as defined below), and therefore desires to enter into this Agreement.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. This Agreement uses a number of terms having specific meanings, as defined below. These specially defined terms are distinguished by having the initial letter capitalized when used in the Agreement. In addition to the terms defined in the Recitals above and elsewhere in this Agreement, the defined terms include the following:

1.1.1 " Site Lease" means the lease agreement by and between Developer and Bluff Road East LLC, a Limited Liability Company, the owner of the Site.

1.1.2 "Agreement" means this Development Agreement and all attachments and Exhibits hereto.

1.1.3 "City" means the City of Montebello, a California municipal corporation.

1.1.4 "City Council" means the City Council of the City.

1.1.5 "Developer" means Clear Channel Outdoor, LLC, a Delaware limited liability company and its successors and assigns, duly existing and operating, and doing business at 19320 Harborgate Way, Torrance, CA 90501.

1.1.6 "Development Approvals" means any and all permits and approvals which may be required by City, affected utility agencies, or any other governmental agency for the construction and/or operation of the Project by Developer pursuant to the Scope of Development, including but not limited to, necessary building permits and all approvals required under the California Environmental Quality Act ("CEQA") and from the California Department of Transportation ("Caltrans"), if any.

1.1.7 "Effective Date" is when the Agreement is signed by both the Developer and City and when the Agreement is approved by Ordinance No. ____, but shall be no sooner than 30 days following approval of this Agreement by Ordinance No. _____, and after expiration of all applicable appeals periods.

1.1.8 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations and official policies of City, including, but not limited to, the City's General Plan, Municipal Code and Zoning Code, which govern development and use of the Site, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the Site which are in full force and effect as of the Effective Date of this Agreement, subject to the terms of this Agreement. Land Use Regulations shall also include NPDES regulations and approvals from the California Department of Transportation Outdoor Advertising Division, to the extent applicable.

1.1.9 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device, including each of their respective successors and assigns.

1.1.10 "New Digital Billboard" means the new double-faced digital sign, as described in Exhibit "B" hereto located on the Site, and a relocation in place of the existing lawfully permitted double faced outdoor advertising structure 12' x 25' foot printed display faces on the Site.

1.1.11 "Operational" means the New Digital Billboard is capable, legally and functionally, of displaying advertising on the digital displays with a permanent source of power.

1.1.12 "Project" means the complete removal of the Removed Sign and the removal of the existing printed display faces and the installation of digital display faces on the New Digital Billboard ".

1.1.13 "Removed Sign" means the sign to be completely removed as more fully described on Exhibit "C" hereto.

1.1.14 "Scope of Development" means the Scope of Development attached hereto as Exhibit "D" and incorporated herein.

1.1.15 "Signing Bonus" means the upfront payment to be used by the City to refurbish its existing on-premise sign as provided in Recital E.3 above.

1.1.16 "Subsequent Land Use Regulations" means any Land Use Regulations effective after the Effective Date of this Agreement which governs development and use of the Project and/or the Site.

1.1.17 "Subsequent Development Approvals" means any and all permits and approvals which may be required by City, affected utility, or any other governmental agency for repair, maintenance, construction, reconstruction, enhancement, development, operation, or other work to be performed by Developer, including but not limited to, necessary building permits and all approvals required under the California Environmental Quality Act ("CEQA"), that occurs after the Project has been constructed and become operational. Consistent with the Outdoor Advertising Act (Bus. & Profs. Code, § 5200 et seq.), the performance of customary maintenance does not require local approvals.

1.1.18 "Term" shall have the meaning provided in Section 2.4, unless earlier terminated as provided in this Agreement.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of this Agreement: Exhibit "A" (Legal Description of Site), Exhibit "B" (Description of New Billboard), Exhibit "C" (Removed Billboards), and Exhibit "D" (Scope of Development)

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. From and following the Effective Date, actions by the City and Developer with respect to the Site, the Project, or the New Digital Billboard, including actions by the City on applications for Subsequent Development Approvals affecting the

Site, shall be subject to the terms and provisions of this Agreement; provided, however, that nothing in this Agreement shall be deemed or construed (i) to modify or amend the Site Lease, or any of Developer's obligations thereunder; (ii) bind or restrict the owner of the Site with respect to its ownership or operation of the Site; or (iii) to impose any obligation whatsoever on the owner of the Site, including without limitation any obligation with respect to the Project, except as expressly set forth in this Agreement.

2.2 Interest in the Site. City and Developer acknowledge and agree that Developer has a legal or equitable interest in the Site and thus is qualified to enter into and be a party to this Agreement under California Government Code 65864 *et. seq*. If Developer's leasehold interest is prematurely terminated by the owner of the Site, then Developer shall have no further obligations under Section 3.2 4 or Exhibit "D" of this Agreement relative to the construction or maintenance of the sign thereon, including but not limited to any payments under Section 2.6 or elsewhere hereunder. Additionally, if Developer's leasehold interest is prematurely terminated by owner of the Site, then this Agreement shall be terminated and Developer shall have no further obligations under this Agreement, except as provided under Section 4.1 with respect to Developer's responsibility to remove the digital display faces on the New Digital Billboard as provided therein.

2.3 No Assignment. Except as set forth herein, neither party may sublet, assign or otherwise transfer this Agreement, or any interest herein, either voluntarily or by operation of law, without the other party's prior written consent, which the other party shall not unreasonably withhold, condition, or delay. Notwithstanding the above, the consent of City shall not be required: (a) for Developer to assign its rights and duties under this Agreement to any type of legal entity, including but not limited to a limited liability company, corporation, or limited partnership, controlling, controlled by or under common control with Developer or to any entity that acquires a majority of Developer's assets in the Southern California market; or (b) in the event any such entity to which this Agreement has been so assigned thereafter merges with another company, reorganizes its stock, or undergoes a similar corporate restructuring, changes ownership or sells any of its assets or stock. Any security posted by Developer may be substituted by the assignee or transferee. After a transfer or assignment as permitted by this Section, the City shall look solely to such assignee or transferee for compliance with the provisions of this Agreement which have been assigned or transferred.

2.4 Term of Agreement. Unless earlier terminated as provided in this Agreement, this Agreement shall continue in full force and effect until the earlier of: (a) twenty (20) years after the date the digital display faces on the New Digital Billboard become Operational; or (b) the earlier termination of this Agreement and Site Lease and the permanent removal of the digital display faces on the New Digital Billboard constructed pursuant to the terms hereof. If one digital face is removed permanently and replaced with a printed face, then this Agreement will remain in full force and effect as to the second digital face and the annual Development Fee under Section 2.6 shall be reduced to one-half of such payments accordingly. This Agreement may be extended at Developer's option at the end of the initial term by delivery of written notice from Developer to the City not less than ninety (90) days prior to expiration of the initial term of this Agreement Within thirty (30) days after the expiration or termination of this Agreement, the parties shall execute a written cancellation of this Agreement which shall be recorded with the County Recorder pursuant to Section 9.1 below. The term of this Agreement supersedes any amortization period that may apply under the Montebello Municipal Code as to any non-conformity as applied to the Site.

2.5 Processing Fee. Upon submission of its application for the Project approvals, Developer will pay to City a processing ("Processing Fee") in the amount of Ten Thousand Dollars ($10,000). This fee is in addition to the payment of customary building plan check or building permit fees. The City shall retain and use the Processing Fee, or any part thereof, for payment of any and all standard fees applicable for the necessary City review, evaluation, and analysis pertaining to the New Digital Billboard, including, but not limited to, legal fees and feasibility analysis incurred by the City in negotiation and preparation of this Agreement.

2.6 Development Fee. The potential impacts of the Project on the City and surrounding community are difficult to identify and calculate. Developer and City agree that an annual development fee paid by Developer to City would adequately ameliorate all such potential impacts. The parties therefore agree that Developer shall pay an annual development fee in the amount of Ten Thousand Dollars ($10,000.00) per digital display face to City, ("Development Fee"),payable in monthly installments, with the first installment due within thirty (30) days after the display faces on the New Digital Billboard become Operational (the "Commencement Date"), and within thirty (30) days of the year anniversary of such Commencement Date throughout the Term of this Agreement, as follows:

2.7 Notification of Operational Date. Developer shall notify the City in writing when the digital display faces on the New Digital Billboard becomes Operational for the purpose of determining the Commencement Date. The City's issuance of a building permit shall not be unreasonably withheld, provided the issuance of a building permit is done in compliance with the terms of this Agreement and said permit is issued in full compliance with applicable building codes and standards.

2.8 Community Benefits. Developer shall also provide the following community benefits during the entire Term of this Agreement:

2.8.1 **City's Use of Digital Sign**. Developer shall also provide, free of charge to City on a space available basis, advertising space on the digital display faces on the New Digital Billboard for purposes of posting public service announcements and City-related advertising or announcements ("City Messages"). The City shall submit all proposed copy of City Messages to Developer not less than five (5) business days prior to the date the copy is proposed to be displayed, and, with the exception of Public Service Messages described in Section 2.8.3, the City shall notify Developer in writing not less than 30 calendar days prior to a requested display date. All proposed copy shall be subject to Developer's standard advertising copy rejection and removal policies, which allow Developer to approve or disapprove copy and remove copy once posted or displayed. City represents and warrants that all copy, content and materials supplied by City to Developer for display under this Agreement: (i) are owned or duly licensed by City and do not infringe or misappropriate the rights of any other person or entity; (ii) comply with all applicable federal, state, and local laws, rules and regulations and any industry codes or rules by which City and/or Developer may be bound and do not contain any obscene, libelous, slanderous or otherwise defamatory materials or refer in an offensive manner to the gender, race or ethnicity of any individual or group; (iii) are accurate and that all claims contained therein have been substantiated; and (iv) do not infringe upon any copyright, trademark or other intellectual property or privacy right of any third party. Any content provided by City shall be owned and belong exclusively to the City, and Developer shall not reproduce, sell, or give away any such content without the advance written consent of the City. It is expressly understood and agreed that, absent approval from Developer, City Messages shall not include any names, logos or marks associated with any third-party non-governmental person or entity, or any products or services associated with any third-party non-governmental person or entity.

2.8.2 **Indemnification for City Messages**. The City shall, and hereby does agree to, indemnify, defend and hold harmless Developer for, from and against, any claims, costs (including, but not limited to, court costs and reasonable attorneys' fees), losses, actions or liabilities arising from or in connection with any third party allegation that any portion of any City Message infringes or violates the rights, including, but not limited to, copyright, trademark, trade secret or any similar right, of any third party. This indemnity shall not include Developer's lost profits or consequential damages or any similar right, of any third party.

2.8.3 **Public Service Messages**. During the entire Term of this Agreement and any extension, Developer shall make advertising space on the digital display faces on the New Digital Billboard Faces available to the appropriate agencies for the purposes of displaying "Amber Alert" or other emergency messages, at no cost, and in accordance with local and regional emergency protocols.

2.9 Prohibited Use. Developer shall not utilize the digital display faces on the New Digital Billboard to advertise tobacco, marijuana, hashish, "gentlemen's clubs," adult entertainment businesses, "obscene matter," as that term is defined in California Penal Code section 311, or any matter that is prohibited by any City ordinance existing as of the Effective Date of this Agreement or as may be amended or implemented from time-to-time after the Effective Date and equally applicable to all billboard displays. In addition, the Developer shall at all times comply with Article 7 § 5402 of the Outdoor Advertising Act from the Business and Professions Code. Developer shall immediately remove any prohibited content upon notice from the City. If there is a dispute between Developer and City as to whether any such content is prohibited, Developer shall remove the disputed content until the dispute is resolved.

2.10 Signing Bonus. Developer shall pay to City the Signing Bonus on the Commencement Date.

3. DEVELOPMENT AND IMPLEMENTATION OF THE PROJECT.

3.1 Vested Right to Develop The Site. Developer shall have the right to develop the Project on the Site in accordance with, and to the extent of, the Development Approvals, the Subsequent Development Approvals, and this Agreement pursuant to the Land Use Regulations including, without limitation, Developer's vested right to develop the Project on the Site; provided that nothing in this Agreement shall be deemed to modify or amend the Site Lease. In the event of any conflict or inconsistency between (i) the Agreement, any Project conditions of approval, and terms for issuance of a Project-related building permit, and (ii) the Land Use Regulations, this Agreement and any Project conditions of approval, and terms for issuance of a Project-related building permit shall prevail and control.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement: the rules, regulations and official policies governing permitted uses of the Site; the density and intensity and use of the Site; the maximum height, bulk, and size of proposed structures; the general location of public utilities; the design, and improvement and construction standards and specifications applicable to development of the Site; and other terms and conditions of development applicable to the Project, are set forth in the Land Use Regulations which are in full force and effect as of the Effective Date of this Agreement, subject to the terms of this Agreement.

3.3 Development Approvals. Developer shall, at its own expense and before commencement of demolition, construction or development of any structures or other work of

improvement upon the Site, secure or cause to be secured all necessary Development Approvals. Not by way of limiting the foregoing, in developing and constructing the Project, Developer shall comply with all (1) applicable development standards in City's Municipal Code, (2) applicable NPDES requirements pertaining to the Project, (3) all applicable building and fire codes, except as may be permitted through approved variances and modifications. Developer shall pay all normal and customary fees and charges applicable to such permits, and any fees and charges hereafter imposed by City in connection with the Project which are standard and uniformly-applied to similar projects in the City.

3.4 Purpose. The purpose of this Agreement is to set forth the rules and regulations applicable to the Project, which shall be accomplished in accordance with this Agreement, including the Scope of Development (Exhibit "D") which sets forth a description of the Project.

3.5 Changes and Amendments. Developer may determine that changes to the Agreement are appropriate and desirable. In the event Developer makes such a determination, Developer may apply in writing for an amendment to the Agreement to effectuate such change(s). The Parties acknowledge that City shall be permitted to use its inherent land use authority in deciding whether to approve or deny any such amendment request; provided, however, that in exercising the foregoing reasonable discretion, the City shall not apply a standard different than that used in evaluating requests of other developers, and the City must comply with Paragraph 9.18 of this Agreement. Accordingly, under no circumstance shall City be obligated in any manner to approve any amendment to the Agreement. Notwithstanding the foregoing, the City Manager shall be authorized, with the written consent of Developer, to approve any non-substantive amendment to the Agreement without processing a formal amendment to this Agreement. All other amendments shall require the approval of the City Council. The parties acknowledge that any extension of the Term for no more than twenty-four (24) months total is an example of a non-substantive change, which the City Manager, in his or her sole discretion, may approve in writing. Nothing herein shall cause Developer to be in default if it upgrades the digital display installed pursuant to this Agreement during the Term of this Agreement to incorporate newer technology; provided Developer shall secure all applicable ministerial permits to do so and ensure that such upgrade is consistent with the dimensions and standards for the displays, as provided under this Agreement and the Land Use Regulations.

3.6 Reservation of Authority.

3.6.1 **Limitations, Reservations and Exceptions**. Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations shall apply to the development of the Site:

(a) Processing fees and charges of every kind and nature imposed by the City to cover the estimated actual costs to City of processing applications for Subsequent Development Approvals to the extent such fees are assessed on a City-wide basis.

(b) Procedural regulations consistent with this Agreement relating to hearing bodies, petitions, applications, notices, findings, records, hearing, reports, recommendations, appeals and any other matter of procedure. Notwithstanding the foregoing, if such change materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice.

(c) Changes adopted by the International Conference of Building Officials, or other similar body, as part of the then most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, or National Electrical Code, as adopted by City as Subsequent Land Use Regulations, if adopted prior to the issuance of a building permit for development of the digital display faces on the New Digital Billboard on the Site. Notwithstanding the foregoing, if such change materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice.

(d) Regulations that are not in conflict with the Development Approvals or this Agreement, and do not (1) reduce the size of the Project as permitted under the Land Use Regulations; (2) interfere with the operation of the New Digital Billboard as permitted under the Land Use Regulations; (3) change the land use designation or permitted or conditionally permitted use of the Site as described in the Land Use Regulations; (4) require the issuance of permits, approvals or entitlements by City other than those required under the Existing Land Use Regulations; or (5) materially limit the processing or procuring of applications and approvals of Subsequent Development Approvals.

(e) Regulations that are in conflict with the Development Approvals or this Agreement, provided Developer has given written consent to the application of such regulations to the Development of the Site.

(f) Applicable Federal, State, County, and multi-jurisdictional law and regulations which City is required to enforce as against the Site and that do not have an exception for existing signs or legal nonconforming uses.

3.6.2 **Future Discretion of City**. This Agreement shall not prevent City from denying or conditionally approving any application for a Subsequent Development Approval on the basis of the Land Use Regulations.

3.6.3 **Modification or Suspension by Federal or State Law**. In the event that applicable federal or state laws or regulations enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, and there is no exception for the legal nonconforming use, each party shall provide the other party with written notice of such state or federal law or regulation, a copy of such law or regulation, and a statement concerning the conflict with the provisions of this Agreement. The parties shall, within thirty (30) days, meet and confer in good faith in a reasonable attempt to modify this Agreement so as to comply with such state or federal law or regulation. This Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provision impractical to enforce. Notwithstanding the foregoing, if such change materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice.

3.7 <u>Regulation by Other Public Agencies</u>. It is acknowledged by the parties that other public agencies not subject to control by City may possess authority to regulate aspects of the development of the Site as contemplated herein, and this Agreement does not limit the authority of such other public agencies. Developer acknowledges and represents that, in addition to the Land Use Regulations, Developer shall, at all times, comply with all applicable federal, State and local laws and regulations applicable to the New Digital Billboard and Site that do not have an exception for a legal nonconforming use. To the extent such other public agencies

preclude development or maintenance of the Project and that do not have an exception for a legal nonconforming use, Developer shall not be further obligated under this Agreement except as provided in Section 4.1. Notwithstanding the foregoing, if such action by another public agency materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice

3.8 Public Improvements. Notwithstanding any provision herein to the contrary, the City shall retain the right to condition any Subsequent Development Approvals to require Developer to pay any required development fees, and/or to construct the required public infrastructure ("Exactions") at such time as City shall determine subject to the following conditions.

3.8.1 The payment or construction must be to alleviate an impact caused by the Project or be of benefit to the Project; and

3.8.2 The timing of the Exaction should be reasonably related to the development of the Project and said public improvements shall be phased to be commensurate with the logical progression of the Project development as well as the reasonable needs of the public.

3.8.3 It being understood, however, that if the there is a material increase in cost to Developer or such action by City otherwise materially impacts Developer's its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice.

3.9 Fees, Taxes and Assessments. During the Term of this Agreement, the City shall not, without the prior written consent of Developer, impose any additional fees, taxes or assessments on all or any portion of the Project, except such fees, taxes and assessments as are described in or required by this Agreement and/or the Development Approvals. However, this Agreement shall not prohibit the application of fees, taxes or assessments upon the Site only and not the New Digital Billboard or Developer directly as follows:

3.9.1 Developer shall be obligated to pay those fees, taxes or City assessments and any increases in same which exist as the Effective Date or are included in the Development Approvals;

3.9.2 Developer shall be obligated to pay any fees or taxes, and increases thereof, imposed on a City-wide basis such as, but not limited to, business license fees or taxes or utility taxes;

3.9.3 Developer shall be obligated to pay all fees applicable to a permit application as charged by City at the time such application is filed by Developer;

3.9.4 Developer shall be obligated to pay any fees imposed pursuant to any Uniform Code that existed when the application is filed by the Developer or that exists when the Developer applies for any Subsequent Development Approval.

3.10 Additional Fees; Termination. Notwithstanding anything to the contrary herein, if there is a change in such fees to those charged as of the full execution hereof, or any additional fees are charged and such additional or increased fees materially change Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice.

3.11 Extension of Term of Development Approvals. The term of any Development Approvals and Subsequent Development Approvals shall be automatically extended for the longer of the Term of this Agreement or the term otherwise applicable to the Development Approvals and Subsequent Development Approvals.

4. REMOVAL OF BILLBOARD DISPLAY FACES.

4.1 Removal by Developer. If an extension of the Term is not granted by the City according to the provisions of paragraph 2.4, above, the New Digital Billboard digital display faces will be removed and the displays may be converted back to printed displays. In the event that the digital displays are not converted back to printed displays according to the terms of this paragraph, Developer shall within sixty (60) days from expiration of the Term, at its sole cost and expense, be required to demolish and remove the New Digital Billboard digital display faces.

4.2 City's Right to Removal. Provided Developer is not in material breach hereof past any applicable notice and cure period, City will not have the right to remove the New Digital Billboard digital display faces . Should Developer be in material breach of this Agreement past any applicable notice and cure period, and subject to due process, City may only require removal of the New Digital Billboard digital display faces. If City requires the New Digital Billboard digital display faces to be removed pursuant to the terms of this paragraph, Developer shall, at its sole cost and expense, remove the digital displays upon the New Digital Billboard and convert the displays to printed displays within ninety (90) days of City's notice to Developer of such breach.

5. REVIEW FOR COMPLIANCE.

5.1 Annual Reviews. At least once every twelve (12) months, Developer shall demonstrate its good faith compliance with the terms hereof by providing written correspondence addressed to the City Manager demonstrating such good faith compliance. "Good faith compliance" shall mean that Developer has sufficiently followed the terms of this Agreement so as to carry out the intent of the parties in entering into it. After receiving and reviewing Developer's written submission, if the City Manager finds that Developer is not acting in good faith compliance with this Agreement, the City Manager shall schedule a hearing before the Planning Commission in order to evaluate Developer's good faith compliance with the terms of the Agreement. The City shall provide Developer with notice of such hearing and a copy of all staff reports and related exhibits as soon as available, but in no event later than five days prior to the hearing. The Planning Commission's determination following such hearing shall be based on substantial evidence, and shall be subject to appeal to the City Council. If the Planning Commission or City Council, as applicable, finds that the Developer is not in good faith compliance with the terms of this Agreement, the provisions of Section 6 shall govern the parties rights.

5.2 City Right of Access. The City, its officers, employees, agents and contractors, shall, in the exercise of the City's police power, have the right, at their sole risk and expense, to enter the Site consistent with any rights the City has obtained by virtue of recorded easement or other property interests or, if no such interests exist, upon execution of a license or other applicable written agreement in a form mutually acceptable to the owner of the Site and upon written notice to Developer. The access to the Site described in this paragraph shall be for the purpose of conducting the inspection, maintenance, repair, service, construction, or relocation of any public improvements or public facilities located on the Site, or to exercise its rights under section 4.2. If an emergency repair to a public improvement or public facility on the Site is required and the City does not possess and has not obtained the foregoing access rights, Developer

acknowledges that the City may exercise its police power to enter the Site and conduct such repair after providing Developer and the Site owner with reasonable advance notice, with the reasonableness of such notice to be determined from the circumstances necessitating the entry. Any damage or injury to the Site or to the improvements constructed thereon resulting from such entry shall be promptly repaired at the sole expense of the City. The City also may access the Site in order to implement any of its lawful police powers to address any nuisance, dangerous condition, or other condition prohibited under the City's ordinances, so long as the City conducts the foregoing activities in a manner consistent with and protective of Developer's and the Site owner's due process rights. Except as explicitly provided for in this Agreement (including without limitation in this Section and Section 4.2 above), the City shall have no right whatsoever to enter the Site.

5.3 Procedure. Each party shall have a reasonable opportunity to assert matters which it believes have not been undertaken in accordance with the Agreement, to explain the basis for such assertion, and to receive from the other party a justification of its position on such matters. If, on the basis of the parties' review of any terms of the Agreement, either party concludes that the other party has not complied with the terms of the Agreement, then such party may issue a written "Notice of Non-Compliance" specifying the grounds therefore and all facts demonstrating such non-compliance. The party receiving a Notice of Non-Compliance shall have forty-five (45) days to cure or remedy the non-compliance identified in the Notice of Non-Compliance, or if such cure or remedy is not reasonably capable of being cured or remedied within such forty-five (45) days period, to commence to cure or remedy the non-compliance and to diligently and in good faith prosecute such cure or remedy to completion. If the party receiving the Notice of Non-Compliance disputes that it is in non-compliance with the terms of this Agreement, that party shall respond in writing to the Notice of Non-Compliance within forty-five (45) days after receipt of the Notice of Non-Compliance. If a Notice of Non-Compliance is disputed, the parties shall, for a period of not less than fifteen (15) days following receipt of the response to the Notice of Non-Compliance, seek to arrive at a mutually acceptable resolution of the dispute. In the event that a cure or remedy is not timely effected or, if the Notice of Non-Compliance is disputed and the parties are not able to arrive at a mutually acceptable resolution of the matter(s) by the end of the fifteen (15) day period described above, the party alleging the non-compliance may thereupon pursue the remedies provided in Section 6. Neither party hereto shall be deemed in breach if the reason for non-compliance is due to a "force majeure" event as defined in, and subject to the provisions of, Section 9.10.

6. DEFAULT AND REMEDIES.

6.1 Termination of Agreement.

6.1.1 **Termination of Agreement for Material Default of Developer**. City, in its discretion, may terminate this Agreement upon written notice to Developer for any material failure of Developer to perform any material duty or obligation of Developer hereunder or to comply with the terms of this Agreement (hereinafter referred to as "default" or "breach"); provided, however, City may terminate this Agreement pursuant to this Section only after following the procedure set forth in Section 5.3. In the event of a termination by City under this Section 6.1.1, Developer acknowledges and agrees that, unless otherwise set forth below, City may retain all fees, including the Processing Fee and the Development Fee paid up to the date of termination, and Developer shall pay the prorated amount of the Development Fee within sixty (60) days after the date of termination and removal of the New Digital Billboard that equates to the percentage of time elapsed in the year of the Term at the time of termination. In the event that City terminates this Agreement under this Section 6.1.1 before the New Digital Billboard

digital display faces become Operational, City shall refund any portion of the Processing Fee that the City has not reasonably expended at the time of such termination after payment to City of the fees and costs described in Section 2.5.

6.1.2 **Termination of Agreement for Material Default of City**. Developer, in its discretion, may terminate this Agreement upon written notice to City for any material failure of City to perform any material duty or obligation of City hereunder or to comply in with the terms of this Agreement; provided, however, Developer may terminate this Agreement pursuant to this Section only after following the procedure set forth in Section 5.3. In addition, Developer may terminate this Agreement upon written notice to City, if despite Developer's good faith efforts, it is unable to secure the Development Approvals and any other necessary approvals and/or compliance with requirements under laws necessary to effectuate the Project is not feasible. In the event of a termination by Developer under this Section 6.1.2, Developer acknowledges and agrees that, unless otherwise set forth below, City may retain all fees, including the Processing Fee and the Development Fee, paid up to the date of termination, and Developer shall pay the prorated amount of the Development Fee within sixty (60) days after the date of termination and removal of the New Digital Billboard digital display faces that equates to the percentage of time elapsed in the year of the Term at the time of termination. In the event that Developer terminates this Agreement under this Section 6.1.2 before the New Digital Billboard digital display faces become Operational, City shall refund any portion of the Processing Fee that the City has not reasonably expended at the time of such termination after payment to City of the fees and costs described in Section 2.5.

6.1.3 **Rights and Duties Following Termination**. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to (i) any default in the performance of the provisions of this Agreement which has occurred prior to said termination, (ii) Developer's obligation to remove the digital display faces on the New Digital billboard pursuant to Section 4.1 or (iii) any continuing obligations to indemnify other parties.

6.2 Remedies. In addition to the rights of termination set forth above, in the event of a default by either party, the non-defaulting party shall have the right to: (a) bring any proceeding in the nature of specific performance, injunctive relief, declaratory relief, or mandamus and/or; (b) bring any action at law or in equity to compensate the non-defaulting party for all the detriment proximately caused by the defaulting party's default; provided, however, that Developer's sole and exclusive remedy shall be specific performance and Developer shall not have the right to recover monetary damages (compensatory, consequential, or punitive) against the City other than attorneys' fees to the extent provided in Section 9.13 below, and the City shall only have the right to recover actual, direct damages (and not consequential or punitive damages) against Developer, as well as attorneys' fees to the extent provided in Section 9.13 below.

7. INSURANCE, INDEMNIFICATION AND WAIVERS.

7.1

7.1.1 **Types of Insurance.**

(a) Liability Insurance. Beginning on the Effective Date hereof and until completion of the Term, Developer shall, at its sole cost and expense, keep or cause to be kept in force for the mutual benefit of City, as additional insured, and Developer comprehensive broad form general liability insurance covering Developer's possession and use of the Site and providing protection of at least Two Million Dollars ($2,000,000) for bodily injury or death to any one person, at least Four Million Dollars ($4,000,000) in the aggregate for any accidents or occurrences, and at least One Million Dollars ($1,000,000) for property damage. Developer shall also furnish or cause to be furnished to City evidence that any contractors with whom Developer has contracted for the performance of any work for which Developer is responsible maintains the same limits of coverage, as specified above. Developer shall provide to the City annual proof of insurance consistent with terms and conditions of this agreement.

(b) Worker's Compensation. Developer shall also furnish or cause to be furnished to City evidence that any contractor with whom Developer has contracted for the performance of any work for which Developer is responsible hereunder carries worker's compensation insurance as required by law.

(c) Insurance Policy Form, Sufficiency, Content and Insurer. All insurance required by express provisions hereof shall be carried only by responsible insurance companies qualified to do business by California with an AM Best Rating of no less than "A". All such policies shall be non-assignable and shall contain language, to the extent obtainable, to the effect that (i) the policies are primary and noncontributing with any insurance that may be carried by City, but only with respect to the liabilities assumed by Developer under this Agreement; and (ii) the policies cannot be canceled or materially changed by Developer except after written notice by Developer to City or City's designated representative and the City's approval thereof. Developer shall furnish City with certificates of insurance evidencing that Developer has complied with the requirements of this paragraph 7.1.1.

7.1.2 **Failure to Maintain Insurance and Proof of Compliance**. Developer shall deliver to City, in the manner required for notices, copies of certificates of all insurance policies required of each policy within the following time limits:

(1) For insurance required above, within seven (7) days after the Effective Date or consistent with the requirements of Exhibit "C" (Schedule of Performance), Item No. 8.

(2) The City can request current certificates of all insurance policies as required. The City reserves the right to obtain copies of relevant policy forms and endorsements of the required insurance policies.

Developer's failure or refusal to procure or maintain insurance as required herein or failure or refusal to furnish City with proof that the required insurance has been procured and is in full force and effect may, after complying with the requirements of Section 5.3, be deemed a default under the terms of this Agreement.

7.2 Indemnification.

7.2.1 **General**. Developer shall indemnify the City, and its respective officers, employees, and/or agents against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions, or liabilities (herein "claims or liabilities") that may be asserted or claimed by any person(s), firm, or entity arising out of or in connection with this Agreement and/or the work, operations, or activities of Developer, its agents, employees, subcontractors, and/or invitees, hereunder, upon the Site.

(a) Developer will defend any action or actions filed in connection with any of said claims or liabilities covered by the indemnification provisions herein and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith, which attorneys will be the attorneys hired by the insurance company where insurance coverage applies.

(b) Developer will promptly pay any judgment rendered against the City or its respective officers, agents, or employees that falls within the scope of Developer's indemnity obligations, as defined above in paragraph 7.2.1.

7.2.2 **Exceptions**. The foregoing indemnity shall not include claims or liabilities arising from the sole negligence or willful misconduct of the City, its officers, agents, or employees or contractors. The foregoing indemnity shall also not include claims or liabilities arising from City's use of Developer's advertising space pursuant to paragraph 2.9.1 above.

7.2.3 **Additional Coverage**. Without limiting the generality of the foregoing, Developer's indemnity obligation shall include any liability arising by reason of any accident or other occurrence caused by Developer in or on the Site causing injury to any person or property;

(a) Loss and Damage. Except as set forth below, City shall not be liable for any damage to property of Developer or others located on the Site, nor for the loss of or damage to any property of Developer or others by theft or otherwise. Except as set forth below, City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain, dampness or leaks from any part of the Site or from the pipes or plumbing, or from the street, or from any environmental or soil contamination or hazard, or from any other latent or patent defect in the soil, subsurface or physical condition of the Site, or by any other cause of whatsoever nature. The provisions of this subparagraph (a) shall not apply (i) to the extent City or its agents, employees, subcontractors, invitees or representatives causes such injury or damage, or (ii) to the extent covered in any permit to enter the Site executed by the City.

(b) Period of Indemnification. The obligations for indemnity under this Section 7.2 shall begin upon the Effective Date and shall survive termination of Development Agreement.

8. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Site or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Site. City acknowledges that the lenders providing such financing may require certain Agreement modifications and City agrees upon request, from time to time, to meet with Developer, the owner of the Site, and representatives of such lenders to negotiate in good faith any such request for modification. Subject to compliance with applicable laws, City will not unreasonably withhold its consent to any such requested modification provided City determines such modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Site shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Project or the Site made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Project or the Site, or any part thereof, which Mortgagee has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Developer in the performance of Developer's obligations under this Agreement.

(c) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Developer under the terms of this Agreement, City shall make a good faith effort to provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Developer. The Mortgagee shall have the right, but not the obligation, to cure the default during the period that is the longer of (i) the remaining cure period allowed such party under this Agreement, or (ii) sixty (60) days.

(d) Any Mortgagee who comes into possession of the Project or the Site, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Project or the Site, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Developer's obligations or other affirmative covenants of Developer hereunder, or to guarantee such performance; except that (i) to the extent that any covenant to be performed by Developer is a condition precedent to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder, and (ii) in the event any Mortgagee seeks to develop or use any portion of the Project or the Site acquired by such Mortgagee by foreclosure, deed of trust, or deed in lieu of foreclosure, such Mortgagee shall strictly comply with all of the terms, conditions and requirements of this Agreement and the Development Approvals applicable to the Project or the Site or such part thereof so acquired by the Mortgagee.

9. MISCELLANEOUS PROVISIONS.

9.1 Recordation of Agreement. This Agreement shall be recorded with the County Recorder by the City Clerk within ten (10) days of execution, as required by Government Code Section 65868.5. Amendments approved by the parties, and any cancellation, shall be similarly recorded.

9.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties with respect to the subject matter set forth herein, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

9.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, then that term, provision, covenant or condition of this Agreement shall be stricken and the remaining portion of this Agreement shall remain valid and enforceable if that stricken term, provision, covenant or condition is not material to the main

purpose of this agreement, which is to allow the Project to be permitted and operated and to provide the Development Fee to the City; otherwise, this Agreement shall terminate in its entirety, unless the parties otherwise agree in writing, which agreement shall not be unreasonably withheld.

9.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning, to achieve the objectives and purposes of the parties hereto. The rule of construction, to the effect that ambiguities are to be resolved against the drafting party or in favor of the non-drafting party, shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and hereof.

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

9.6 Singular and Plural. As used herein, the singular of any word includes the plural.

9.7 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

9.8 Waiver. Failure of a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

9.9 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit for the parties and their owner, successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

9.10 Force Majeure. Notwithstanding the contrary herein, neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other acts of God, fires, rains, winds, wars, pandemics, epidemics, terrorism, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the party's employment force), government actions and regulations (other than those of the City), court actions (such as restraining orders or injunctions), or other causes beyond the party's reasonable control. If any such events shall occur, the term of this Agreement and the time for performance shall be extended for the duration of each such event, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years and further provided that if such delay is longer than six (6) months, Developer may terminate this Agreement upon written notice to City and City shall return to Developer any portion of the Development fee paid for any period after the effective date of such termination.

9.11 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

9.12 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same affected as if all of the parties had executed the same instrument.

9.13 Litigation. Any action at law or in equity arising under this Agreement or brought by any party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Los Angeles, State of California, or such other appropriate court in said county. Service of process on City shall be made in accordance with California law. Service of process on Developer shall be made in any manner permitted by California law and shall be effective whether served inside or outside California. In the event of any action between City and Developer seeking enforcement or interpretation of any of the terms and conditions to this Agreement, the prevailing party in such action shall be awarded, in addition to such relief to which such party is entitled under this Agreement, its reasonable litigation costs and expenses, including without limitation its expert witness fees and reasonable attorneys' fees.

9.14 Covenant Not To Sue. The parties to this Agreement, and each of them, agree that this Agreement and each term hereof are legal, valid, binding, and enforceable. The parties to this Agreement, and each of them, hereby covenant and agree that each of them will not commence, maintain, or prosecute any claim, demand, cause of action, suit, or other proceeding against any other party to this Agreement, in law or in equity, which is based on an allegation, or assert in any such action, that this Agreement or any term hereof is void, invalid, or unenforceable.

9.15 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the Development of the Project is a private Development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Developer is that of a government entity regulating the Development of private property, on the one hand, and the holder of a legal or equitable interest in such property on the other hand. City agrees that by its approval of, and entering into, this Agreement, that it is not taking any action which would transform this private Development into a "public work" project, and that nothing herein shall be interpreted to convey upon Developer any benefit which would transform Developer's private project into a public work project, it being understood that this Agreement is entered into by City and Developer upon the exchange of consideration described in this Agreement, including the Recitals to this Agreement which are incorporated into this Agreement and made a part hereof, and that City is receiving by and through this Agreement the full measure of benefit in exchange for the burdens placed on Developer by this Agreement.

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

9.17 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain or Developer's right to seek and collect just compensation or any other remedy available to it.

9.18 Amendments in Writing/Cooperation. This Agreement may be amended only by written consent of both parties specifically approving the amendment and in accordance with the Government Code provisions for the amendment of Development Agreements. The parties shall cooperate in good faith with respect to any amendment proposed in order to clarify the intent and application of this Agreement, and shall treat any such proposal on its own merits, and not as a basis for the introduction of unrelated matters. Minor, non-material modifications may be approved by the City Manager upon approval by the City Attorney.

9.19 Corporate Authority. The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party, if not an individual, is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

9.20 Notices. All notices under this Agreement shall be effective when delivered by United States Postal Service mail, registered or certified, postage prepaid return receipt requested; and addressed to the respective parties as set forth below or as to such other address as the parties may from time to time designate in writing by providing notice to the other party:

To City:	City of Montebello 1600 West Beverly Boulevard Montebello, CA 90640 Attn: City Manager
To Developer:	Clear Channel Outdoor, Inc. 19320 Harborgate Way Torrance, CA 90501 Attn: Vice President, Real Estate & Public Affairs
With Copy To:	Clear Channel Outdoor, LLC 2325 E. Camelback Road, Suite 250 Phoenix, AZ 85016 Attn: Operations Counsel

9.21 Nonliability of City Officials. No officer, official, member, employee, agent, and/or representatives of City shall be liable for any amounts due hereunder, and no judgment or execution thereon entered in any action hereon shall be personally enforced against any such officer, official, member, employee, agent, and/or representative.

9.22 No Brokers. City and Developer represent and warrant to the other that neither has employed any broker and/or finder to represent its interest in this transaction. Each party agrees to indemnify and hold the other free and harmless from and against any and all liability, loss, cost, or expense (including court costs and reasonable attorneys' fees) in any manner connected with a claim asserted by any individual or entity for any commission or finder's fee in connection with this Agreement or arising out of agreements by the indemnifying party to pay any commission or finder's fee.

9.23 No Amendment of Lease. Nothing contained in this Agreement shall be deemed to amend or modify any of the terms or provisions of the Lease. Nothing contained in this Agreement shall constitute or be deemed to constitute a limit on any of Developer's

obligations under the Lease, or any of Owner's rights or remedies against Developer under the Lease.

WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

City: CITY OF MONTEBELLO

By: ______________________________

Mayor

ATTEST:

____

City Clerk

APPROVED AS TO FORM:

____

City Attorney

Developer:

Clear Channel Outdoor, LLC a Delaware limited liability company

____

Bryan Parker, Executive Vice President

[end of signatures]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

On ____________________, before me, ____________________________, a Notary Public, personally appeared _______________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ________________________________

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

On ____________________, before me, ____________________________, a Notary Public, personally appeared _______________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ________________________________

EXHIBIT “A”

LEGAL DESCRIPTION OF SITE

PARCEL MAP AS PER BK 14 P 21 OF PM
LOT 2

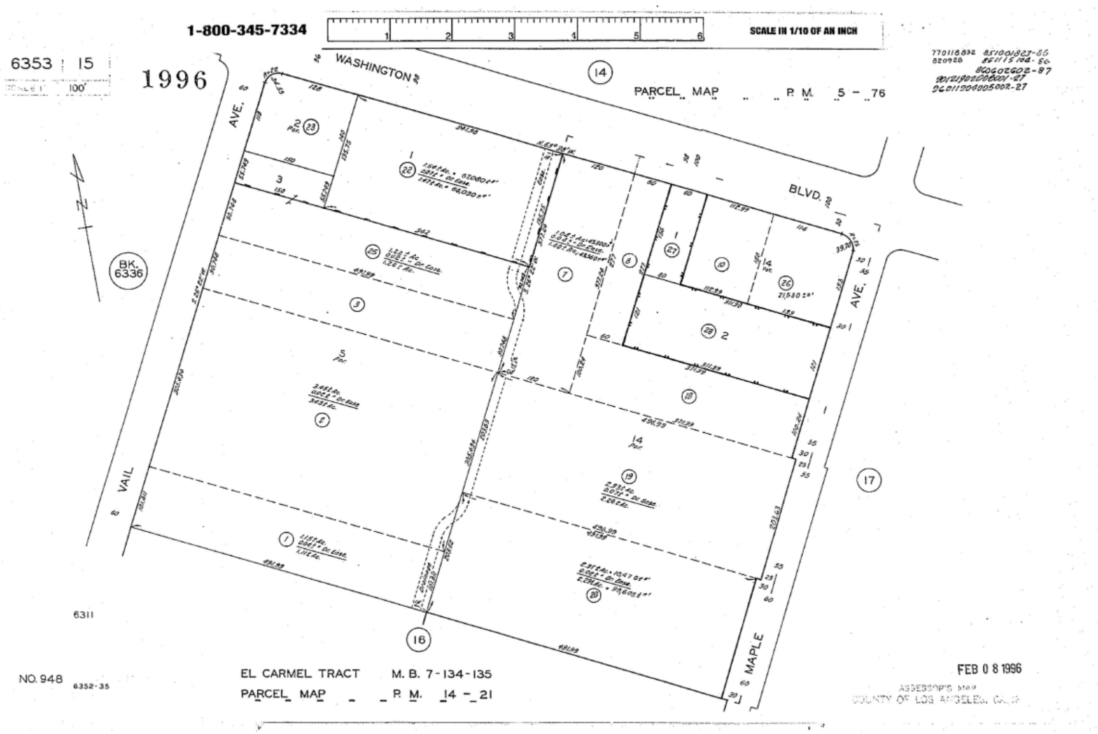


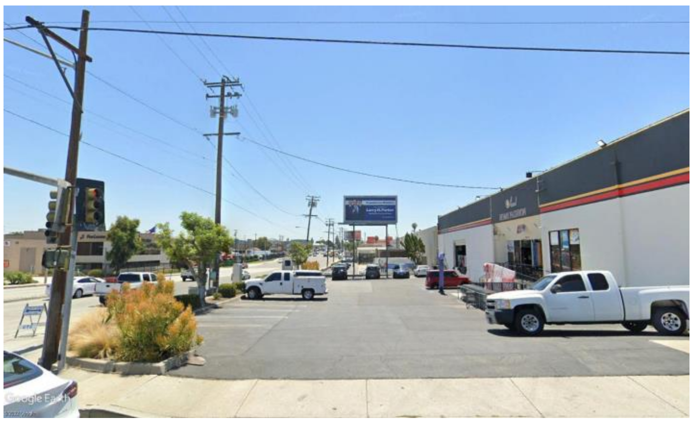
EXHIBIT “B”

Description of New Digital Billboard

CCO will be removing the existing Deck and External Lights

CCO will be relocating the existing printed display faces in place as a double-faced 12’ x 25’ outdoor advertising sign with digital display faces

Existing West Face



Existing East Face

Digital Panel Sample

EXHIBIT “C”
Billboard Structure and Faces To Be Removed

249 E Beverly Terrace, Montebello, CA 90640 (Panels #3936 & #3937)

East Face

West Face

EXHIBIT “D”

SCOPE OF DEVELOPMENT INCLUDING SIGN PLANS

Developer and City agree that the Development shall be undertaken in accordance with the terms of the Agreement, which include the following:

1. Project. Developer shall relocate in place the existing printed sign faces and shall convert it to the New Digital Billboard with digital display faces in accordance with the terms of this Agreement. The existing structure will have two (2) new digital display faces (each display face measuring approximately 12’ x 25’) within the Site.

2. Building Fees. Developer shall pay all applicable City building fees, as described in this Agreement, at the time that a building permit is issued for the installation of the New Digital Billboard Faces on the Site.

3. Maintenance and Access. Developer, for itself and its successors and assigns, hereby covenants and agrees to be responsible for the following:

(a) Maintenance and repair of the New Digital Billboard and Site (where authorized pursuant to the Site Lease) including but not limited to, the displays installed thereon, and all related on-Site improvements, easements, rights-of-way at its sole cost and expense. Developer’s maintenance and repair obligation shall include, without limitation, maintaining any poles, lighting, signs and walls in good repair and free of graffiti, rubbish, debris and other hazards to persons using the same. Developer shall maintain and repair the New Digital Billboard digital display faces in accordance with all applicable laws, rules, ordinances and regulations of all federal, State, and local bodies and agencies having jurisdiction over the Site [unless those federal, State, and local bodies have an exception for a legal nonconforming use]. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal related to the Project; (ii) replacement of any fixtures, equipment or property damaged by the Project to the extent required by this Agreement or applicable law; (iii) the ongoing maintenance by the Developer of any access points to the New Digital Billboard to minimize dust caused by the Project; and (iv) the repair, replacement and repainting of the New Digital Billboard structure and display faces as necessary to maintain such billboard in good condition and repair.

(b) Maintenance of the Site (where authorized pursuant to the Site Lease) in such a manner as to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance of the New Digital Billboard digital display faces or structure such as to be detrimental to the public health, safety or general welfare or that such a condition of deterioration or disrepair causes appreciable harm or is materially detrimental to property or improvements within three hundred (300) feet of Site.

4. Other Rights of City. In the event of any violation or threatened violation of any of the provisions of this Exhibit “D,” then in addition to, but not in lieu of, any of the rights or remedies the City may have to enforce the provisions of this Agreement, the City shall have the

right, after complying with Section 5.3 of this Agreement, (i) to enforce the provisions hereof by undertaking any maintenance or repairs required by Developer under Paragraph 3 above (subject to the execution of a permit to enter in form reasonably acceptable to Owner) and charging Developer for any actual maintenance costs incurred in performing same, and (ii) to withhold or revoke in the manner proscribed by law, after giving written notice of said violation, any building permits, occupancy permits, certificates of occupancy, business licenses and similar matters or approvals pertaining to the New Digital Billboard digital display faces.

5. No City Liability. The granting of a right of enforcement to the City does not create a mandatory duty on the part of the City to enforce any provision of this Agreement. The failure of the City to enforce this Agreement shall not give rise to a cause of action on the part of any person. No officer or employee of the City shall be personally liable to the Developer, its successors, transferees or assigns, for any default or breach by the City under this Agreement.

6. Conditions of Approval. The following additional conditions shall apply to the installation of the New Digital Billboard digital display faces and, where stated, on the Site, shall conform to all applicable provisions of the Montebello Municipal Code (MMC) and the following conditions, in a manner subject to the approval of the Planning Manager or designee:

(a) A building permit will be required and structural calculations shall be prepared by a licensed civil engineer and approved by the City Building Official.

(b) The New Digital Billboard shall remain located in the portion of the Site as described in attached Exhibit A and as set forth herein and based on dimensions described in Section 1, above.

(c) The size of each digital display face of the New Digital Billboard shall not exceed a maximum area of 300 square feet with no extensions or borders.

(d) Plans and specifications for the proposed installation of the New Digital Billboard digital display faces, including all utility plans, shall be submitted to the City Planning and Building Departments for plan check and approval prior to the issuance of building permits.

(e) Prior to the approval of the final inspection, all applicable conditions of approval and all mandatory improvements shall be completed to the reasonable satisfaction of the City.

(f) Developer shall maintain the Site and use thereof in full compliance with all applicable codes, standards, policies and regulations imposed by the City, County, State or federal agencies by any duly and valid city, county or state ordinance with jurisdiction over the facilities, unless the Project is exempted as a legal nonconforming use.

(g) The Developer shall pay any and all applicable fees due to any public agency pertaining to the New Digital Billboard digital display faces prior to the final issuance of the building permits.

(h) The activities proposed in this Agreement shall be conducted completely upon the Site and shall not use or encroach on any public right-of-way.

(i) All graffiti shall be adequately and completely removed or painted over within 48 hours of notice to Developer of such graffiti being affixed on the New Digital Billboard.

(j) Developer shall comply with the standards as adopted by the Outdoor Advertising Association of America, Inc. (OAAA), including but not limited to, the 0.3 foot-candles limitation over ambient light levels at 250 feet, and ensuring additional flexibility in reducing such maximum light level standard given the lighting environment, the obligation to have automatic diming capabilities, as well as providing the City's Planning Manager or designee with a designated Developer employee's phone number and/or email address for emergencies or complaints that will be monitored 24 hours a day/7 days per week. Upon any reasonable complaint by the City's Planning Manager or designee, Developer shall perform a brightness measurement of the display using OAAA standards and provide City with the results of same within 15 days of the City's complaint. Developer shall dim the display to the appropriate setting immediately upon the conclusion of any such measurement that concluding that the light standards were exceeded.

(k) In the event ten percent (10%) or more of the digital sign face is not operating correctly or in the event of a malfunction, Developer shall immediately turn the entire display off, or show a one hundred percent (100%) black image on the display until corrected.

(l) The interval between the change in digital content shall be a minimum of eight (8) seconds and the images shall change instantaneously, without special transitional effects.

RECORDING REQUESTED BY AND
AFTER RECORDING MAIL TO:

CITY OF MONTEBELLO
1600 West Beverly Boulevard
Montebello, CA 90640
Attn: City Clerk

Space above this line reserved for recorder's use
[Exempt From Recording Fee Per Gov. Code §6103]

DEVELOPMENT AGREEMENT NO. 4034

This Development Agreement (hereinafter "Agreement") is entered into by and between the CITY OF MONTEBELLO (hereinafter "City") and CLEAR CHANNEL OUTDOOR, INC., a Delaware corporation (hereinafter "Developer").

RECITALS

A. California Government Code Sections 65864, *et seq.*, ("Development Agreement Law") authorizes cities to enter into binding development agreements with persons having a legal or equitable interest in real property for the development of such property, all for the purposes of strengthening the public planning process, encouraging private participation and comprehensive planning, and identifying the economic costs of such development.

B. Developer has a leasehold interest in that certain portion of real property located at 1915 W Whittier Blvd. in the City of Montebello, CA 90640, Assessor Parcel Number 6337-007-033, as more specifically described in Exhibit "A" (the "Site") upon which Developer currently owns and operates an existing lawfully permitted double-faced 12' x 25' outdoor advertising sign with printed display faces and seeks to relocate such sign in place as a double-faced 12' x 25' outdoor advertising sign with one east facing digital display face and one west facing printed display face, as more fully described in Exhibit "B" hereto ("New Digital Billboard"), in consideration for the additional removal of the single-faced 12' x 25' outdoor advertising sign located on the real property described on Exhibit "C" hereto (the "Removed Sign" and together with the New Digital Billboard, the "Project").

C. Notwithstanding anything to the contrary in Section 17.62.105 of the City's Zoning Ordinance, the City has determined that the Project contemplated herein complies with Section 17.62.105.C of the Zoning Ordinance, as amended by the Ordinance approving this Agreement (the "Code"), and will provide public benefits among other things, resulting in a net reduction in outdoor advertising signage in the City.

D. City and Developer agree and acknowledge that the outdoor advertising sign relocation contemplated herein complies with, and serves the purposes enumerated in,

California Business & Professions Code Sections 5200 *et seq*. (the "California Outdoor Advertising Act"), including, but not limited to, Sections 5412 and 5443.5.

E. In exchange for the approvals sought to convert the existing double-faced billboard with printed display faces to the New Digital Billboard, as described above, Developer has offered to:

1. Pay to the City an annual Development Fee, as defined and provided in Section 2.6 below, for the cost to the City to ameliorate the impact of the installation of the digital sign panels on the New Digital Billboard; and

2. Provide advertising space free of charge to City on a space available basis as further described below.

3. Pay to the City a signing bonus of Twenty Thousand Dollars ($20,000) per digital display face under this agreement to be used to refurbish the City's existing on-premise sign located at 1600 W Beverly Blvd., Montebello CA 90640, (the "Signing Bonus").

F. Developer and City agree that a development agreement should be approved and adopted to memorialize the expectations of City and Developer as more particularly described herein.

G. On _________, 2022, the City Council of the City, pursuant to Government Code sections 65867 and 65867.5 and other applicable law, held a duly noticed public hearing to consider the approval of this Agreement and, after hearing public testimony thereon, considered the proposal and introduced Ordinance No. _____.

H. The City Council has found that: this Agreement is in the best public interest of the City and its residents; adopting this Agreement constitutes a present exercise of the City's police power; the terms of the Agreement will not be detrimental to the public's health, safety, or general welfare; and this Agreement is consistent with the City's General Plan and Municipal Code. This Agreement and the proposed Project (as hereinafter defined) will achieve a number of City objectives including the reduction of visual clutter, elimination of non-conforming signage, and facilitation of the orderly development, relocation and distribution of existing displays to more appropriate locations within the City, while allowing for the incorporation of modern technology into relocated displays and an overall reduction in the number of outdoor advertising signs in the City as part of the City's planned development.

I. On _____ 2022, the City Council held the second reading of Ordinance No.__, thereby approving this Agreement.

J. City finds and determines that all actions required of City precedent to approval of this Agreement by Ordinance No. ______ of the City Council have been duly and regularly taken.

K. In exchange for the benefits to the City described in the Agreement, together with other public benefits that will result from the development of the Project (as defined below), Developer will receive by this Agreement assurance that it may proceed with the Project in accordance with Land Use Regulations (as defined below), and therefore desires to enter into this Agreement.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. This Agreement uses a number of terms having specific meanings, as defined below. These specially defined terms are distinguished by having the initial letter capitalized when used in the Agreement. In addition to the terms defined in the Recitals above and elsewhere in this Agreement, the defined terms include the following:

1.1.1 " Site Lease" means the lease agreement by and between Developer and Bluff Road East LLC, a Limited Liability Company, the owner of the Site.

1.1.2 "Agreement" means this Development Agreement and all attachments and Exhibits hereto.

1.1.3 "City" means the City of Montebello, a California municipal corporation.

1.1.4 "City Council" means the City Council of the City.

1.1.5 "Developer" means Clear Channel Outdoor, LLC, a Delaware limited liability company and its successors and assigns, duly existing and operating, and doing business at 19320 Harborgate Way, Torrance, CA 90501.

1.1.6 "Development Approvals" means any and all permits and approvals which may be required by City, affected utility agencies, or any other governmental agency for the construction and/or operation of the Project by Developer pursuant to the Scope of Development, including but not limited to, necessary building permits and all approvals required under the California Environmental Quality Act ("CEQA") and from the California Department of Transportation ("Caltrans"), if any.

1.1.7 "Effective Date" is when the Agreement is signed by both the Developer and City and when the Agreement is approved by Ordinance No. ____, but shall be no sooner than 30 days following approval of this Agreement by Ordinance No. _____, and after expiration of all applicable appeals periods.

1.1.8 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations and official policies of City, including, but not limited to, the City's General Plan, Municipal Code and Zoning Code, which govern development and use of the Site, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the Site which are in full force and effect as of the Effective Date of this Agreement, subject to the terms of this Agreement. Land Use Regulations shall also include NPDES regulations and approvals from the California Department of Transportation Outdoor Advertising Division, to the extent applicable.

1.1.9 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device, including each of their respective successors and assigns.

1.1.10 "New Digital Billboard" means the new double-faced digital sign, as described in Exhibit "B" hereto located on the Site, and a relocation in place of the existing lawfully permitted double faced outdoor advertising structure 12' x 25' foot printed display faces on the Site.

1.1.11 "Operational" means the New Digital Billboard is capable, legally and functionally, of displaying advertising on the digital displays with a permanent source of power.

1.1.12 "Project" means the complete removal of the Removed Sign and the removal of the existing printed display face and the installation of one east facing digital display face on the New Digital Billboard ".

1.1.13 "Removed Sign" means the sign to be completely removed as more fully described on Exhibit "C" hereto.

1.1.14 "Scope of Development" means the Scope of Development attached hereto as Exhibit "D" and incorporated herein.

1.1.15 "Signing Bonus" means the upfront payment to be used by the City to refurbish its existing on-premise sign as provided in Recital E.3 above.

1.1.16 "Subsequent Land Use Regulations" means any Land Use Regulations effective after the Effective Date of this Agreement which governs development and use of the Project and/or the Site.

1.1.17 "Subsequent Development Approvals" means any and all permits and approvals which may be required by City, affected utility, or any other governmental agency for repair, maintenance, construction, reconstruction, enhancement, development, operation, or other work to be performed by Developer, including but not limited to, necessary building permits and all approvals required under the California Environmental Quality Act ("CEQA"), that occurs after the Project has been constructed and become operational. Consistent with the Outdoor Advertising Act (Bus. & Profs. Code, § 5200 et seq.), the performance of customary maintenance does not require local approvals.

1.1.18 "Term" shall have the meaning provided in Section 2.4, unless earlier terminated as provided in this Agreement.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of this Agreement: Exhibit "A" (Legal Description of Site), Exhibit "B" (Description of New Billboard), Exhibit "C" (Removed Billboards), and Exhibit "D" (Scope of Development)

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. From and following the Effective Date, actions by the City and Developer with respect to the Site, the Project, or the New Digital Billboard, including actions by the City on applications for Subsequent Development Approvals affecting the

Site, shall be subject to the terms and provisions of this Agreement; provided, however, that nothing in this Agreement shall be deemed or construed (i) to modify or amend the Site Lease, or any of Developer's obligations thereunder; (ii) bind or restrict the owner of the Site with respect to its ownership or operation of the Site; or (iii) to impose any obligation whatsoever on the owner of the Site, including without limitation any obligation with respect to the Project, except as expressly set forth in this Agreement.

2.2 Interest in the Site. City and Developer acknowledge and agree that Developer has a legal or equitable interest in the Site and thus is qualified to enter into and be a party to this Agreement under California Government Code 65864 *et. seq*. If Developer's leasehold interest is prematurely terminated by the owner of the Site, then Developer shall have no further obligations under Section 3.2 4 or Exhibit "D" of this Agreement relative to the construction or maintenance of the sign thereon, including but not limited to any payments under Section 2.6 or elsewhere hereunder. Additionally, if Developer's leasehold interest is prematurely terminated by owner of the Site, then this Agreement shall be terminated and Developer shall have no further obligations under this Agreement, except as provided under Section 4.1 with respect to Developer's responsibility to remove the digital display face on the New Digital Billboard as provided therein.

2.3 No Assignment. Except as set forth herein, neither party may sublet, assign or otherwise transfer this Agreement, or any interest herein, either voluntarily or by operation of law, without the other party's prior written consent, which the other party shall not unreasonably withhold, condition, or delay. Notwithstanding the above, the consent of City shall not be required: (a) for Developer to assign its rights and duties under this Agreement to any type of legal entity, including but not limited to a limited liability company, corporation, or limited partnership, controlling, controlled by or under common control with Developer or to any entity that acquires a majority of Developer's assets in the Southern California market; or (b) in the event any such entity to which this Agreement has been so assigned thereafter merges with another company, reorganizes its stock, or undergoes a similar corporate restructuring, changes ownership or sells any of its assets or stock. Any security posted by Developer may be substituted by the assignee or transferee. After a transfer or assignment as permitted by this Section, the City shall look solely to such assignee or transferee for compliance with the provisions of this Agreement which have been assigned or transferred.

2.4 Term of Agreement. Unless earlier terminated as provided in this Agreement, this Agreement shall continue in full force and effect until the earlier of: (a) twenty (20) years after the date the digital display face on the New Digital Billboard become Operational; or (b) the earlier termination of this Agreement and Site Lease and the permanent removal of the digital display face on the New Digital Billboard constructed pursuant to the terms hereof. If one digital face is removed permanently and replaced with a printed face, then this Agreement will remain in full force and effect as to the second digital face and the annual Development Fee under Section 2.6 shall be reduced to one-half of such payments accordingly. This Agreement may be extended at Developer's option at the end of the initial term by delivery of written notice from Developer to the City not less than ninety (90) days prior to expiration of the initial term of this Agreement Within thirty (30) days after the expiration or termination of this Agreement, the parties shall execute a written cancellation of this Agreement which shall be recorded with the County Recorder pursuant to Section 9.1 below. The term of this Agreement supersedes any amortization period that may apply under the Montebello Municipal Code as to any non-conformity as applied to the Site.

2.5 Processing Fee. Upon submission of its application for the Project approvals, Developer will pay to City a processing ("Processing Fee") in the amount of Ten Thousand Dollars ($10,000). This fee is in addition to the payment of customary building plan check or building permit fees. The City shall retain and use the Processing Fee, or any part thereof, for payment of any and all standard fees applicable for the necessary City review, evaluation, and analysis pertaining to the New Digital Billboard, including, but not limited to, legal fees and feasibility analysis incurred by the City in negotiation and preparation of this Agreement.

2.6 Development Fee. The potential impacts of the Project on the City and surrounding community are difficult to identify and calculate. Developer and City agree that an annual development fee paid by Developer to City would adequately ameliorate all such potential impacts. The parties therefore agree that Developer shall pay an annual development fee in the amount of Ten Thousand Dollars ($10,000.00) per digital display face to City, ("Development Fee"),payable in monthly installments, with the first installment due within thirty (30) days after the display face on the New Digital Billboard become Operational (the "Commencement Date"), and within thirty (30) days of the year anniversary of such Commencement Date throughout the Term of this Agreement, as follows:

2.7 Notification of Operational Date. Developer shall notify the City in writing when the digital display face on the New Digital Billboard becomes Operational for the purpose of determining the Commencement Date. The City's issuance of a building permit shall not be unreasonably withheld, provided the issuance of a building permit is done in compliance with the terms of this Agreement and said permit is issued in full compliance with applicable building codes and standards.

2.8 Community Benefits. Developer shall also provide the following community benefits during the entire Term of this Agreement:

2.8.1 **City's Use of Digital Sign**. Developer shall also provide, free of charge to City on a space available basis, advertising space on the digital display face on the New Digital Billboard for purposes of posting public service announcements and City-related advertising or announcements ("City Messages"). The City shall submit all proposed copy of City Messages to Developer not less than five (5) business days prior to the date the copy is proposed to be displayed, and, with the exception of Public Service Messages described in Section 2.8.3, the City shall notify Developer in writing not less than 30 calendar days prior to a requested display date. All proposed copy shall be subject to Developer's standard advertising copy rejection and removal policies, which allow Developer to approve or disapprove copy and remove copy once posted or displayed. City represents and warrants that all copy, content and materials supplied by City to Developer for display under this Agreement: (i) are owned or duly licensed by City and do not infringe or misappropriate the rights of any other person or entity; (ii) comply with all applicable federal, state, and local laws, rules and regulations and any industry codes or rules by which City and/or Developer may be bound and do not contain any obscene, libelous, slanderous or otherwise defamatory materials or refer in an offensive manner to the gender, race or ethnicity of any individual or group; (iii) are accurate and that all claims contained therein have been substantiated; and (iv) do not infringe upon any copyright, trademark or other intellectual property or privacy right of any third party. Any content provided by City shall be owned and belong exclusively to the City, and Developer shall not reproduce, sell, or give away any such content without the advance written consent of the City. It is expressly understood and agreed that, absent approval from Developer, City Messages shall not include any names, logos or marks associated with any third-party non-governmental person or entity, or any products or services associated with any third-party non-governmental person or entity.

2.8.2 **Indemnification for City Messages**. The City shall, and hereby does agree to, indemnify, defend and hold harmless Developer for, from and against, any claims, costs (including, but not limited to, court costs and reasonable attorneys' fees), losses, actions or liabilities arising from or in connection with any third party allegation that any portion of any City Message infringes or violates the rights, including, but not limited to, copyright, trademark, trade secret or any similar right, of any third party. This indemnity shall not include Developer's lost profits or consequential damages or any similar right, of any third party.

2.8.3 **Public Service Messages**. During the entire Term of this Agreement and any extension, Developer shall make advertising space on the digital display face on the New Digital Billboard Face available to the appropriate agencies for the purposes of displaying "Amber Alert" or other emergency messages, at no cost, and in accordance with local and regional emergency protocols.

2.9 Prohibited Use. Developer shall not utilize the digital display face on the New Digital Billboard to advertise tobacco, marijuana, hashish, "gentlemen's clubs," adult entertainment businesses, "obscene matter," as that term is defined in California Penal Code section 311, or any matter that is prohibited by any City ordinance existing as of the Effective Date of this Agreement or as may be amended or implemented from time-to-time after the Effective Date and equally applicable to all billboard displays. In addition, the Developer shall at all times comply with Article 7 § 5402 of the Outdoor Advertising Act from the Business and Professions Code. Developer shall immediately remove any prohibited content upon notice from the City. If there is a dispute between Developer and City as to whether any such content is prohibited, Developer shall remove the disputed content until the dispute is resolved.

2.10 Signing Bonus. Developer shall pay to City the Signing Bonus on the Commencement Date.

3. DEVELOPMENT AND IMPLEMENTATION OF THE PROJECT.

3.1 Vested Right to Develop The Site. Developer shall have the right to develop the Project on the Site in accordance with, and to the extent of, the Development Approvals, the Subsequent Development Approvals, and this Agreement pursuant to the Land Use Regulations including, without limitation, Developer's vested right to develop the Project on the Site; provided that nothing in this Agreement shall be deemed to modify or amend the Site Lease. In the event of any conflict or inconsistency between (i) the Agreement, any Project conditions of approval, and terms for issuance of a Project-related building permit, and (ii) the Land Use Regulations, this Agreement and any Project conditions of approval, and terms for issuance of a Project-related building permit shall prevail and control.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement: the rules, regulations and official policies governing permitted uses of the Site; the density and intensity and use of the Site; the maximum height, bulk, and size of proposed structures; the general location of public utilities; the design, and improvement and construction standards and specifications applicable to development of the Site; and other terms and conditions of development applicable to the Project, are set forth in the Land Use Regulations which are in full force and effect as of the Effective Date of this Agreement, subject to the terms of this Agreement.

3.3 Development Approvals. Developer shall, at its own expense and before commencement of demolition, construction or development of any structures or other work of

improvement upon the Site, secure or cause to be secured all necessary Development Approvals. Not by way of limiting the foregoing, in developing and constructing the Project, Developer shall comply with all (1) applicable development standards in City's Municipal Code, (2) applicable NPDES requirements pertaining to the Project, (3) all applicable building and fire codes, except as may be permitted through approved variances and modifications. Developer shall pay all normal and customary fees and charges applicable to such permits, and any fees and charges hereafter imposed by City in connection with the Project which are standard and uniformly-applied to similar projects in the City.

3.4 Purpose. The purpose of this Agreement is to set forth the rules and regulations applicable to the Project, which shall be accomplished in accordance with this Agreement, including the Scope of Development (Exhibit "D") which sets forth a description of the Project.

3.5 Changes and Amendments. Developer may determine that changes to the Agreement are appropriate and desirable. In the event Developer makes such a determination, Developer may apply in writing for an amendment to the Agreement to effectuate such change(s). The Parties acknowledge that City shall be permitted to use its inherent land use authority in deciding whether to approve or deny any such amendment request; provided, however, that in exercising the foregoing reasonable discretion, the City shall not apply a standard different than that used in evaluating requests of other developers, and the City must comply with Paragraph 9.18 of this Agreement. Accordingly, under no circumstance shall City be obligated in any manner to approve any amendment to the Agreement. Notwithstanding the foregoing, the City Manager shall be authorized, with the written consent of Developer, to approve any non-substantive amendment to the Agreement without processing a formal amendment to this Agreement. All other amendments shall require the approval of the City Council. The parties acknowledge that any extension of the Term for no more than twenty-four (24) months total is an example of a non-substantive change, which the City Manager, in his or her sole discretion, may approve in writing. Nothing herein shall cause Developer to be in default if it upgrades the digital display installed pursuant to this Agreement during the Term of this Agreement to incorporate newer technology; provided Developer shall secure all applicable ministerial permits to do so and ensure that such upgrade is consistent with the dimensions and standards for the displays, as provided under this Agreement and the Land Use Regulations.

3.6 Reservation of Authority.

3.6.1 **Limitations, Reservations and Exceptions**. Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations shall apply to the development of the Site:

(a) Processing fees and charges of every kind and nature imposed by the City to cover the estimated actual costs to City of processing applications for Subsequent Development Approvals to the extent such fees are assessed on a City-wide basis.

(b) Procedural regulations consistent with this Agreement relating to hearing bodies, petitions, applications, notices, findings, records, hearing, reports, recommendations, appeals and any other matter of procedure. Notwithstanding the foregoing, if such change materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice.

(c) Changes adopted by the International Conference of Building Officials, or other similar body, as part of the then most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, or National Electrical Code, as adopted by City as Subsequent Land Use Regulations, if adopted prior to the issuance of a building permit for development of the digital display face on the New Digital Billboard on the Site. Notwithstanding the foregoing, if such change materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice.

(d) Regulations that are not in conflict with the Development Approvals or this Agreement, and do not (1) reduce the size of the Project as permitted under the Land Use Regulations; (2) interfere with the operation of the New Digital Billboard as permitted under the Land Use Regulations; (3) change the land use designation or permitted or conditionally permitted use of the Site as described in the Land Use Regulations; (4) require the issuance of permits, approvals or entitlements by City other than those required under the Existing Land Use Regulations; or (5) materially limit the processing or procuring of applications and approvals of Subsequent Development Approvals.

(e) Regulations that are in conflict with the Development Approvals or this Agreement, provided Developer has given written consent to the application of such regulations to the Development of the Site.

(f) Applicable Federal, State, County, and multi-jurisdictional law and regulations which City is required to enforce as against the Site and that do not have an exception for existing signs or legal nonconforming uses.

3.6.2 **Future Discretion of City**. This Agreement shall not prevent City from denying or conditionally approving any application for a Subsequent Development Approval on the basis of the Land Use Regulations.

3.6.3 **Modification or Suspension by Federal or State Law**. In the event that applicable federal or state laws or regulations enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, and there is no exception for the legal nonconforming use, each party shall provide the other party with written notice of such state or federal law or regulation, a copy of such law or regulation, and a statement concerning the conflict with the provisions of this Agreement. The parties shall, within thirty (30) days, meet and confer in good faith in a reasonable attempt to modify this Agreement so as to comply with such state or federal law or regulation. This Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provision impractical to enforce. Notwithstanding the foregoing, if such change materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice.

3.7 <u>Regulation by Other Public Agencies</u>. It is acknowledged by the parties that other public agencies not subject to control by City may possess authority to regulate aspects of the development of the Site as contemplated herein, and this Agreement does not limit the authority of such other public agencies. Developer acknowledges and represents that, in addition to the Land Use Regulations, Developer shall, at all times, comply with all applicable federal, State and local laws and regulations applicable to the New Digital Billboard and Site that do not have an exception for a legal nonconforming use. To the extent such other public agencies

preclude development or maintenance of the Project and that do not have an exception for a legal nonconforming use, Developer shall not be further obligated under this Agreement except as provided in Section 4.1. Notwithstanding the foregoing, if such action by another public agency materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice

3.8 Public Improvements. Notwithstanding any provision herein to the contrary, the City shall retain the right to condition any Subsequent Development Approvals to require Developer to pay any required development fees, and/or to construct the required public infrastructure ("Exactions") at such time as City shall determine subject to the following conditions.

3.8.1 The payment or construction must be to alleviate an impact caused by the Project or be of benefit to the Project; and

3.8.2 The timing of the Exaction should be reasonably related to the development of the Project and said public improvements shall be phased to be commensurate with the logical progression of the Project development as well as the reasonable needs of the public.

3.8.3 It being understood, however, that if the there is a material increase in cost to Developer or such action by City otherwise materially impacts Developer's its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice.

3.9 Fees, Taxes and Assessments. During the Term of this Agreement, the City shall not, without the prior written consent of Developer, impose any additional fees, taxes or assessments on all or any portion of the Project, except such fees, taxes and assessments as are described in or required by this Agreement and/or the Development Approvals. However, this Agreement shall not prohibit the application of fees, taxes or assessments upon the Site only and not the New Digital Billboard or Developer directly as follows:

3.9.1 Developer shall be obligated to pay those fees, taxes or City assessments and any increases in same which exist as the Effective Date or are included in the Development Approvals;

3.9.2 Developer shall be obligated to pay any fees or taxes, and increases thereof, imposed on a City-wide basis such as, but not limited to, business license fees or taxes or utility taxes;

3.9.3 Developer shall be obligated to pay all fees applicable to a permit application as charged by City at the time such application is filed by Developer;

3.9.4 Developer shall be obligated to pay any fees imposed pursuant to any Uniform Code that existed when the application is filed by the Developer or that exists when the Developer applies for any Subsequent Development Approval.

3.10 Additional Fees; Termination. Notwithstanding anything to the contrary herein, if there is a change in such fees to those charged as of the full execution hereof, or any additional fees are charged and such additional or increased fees materially change Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice.

3.11 Extension of Term of Development Approvals. The term of any Development Approvals and Subsequent Development Approvals shall be automatically extended for the longer of the Term of this Agreement or the term otherwise applicable to the Development Approvals and Subsequent Development Approvals.

4. REMOVAL OF BILLBOARD DISPLAY FACE.

4.1 Removal by Developer. If an extension of the Term is not granted by the City according to the provisions of paragraph 2.4, above, the New Digital Billboard digital display face will be removed and the displays may be converted back to printed displays. In the event that the digital displays are not converted back to printed displays according to the terms of this paragraph, Developer shall within sixty (60) days from expiration of the Term, at its sole cost and expense, be required to demolish and remove the New Digital Billboard digital display face.

4.2 City's Right to Removal. Provided Developer is not in material breach hereof past any applicable notice and cure period, City will not have the right to remove the New Digital Billboard digital display face . Should Developer be in material breach of this Agreement past any applicable notice and cure period, and subject to due process, City may only require removal of the New Digital Billboard digital display face. If City requires the New Digital Billboard digital display face to be removed pursuant to the terms of this paragraph, Developer shall, at its sole cost and expense, remove the digital displays upon the New Digital Billboard and convert the displays to printed displays within ninety (90) days of City's notice to Developer of such breach.

5. REVIEW FOR COMPLIANCE.

5.1 Annual Reviews. At least once every twelve (12) months, Developer shall demonstrate its good faith compliance with the terms hereof by providing written correspondence addressed to the City Manager demonstrating such good faith compliance. "Good faith compliance" shall mean that Developer has sufficiently followed the terms of this Agreement so as to carry out the intent of the parties in entering into it. After receiving and reviewing Developer's written submission, if the City Manager finds that Developer is not acting in good faith compliance with this Agreement, the City Manager shall schedule a hearing before the Planning Commission in order to evaluate Developer's good faith compliance with the terms of the Agreement. The City shall provide Developer with notice of such hearing and a copy of all staff reports and related exhibits as soon as available, but in no event later than five days prior to the hearing. The Planning Commission's determination following such hearing shall be based on substantial evidence, and shall be subject to appeal to the City Council. If the Planning Commission or City Council, as applicable, finds that the Developer is not in good faith compliance with the terms of this Agreement, the provisions of Section 6 shall govern the parties rights.

5.2 City Right of Access. The City, its officers, employees, agents and contractors, shall, in the exercise of the City's police power, have the right, at their sole risk and expense, to enter the Site consistent with any rights the City has obtained by virtue of recorded easement or other property interests or, if no such interests exist, upon execution of a license or other applicable written agreement in a form mutually acceptable to the owner of the Site and upon written notice to Developer. The access to the Site described in this paragraph shall be for the purpose of conducting the inspection, maintenance, repair, service, construction, or relocation of any public improvements or public facilities located on the Site, or to exercise its rights under section 4.2. If an emergency repair to a public improvement or public facility on the Site is required and the City does not possess and has not obtained the foregoing access rights, Developer

acknowledges that the City may exercise its police power to enter the Site and conduct such repair after providing Developer and the Site owner with reasonable advance notice, with the reasonableness of such notice to be determined from the circumstances necessitating the entry. Any damage or injury to the Site or to the improvements constructed thereon resulting from such entry shall be promptly repaired at the sole expense of the City. The City also may access the Site in order to implement any of its lawful police powers to address any nuisance, dangerous condition, or other condition prohibited under the City's ordinances, so long as the City conducts the foregoing activities in a manner consistent with and protective of Developer's and the Site owner's due process rights. Except as explicitly provided for in this Agreement (including without limitation in this Section and Section 4.2 above), the City shall have no right whatsoever to enter the Site.

5.3 Procedure. Each party shall have a reasonable opportunity to assert matters which it believes have not been undertaken in accordance with the Agreement, to explain the basis for such assertion, and to receive from the other party a justification of its position on such matters. If, on the basis of the parties' review of any terms of the Agreement, either party concludes that the other party has not complied with the terms of the Agreement, then such party may issue a written "Notice of Non-Compliance" specifying the grounds therefore and all facts demonstrating such non-compliance. The party receiving a Notice of Non-Compliance shall have forty-five (45) days to cure or remedy the non-compliance identified in the Notice of Non-Compliance, or if such cure or remedy is not reasonably capable of being cured or remedied within such forty-five (45) days period, to commence to cure or remedy the non-compliance and to diligently and in good faith prosecute such cure or remedy to completion. If the party receiving the Notice of Non-Compliance disputes that it is in non-compliance with the terms of this Agreement, that party shall respond in writing to the Notice of Non-Compliance within forty-five (45) days after receipt of the Notice of Non-Compliance. If a Notice of Non-Compliance is disputed, the parties shall, for a period of not less than fifteen (15) days following receipt of the response to the Notice of Non-Compliance, seek to arrive at a mutually acceptable resolution of the dispute. In the event that a cure or remedy is not timely effected or, if the Notice of Non-Compliance is disputed and the parties are not able to arrive at a mutually acceptable resolution of the matter(s) by the end of the fifteen (15) day period described above, the party alleging the non-compliance may thereupon pursue the remedies provided in Section 6. Neither party hereto shall be deemed in breach if the reason for non-compliance is due to a "force majeure" event as defined in, and subject to the provisions of, Section 9.10.

6. DEFAULT AND REMEDIES.

6.1 Termination of Agreement.

6.1.1 **Termination of Agreement for Material Default of Developer**. City, in its discretion, may terminate this Agreement upon written notice to Developer for any material failure of Developer to perform any material duty or obligation of Developer hereunder or to comply with the terms of this Agreement (hereinafter referred to as "default" or "breach"); provided, however, City may terminate this Agreement pursuant to this Section only after following the procedure set forth in Section 5.3. In the event of a termination by City under this Section 6.1.1, Developer acknowledges and agrees that, unless otherwise set forth below, City may retain all fees, including the Processing Fee and the Development Fee paid up to the date of termination, and Developer shall pay the prorated amount of the Development Fee within sixty (60) days after the date of termination and removal of the New Digital Billboard that equates to the percentage of time elapsed in the year of the Term at the time of termination. In the event that City terminates this Agreement under this Section 6.1.1 before the New Digital Billboard

digital display face become Operational, City shall refund any portion of the Processing Fee that the City has not reasonably expended at the time of such termination after payment to City of the fees and costs described in Section 2.5.

6.1.2 **Termination of Agreement for Material Default of City**. Developer, in its discretion, may terminate this Agreement upon written notice to City for any material failure of City to perform any material duty or obligation of City hereunder or to comply in with the terms of this Agreement; provided, however, Developer may terminate this Agreement pursuant to this Section only after following the procedure set forth in Section 5.3. In addition, Developer may terminate this Agreement upon written notice to City, if despite Developer's good faith efforts, it is unable to secure the Development Approvals and any other necessary approvals and/or compliance with requirements under laws necessary to effectuate the Project is not feasible. In the event of a termination by Developer under this Section 6.1.2, Developer acknowledges and agrees that, unless otherwise set forth below, City may retain all fees, including the Processing Fee and the Development Fee, paid up to the date of termination, and Developer shall pay the prorated amount of the Development Fee within sixty (60) days after the date of termination and removal of the New Digital Billboard digital display face that equates to the percentage of time elapsed in the year of the Term at the time of termination. In the event that Developer terminates this Agreement under this Section 6.1.2 before the New Digital Billboard digital display face become Operational, City shall refund any portion of the Processing Fee that the City has not reasonably expended at the time of such termination after payment to City of the fees and costs described in Section 2.5.

6.1.3 **Rights and Duties Following Termination**. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to (i) any default in the performance of the provisions of this Agreement which has occurred prior to said termination, (ii) Developer's obligation to remove the digital display face on the New Digital billboard pursuant to Section 4.1 or (iii) any continuing obligations to indemnify other parties.

6.2 Remedies. In addition to the rights of termination set forth above, in the event of a default by either party, the non-defaulting party shall have the right to: (a) bring any proceeding in the nature of specific performance, injunctive relief, declaratory relief, or mandamus and/or; (b) bring any action at law or in equity to compensate the non-defaulting party for all the detriment proximately caused by the defaulting party's default; provided, however, that Developer's sole and exclusive remedy shall be specific performance and Developer shall not have the right to recover monetary damages (compensatory, consequential, or punitive) against the City other than attorneys' fees to the extent provided in Section 9.13 below, and the City shall only have the right to recover actual, direct damages (and not consequential or punitive damages) against Developer, as well as attorneys' fees to the extent provided in Section 9.13 below.

7. INSURANCE, INDEMNIFICATION AND WAIVERS.

7.1

7.1.1 **Types of Insurance.**

(a) Liability Insurance. Beginning on the Effective Date hereof and until completion of the Term, Developer shall, at its sole cost and expense, keep or cause to be kept in force for the mutual benefit of City, as additional insured, and Developer comprehensive broad form general liability insurance covering Developer's possession and use of the Site and providing protection of at least Two Million Dollars ($2,000,000) for bodily injury or death to any one person, at least Four Million Dollars ($4,000,000) in the aggregate for any accidents or occurrences, and at least One Million Dollars ($1,000,000) for property damage. Developer shall also furnish or cause to be furnished to City evidence that any contractors with whom Developer has contracted for the performance of any work for which Developer is responsible maintains the same limits of coverage, as specified above. Developer shall provide to the City annual proof of insurance consistent with terms and conditions of this agreement.

(b) Worker's Compensation. Developer shall also furnish or cause to be furnished to City evidence that any contractor with whom Developer has contracted for the performance of any work for which Developer is responsible hereunder carries worker's compensation insurance as required by law.

(c) Insurance Policy Form, Sufficiency, Content and Insurer. All insurance required by express provisions hereof shall be carried only by responsible insurance companies qualified to do business by California with an AM Best Rating of no less than "A". All such policies shall be non-assignable and shall contain language, to the extent obtainable, to the effect that (i) the policies are primary and noncontributing with any insurance that may be carried by City, but only with respect to the liabilities assumed by Developer under this Agreement; and (ii) the policies cannot be canceled or materially changed by Developer except after written notice by Developer to City or City's designated representative and the City's approval thereof. Developer shall furnish City with certificates of insurance evidencing that Developer has complied with the requirements of this paragraph 7.1.1.

7.1.2 Failure to Maintain Insurance and Proof of Compliance. Developer shall deliver to City, in the manner required for notices, copies of certificates of all insurance policies required of each policy within the following time limits:

(1) For insurance required above, within seven (7) days after the Effective Date or consistent with the requirements of Exhibit "C" (Schedule of Performance), Item No. 8.

(2) The City can request current certificates of all insurance policies as required. The City reserves the right to obtain copies of relevant policy forms and endorsements of the required insurance policies.

Developer's failure or refusal to procure or maintain insurance as required herein or failure or refusal to furnish City with proof that the required insurance has been procured and is in full force and effect may, after complying with the requirements of Section 5.3, be deemed a default under the terms of this Agreement.

7.2 Indemnification.

7.2.1 **General**. Developer shall indemnify the City, and its respective officers, employees, and/or agents against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions, or liabilities (herein "claims or liabilities") that may be asserted or claimed by any person(s), firm, or entity arising out of or in connection with this Agreement and/or the work, operations, or activities of Developer, its agents, employees, subcontractors, and/or invitees, hereunder, upon the Site.

(a) Developer will defend any action or actions filed in connection with any of said claims or liabilities covered by the indemnification provisions herein and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith, which attorneys will be the attorneys hired by the insurance company where insurance coverage applies.

(b) Developer will promptly pay any judgment rendered against the City or its respective officers, agents, or employees that falls within the scope of Developer's indemnity obligations, as defined above in paragraph 7.2.1.

7.2.2 **Exceptions**. The foregoing indemnity shall not include claims or liabilities arising from the sole negligence or willful misconduct of the City, its officers, agents, or employees or contractors. The foregoing indemnity shall also not include claims or liabilities arising from City's use of Developer's advertising space pursuant to paragraph 2.9.1 above.

7.2.3 **Additional Coverage**. Without limiting the generality of the foregoing, Developer's indemnity obligation shall include any liability arising by reason of any accident or other occurrence caused by Developer in or on the Site causing injury to any person or property;

(a) Loss and Damage. Except as set forth below, City shall not be liable for any damage to property of Developer or others located on the Site, nor for the loss of or damage to any property of Developer or others by theft or otherwise. Except as set forth below, City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain, dampness or leaks from any part of the Site or from the pipes or plumbing, or from the street, or from any environmental or soil contamination or hazard, or from any other latent or patent defect in the soil, subsurface or physical condition of the Site, or by any other cause of whatsoever nature. The provisions of this subparagraph (a) shall not apply (i) to the extent City or its agents, employees, subcontractors, invitees or representatives causes such injury or damage, or (ii) to the extent covered in any permit to enter the Site executed by the City.

(b) Period of Indemnification. The obligations for indemnity under this Section 7.2 shall begin upon the Effective Date and shall survive termination of Development Agreement.

8. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Site or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Site. City acknowledges that the lenders providing such financing may require certain Agreement modifications and City agrees upon request, from time to time, to meet with Developer, the owner of the Site, and representatives of such lenders to negotiate in good faith any such request for modification. Subject to compliance with applicable laws, City will not unreasonably withhold its consent to any such requested modification provided City determines such modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Site shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Project or the Site made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Project or the Site, or any part thereof, which Mortgagee has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Developer in the performance of Developer's obligations under this Agreement.

(c) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Developer under the terms of this Agreement, City shall make a good faith effort to provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Developer. The Mortgagee shall have the right, but not the obligation, to cure the default during the period that is the longer of (i) the remaining cure period allowed such party under this Agreement, or (ii) sixty (60) days.

(d) Any Mortgagee who comes into possession of the Project or the Site, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Project or the Site, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Developer's obligations or other affirmative covenants of Developer hereunder, or to guarantee such performance; except that (i) to the extent that any covenant to be performed by Developer is a condition precedent to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder, and (ii) in the event any Mortgagee seeks to develop or use any portion of the Project or the Site acquired by such Mortgagee by foreclosure, deed of trust, or deed in lieu of foreclosure, such Mortgagee shall strictly comply with all of the terms, conditions and requirements of this Agreement and the Development Approvals applicable to the Project or the Site or such part thereof so acquired by the Mortgagee.

9. MISCELLANEOUS PROVISIONS.

9.1 Recordation of Agreement. This Agreement shall be recorded with the County Recorder by the City Clerk within ten (10) days of execution, as required by Government Code Section 65868.5. Amendments approved by the parties, and any cancellation, shall be similarly recorded.

9.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties with respect to the subject matter set forth herein, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

9.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, then that term, provision, covenant or condition of this Agreement shall be stricken and the remaining portion of this Agreement shall remain valid and enforceable if that stricken term, provision, covenant or condition is not material to the main

purpose of this agreement, which is to allow the Project to be permitted and operated and to provide the Development Fee to the City; otherwise, this Agreement shall terminate in its entirety, unless the parties otherwise agree in writing, which agreement shall not be unreasonably withheld.

9.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning, to achieve the objectives and purposes of the parties hereto. The rule of construction, to the effect that ambiguities are to be resolved against the drafting party or in favor of the non-drafting party, shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and hereof.

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

9.6 Singular and Plural. As used herein, the singular of any word includes the plural.

9.7 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

9.8 Waiver. Failure of a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

9.9 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit for the parties and their owner, successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

9.10 Force Majeure. Notwithstanding the contrary herein, neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other acts of God, fires, rains, winds, wars, pandemics, epidemics, terrorism, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the party's employment force), government actions and regulations (other than those of the City), court actions (such as restraining orders or injunctions), or other causes beyond the party's reasonable control. If any such events shall occur, the term of this Agreement and the time for performance shall be extended for the duration of each such event, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years and further provided that if such delay is longer than six (6) months, Developer may terminate this Agreement upon written notice to City and City shall return to Developer any portion of the Development fee paid for any period after the effective date of such termination.

9.11 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

9.12 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same affected as if all of the parties had executed the same instrument.

9.13 Litigation. Any action at law or in equity arising under this Agreement or brought by any party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Los Angeles, State of California, or such other appropriate court in said county. Service of process on City shall be made in accordance with California law. Service of process on Developer shall be made in any manner permitted by California law and shall be effective whether served inside or outside California. In the event of any action between City and Developer seeking enforcement or interpretation of any of the terms and conditions to this Agreement, the prevailing party in such action shall be awarded, in addition to such relief to which such party is entitled under this Agreement, its reasonable litigation costs and expenses, including without limitation its expert witness fees and reasonable attorneys' fees.

9.14 Covenant Not To Sue. The parties to this Agreement, and each of them, agree that this Agreement and each term hereof are legal, valid, binding, and enforceable. The parties to this Agreement, and each of them, hereby covenant and agree that each of them will not commence, maintain, or prosecute any claim, demand, cause of action, suit, or other proceeding against any other party to this Agreement, in law or in equity, which is based on an allegation, or assert in any such action, that this Agreement or any term hereof is void, invalid, or unenforceable.

9.15 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the Development of the Project is a private Development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Developer is that of a government entity regulating the Development of private property, on the one hand, and the holder of a legal or equitable interest in such property on the other hand. City agrees that by its approval of, and entering into, this Agreement, that it is not taking any action which would transform this private Development into a "public work" project, and that nothing herein shall be interpreted to convey upon Developer any benefit which would transform Developer's private project into a public work project, it being understood that this Agreement is entered into by City and Developer upon the exchange of consideration described in this Agreement, including the Recitals to this Agreement which are incorporated into this Agreement and made a part hereof, and that City is receiving by and through this Agreement the full measure of benefit in exchange for the burdens placed on Developer by this Agreement.

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

9.17 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain or Developer's right to seek and collect just compensation or any other remedy available to it.

9.18 Amendments in Writing/Cooperation. This Agreement may be amended only by written consent of both parties specifically approving the amendment and in accordance with the Government Code provisions for the amendment of Development Agreements. The parties shall cooperate in good faith with respect to any amendment proposed in order to clarify the intent and application of this Agreement, and shall treat any such proposal on its own merits, and not as a basis for the introduction of unrelated matters. Minor, non-material modifications may be approved by the City Manager upon approval by the City Attorney.

9.19 Corporate Authority. The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party, if not an individual, is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

9.20 Notices. All notices under this Agreement shall be effective when delivered by United States Postal Service mail, registered or certified, postage prepaid return receipt requested; and addressed to the respective parties as set forth below or as to such other address as the parties may from time to time designate in writing by providing notice to the other party:

To City: City of Montebello
1600 West Beverly Boulevard
Montebello, CA 90640
Attn: City Manager

To Developer: Clear Channel Outdoor, LLC
19320 Harborgate Way
Torrance, CA 90501
Attn: Vice President, Real Estate & Public Affairs

With Copy To: Clear Channel Outdoor, LLC
2325 E. Camelback Road, Suite 250
Phoenix, AZ 85016
Attn: Operations Counsel

9.21 Nonliability of City Officials. No officer, official, member, employee, agent, and/or representatives of City shall be liable for any amounts due hereunder, and no judgment or execution thereon entered in any action hereon shall be personally enforced against any such officer, official, member, employee, agent, and/or representative.

9.22 No Brokers. City and Developer represent and warrant to the other that neither has employed any broker and/or finder to represent its interest in this transaction. Each party agrees to indemnify and hold the other free and harmless from and against any and all liability, loss, cost, or expense (including court costs and reasonable attorneys' fees) in any manner connected with a claim asserted by any individual or entity for any commission or finder's fee in connection with this Agreement or arising out of agreements by the indemnifying party to pay any commission or finder's fee.

9.23 No Amendment of Lease. Nothing contained in this Agreement shall be deemed to amend or modify any of the terms or provisions of the Lease. Nothing contained in this Agreement shall constitute or be deemed to constitute a limit on any of Developer's

obligations under the Lease, or any of Owner's rights or remedies against Developer under the Lease.

WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

City: CITY OF MONTEBELLO

By: ______________________________

Mayor

ATTEST:

____

City Clerk

APPROVED AS TO FORM:

____

City Attorney

Developer:

Clear Channel Outdoor, LLC a Delaware limited liability company

____

Bryan Parker, Executive Vice President

[end of signatures]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

On ____________________, before me, ____________________________, a Notary Public, personally appeared _______________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ________________________________

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

On ____________________, before me, ____________________________, a Notary Public, personally appeared _______________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ________________________________

EXHIBIT "A"

LEGAL DESCRIPTION OF SITE

MONTEBELLO SE 40 FT OF NE 135 FT EX OF ST OF LOT 51

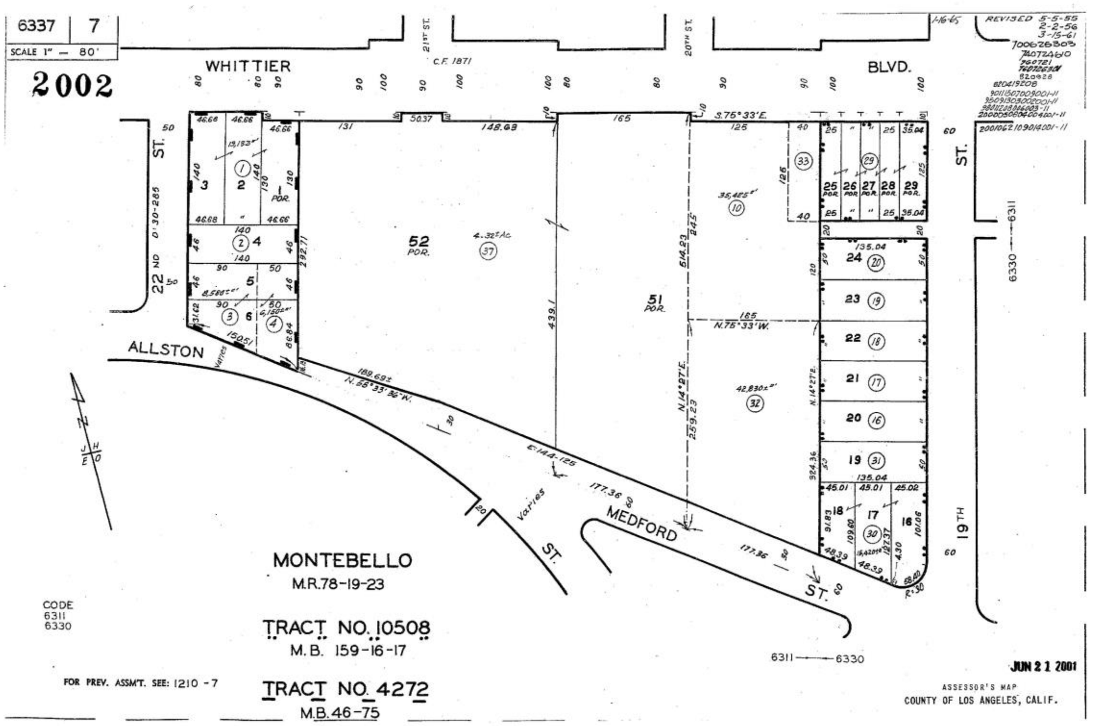


EXHIBIT "B"

Description of New Digital Billboard

CCO will be removing the existing Deck and External Lights on the east facing display

CCO will be relocating the existing printed display face in place as a double-faced 12' x 25' outdoor advertising sign with an east facing digital display face

Existing East Face

Digital Panel Sample

EXHIBIT “C”
Billboard Structure and Face To Be Removed

303 W. Whittier Blvd., Montebello, CA 90640 (Panel #5685)

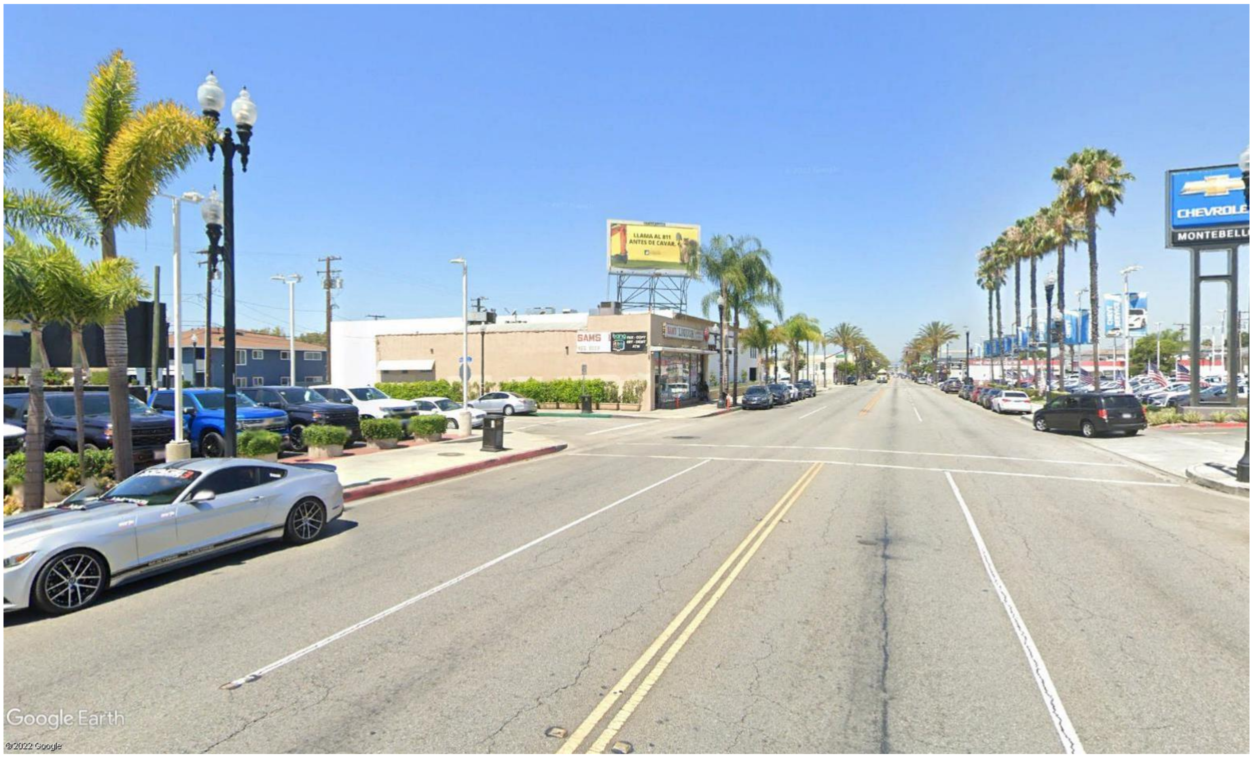


EXHIBIT "D"

SCOPE OF DEVELOPMENT INCLUDING SIGN PLANS

Developer and City agree that the Development shall be undertaken in accordance with the terms of the Agreement, which include the following:

1. Project. Developer shall relocate in place the existing printed sign faces and shall convert it to the New Digital Billboard with one east facing digital display face in accordance with the terms of this Agreement. The existing structure will have two (1) new digital display face (display face measuring approximately 12' x 25') within the Site.

2. Building Fees. Developer shall pay all applicable City building fees, as described in this Agreement, at the time that a building permit is issued for the installation of the New Digital Billboard Face on the Site.

3. Maintenance and Access. Developer, for itself and its successors and assigns, hereby covenants and agrees to be responsible for the following:

(a) Maintenance and repair of the New Digital Billboard and Site (where authorized pursuant to the Site Lease) including but not limited to, the displays installed thereon, and all related on-Site improvements, easements, rights-of-way at its sole cost and expense. Developer's maintenance and repair obligation shall include, without limitation, maintaining any poles, lighting, signs and walls in good repair and free of graffiti, rubbish, debris and other hazards to persons using the same. Developer shall maintain and repair the New Digital Billboard digital display face in accordance with all applicable laws, rules, ordinances and regulations of all federal, State, and local bodies and agencies having jurisdiction over the Site [unless those federal, State, and local bodies have an exception for a legal nonconforming use]. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal related to the Project; (ii) replacement of any fixtures, equipment or property damaged by the Project to the extent required by this Agreement or applicable law; (iii) the ongoing maintenance by the Developer of any access points to the New Digital Billboard to minimize dust caused by the Project; and (iv) the repair, replacement and repainting of the New Digital Billboard structure and display faces as necessary to maintain such billboard in good condition and repair.

(b) Maintenance of the Site (where authorized pursuant to the Site Lease) in such a manner as to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance of the New Digital Billboard digital display face or structure such as to be detrimental to the public health, safety or general welfare or that such a condition of deterioration or disrepair causes appreciable harm or is materially detrimental to property or improvements within three hundred (300) feet of Site.

4. Other Rights of City. In the event of any violation or threatened violation of any of the provisions of this Exhibit "D," then in addition to, but not in lieu of, any of the rights or remedies the City may have to enforce the provisions of this Agreement, the City shall have the

right, after complying with Section 5.3 of this Agreement, (i) to enforce the provisions hereof by undertaking any maintenance or repairs required by Developer under Paragraph 3 above (subject to the execution of a permit to enter in form reasonably acceptable to Owner) and charging Developer for any actual maintenance costs incurred in performing same, and (ii) to withhold or revoke in the manner proscribed by law, after giving written notice of said violation, any building permits, occupancy permits, certificates of occupancy, business licenses and similar matters or approvals pertaining to the New Digital Billboard digital display face.

5. No City Liability. The granting of a right of enforcement to the City does not create a mandatory duty on the part of the City to enforce any provision of this Agreement. The failure of the City to enforce this Agreement shall not give rise to a cause of action on the part of any person. No officer or employee of the City shall be personally liable to the Developer, its successors, transferees or assigns, for any default or breach by the City under this Agreement.

6. Conditions of Approval. The following additional conditions shall apply to the installation of the New Digital Billboard digital display face and, where stated, on the Site, shall conform to all applicable provisions of the Montebello Municipal Code (MMC) and the following conditions, in a manner subject to the approval of the Planning Manager or designee:

(a) A building permit will be required and structural calculations shall be prepared by a licensed civil engineer and approved by the City Building Official.

(b) The New Digital Billboard shall remain located in the portion of the Site as described in attached Exhibit A and as set forth herein and based on dimensions described in Section 1, above.

(c) The size of each digital display face of the New Digital Billboard shall not exceed a maximum area of 300 square feet with no extensions or borders.

(d) Plans and specifications for the proposed installation of the New Digital Billboard digital display face, including all utility plans, shall be submitted to the City Planning and Building Departments for plan check and approval prior to the issuance of building permits.

(e) Prior to the approval of the final inspection, all applicable conditions of approval and all mandatory improvements shall be completed to the reasonable satisfaction of the City.

(f) Developer shall maintain the Site and use thereof in full compliance with all applicable codes, standards, policies and regulations imposed by the City, County, State or federal agencies by any duly and valid city, county or state ordinance with jurisdiction over the facilities, unless the Project is exempted as a legal nonconforming use.

(g) The Developer shall pay any and all applicable fees due to any public agency pertaining to the New Digital Billboard digital display face prior to the final issuance of the building permits.

(h) The activities proposed in this Agreement shall be conducted completely upon the Site and shall not use or encroach on any public right-of-way.

(i) All graffiti shall be adequately and completely removed or painted over within 48 hours of notice to Developer of such graffiti being affixed on the New Digital Billboard.

(j) Developer shall comply with the standards as adopted by the Outdoor Advertising Association of America, Inc. (OAAA), including but not limited to, the 0.3 foot-candles limitation over ambient light levels at 250 feet, and ensuring additional flexibility in reducing such maximum light level standard given the lighting environment, the obligation to have automatic diming capabilities, as well as providing the City's Planning Manager or designee with a designated Developer employee's phone number and/or email address for emergencies or complaints that will be monitored 24 hours a day/7 days per week. Upon any reasonable complaint by the City's Planning Manager or designee, Developer shall perform a brightness measurement of the display using OAAA standards and provide City with the results of same within 15 days of the City's complaint. Developer shall dim the display to the appropriate setting immediately upon the conclusion of any such measurement that concluding that the light standards were exceeded.

(k) In the event ten percent (10%) or more of the digital sign face is not operating correctly or in the event of a malfunction, Developer shall immediately turn the entire display off, or show a one hundred percent (100%) black image on the display until corrected.

(l) The interval between the change in digital content shall be a minimum of eight (8) seconds and the images shall change instantaneously, without special transitional effects.

ITEM # 3

CITY OF MONTEBELLO
PLANNING COMMISSION AGENDA STAFF REPORT

TO: Members of the Planning Commission

FROM: Joseph Palombi, Director of Planning & Community Development

BY: Daniel Ruiz, Assistant Planner

SUBJECT: **Case No. PC-2022-0006-CUP-PMP for a Conditional Use Permit ("CUP") and a Parking Management Plan ("PMP") to allow the conversion of an existing office building to a medical office/clinic (dialysis clinic) as well as to propose tandem parking in conjunction with the proposed dialysis clinic at the property located at 2120 West Beverly Boulevard ("Project Site").**

DATE: October 18, 2022

RECOMMENDATION(S):

It is recommended that the Planning Commission ("Planning Commission") of the City of Montebello ("City") conduct a public hearing and take the following action:

1. ADOPT the Resolution approving Case No. PC-2022-0006-CUP-PMP with conditions to allow a medical office/clinic (dialysis clinic) and approve a parking management plan to allow tandem parking at the Project Site, and

2. ADOPT California Environmental Quality Act (CEQA) Exemption §15301 (Existing Facilities) (for ENV No. 06-22-CE).

FISCAL IMPACT:

None.

BACKGROUND:

PROJECT /APPLICANT INFORMATION

Project Location: 2120 W. Beverly Blvd.
Project Applicant: Leonardo Corona
Property Owner: LACNA Real Estate Ventures LLC
General Plan Designation: Boulevard Commercial
Zoning: C-2 (General Commercial) Zone
Existing Use on Property: Commercial Office

Project Site

The surrounding zoning and land uses are listed as follows:

Direction	Zone	Land Use
North	R-3	High Density Residential
South	C-2	Boulevard Commercial
East	C-2	Boulevard Commercial
West	C-2	Boulevard Commercial

BACKGROUND

On July 25, 2022, Leonardo Corona ("Applicant") filed an application (PC-2022-0006-CUP-PMP) for a CUP to allow the conversion of an existing office building to a medical office/clinic (dialysis clinic). In conjunction with the CUP, the applicant also filed a PMP to allow tandem parking at the Project Site.

On August 3, 2022, the application was Deemed Complete.

ENVIRONMENTAL IMPACT:

Case No. PC-2022-0006-CUP-PMP is considered a "project," per the CEQA definition of a "project." The project is categorically exempt per CEQA Section §15301(a) (Existing Facilities) because this classification consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination such as interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances. The CUP and PMP will not expand the existing footprint of the structure at the site and the majority of the improvements to the site include interior changes as well as changes to the parking lot area of the Project Site.

ANALYSIS:

PROJECT DESCRIPTION

The proposed CUP and PMP is for a proposed medical office/clinic (dialysis clinic) with tandem parking for the property located at 2120 W. Beverly Blvd (APN 5294-010-019). The Project Site is located in the C-2 (General Commercial) Zone and is surrounded by commercial uses to the East, West, and South, as well as, surrounded by residential uses to the North. The Project Site has a lot area of 22,250 square feet and is currently developed with a 6,619 square foot commercial office building.

As part of the application, the Applicant is proposing the following improvements:

- Minor façade improvements;
- Interior tenant improvement;
- Demolish an existing two-car garage;
- New concrete walkway;
- New landscape planter to be located north of the existing parking space number 19; and
- Reconfigure the existing parking lot to add a total of twenty-one (21) parking spaces, including two (2) tandem parking spaces for a total of thirty-three (33) parking spaces.

Pursuant to Section 17.52.280 of the Montebello Municipal Code ("MMC"), a PMP application is required when tandem off-street parking is proposed. Additionally, per MMC Section 17.52.050, Medical Clinics and/or Offices require one (1) off-street parking space per 200 square feet of gross floor area. The site currently provides twelve (12) off-street parking spaces. The existing square footage of the building is 6,619 square feet, which requires a minimum of thirty-three (33) off-street parking spaces. The Applicant is proposing several site improvements, which include the removal of an existing two-car garage and the addition of twenty-one (21) new parking spaces, which includes two (2) tandem spaces to be designated for staff only, two (2) accessible spaces, and one (1) loading space. The project site configuration as it currently exists does not have the space to fully accommodate the required number of off-street parking spaces without demolishing portions of the existing building and without proposing the tandem parking at the site. As such, a small portion of the parking spaces proposed do not meet the typical backup clearance requirement for off-street parking spaces. Nonetheless, the parking configuration proposed with the tandem parking spaces allows the applicant to meet the required number of off-street parking spaces and to provide ample parking for the proposed use.

The proposed business hours for the new medical office and dialysis clinic are from 8:00 am to 5:00 pm seven (7) days a week. The business will be closed from 12:00 pm to 1:00 pm for lunch. The proposed hours for the dialysis clinic portion of the business specifically, are from 9:00 am to 4:00 pm. It is anticipated that the business will have a total of fourteen (14) employees, including ten (10) nurses and four (4) doctors. The four (4) doctors will work alternating days depending on their availability and patient/client appointment times. The facility is a home-based treatment center and will be used exclusively for home dialysis patients who do most of their own dialysis at home and come in once or twice a month for appointments to check-in with their doctors and physicians. The dialysis center has around forty (40) patients overall and all patients are seen by appointment only with no walk-ins accepted. It is also anticipated that there will not be more than six (6) patients on site on any given day and at times no patients will be seen.

Of the fourteen (14) employees, three (3) will use the bus for transportation, two (2) will carpool, and one (1) will walk, with it being expected that the remaining nine (9) employees will drive to work. The two (2) proposed tandem spaces will be used exclusively by staff, leaving the remaining off-street parking spaces (excluding the one loading space) available for patients/clients and the other remaining staff members who drive to work. The project site is also located within a half mile of approximately eight (8) Montebello Bus Line stops at the intersection of Beverly Boulevard and Wilcox Avenue, which, when combined with the off-street parking provided on site, should provide ample parking and accessibility to the site.

GENERAL PLAN LAND USE ELEMENT

The City's General Plan Land Use designation for the Project Site is Boulevard Commercial. The following General Plan Land Use Element Goals and Policies are applicable to the Dialysis Clinic proposed at the Project Site:

General Plan Land Use Element Goal #1 is "to formulate a plan which is responsive to the needs of the community and which permits the orderly arrangement of land uses, permitting sufficient areas for reasonable development."
General Plan Land Use Element Commercial Policy #1 states that "commercial development in the City should be sited in appropriate locations according to need."

General Plan Land Use Element Commercial Policy #2 states that the "City should contain a variety of types of commercial development, including regional and community shopping facilities, local neighborhood convenience centers, highway oriented development and professional office type areas."

General Plan Land Use Element Commercial Policy #5 states that "the City should contain ample commercial facilities to meet the needs of its residents as well as provide taxable revenues to the City".

The proposed project conforms to the City of Montebello General Plan Land Use Element in that the proposed use will allow the Montebello community to benefit from the dialysis service offered at the site. The establishment of the proposed project will be beneficial to the health outcomes of those members of the community in need of this specific service. In addition, the property has been vacant for several years, allowing the proposed use will replace an underutilized building. Additionally, the establishment of the business will increase the taxable revenue to the City and will increase the variety of commercial developments available in the City. The site is in an appropriate location given that it is located along Beverly Boulevard, which is a major commercial thoroughfare in the City and in close proximity to the Beverly Hospital.

CONDITIONAL USE PERMIT

Pursuant to Section 17.70 (Conditional Use Permits) and Appendix A of the MMC, the approval of a CUP is required for medical clinics in the C-2 (General Commercial) Zone. Section 17.70.010 of the MMC specifies that “the purpose of the CUP is to allow proper integration of uses into the community which may only be suitable in specific locations, or only if such uses are designed and constructed in a particular manner on the site, and under certain conditions.” Additionally, Section 17.70.020 stipulates that the Planning Commission has the authority to grant CUPs. Based on the portions of the MMC referred to in this section, a CUP for the proposed medical clinic at the Project Site is required. The role of the Planning Commission in reviewing this submittal is to ensure that, if approved, the use is properly integrated into the community and constructed in a manner which will ensure that any adverse impacts or concerns surrounding the proposed use will be limited via the establishment of stipulations, if necessary.

Pursuant to Section 17.70.070 of the MMC, before any CUP shall be granted, the following findings must be made:

1. *That the site for the proposed use is adequate in size and shape*;

The Project Site is located within the City’s established C-2 Zone designated for General Commercial uses with the “Boulevard Commercial” General Plan Land Use Designation. This zoning district is intended to provide for business centers in areas where a wide range of retail sales and service establishments are needed to accommodate the surrounding community. The current use at the Project Site is a vacant office space and the proposed use of a medical office and dialysis clinic is compatible with the existing zone and General Plan Land Use Designation. The property is located along Beverly Boulevard which is a major thoroughfare in the City and is surrounded by mostly commercial uses. The Project Site currently provides twelve (12) parking space. Some of the existing parking spaces do not provide the required 24-foot back-up clearance. Should the Applicant be required to provide the back-up space for the existing spaces, the building will have to be reduced in size. Therefore, the existing parking spaces will not be modified and the majority of the parking lot improvements will take place within the northerly portion of the parking lot. Aside from requesting to deviate from the back up clearance requirements for off-street parking, the proposed project is in compliance with the development standards designated in the C-2 Zone. The request to deviate from the back-up clearance will allow the site to provide an adequate number of parking spaces for the proposed use. Given that only a maximum of six (6) outside clients or customers are anticipated on site at any given time, the proposed total number of off-street parking spaces is sufficient to support the proposed use and not pose any significant issues.

2. *That the site has sufficient access to streets and highways, and is adequate in width and pavement type to carry the quantity and quality of traffic generated by the proposed use;*

The Project Site is adjacent to and has sufficient access to Beverly Boulevard, which is one of the major streets in the City of Montebello. There is currently an approximately thirty (30) foot driveway which is adequate in width and pavement type to carry the quantity and quality of traffic generated by the proposed use. The improvements made to the parking lot area as a part of the proposed project will also allow the Project Site to be better equipped to sufficiently carry the traffic generated by the proposed use. Additionally, there is not a large quantity of traffic that is anticipated to be generated by the proposed medical office and dialysis clinic. The general vicinity also has the capacity to carry the traffic anticipated for the proposed use.

3. *That the proposed use will not have an adverse effect upon adjacent or abutting properties;*

The Project Site and the surrounding area are already fully developed with there being mostly commercial uses in the immediate vicinity of the project area. The traffic generated by the business will be contained on site, limiting the potential traffic impacts of the proposed use to adjacent or abutting properties. Additionally, since the building in which the medical office and dialysis clinic are being proposed is an already existing building, the changes to the site mostly consist of interior changes to the building as well as the changes to the parking lot to increase the number of parking spaces for the proposed use. These changes to the building and to the parking lot are not expected to have an adverse impact upon adjacent or abutting properties.

4. *That the proposed use is consistent with the objectives of the community redevelopment project area in which the site is located. Put another way, that the proposed used will meet the general purpose and intent of the Zoning Code and how it will be consistent with the General Plan and the purpose and intent of this code and any applicable specific plan.*

The proposal for the Project Site will be constructed in compliance with the development standards listed in Chapter 17.22 (Commercial Zones Generally) of the MMC. The proposed development plans are consistent with the general commercial zone requirements for lot area, width, depth, height, landscaping, building intensity, lot coverage, access, screening, trash areas, and all other commercial zone requirements for the City of Montebello with the exception of the backup clearance requirements for a small portion of the off-street parking spaces that currently exist at the site.

Additionally, the proposed use is consistent with General Plan Land Use Element Goal 1, as well as with General Plan Land Use Element Commercial Policies 1, 2, and 5. These goals and policies relate to the project being responsive to the needs of the community, to the City permitting for the orderly arrangement of land uses, to the City situating commercial developments in appropriate locations according to need, to the City providing a variety of types of commercial development, as well as to commercial developments providing taxable revenue to the City. The proposed project conforms with the City of Montebello General Plan Land Use Element in that the proposed use is located in a developed commercial area, the use of a medical office/ medical clinic is compatible with the existing office space on the site and surrounding uses in the area, and the proposed construction is in compliance with the development standards for the C-2 (General Commercial) Zone.

PARKING MANAGEMENT PLAN

In conjunction with the CUP application, the Applicant is also requesting the approval of a PMP to allow tandem off-street parking on the Project Site.

Pursuant to Section 17.52.310 (B) of the MMC, a PMP may be approved or conditionally approved by the Planning Commission if the following findings can be made:

1. *The proposed use is consistent with the general plan, any applicable specific plans, and the general intent of the zoning code;*

Per Section 17.02.020 of the MMC, the purpose and intent of the zoning code is "to permit the most compatible use of land within the City, consistent with the needs of residential, commercial and industrial developments, and the promotion of the public health, safety, welfare and general prosperity of the City and its residents." The proposed project is consistent with the existing residential and commercial uses in the vicinity of the Project Site. The approval of the proposed use will provide local residents with access to an additional medical service which will promote their overall general health and welfare.

The dialysis clinic is a conditionally permitted use in the C-2 Zone pursuant to MMC Appendix A (List of Primary Uses). The site complies with most development standards listed in MMC Chapter 17.22 and is compatible with the surrounding uses. The Project Site is currently deficient with the required back up clearance for some of the existing off-street parking spaces, however, allowing the nonconforming back-up clearance will allow the Applicant to meet the required off-street parking requirements.

The proposed use is consistent with General Plan Land Use Element Goal 1, as well as with General Plan Land Use Element Commercial Policies 1, 2, and 5. These goals and policies relate to the project being responsive to the needs of the community, to the City permitting for the orderly arrangement of land uses, to the City situating commercial developments in appropriate locations according to need, to the City providing a variety of types of commercial development, as well as to commercial developments providing taxable revenue to the City. The proposed project conforms with the City of Montebello General Plan Land Use Element in that the proposed use is located in a developed commercial area, the use of a medical office/ dialysis clinic is compatible with the existing office space on the site and surrounding uses in the area, and the proposed construction is in compliance with the development standards for the C-2 (General Commercial) Zone.

2. *The surrounding properties will not be adversely affected by the approval of the proposed parking management plan;*

Approval of the proposed Parking Management Plan would not adversely affect surrounding properties. The office will have normal business hours from 8:00 am to 5:00 pm and all off-street parking will be located on-site. The facility is a home based treatment center and will be used exclusively for home dialysis patients who do most of their own dialysis at home and only come in once or twice a month with appointments to check-in. All patients are seen by appointment only and no walk-ins will be accepted. The parking lot is not expected to be completely occupied as most patients do their own dialysis at home and more are attending virtually due to the COVID-19 Pandemic. Two (2) tandem spaces will be designated exclusively for staff with the remaining off-street parking spaces (excluding the one loading space) available for patients/clients and the other staff members who drive to work.

3. *The proposed parking management plan is appropriate for the proposed land use;*

The project site currently has a 6,939 square foot commercial office building at the site and has twelve (12) off-street parking spaces. The proposed land use of a Medical Clinic (Dialysis Center) is compatible with the surrounding uses and is permitted through a Conditional Use Permit in the C-2 Zone. The PMP will provide for an additional twenty-one (21) off-street parking spaces and includes two (2) tandem spaces to allow for the efficient use of the site. Drive aisles have been designed to provide ample circulation and access. The project site is also located within a half mile of approximately eight (8) Montebello Bus Lines at the intersection of Beverly Boulevard and Wilcox Avenue.

4. *That adequate off-street parking for customers, clients, visitors, and employees will be available for the proposed land use;*

The project site will provide thirty-three (33) off-street parking spaces – twenty-one (21) more off-street parking spaces than what currently exists at the site. Of the fourteen (14) employees, three (3) will use the bus for transportation, two (2) will carpool, and one (1) will walk, while the remaining workers will drive to work. The two (2) tandem spaces will be designated exclusively for staff, leaving the remaining twenty-nine (29) off-street parking spaces (excluding the one loading space) available for patients/clients and the other staff members who drive to work. The facility is a home based treatment center and will be used exclusively for home dialysis patients who do most of their own dialysis at home and come in once or twice a month for appointments to check-in. All patients are seen by appointment only and no walk-ins will be accepted. The parking lot is not expected to be completely occupied as most patients do their own dialysis at home and an increasing number of patients have been attending their appointments virtually due to the COVID-19 Pandemic. At most, the site is expected to have six (6) patients at any given time, further complementing the adequacy of off-street parking at the site.

5. *The parking management plan includes provisions for periodic monitoring by the City to identify any problems associated with implementation of the plan and to adjust the plan as necessary. Any costs to the City incurred as a result of such monitoring shall be paid by the property owner upon request of the City.*

The PMP requires provisions for periodic monitoring by the City to mitigate any problems associated with the implementation of the plan. A condition of approval has been included in the attached resolution ("Attachment A") stipulating that the periodic monitoring by the City of the site to identify any problems is required and that costs will be reimbursed by the property owner upon request of the City.

REPORTS RECEIVED

On February 22, 2022, the application for PC-2022-0006-CUP-PMP was forwarded to the Building, Public Works, Fire, and Police Department for review, comments, and conditions. The department conditions of approval that were provided are included in "Attachment A."

DISCUSSION:

PUBLIC NOTIFICATION

Pursuant to MMC Section 17.78 (Public Hearings, Notices, and Appeals), the following noticing was performed:

- On October 6, 2022, the Public Hearing Notice was published in the Daily Journal (Whittier Daily News); and
- On October 6, 2022, the Public Hearing Notice was mailed to all property owners within a 300-foot radius from the exterior boundaries of project site.

SUMMARY:

ATTACHMENT(S)

1. Attachment A - Reso No. 13-22 (PC-2022-0006-CUP-PMP)
2. Attachment B - Final Public Hearing Notification - 2120 W. Beverly Blvd...
3. Attachment C - 2120 Beverly Blvd Proposed Site Plan

NEXT STEPS:

CITY OF MONTEBELLO
PLANNING COMMISSION

RESOLUTION NO. 13-22

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MONTEBELLO, CALIFORNIA, APPROVING A CONDITIONAL USE PERMIT AND A PARKING MANAGEMENT PLAN (“CASE NO. PC-2022-0006-CUP-PMP”) WITH CONDITIONS TO ALLOW THE ESTABLISHMENT OF A MEDICAL OFFICE AND DIALYSIS CLINIC WITH TANDEM PARKING FOR THE PROPERTY LOCATED AT 2120 WEST BEVERLY BOULEVARD (“PROJECT SITE”) AND ADOPTING A NOTICE OF EXEMPTION UNDER CEQA § 15301 (EXISTING FACILITIES) (ENV NO. 06-22-CE).

WHEREAS, the City of Montebello (“City”) received an application from Leonardo Corona (“Applicant”) for a Conditional Use Permit (“CUP”) and Parking Management Plan (“PMP”) (Case No. PC-2022-0006-CUP-PMP) to allow the establishment of a medical office and dialysis clinic with tandem parking at the project site (“Project”) located at 2120 W. Beverly (“Project Site”); and

WHEREAS, pursuant to Montebello Municipal Code (“MMC”) Section 17.52.280, approval of a parking management plan by the City of Montebello Planning Commission (“Planning Commission”) is required for tandem, stacked, valet, and attended off-street parking, and the Application proposes tandem parking at the Project Site; and

WHEREAS, pursuant to Section 21067 of the Public Resources Code, and Section 15367 of the State California Environmental Quality Act (“CEQA”) Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.), the City of Montebello is the lead agency for the proposed Project; and

WHEREAS, the CUP and PMP (PC-2022-0006-CUP-PMP) are considered a "project," as per the California Environmental Quality Act definition of a "project"; and

WHEREAS, the project is Categorically Exempt per CEQA Section §15301, Class 1 (Existing Facilities); and

WHEREAS, a duly noticed public hearing has been held, at which the Planning Commission received and considered staff presentations, recommendations, public testimony, and all other substantial evidence presented at the public hearing and included in the record for this matter; and

WHEREAS all other legal prerequisites to the adoption of this Resolution have occurred.

NOW THEREFORE, the Planning Commission of the City of Montebello hereby finds, declares and resolves as follows:

SECTION 1. RECITALS. The foregoing recitals are true and correct and are hereby incorporated as substantive findings in this Resolution.

SECTION 2. FINDINGS.

A. Per MMC 17.70.070, before any CUP is granted, the following findings must be made:

1. That the site for the proposed use is adequate in size and shape;

The Project Site is located within the City's established C-2 Zone designated for General Commercial uses with the "Boulevard Commercial" General Plan Land Use Designation. This zoning district is intended to provide for business centers in areas where a wide range of retail sales and service establishments are needed to accommodate the surrounding community. The current use at the Project Site is a vacant office space and the proposed use of a medical office and dialysis clinic is compatible with the existing zone and General Plan Land Use Designation. The property is located along Beverly Boulevard which is a major thoroughfare in the City and is surrounded by mostly commercial uses. The Project Site currently provides twelve (12) parking space. Some of the existing parking spaces do not provide the required 24-foot back-up clearance. Should the Applicant be required to provide the back-up space for the existing spaces, the building will have to be reduced in size. Therefore, the existing parking spaces will not be modified and the majority of the parking lot improvements will take place within the northerly portion of the parking lot. Aside from requesting to deviate from the back up clearance requirements for off-street parking, the proposed project is in compliance with the development standards designated in the C-2 Zone. The request to deviate from the back-up clearance will allow the site to provide an adequate number of parking spaces for the proposed use. Given that only a maximum of six (6) outside clients or customers are anticipated on site at any given time, the proposed total number of off-street parking spaces is sufficient to support the proposed use and not pose any significant issues.

2. *That the site has sufficient access to streets and highways, and is adequate in width and pavement type to carry the quantity and quality of traffic generated by the proposed use;*

The Project Site is adjacent to and has sufficient access to Beverly Boulevard, which is one of the major streets in the City of Montebello. There is currently an approximately thirty (30) foot driveway which is adequate in width and pavement type to carry the quantity and quality of traffic generated by the proposed use. The improvements made to the parking lot area as a part of the proposed project will also allow the Project Site to be better equipped to sufficiently carry the traffic generated by the proposed use. Additionally, there is not a large quantity of traffic that is anticipated to be generated by the proposed medical office and dialysis clinic. The general vicinity also has the capacity to carry the traffic anticipated for the proposed use.

3. *That the proposed use will not have an adverse effect upon adjacent or abutting properties;*

The Project Site and the surrounding area are already fully developed with there being mostly commercial uses in the immediate vicinity of the project area. The traffic generated by the business will be contained on site, limiting the potential traffic impacts of the proposed use to adjacent or abutting properties. Additionally, since the building in which the medical office and dialysis clinic are being proposed is an already existing building, the changes to the site consist of interior changes to the building as well as the changes to the parking lot to increase the number of parking spaces for the proposed use. These changes to the building and to the parking lot are not expected to have an adverse impact upon adjacent or abutting properties.

4. *That the proposed use is consistent with the objectives of the community redevelopment project area in which the site is located. Put another way, that the proposed use is in conformance with the goals, policies, and objectives of the General Plan and the purpose and intent of this code and any applicable specific plan.*

The proposal for the Project Site will be constructed in compliance with the development standards listed in Chapter 17.22 (Commercial Zones Generally) of the MMC. The proposed development plans are consistent with the general commercial zone requirements for lot area, width, depth, height, landscaping, building intensity, lot coverage, access, screening, trash areas, and all other commercial zone requirements for the City of Montebello with the exception of the backup clearance requirements for a small portion of the off-street parking spaces that currently exist at the site.

Additionally, the proposed use is consistent with General Plan Land Use Element Goal 1, as well as with General Plan Land Use Element Commercial Policies 1, 2, and 5. These goals and policies relate to the project being responsive to the needs of the community, to the City permitting for the orderly arrangement of land uses, to the City situating commercial developments in appropriate locations according to need, to the City providing a variety of types of commercial development, as well as to commercial developments providing taxable revenue to the City. The proposed project conforms with the City of Montebello General Plan Land Use Element in that the proposed use is located in a developed commercial area, the use of a medical office/ medical clinic is compatible with the existing office space on the site and surrounding uses in the area, and the proposed construction is in compliance with the development standards for the C-2 (General Commercial) Zone.

B. Per MMC Section 17.52.310(B), a parking management plan may be approved or conditionally approved by the planning commission only if the following findings can be made:

1. *That the proposed use is consistent with the general plan, any applicable specific plans, and the general intent of the zoning code;*

Per Section 17.02.020 of the MMC, the purpose and intent of the zoning code is "to permit the most compatible use of land within the City, consistent with the needs of residential, commercial and industrial developments, and the promotion of the public health, safety, welfare and general prosperity of the City and its residents." The proposed project is consistent with the existing residential and commercial uses in the vicinity of the Project Site. The approval of the proposed use will provide local residents with access to an additional medical service which will promote their overall general health and welfare.

The dialysis clinic is a conditionally permitted use within in the C-2 Zone pursuant to MMC Appendix A (List of Primary Uses). The site complies with most development standards listed in MMC Chapter 17.22 and is compatible with the surrounding uses. The Project Site is currently deficient with the required back up clearance for some of the existing off-street parking spaces, however, allowing the nonconforming back-up clearance will allow the Applicant to meet the required off-street parking requirements.

The proposed use is consistent with General Plan Land Use Element Goal 1, as well as with General Plan Land Use Element Commercial Policies 1, 2, and 5. These goals and policies relate to the project being responsive to the needs of the community, to the City permitting for the orderly arrangement of land uses, to the City situating commercial developments in appropriate locations according to need, to the City providing a variety of types of commercial development, as well as to commercial developments providing taxable revenue to the City. The proposed project conforms with the City of Montebello General Plan Land Use Element in that the proposed use is located in a developed commercial area, the use of a medical office/ medical clinic is compatible with the existing office space on the site and surrounding uses in the area, and the proposed construction is in compliance with the development standards for the C-2 (General Commercial) Zone.

2. *The surrounding properties will not be adversely affected by the approval of the proposed parking management plan;*

Approval of the proposed Parking Management Plan would not adversely affect surrounding properties. The office will have normal business hours from 8:00 am to 5:00 pm and all off-street parking will be located on-site. The facility is a home based treatment center and will be used exclusively for home dialysis patients who do most of their own dialysis at home and only come in once or twice a month with appointments to check-in. All patients are seen by appointment only and no walk-ins will be accepted. The parking lot is not expected to be completely occupied as most patients do their own dialysis at home and more are attending virtually due to the COVID-19 Pandemic. Two (2) tandem spaces will be designated exclusively for staff with the remaining off-street parking spaces (excluding the one loading space) available for patients/clients and the other staff members who drive to work.

3. *The proposed parking management plan is appropriate for the proposed land use;*

The project site currently has a 6,939 square foot commercial office building at the site and has twelve (12) off-street parking spaces. The proposed land use of a Medical Clinic (Dialysis Center) is compatible with the surrounding uses and is permitted through a Conditional Use Permit in the C-2 Zone. The Parking Management Plan will provide for an additional twenty-one (21) off-street parking spaces and includes two (2) tandem spaces to allow for the efficient use of the site. Drive aisles have been designed to provide ample circulation and access. The project site is also located within a half mile of approximately eight (8) Montebello Bus Lines at the intersection of Beverly Boulevard and Wilcox Avenue.

4. *That adequate off-street parking for customers, clients, visitors, and employees will be available for the proposed land use;*

The project site will provide thirty-three (33) off-street parking spaces – twenty-one (21) more off-street parking spaces than what currently exists at the site. Of the fourteen (14) employees, three (3) will use the bus for transportation, two (2) will carpool, and one (1) will walk, while the remaining workers will drive to work. The two (2) tandem spaces will be designated exclusively for staff, leaving the remaining twenty-nine (29) off-street parking spaces (excluding the one loading space) available for patients/clients and the other staff members who drive to work. The facility is a home based treatment center and will be used exclusively for home dialysis patients who do most of their own dialysis at home and come in once or twice a month for appointments to check-in. All patients are seen by appointment only and no walk-ins will be accepted. The parking lot is not expected to be completely occupied as most patients do their own dialysis at home and an increasing number of patients have been attending their appointments virtually due to the COVID-19 Pandemic. At most, the site is expected to have six (6) patients at any given time, further complementing the adequacy of off-street parking at the site.

5. *The parking management plan includes provisions for periodic monitoring by the City to identify any problems associated with implementation of the plan and to adjust the plan as necessary. Any costs to the City incurred as a result of such monitoring shall be paid by the property owner upon request of the City.*

The PMP requires provisions for periodic monitoring by the City to mitigate any problems associated with the implementation of the plan. A condition of approval has been included in the attached Resolution ("Attachment A") stipulating that the periodic monitoring by the City of the site to identify any problems is required and that costs will be reimbursed by the property owner upon request of the City.

SECTION 3. CEQA. The Planning Commission hereby approves and adopts the CEQA Categorical Exemption §15301 (Existing Facilities) Class 1 exemption, as the proposed use constitutes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of an existing private structure involving negligible or no expansion of use. The project consists of the remodel of the interior of the existing facilities and no expansion is proposed as a part of this Project.

SECTION 4. APPROVALS. The Planning Commission hereby approves CUP and PMP (PC-2022-0006-CUP-PMP) to allow the establishment of a medical office and a dialysis clinic with tandem parking spaces at the Project Site subject to the conditions set forth in Section 5 of this Resolution.

SECTION 5. CONDITIONS. The Planning Commission finds that the foregoing conditions of approval are necessary and appropriate.

A. Planning Division Conditions

1. The Applicant shall defend, indemnify, and hold harmless the City, its elected and appointed officials, agents, officers, and employees from any claim, action, or proceeding brought against the City, its elected and appointed officials, agents, officers, or employees arising out of, or which are related to the Applicant's project or application (collectively referred to as "proceedings"). The indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and cost of suit, attorney's fees, and other costs, liabilities, and expenses incurred or awarded in connection with the proceedings whether incurred by the Applicant, the City and/or the parties initiating or bringing such proceedings. This indemnity provision shall include the Applicant's obligation to indemnify the City for all the City's costs, fees, and damages that the City incurs in enforcing the indemnification provisions set forth herein. The City shall have the right to choose its own legal counsel to represent the City's interest in the proceedings.

2. The development of the subject site shall be consistent with all of the provisions of the Montebello Municipal Code ("MMC"), Conditional Use Permit and Parking Management Plan Case No. PC-2022-0006-CUP-PMP/ENV No. 06-22, and the specifications of the City's Planning Division ("Planning Division" or "Planning Department").

3. Within thirty (30) days of the Planning Division transmittal of the Acceptance Form, the Applicant shall sign and return a copy of the Acceptance Form, agreeing to the conditions of approval and acknowledging that failure to comply with such conditions shall constitute grounds for potential revocation of the permit approval. Failure to return the Acceptance Form within thirty (30) days shall constitute grounds for terminating the permit.

4. The Director of Planning & Community Development ("Director"), at any time, can call for a review of the approved conditions of approval at a duly noticed public hearing before the Planning Commission. These condition(s) may be modified, or new condition(s) added to reduce any impacts of the use. The Planning Commission may revoke the CUP and PMP (PC-2022-0006-CUP-PMP) if sufficient cause is given.

5. The Applicant or successor in interest shall meet the applicable code requirements and all other City department regulations.

6. In the event the Applicant violates or fails to comply with any conditions of approval of this permit, no further permits, licenses, approvals, or certificate of occupancy shall be issued until such violation(s) has been fully remedied.

7. It is the responsibility of the Applicant to have all graffiti on the site removed within twenty-four (24) hours of its appearance, or be subject to citation from the City of Montebello Code Enforcement Division.

8. The Applicant, Owner, Management and/or successor of the use shall bear full cost of all monitoring and inspection activities to be conducted by City staff or its designated consultant representative(s) as necessary to ensure compliance with the conditions of this Resolution and the Parking Management Plan.

9. Any change, expansion, intensification and/or modification to the proposed plans use, or mode of operations shall be subject to the review and approval by the Director who may take action or call for review by the Montebello Planning Commission ("Planning Commission") at a noticed public hearing.

10. This approval shall not supersede the approval of any other responsible agencies. The Applicant shall comply with all Federal, State and local laws.

11. The approval of the entitlement shall expire if the rights granted are not exercised within one (1) year from the CUP's and PMP's effective date. Exercise of right shall mean issuance of a building permit to commence construction or similar activities demonstrating the intent to proceed with the project, as determined by the Director.

12. A copy of the approved Resolution shall be attached to the construction plans for any site improvement at the submittal of plans for plan check.

13. The site shall be attractively landscaped and maintained in accordance with the standards established in the MMC and to the satisfaction of the Planning Department.

14. If changes to the wall or fence surrounding the property are proposed, the Applicant shall submit a detailed wall/fence plan which is consistent with the MMC and identifies the material(s), color(s), and dimensions of proposed fencing, subject to the review and approval of the Planning Department.

15. The applicant shall remove the existing cabinet signage at the site and no signs shall be installed on the site until a sign permit has been approved by the Planning Department and Building & Safety Division in conformance with the provisions set forth in Chapter 17.62 ("Signs") of the MMC.

B. <u>Building Division Conditions</u>

1. Plans will need to be submitted to the Department of Health Care Access and Information (HCAI), formerly known as the Office of Statewide Health Planning and Development (OSHPD), for review.

2. The development and utilization of the site shall comply with all the provisions of the current Building, Plumbing, Mechanical, Electrical, Energy, CALGreen, Fire Codes, City Ordinances, as well as additional requirements from the Montebello Building and Safety Division.

C. <u>Fire Department Conditions</u>

1. The development shall comply with all applicable provisions of the California Fire Code, referenced NFPA standards, and local ordinances.

2. The Applicant shall submit an Underground fire main/fire sprinkler supply plan based on 2019 Edition California Fire Code and NFPA 13/24 and Montebello Fire Department's plan check submittal requirements and notes.

3. The Applicant shall submit a Fire Sprinkler Overhead plan based on 2019 Edition California Fire Code and NFPA 13/13R and Montebello Fire Department's plan check submittal requirements and notes.

4. The Applicant shall submit a Fire Alarm plan based on 2019 Edition California Fire Code and NFPA 72 and Montebello Fire Department's plan check submittal requirements and notes.

5. Additional requirements maybe added during the plan check process.

6. The building shall provide fire extinguishers per 2019 Edition California Fire Code.

7. The Applicant shall submit a Fire/Emergency evacuation plan per 2019 Edition California Fire Code, Chapter 4.

D. <u>Police Department Conditions</u>

1. The Applicant shall provide proper signage for "Private Property Parking Only" signage. Anyone who parks at the facility without the owner or property manager's permission will be subject to a fine and towed at their own expense.

PASSED AND ADOPTED this 18th day of October, 2022 by the Planning Commission.

Chair Cuevas:	( ) AYE ( ) NOE ( ) ABSENT ( ) ABSTAIN
Vice-Chair Del Rio:	( ) AYE ( ) NOE ( ) ABSENT ( ) ABSTAIN
Commissioner Alikasanian:	( ) AYE ( ) NOE ( ) ABSENT ( ) ABSTAIN
Commissioner Lomeli:	( ) AYE ( ) NOE ( ) ABSENT ( ) ABSTAIN
Vacant:	( ) AYE ( ) NOE ( ) ABSENT ( ) ABSTAIN

Victor Cuevas, Chair

ATTEST:

Joseph A. Palombi, Director
Planning & Community Development Department

ATTACHMENT B

NOTICE OF PUBLIC HEARING
CITY OF MONTEBELLO PLANNING COMMISSION

Conditional Use Permit and Parking Management Plan
Categorical Exemption (Section §15301 – Class 1 "Existing Facilities")

Location: 2120 W. Beverly Blvd, Montebello, CA 90640

Case No.: PC-2022-0006-CUP/ENV No. 07-22-CE

Applicant: Leonardo Corona

Project Description: A Conditional Use Permit (CUP) application to allow for the conversion of an existing office building to a medical office and a dialysis center to be located at 2120 W. Beverly Blvd ("Project Site"). In conjunction with the CUP application, the Applicant also submitted an application for a Parking Management Plan to propose tandem parking at the Project Site.

Zone: C-2 (General Commercial)

General Plan Designation: Boulevard Commercial

Environmental: The proposal is considered a "Project" and is categorically exempt under the California Environmental Quality Act (CEQA) Section 15301 – Class 1 (Existing Facilities) because it involves negligible or no expansion of the existing or former use.

NOTICE IS HEREBY GIVEN that the City of Montebello ("City") Planning Commission ("Planning Commission") will hold a public hearing to consider the Conditional Use Permit and Parking Management Plan applications described above. The meeting is scheduled to be held on:

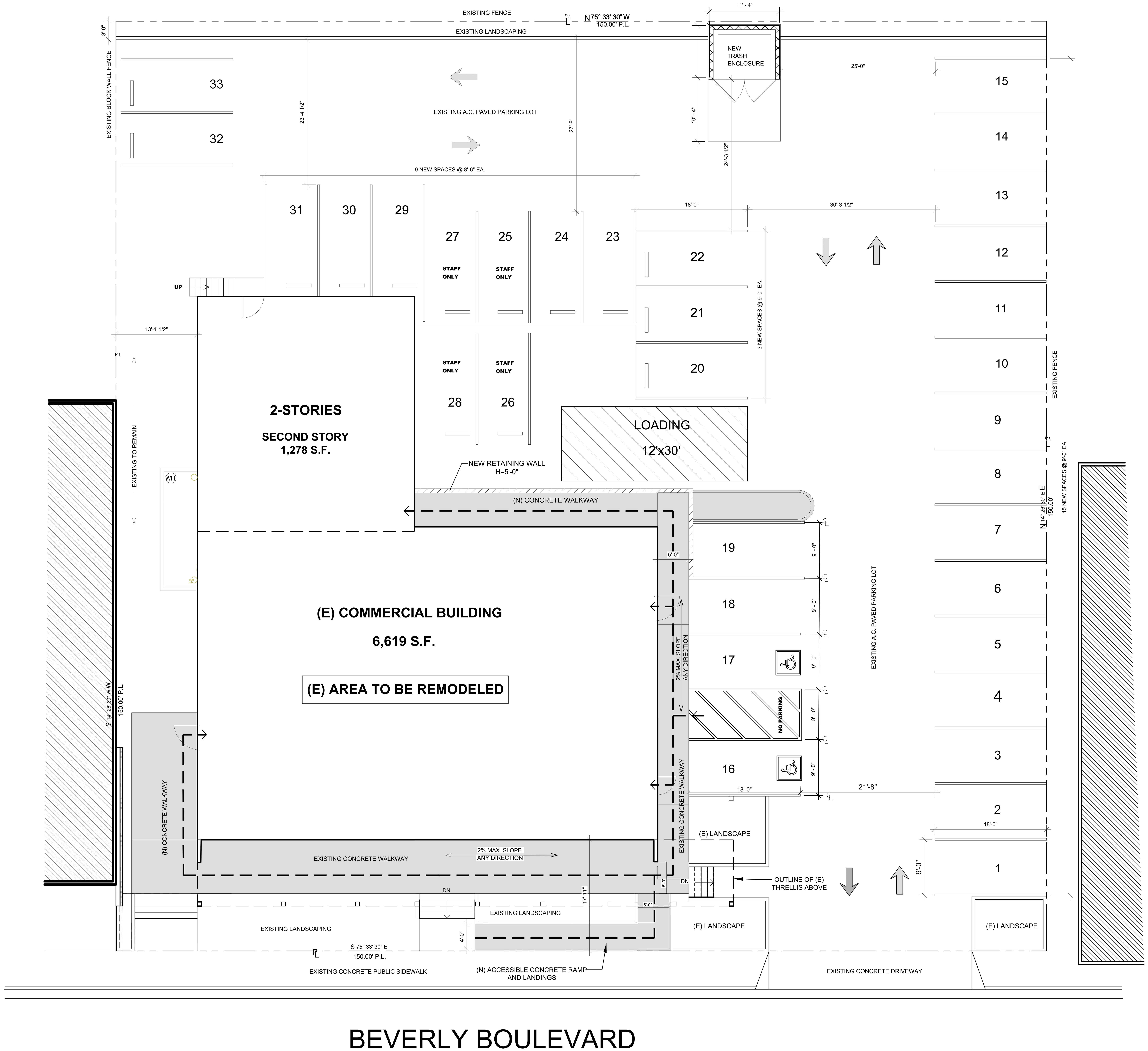
Date: Tuesday, October 18, 2022
Time: 6:30 p.m.
Place: City Hall Council Chambers
1600 West Beverly Boulevard, Montebello, CA, 90640

For those interested in participating in-person during the Public Comment period(s) or public testimony period for Public Hearings of the Planning Commission, you may address the Planning Commission in person the day of the meeting. Speakers will be required to fill out a speaker card provided at the door and turn it into the Administrative Secretary prior to each Public Comment announcement period. Staff will number and call each speaker card in the order received.

The public may also submit emailed comments via the City's email address: pcpubliccomment@cityofmontebello.com where the public can submit written public comments up until the day of the meeting, **Tuesday, October 18, 2022 between 7:30 a.m. – 6:00 p.m.** These comments will be read out loud and submitted for the record. Additional Information related to the Planning Commission meetings can be located on the City's webpage: https://www.montebelloca.gov/cms/One.aspx?portalId=58756&pageId=61848.

Written comments may also be mailed or delivered to the Planning Commission at the Planning Division office address identified below on or before the meeting date. If you challenge the matter in court, you may be limited to raising those issues you or someone else raised at the public hearing, or in written correspondence delivered to the City of Montebello at, or prior to, the public hearing.

For more information about the project and the related environmental documentation please contact:
Contact Person: Daniel Ruiz, Assistant Planner
Phone: 323.887.1200 Ext. 484 / **Email:** druiz2@cityofmontebello.com
Address: City of Montebello, City Hall, Planning Division, 1600 W. Beverly Blvd, Montebello, CA 90640
City Website: www.montebelloca.gov
Date of Publication: October 6, 2022



PROJECT SQUARE FOOTAGE

1ST STORY-OFFICES:	5341 S.F.
2ND STORY- OFFICES	1278 S.F.
TOTAL	6619 S.F.

NOTES:

1. THE PARKING MANAGEMENT PLAN INCLUDES PROVISIONS FOR PERIODIC MONITORING BY THE CITY TO IDENTIFY ANY PROBLEMS ASSOCIATED WITH IMPLEMENTATION OF THE PLAN AND TO ADJUST THE PLAN AS NECESSARY. ANY COSTS TO THE CITY INCURRED AS A RESULT OF SUCH MONITORING SHALL BE PAID BY THE PROPERTY OWNER UPON REQUEST OF THE CITY.

THIS PLAN HAVE BEEN REVIEWED BY

LILIAN DIAZ
DESIGNER

(N) SITE PLAN:
SCALE: 1/8" = 1'-0"

N

REVISIONS: DATE

CONTRACTOR:

DESIGNER/CONTACT:

PROJECT:
TENANT IMPROVEMENT FOR OFFICES/DIALYSIS CLINIC
2120-2122 BEVERLY BLVD.
MONTEBELLO, CA 90640
APN: 5294-010-019

STAMP:

SHEET TITLE:
(N)SITE PLAN

DRAWN BY: L. D.

SHEET NO:
A-1.1

DATE ISSUED:
SEPTEMBER 15, 2022