

ITEM 8.A.

MOORPARK CITY COUNCIL AGENDA REPORT

TO: Honorable City Council

FROM: David A. Bobardt, Community Development Director
Prepared by: Joseph Fiss, Principal Planner 

DATE: August 31, 2011 (CC Meeting of 10/5/2011)

SUBJECT: Consider Resolution Adopting a Mitigated Negative Declaration and Approving General Plan Amendment No. 2009-01; Ordinance Approving Zone Change No. 2009-01; Ordinance Approving Development Agreement No. 2009-02 between City of Moorpark and Los Angeles Avenue LLC; and Resolution Approving Industrial Planned Development No. 2009-01 and Conditional Use Permit No. 2009-01; To Allow a 559,450 Square-Foot Motion Picture Studio Complex with 12 Soundstages, 3 Office Buildings, 18 Studio Support Buildings, and Surface Parking on a 44.467 Acre Site Located on the North Side of Los Angeles Avenue, West of Gabbert Road, on the Application of Triliad Development, Inc. for Los Angeles Avenue LLC

SUMMARY/BACKGROUND

On March 23, 2009 Triliad Development, Inc. (on behalf of Los Angeles Avenue, LLC) filed an application for a General Plan Amendment, a Zone Change, an Industrial Planned Development Permit, a Conditional Use Permit, and a Development Agreement to allow a 559,450 square-foot motion picture studio complex with , 12 sound stages totaling 296,000 square-feet of building area, 3 office buildings totaling 145,500 square feet of building area, 18 studio support buildings totaling 117,950 square feet of building area, and 1,696 surface parking spaces, all on a 44.467 acre site located on the north side of Los Angeles Avenue, west of Gabbert Road. The site is comprised of 3 full parcels and an approximate 30-foot wide strip of a fourth parcel and it is currently owned by Los Angeles Avenue LLC, PEGH Investments, LLC, the Ronald Newburg Living Trust, and the Richard S. Held Retirement Trust. The project may be developed in one or two phases, with perimeter and off-site improvements to be built as part of the first phase.

The applicant is requesting the following City approvals:

- A General Plan Amendment (GPA) to change the land use designation on

approximately 10.75 acres of the site from General Commercial (C-2) to Medium Industrial (I-2) to be consistent with the rest of the site;

- A Zone Change to change the existing zoning on approximately 10.75 acres of the site from Commercial Planned Development (CPD) to Medium Industrial (M-2) to be consistent with the rest of the site;
- An Industrial Planned Development Permit (IPD) for the proposed site layout and improvements, including building design, materials and colors, and landscaping;
- A Conditional Use Permit (CUP) to allow the building heights above 30 feet (the CUP allows for building heights up to 60 feet in the M-2 Zone (higher for architectural features extending beyond the height range); and
- A Development Agreement between the City and property owner outlining fees and improvements for which the developer will be responsible, as well as commitments of the City to the project implementation.

The project also includes a lot line adjustment with the property to the west to add approximately 30 feet to the width of the property and proposed widening of Los Angeles Avenue (SR-118) with the acquisition of approximately 4 acres of agricultural land for additional right-of-way on the south side of the street, in unincorporated Ventura County. The highway widening would require an encroachment permit from Caltrans. Expansion of the City's Sphere of Influence and annexation of the additional right-of-way into the City's municipal boundary would need to be considered by the City and the Ventura County Local Agency Formation Commission (LAFCo) as the current City boundary follows the south side of the existing improvements of Los Angeles Avenue west of the Buttercreek neighborhood. Annexation of the property to Ventura County Waterworks District No. 1 is also required for the project to have water and sewer service; with approval needed from both the District and Ventura County LAFCo.

DISCUSSION

On May 3, 2011, the Planning Commission considered this application and adopted Resolution PC-2011-563 recommending approval of the project to the City Council. A full analysis of this project is provided in the attached May 3, 2011 Planning Commission agenda report. The motion to recommend approval was approved by a 4-0 vote, with Chair Landis abstaining because he was not in attendance during the majority of the public hearing.

The Planning Commission's discussion focused on issues related to project traffic, parking, and noise. With regard to traffic and off-site circulation, the Planning Commission discussed the SR-118/Los Angeles Avenue widening, including the proposed alignment of Los Angeles Avenue; ingress and egress to Los Angeles Avenue from the Buttercreek and Mira Sol neighborhoods; the proposed North Hills Parkway signalization; the developer's participation in a North Hills Parkway Assessment District;

and the proposed design of the southeast project entrance for trucks with respect to the size of trucks and deceleration.

With regard to parking and on-site circulation, the Planning Commission discussed the need for a parking regulation plan that would include motorhomes at the site for anticipated shoots; the amount of land the project is taking for parking and the feasibility of putting a parking structure on the main site, east of North Hills parkway; how the remote site is going to be secured; security fencing on Union Pacific Railroad boundary; access to the project site for trucks and other vehicles entering the site; the emergency gate; staging for trucks; and, pedestrian walk ways. With regard to noise, the Planning Commission discussed the noise analysis in the environmental document along with the potential need for soundwalls adjacent to the nearby residential areas.

Additionally, the Planning Commission discussed stormwater runoff from the site, whether the channel on the east and south side of the project will remain open, whether the Los Angeles Avenue power poles will go underground, project lighting, graffiti; concerns regarding fencing along the back wall by the railroad tracks; and, general safety issues.

On December 15, 2010, the City Council considered the recommendation of its Ad Hoc Committee (Mayor Parvin and Councilmember Mikos) regarding Development Agreement Number 2009-02 for Triliad Development, Inc. for Los Angeles Avenue LLC for this project. The Council, upon recommendation of the Ad Hoc Committee, directed staff to advertise a public hearing on the Development Agreement before the Planning Commission and the City Council. As with all of the City's development agreements, a standard format has been utilized, making slight adjustments to suit the particular project. The substance of the developer's obligations is contained in Section 6 and the substance of the City's obligations is in Section 7. The format of this Development Agreement is consistent with other Development Agreements and the terms will ensure that the project will be developed consistent with the goals of the General Plan. Items unique to this project include specific development fees; assessment district participation; Los Angeles Avenue and North Hills Parkway dedication, improvement, and signalization; an east-west frontage road that gives vehicular access to North Hills Parkway to the properties to the west; and, the provision of an easement to the City for a City Welcome Sign on the pedestrian/cart bridge across North Hills Parkway, or an alternative location on the Property to the satisfaction of the City, should a pedestrian/cart bridge not be constructed, including payment of \$25,000 to the City for the construction and erection of the sign.

The Development Agreement considered by the City Council on December 15, 2010, included terms (Section 6.22) related to the provision of upstream drainage improvements on the Hitch Ranch property. These improvements were proposed by the developer at the time to address deficiencies in the Walnut Canyon Channel, which posed flooding issues on the project site. Since then, the developer has designed a

drainage system within the project site to address this deficiency. Therefore, this term is no longer needed for the project and it has been removed from the draft Development Agreement.

FISCAL IMPACT

The action to be considered by the City Council is the approval of the discretionary permits and a development agreement, which do not include a commitment of City funds.

STAFF RECOMMENDATION

1. Open the public hearing, accept public testimony and close the public hearing.
2. Adopt Resolution No. 2011-____ adopting a Mitigated Negative Declaration and approving General Plan Amendment No. 2009-01.
3. Introduce, for first reading, Ordinance No. ____ approving Zone Change No. 2009-01, and set October 19, 2011, for second reading.
4. Introduce, for first reading, Ordinance No. ____ to adopt the Development Agreement No. 2009-02, and set October 19, 2011, for second reading;
5. Adopt Resolution No. 2011-____ approving Industrial Planned Development Permit No. 2009-01 and Conditional Use Permit No. 2009-01, subject to Conditions of Approval.

ATTACHMENTS:

1. Location Map
2. Aerial Photograph
3. Project Exhibits (Previously Provided Under Separate Cover)
 - A. Full Set of ½-Size Project Plans
 - B. Colored Elevation Book
4. Planning Commission Agenda Report (w/o attachments)
5. Resolution No. 2011-____ adopting Mitigated Negative Declaration and approving General Plan Amendment No. 2009-01
6. Ordinance No. ____ approving Zone Change No. 2009-01
7. Ordinance No. ____ approving Development Agreement No. 2009-02
8. Resolution No. 2011-____ Approving Industrial Planned Development Permit No. 2009-01 and Conditional Use Permit No. 2009-01 with Conditions of Approval



LOCATION MAP

Industrial Planned Development Permit No. 2009-01

General Plan Amendment No. 2009-01

Zone Change No. 2009-01

Moorpark West Studios

Motion Picture Studio Complex

11289 Los Angeles Avenue



AERIAL PHOTOGRAPH

Industrial Planned Development Permit No. 2009-01

General Plan Amendment No. 2009-01

Zone Change No. 2009-01

Moorpark West Studios

Motion Picture Studio Complex

11289 Los Angeles Avenue

**PROJECT EXHIBITS
PROVIDED UNDER
SEPARATE COVER**

CC ATTACHMENT 3

**MOORPARK PLANNING COMMISSION
AGENDA REPORT**

TO: Honorable Planning Commission

FROM: David A. Bobardt, Community Development Director
Prepared by Joseph Fiss, Principal Planner

DATE: April 28, 2011 (PC Special Meeting of 5/3/2011)

SUBJECT: Consider Resolution Recommending to the City Council Adoption of a Mitigated Negative Declaration, Approval of General Plan Amendment No. 2009-01, Zone Change No. 2009-01, Industrial Planned Development No. 2009-01, Conditional Use Permit No. 2009-01, and Development Agreement No. 2009-02 between City of Moorpark and Los Angeles Avenue LLC to Allow a Motion Picture Studio Complex With 12 Soundstages, Support Buildings, and Surface Parking on a 44.467 Acre Site Located on the North Side of Los Angeles Avenue, West of Gabbert Road, on the Application of Triliad Development, Inc. for Los Angeles Avenue LLC

BACKGROUND

On March 23, 2009 Triliad Development, Inc. (on behalf of Los Angeles Avenue, LLC) filed an application for a General Plan Amendment, a Zone Change, an Industrial Planned Development Permit, a Conditional Use Permit, and a Development Agreement to allow a motion picture studio complex with 3 office buildings, 12 sound stages, and several other buildings for studio support services all totaling 559,450 square feet of building space on a 44.467 acre site located on the north side of Los Angeles Avenue, West of Gabbert Road. The site comprises of 3 full parcels and an approximate 30-foot wide strip of a 4th parcel and it is currently owned by Los Angeles Avenue LLC, PEGH Investments LLC, and the Ronald Newburg Trust et al. The project may be developed in two phases as shown in the project summary table below, with perimeter and off-site improvements to be built as part of the first phase.

The applicant is requesting the following City approvals:

- A General Plan Amendment (GPA) to change the land use designation on approximately 10.75 acres of the site from General Commercial (C-2) to Medium Industrial (I-2) to be consistent with the rest of the site;
- A Zone Change to change the existing zoning on approximately 10.75 acres of the site from Commercial Planned Development (CPD) to Medium Industrial (M-2) to be consistent with the rest of the site;
- An Industrial Planned Development Permit (IPD) for the proposed site layout and improvements, including building design, materials and colors, and landscaping;
- A Conditional Use Permit (CUP) to allow the building heights above 30 feet (the CUP allows for building heights up to 60 feet in the M-2 Zone (higher for architectural features extending beyond the height range); and
- A Development Agreement between the City and property owner outlining fees and improvements for which the developer will be responsible, as well as commitments of the City to the project implementation.

The project also includes a lot line adjustment with the property to the west to add approximately 30 feet to the width of the property and proposed widening of Los Angeles Avenue (SR-118) with the acquisition of approximately 4 acres of agricultural land for additional right-of-way on the south side of the street, in unincorporated Ventura County. The highway widening would require an encroachment permit from Caltrans. Expansion of the City's Sphere of Influence and annexation of the additional right-of-way into the City's municipal boundary would need to be considered by the City and the Ventura County LAFCo as the current City boundary follows the south side of the existing improvements of Los Angeles Avenue west of the Buttercreek neighborhood. Annexation of the property to Ventura County Waterworks District No. 1 is also required for the project to have water and sewer service; with approval needed from both the district and Ventura County LAFCo.

DISCUSSION

Project Setting

Existing Site Conditions and Surrounding Uses:

The relatively flat, vacant project site fronts Los Angeles Avenue (State Route 118) in the western portion of Moorpark, and is adjacent to unincorporated lands on the northwest and southwest. Land uses surrounding the site include vacant land and the Union Pacific Railroad right-of-way (ROW) to the north, vacant land to the west, agricultural land outside the City's boundary to the southwest, the Buttercreek residential neighborhood to the southeast, and the Southern California Edison (SCE) substation to the east.

The Walnut Canyon flood control channel runs adjacent to the site on the east on the SCE substation property and along the southern edge of the project property parallel to Los Angeles Avenue. The Gabbert Canyon flood control channel runs from north to south bisecting the western portion of the project property and joining the Walnut Canyon channel adjacent to Los Angeles Avenue. These flood control channels are maintained by the Ventura County Watershed Protection District (VCWPD). The current site access is along Los Angeles Avenue with two service bridges over the open flood control channels.

The project site had previously been used for agriculture, but has been vacant for many years. The site shows signs of prior and ongoing disturbances, including disking and off-road vehicle use. Vegetation is dominated by non-native annual species. Native shrubs and small trees are scattered within the matrix of non-native annual vegetation. In the northwestern corner of the property, and along the northern boundary, are remnants of coastal sage scrub vegetation. A single individual of Blue Gum Eucalyptus is present on site and several more are located along the south side of Los Angeles Avenue in the area proposed for highway widening.

Previous Applications:

On May 13, 1992, the City Council adopted Resolution No. 92-856, adopting the "Revised Moorpark Land Use and Circulation Elements of the Moorpark General Plan and Related Maps (GPA 89-1)". On November 4, 1992, the City Council adopted Ordinance No. 155 approving Zone Change No. 92-2, approving various zoning changes consistent with the previously adopted Land Use Element. As part of these adoptions, a 10.75 acre portion of this site, fronting on Los Angeles Avenue, was re-zoned from Medium Industrial (M-2) to Commercial Planned Development (CPD), which would allow commercial uses that could be consistent with the surrounding industrial zoned property.

In 1995, Pre-Application 95-7 was filed on behalf of Bugle Boy Industries to allow an industrial facility with a commercial component on the site. This application did not move forward.

On December 29, 1999, Triliad Development Inc, filed applications for Industrial Planned Development No. 99-05 through 99-10, Tentative Tract Map No. 5217, General Plan Amendment No. 99-5 to change the land use designation on 10.75 acres of the site from C-2 (General Commercial) to I-2 (Medium Industrial) and Zone Change No. 99-5 to change the zoning on 10.75 acres of the site from CPD (Commercial Planned Development) to M-2 (Limited Industrial) in order to develop the site with six industrial buildings totaling approximately 586,000 square feet on six lots. This application was determined to be incomplete and was not pursued further by the applicant.

General Plan and Zoning:

GENERAL PLAN/ZONING			
Direction	General Plan	Zoning	Land Use
Site	Gen. Commercial (C-2) & Medium Industrial (I-2)	Commercial Planned Development (CPD) & Limited Industrial (M-2)	Undeveloped
North	Medium Industrial (I-2)	Limited Industrial (M-2)	Undeveloped
Southwest	County Agricultural (40-acre minimum)	County Agricultural Exclusive (40 acre minimum)	Agriculture
Southeast	Medium Density Residential (M)	Single Family Residential (R1)	Single Family Residential
East	Utility (U)	Limited Industrial (M-2)	SCE Substation
West	Medium Industrial (I-2)	Limited Industrial (M-2)	Undeveloped

The applicant is requesting a General Plan Amendment and Zone Change for this project. The current General Plan designations of the site are General Commercial (C-2) and Medium Industrial (I-2). The current Zoning designations are Commercial Planned Development (CPD) and Limited Industrial (M-2). The applicant is proposing to change the General Plan designation for the 10.75-acre C-2 portion of the site to I-2 and the Zoning of the 10.75-acre CPD portion of the site to M-2. If approved, the entire site would have a General Plan designation of Medium Industrial (I-2) and a zoning designation of Limited Industrial (M-2). The requested zoning designation of M-2 would accommodate the proposed use and be consistent with the zoning of the surrounding uses. The General Plan designation of Medium Industrial (I-2) allows for the proposed use.

Proposed Project

Building Summary:

Bldg.	Proposed Use	Stories	Height*	Bldg. Area (SF)	Phase
A	Administration, Security, Studio Support	2	44'6"	40,000	1
B	Presentation Room, Lobby, Commissary, Kitchen, Store, Gym, Conference	2	51'	31,500	1
C	Producer's Office Building	2	44'7"	74,000	2
D	Fire, Medic, Maintenance, Dining Hall, Support Rooms	2	34'	19,900	2
E	Storage, Lighting, Grips, Camera, Scenery Dock, Support Rooms	2	36'	46,150	1
F	Mill, Fabrication and Assembly	1	36'	9,110	1
G	Mill, Fabrication and Assembly	1	32'	22,150	1
H	Lumber and Materials Yard, Waste Storage, Oversized Equipment Yard	1	26'	10,750	1
S-1	One-Story Sound Stage with 20' by 30' Pool, Three-Story Multi-Use Support	3	64'	50,760	2
S-2	One-Story Audience Rated Sound Stage, Two-Story Multi-Use Support	2	54'	31,040	2
S-3	One-Story Sound Stage, Two-Story Multi-Use Support	2	54'	28,680	2
S-4	One-Story Sound Stage, Two-Story Multi-Use Support	2	54'	28,660	1
S-5/6	One-Story Sound Stage, Two-Story Multi-Use Support	2	69'	40,640	1
S-7	One-Story Sound Stage	1	54'	18,000	1
S-8	One-Story Sound Stage	1	59'	18,000	1
S-9	One-Story Sound Stage	1	59'	18,000	2
S-10	One-Story Sound Stage	1	59'	18,000	2
S-11	One-Story Sound Stage	1	59'	18,000	1
S-12	One-Story Sound Stage with Cyclorama, Three-Story Multi-Use Support	3	54'	26,220	1
R1-9	9 Restroom Buildings	1	16'	4,800	1 and 2
GS1-3	3 Guard Shacks	1	16'	860	1
BL	Backlot Set Façade Structure		60'	4,230	1 and 2
Total				559,450	

* Maximum structure height including decorative features.

Site Design and Architecture:

A facility of this type is unique in that, by its very nature, there are several architectural districts and styles. Staff has identified four major design areas, as follows:

1. **Walls, Fencing, and Landscaping:** The applicant is proposing a 7-foot sidewalk along Los Angeles Avenue with parkway trees at regular intervals. Behind the sidewalk still within the Caltrans right-of-way and just before the project property line, a low concrete wall is proposed to protect pedestrians and screen the flood control channel on the project site. This wall would be about 32 inches high with a 10-inch high railing on top of it. It is not known whether Caltrans would allow this wall to include decoration on it, but Section 7.6 of the Development Agreement would allow credit to the developer for placement of public art on this wall. Behind the wall, the Ventura County Watershed Protection District maintains a 15-foot wide open flood control channel and a 15-foot wide service road within the first 30 feet of the property line. The applicant is proposing paving the access road with turfblock and providing a 12.5-foot wide landscaping buffer beyond this with fencing behind. The fencing is proposed to have 8 to 9-foot high combination tubular steel and concrete sections separated by pre-cast concrete posts as well as solid 8 to 9-foot high sections separated by pre-cast concrete posts at regular intervals. The fencing would terminate at Building A, on the corner of North Hills Parkway and Los Angeles Avenue. Buildings B and C would be set back approximately 75 feet from the Los Angeles Avenue fencing and the nearest stage building, Stage 5, would be set back approximately 220 feet from the fencing. A similar theme is proposed for the North Hills Parkway frontage, with Building A at the street frontage and the rest of the complex behind fencing similar to that along Los Angeles Avenue. Stage buildings will be set back approximately 380 to 440 feet from the North Hills Parkway right-of-way.
2. **Office Buildings:** Buildings "A", "B", and "C", combined with the aforementioned fencing and landscaping, make up the primary street scene of the project from Los Angeles Avenue and North Hills Parkway. The design of these buildings is contemporary, with traditional architectural elements, such as towers, columns, roof cornices, overhangs, and base elements. The proposed colors are traditional rich earth tone colors. Each building has its own character, tied together by colors and design elements. The windows will be minimally reflective, consistent with modern office buildings. Proposed materials include painted concrete and stucco with aluminum window frames. Roofs are generally flat below a parapet wall with standing seam metal tower elements and glass tile domes on Building A.
3. **Internal Street Façades:** The main driveway is fronted on the north side and at the east end by Sound Stages 2 through 6. The elevations of these buildings have been designed to replicate the first 3 or 4 stories of traditional urban city street scenes from different eras. These elevations will allow the site to be used for outdoor shoots. These elevations will not be very visible from outside the project site.

4. Internal Sound Stages and Support Buildings: The remaining internal building elevations of the sound stages and support buildings are constructed in a conventional concrete tilt-up design, with paint colors and scoring patterns to break up the large elevations.

Building Height – Conditional Use Permit

The Municipal Code allows buildings up to 30 feet in height in the M-2 zone, but this may be increased to 60 feet in height with a Conditional Use Permit. Most of the buildings on the project site have a maximum structure height over 30 feet in height as noted in the project summary. Building height is defined in the Zoning Ordinance as:

“the vertical distance from the grade to the highest point of a flat roof or mansard roof, or, in the case of a pitched or hip roof, the “averaged midpoint,” which is arrived at by the drawing of two (2) imaginary lines between the finished main ridgeline peak and the top of the two (2) exterior finished walls running parallel to the main ridgeline, adding together the vertical heights of these two (2) imaginary lines, and dividing the result by two (2).

The tallest building proposed as part of the project is Stage 1. It has a maximum height of 64 feet and is proposed with a barrel roof. Using the formula from the Zoning Ordinance, the building height measured to the average midpoint of the roof of Stage 1 would be approximately 55 feet.

Architectural appurtenances may exceed the maximum building height standards, provided that they do not add floor area and are evaluated on a case-by-case basis as part of the permit. Soundstage 5/6 has a decorative tower spire that rises to 69 feet in height, which is appropriate for the building design as a street-scene backdrop.

Setbacks:

The M-2 zone requires a 20-foot minimum street front setback, except when next to or across the street from an R zone, in which case the minimum required setback is 30 feet, as in this case. A 5-foot setback is required on the internal side property lines and on the street side. No setback is required on the rear property line. The code requires that all setbacks be landscaped except for required walkways and driveways. The applicant is not requesting any deviation from these requirements and the project meets or exceeds all required setbacks.

Circulation:

The site is bisected by the north-south extension of the future North Hills Parkway, identified in the Circulation Element to be developed as a 4-lane arterial. Approximately half of the parking is proposed west of North Hills Parkway, with the actual facility and half of the parking east of North Hills Parkway. Access to the westerly parking lots from North Hills Parkway is proposed via a private street. Section 6.23 of the Development Agreement calls for the developer to improve this access road west to the Pentair Pool Products southerly parking lot. This would allow access for that property can be re-aligned

in the future so that it can access Los Angeles Avenue through a signalized intersection. A private shuttle is proposed to operate between the parking lot and studio facility. The applicant has proposed a future bridge as a shuttle crossing over North Hills Parkway, once North Hills Parkway is extended to the north. The design of this bridge would be considered when the applicant wishes to proceed with this future project.

Access to both the main studio site and the remote parking lots is provided from North Hills Parkway, north of Los Angeles Avenue. Per Section 6.24 of the Development Agreement, Los Angeles Avenue will be widened by the developer to 2 lanes in each direction from the Tierra Rejada Road/Gabbert Road intersection to a new intersection at North Hills Parkway, tapering to 1 lane in each direction west of this intersection. Left turn lanes will be provided for Gabbert Road, Mira Sol Drive, Buttercreek Road, and North Hills Parkway, and a raised landscaped median will be provided from North Hills Parkway to the Tierra Rejada Road/Gabbert Road intersection. Right turn lanes will be provided on Los Angeles Avenue for a truck entrance on the eastern boundary of the site and for North Hills Parkway. Sidewalks will be extended on both the north and south sides of Los Angeles Avenue from where they currently terminate to North Hills Parkway. Although Los Angeles Avenue is not identified in the City's bicycle plan as a street to have bike lanes, the widened street will also have wider shoulders, benefiting bicyclists.

The developer will be obligated to construct the North Hills Parkway improvements from Los Angeles Avenue to the northern boundary of the project entry intersection. The remaining improvements will tie into the railroad under crossing and will be improved as part of a regional improvement project. The developer will be required to dedicate the North Hills Parkway right-of-way and to construct interim improvements up to their northern property line, including the signalization of the Los Angeles Avenue/North Hills Parkway intersection prior to first occupancy. Signalization of the North Hills Parkway/Project Entry intersection would be required as conditions warrant to be determined by City staff per Section 6.21 of the Development Agreement. Also, per Section 6.20 of the Development Agreement, the developer will be required to participate in an assessment district for the construction of the North Hills Parkway beyond the project entry. At this time, without a connection beyond the project site, northbound North Hills Parkway would have 2 lanes turning right into the studio complex and 2 lanes turning left into the parking area west of North Hills Parkway. Southbound North Hills Parkway would be improved with 2 left-turn lanes and 1 right-turn lane at Los Angeles Avenue.

The main studio parcel on the east side of North Hills Parkway will be gated with posted guards for access control. The guard shack is proposed approximately 240 feet from North Hills Parkway, allowing plenty of distance for queuing. No security gates are currently proposed on the westerly parking lots. Internal circulation within the studio complex is designed to separate truck traffic and passenger car traffic as much as possible. The site is designed so that trucks entering from the east will enter through a dedicated right-turn lane leading to a one-way driveway on the eastern boundary of the site. Trucks will then be routed to the northern boundary of the site via a perimeter drive, exiting the site at the North Hills Parkway gate.

Traffic:

Based on the traffic report for the Studio Project, the project is estimated to generate a total of 3,108 weekday daily trips and 2,134 Saturday daily trips spread over a typical 24-hour period. Traffic is identified in the Initial Study as an area where there are potential impacts, which would be less than a significant impact, with appropriate mitigation. This issue is addressed in detail in the analysis section below.

Parking:

The applicant is proposing 1,696 parking spaces within several surface parking lots for the studio use. As shown in the table below, staff applied the parking requirement for office uses (1 space per 300 square feet) to the soundstages and offices and the parking requirement for industrial uses (1 space per 500 square feet) to support uses, since the zoning code does not have specific parking requirements for a studio complex. Parking for 4,230 square feet of unoccupied facades was not included in this calculation, as this space does not generate parking demand. Section 17.32.010(J) of the Zoning Ordinance states that when a parking standard is not indicated in this chapter, the Community Development Director may establish the parking standard based on the type of use, location of use, number of employees, traffic generated and good planning practice.

This table shows that the applicant is proposing sufficient parking for the studio project.

Use	Building Area (Square Feet)	Parking Requirement	Required Parking Spaces
Offices	145,500	1 space/300 sq. ft.	485
Sound Stages	215,000	1 space/300 sq. ft.	717
Support Facilities	194,720	1 space/500 sq. ft.	389
Total	555,220		1,591

Loading Area:

The project is designed in such a manner that each sound stage has truck parking/loading spaces on at least 3 sides, and there is sufficient access and circulation surrounding the office buildings for general deliveries. This design allows for delivery areas far in excess of the required 9 loading spaces per the Zoning Ordinance.

Landscaping/Lighting:

The applicant has proposed a landscape theme consistent with the City's landscape guidelines and with the proposed architecture. The perimeter setbacks and the parking lots of the project are heavily landscaped. The parking lot shows an abundance of landscaped "fingers" and "diamonds" for trees, shrubs, and groundcover. The landscaping plan appears to exceed the required minimum of 50 percent shade coverage. The City's

landscape architect will review the plans in detail to determine if the number and placement of all plant materials and irrigation is appropriate. The Municipal Code does not require a certain percentage of the site to be landscaped, but does require that 10 percent of the parking lot be landscaped. Overall, 20 percent of the entire site is shown to be landscaped.

The site is unusual in that the soundstage buildings are clustered around the core of the site, acting more like one building than twelve separate sound stages. The nature of this design creates a large interior area with no landscaping. Although this is atypical for industrial park projects, where parking and landscaping is provided in close proximity to each building, it is necessary for the operation of this type of building, where service vehicles and equipment must access all four sides of the buildings, and exterior driveways are required between the buildings.

The applicant has provided a conceptual lighting plan. While it appears to meet the City's lighting standards, a more detailed plan will be reviewed by the City's lighting consultant for consistency with the City's requirements as part of the condition compliance process. A condition of approval is recommended requiring that lighting fixtures be architecturally compatible with the buildings and landscaping, subject to review and approval of the Community Development Director.

Site Drainage and Stormwater Quality:

The recent Letter of Map Revision issued by the Federal Emergency Management Agency (FEMA) revising the flood zone maps for the site and vicinity becomes effective June 13, 2011, and shows that the project site is not in an area affected by 100-year storm flows in the Arroyo Simi. However, the Walnut Canyon flood control channel adjacent to the project does not have the capacity to contain stormwater from a 100-year storm event, potentially affecting this property as well as properties to the south, west, and east. The applicant is proposing to divert flood water from this channel that enters the site near the northeast corner of the project site into an on-site detention system, releasing the water back into the channel downstream so that pre-development hydrologic conditions are maintained. While the project will cover most of the site with impermeable surfaces, site drainage will be detained on-site so that the project will not result in an increase in runoff from the site. Mitigation prepared for this project in the Mitigated Negative Declaration and Standard Conditions of Approval address both stormwater management and National Pollution Discharge Elimination System (NPDES) requirements. The improvements described in Section 6.22 of the Development Agreement are not needed anymore for the project based on the most recent Letter of Map Revision. The City Council Ad-Hoc Committee (Mayor Parvin, Councilmember Mikos) will be reviewing this section further before the project is scheduled for City Council consideration.

Air Quality:

As is required with all commercial/industrial projects, and re-enforced in Section 6.5 of the Development Agreement, the Developer will pay an Air Quality Fee of sixty-three cents (\$0.63) for each square-foot of office building area and twenty-eight cents (\$0.28) for each square foot of studio, support or institutional building area.

ANALYSIS

Issues

Staff analysis of the proposed project has identified the following areas for Planning Commission consideration in their recommendation to the City Council:

- Noise
- Aesthetics, Light, and Glare
- Traffic/Circulation

Noise:

The Initial Study prepared for this project (attached) evaluated both construction and operational noise. The study noted that existing residences south of Los Angeles Avenue are already subjected to unacceptable levels of noise based on the City's General Plan standards. This is mostly due to truck traffic on Los Angeles Avenue, with 24-hour Community Noise Equivalency Levels (CNEL) levels in the residential neighborhood above 70 decibels, A-Weighted (dBA). Existing peak noise is from trucks using engine brakes, and at times exceeds 90 dBA. While the project will increase vehicle traffic along Los Angeles Avenue, the level of increase in CNEL was estimated to be 0.3 dBA or less. This would not be a noticeable increase given the existing noise environment.

In addition to traffic-generated noise levels, there is the potential for noise generated from outdoor production activities. In order to mitigate these noises, mitigation has been added so that no production activities capable of generating loud noises may take place between 10:00 PM and 7:00 AM. Additionally, a designated community liaison from the studio shall coordinate with the Community Development Director on notification of nearby residents of any activities that may generate loud or unusual noises.

Aesthetics, Light, Glare:

Although the site is currently vacant, and there is an open viewshed, this site has been designated for industrial and/or commercial uses since the City's incorporation in 1983. The site is not with a scenic area as described in the City's General Plan and no unique visual resources would be affected by the implementation of the project. The adjacent land uses on the north and west are designated for industrial uses and the land use currently to the east is the Southern California Edison (SCE) substation, the visual character would be less than significant at build out of the Studio Project.

As viewed from Los Angeles Avenue, portions of the hills north of the site would be partially obscured by the eastern section of the Studio Project. As described in the Project Description, the western third of the project site would be designated for parking spaces which would not result in the construction or development of any structures or buildings and would provide unobstructed views of the hills to the north in that area.

The City's standard conditions of approval provide mitigation for visual impacts after construction. These conditions address items such as general maintenance, landscaping, and items such as exterior vents, equipment and ladders. Prior to the issuance of Zoning Clearance for occupancy of any of the buildings, all fences/walls along lot boundaries must be in place, unless an alternative schedule is approved by the Community Development Director.

Light and glare impacts generated by the Studio Project would be mitigated through compliance with the City Lighting Ordinance. The northern portion of the project site, adjacent to the south of "Buildings E and F" has the potential for the generation of temporary outdoor nighttime lighting. A Temporary Use Permit would be required for nighttime activities that would have spillover lighting from the project site. Permanent project lighting would be limited to those levels necessary to provide safety and security to the site, along with low intensity lighting for aesthetic purposes to enhance or accent building features and landscape architectural features. Potential vehicle lighting would be limited on-site due to the perimeter wall and landscaping. Skylights are prohibited unless approved through the Planned Development Permit process or as a Modification to the Planned Development Permit.

In order to mitigate glare, the use of highly reflective glass or highly reflective film applied to glass is not allowed on any structures. A condition of approval is recommended requiring that the applicant provide a sample of all building glass for review and approval by the Community Development Director, and that glass used along the Los Angeles Avenue and North Hills Parkway frontages not exceed 8 percent exterior reflectance.

Traffic/Circulation:

The 2008 number of average daily trips (ADTs) that travel through the Los Angeles Avenue (SR-118) from Grimes Canyon Road to the project site roadway segment would be 19,900 ADTs. The 2008 number of ADTs that travel through the Los Angeles Avenue (SR-118) from Gabbert Road to Moorpark Avenue (SR-23) roadway segment was 33,000 ADTs. As part of the daily traffic that travels along Los Angeles Avenue (SR-118) there is a higher than average use of heavy trucks. Heavy trucks account for 15.42 percent of ADTs along Los Angeles Avenue.

Based on the traffic report for the Studio Project, the project is estimated to generate a total of 3,108 weekday daily trips and 2,134 Saturday daily trips spread over atypical 24-hour period. Of the total 3,108 weekday ADTs, 1,836 ADTs would consist of an anticipated occupancy rate of 75 percent for the studios, 1,242 ADTs from general office use, and 30 ADTs from security personnel trips. Of the weekday daily trips there would be 174 weekday

AM peak hour trips and 168 weekday PM peak hour trips. Of the total 2,134 Saturday ADTs, the anticipated 75 percent rate of occupancy for studio use would be 1,836 ADTs, 268 ADTs from general office use, and 30 from security personnel. The Saturday daily trips would include 46 Saturday mid-day peak hour trips. The office building components are expected to generate trips during the peak hour analysis periods, with the sound stages and ancillary support buildings for the studios generating trips outside of the peak hour analysis periods.

As part of the Studio Project, Los Angeles Avenue (SR-118) will be widened along the project frontage from a two-lane to a four-lane roadway, plus turning lanes. As described below and in the Project Description the widening of Los Angeles Avenue would improve the existing vehicle capacity and level of service. Therefore, project impacts would be mitigated.

A number of intersections were identified within the traffic report that would be impacted by the Studio Project. These intersections fall within three jurisdictions: City of Moorpark, Caltrans, and the County of Ventura. In order to mitigate the impacts on affected intersections, prior to issuance of the first Zoning Clearance for a building permit, the applicant shall submit to the Community Development Department a fair-share contribution for intersection improvements relating to the project. The amount of fair-share participation will be to the satisfaction of the City Engineer and Public Works Director based on the traffic report prepared for the project and the extent of the impact to these intersections.

The second major infrastructure required as a result of this project is the widening of Los Angeles Avenue in the area adjacent to the project. The proposed four lane roadway would incorporate 12-foot-wide lanes in addition to a 12-foot-wide median consisting of an 8-foot-wide raised median with 2 feet of striping on each side of the raised curb face. For eastbound traffic, a 12-foot-wide left-turn lane into the proposed project site would be provided. For westbound traffic, a 14-foot-wide right-turn lane, which would consist of a 12-foot-wide lane and a 2-foot-wide shoulder, would provide access to the proposed project site for truck access; a 12-foot-wide left-turn lane would occur at Mira Sol Drive; a 12-foot-wide left-turn lane would occur at Buttercreek Road, and a 16-foot-wide right-turn lane, which would consist of a 12-foot-wide lane and a 4-foot-wide shoulder, would provide access to the proposed North Hills Parkway and access to the proposed project site. Both sides of Los Angeles Avenue from Tierra Rejada west to the proposed North Hills Parkway would consist of a minimum 5-foot-wide to a maximum of 8-foot-wide sidewalk/parkways. The proposed areas to be directly disturbed by project construction are currently occupied by roadway facilities (Los Angeles Avenue) and agricultural uses (the existing agricultural facility south of Los Angeles Avenue).

The roadway widening would require the acquisition of additional Right-of-Way (ROW) along a portion of the southern boundary. This area is under County of Ventura jurisdiction and would require a Caltrans encroachment permit. Ventura County LAFCo action would also be sought by the City of Moorpark to include the entire ROW within the City boundaries. Along this segment where additional ROW is necessary, the site is constrained to the north by the existing VCWPD drainage channel. ROW acquisition is only proposed

along the agricultural facility south of Los Angeles Avenue. The area for ROW acquisition would extend for a length of approximately 2,400 linear feet, while the width would vary (although the maximum width would reach 74 feet within the agricultural fields south of the proposed alignment site). A maximum of 4.08 acres of ROW would need to be acquired. Portions of two parcels would be affected by the ROW acquisition process.

The proposed alignment would require the replacement or relocation of signs, electric utility poles, manholes, and utility pipelines/conduits along the southern side of Los Angeles Avenue. Stormwater drainage improvements would be implemented due to the increase in impervious area adjustments to the crown of the roadway.

Findings

Planned Development Findings:

1. The site design, including structure location, size, height, setbacks, massing, scale, architectural style and colors, and landscaping, is consistent with the provisions of the general plan, any applicable specific plans, zoning ordinance, and any other applicable regulations in that the proposed project meets or exceeds the Ordinance requirements for setbacks, parking, and landscaping, meets the conditional use permit findings for increased height, and meets or exceeds the existing General Plan and zoning designation requirements for the property;
2. The site design would not create negative impacts on or impair the utility of properties, structures or uses in the surrounding area in that the project has been designed in a manner consistent with the Moorpark General Plan and Municipal Code, and conditions of approval have been proposed to mitigate potential negative impacts; and
3. The proposed uses are compatible with existing and permitted uses in the surrounding area in that the proposed building colors and architecture are designed to be compatible with each other and the proposed buildings are located in such a manner so as not to cause problems with the use of the adjacent properties and conditions of approval have been added to mitigate any potential incompatibility.

Conditional Use Permit Findings:

1. The proposed use is consistent with the provisions of the general plan, zoning ordinance, and any other applicable regulations in that the zoning ordinance allows for building heights up to 60 feet subject to a conditional use permit, the site is not with a protected scenic area as described in the City's General Plan, and no unique visual resources would be affected by the implementation of the project;

2. The proposed use is compatible with both existing and permitted land uses in the surrounding area in that building heights up to 60 feet could be conditionally permitted for any permitted development of this site, and this site has been consistently designated for industrial and/or commercial uses since the City's incorporation in 1983 and surrounding and existing land uses have been developed or proposed with these designations in mind;

3. The proposed use is compatible with the scale, visual character, and design of surrounding properties in that the proposed building heights, colors, and architecture are designed specifically for this use to blend in with each other and the proposed buildings are located in such a manner so as not to cause conflicts with the use of the adjacent properties. Architectural appurtenances may exceed the maximum building height standards, provided that they do not add floor area and are evaluated on a case-by-case basis as part of the permit and conditions of approval addressing items such as general maintenance, landscaping, and items such as exterior vents, equipment and ladders have been added to mitigate any potential incompatibility;

4. The proposed use would not be obnoxious or harmful, or impair the utility of neighboring property or uses in that conditions of approval have been proposed to regarding architecture, parking, noise, lighting, and hours of operation; and

5. The proposed use would not be detrimental to the public health, safety, convenience, or welfare in that environmental mitigation measures and conditions of approval have been put in place to mitigate any effects upon the public health, safety, convenience, or welfare.

PROCESSING TIME LIMITS

Time limits have been established for the processing of development projects under the Permit Streamlining Act (Government Code Title 7, Division 1, Chapter 4.5), the Subdivision Map Act (Government Code Title 7, Division 2), and the California Environmental Quality Act Statutes and Guidelines (Public Resources Code Division 13, and California Code of Regulations, Title 14, Chapter 3). Because this project includes consideration of a General Plan Amendment, Zone Change and a Development Agreement, all legislative actions, it is not subject to any processing time limits noted above.

ENVIRONMENTAL DETERMINATION

An Initial Study has been prepared by Impact Sciences under City staff supervision to assess the potential significant impacts of this project. The Initial Study concluded that with mitigation measures, the project would not result in any significant environmental effects, and a Proposed Mitigated Negative Declaration (Attachment No. 4) was prepared. The public comment period for the Proposed Mitigated Negative Declaration is from April 18, 2011 to May 18, 2011. As an advisory body on this project, the Planning Commission needs to review and consider this Proposed Mitigated Negative Declaration before making a recommendation on the project.

STAFF RECOMMENDATION

1. Open the public hearing, accept public testimony and close the public hearing.
2. Adopt Resolution No. PC-2011-____ recommending to the City Council adoption of a Mitigated Negative Declaration, approval of General Plan Amendment No. 2009-01, Zone Change No. 2009-01, Industrial Planned Development No. 2009-01, Conditional Use Permit No. 2009-01, and Development Agreement No. 2009-02.

ATTACHMENTS:

1. Location Map
2. Aerial Photograph
3. Project Exhibits (Previously Provided Under Separate Cover)
 - A. Full Set of ½-Size Project Plans
 - B. Colored Elevation Book
4. Draft Development Agreement
5. Proposed Mitigated Negative Declaration (Previously Provided Under Separate Cover)
6. Resolution No. 2009-2799 (Standard Conditions of Approval)
7. Draft PC Resolution with Conditions of Approval

RESOLUTION NO. 2011-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, ADOPTING A MITIGATED NEGATIVE DECLARATION, ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM, AND APPROVING GENERAL PLAN AMENDMENT NO. 2009-01 FOR A CHANGE OF LAND USE DESIGNATION ON 10.75 ACRES ON THE NORTH SIDE OF LOS ANGELES AVENUE, WEST OF GABBERT ROAD, ON THE APPLICATION OF TRILIAD DEVELOPMENT, INC. FOR LOS ANGELES AVENUE LLC

WHEREAS, on March 23, 2009, Triliad Development, Inc., on behalf of Los Angeles Avenue LLC, filed applications for General Plan Amendment 2009-01, Zone Change No. 2009-01, Industrial Planned Development No. 2009-01, Conditional Use Permit No. 2009-01, and Development Agreement No. 2009-02 in association with a proposed 559,450 square-foot motion picture studio complex project with 12 soundstages, 3 office buildings, 18 studio support buildings, and surface parking on a 44.467 acre site located on the north side of Los Angeles Avenue, west of Gabbert Road; and

WHEREAS, on May 3, 2011, the Planning Commission adopted Resolution No. PC-2011-563, which included recommendations that the City Council adopt a Mitigated Negative Declaration and approve General Plan Amendment No. 2009-01, to amend the General Plan land-use designation from General Commercial (C-2) to Medium Industrial (I-2), on 10.75 acres located on the north side of Los Angeles Avenue, west of Gabbert Road, as part of the project; and

WHEREAS, at a duly noticed public hearing on October 5, 2011, the City Council considered the agenda reports for the project affected by General Plan Amendment No. 2009-01 and any supplements thereto and written public comments; opened the public hearing and took and considered public testimony both for and against the proposal, closed the public hearings and reached a decision on this matter; and

WHEREAS, the City Council has read, reviewed, and considered the proposed Mitigated Negative Declaration prepared for the project referenced above, together with any comments received during the public review process.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. FINDINGS AND DECLARATIONS ON MITIGATED NEGATIVE DECLARATION: The City Council finds and declares as follows:

- A. The Mitigated Negative Declaration and Initial Study prepared for this project, attached as Exhibit B, are complete and have been prepared in compliance with CEQA, and City CEQA Procedures.
- B. The City Council has read, reviewed, and considered the proposed Mitigated Negative Declaration prepared for the project referenced above together with any comments received during the public review process before making a decision concerning the project.
- C. Based on the whole of the record before the City Council, there is no substantial evidence that the project will have a significant effect on the environment, with the incorporation of the Mitigation Measures identified in the attached Mitigated Negative Declaration as project conditions of the accompanying Industrial Planned Development and Conditional Use Permit for this project.
- D. The Mitigated Negative Declaration reflects the independent judgment and analysis of the City of Moorpark as lead agency.
- E. The City Council hereby designates the Office of the City Clerk as the custodian of the records constituting the record of proceedings upon which its decision has been based.

SECTION 2. ADOPTION OF MITIGATED NEGATIVE DECLARATION: The Mitigated Negative Declaration prepared in connection with General Plan Amendment 2009-01, Zone Change No. 2009-01, Industrial Planned Development No. 2009-01, Conditional Use Permit No. 2009-01, and Development Agreement No. 2009-02 is hereby adopted.

SECTION 3. ADOPTION OF MITIGATION MONITORING AND REPORTING PROGRAM: The Mitigation Monitoring and Reporting Program, required by Section 21081.6 of CEQA and 15074 of the CEQA Guidelines, and included in the Mitigated Negative Declaration (Exhibit B), is hereby adopted.

SECTION 4. GENERAL PLAN AMENDMENT APPROVAL: General Plan Amendment 2009-01 is approved, amending the General Plan Land Use Map the site as shown in Exhibit "A" attached hereto.

SECTION 5. The effective date of General Plan Amendment No. 2009-01 shall be concurrent with the effective date of the Ordinances for Zone Change No. 2009-01 and Development Agreement No. 2009-02, and the Resolution for Industrial Planned Development Permit No. 2009-01 and Conditional Use Permit No. 2009-01, whichever occurs last.

SECTION 6. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

PASSED AND ADOPTED this 5th day of October, 2011.

Janice S. Parvin, Mayor

ATTEST:

Maureen Benson, City Clerk

Attachments:

Exhibit A – General Plan Amendment Map: 10.75 acres located on the north side of Los Angeles Avenue, west of Gabbert Road

Exhibit B –Mitigated Negative Declaration

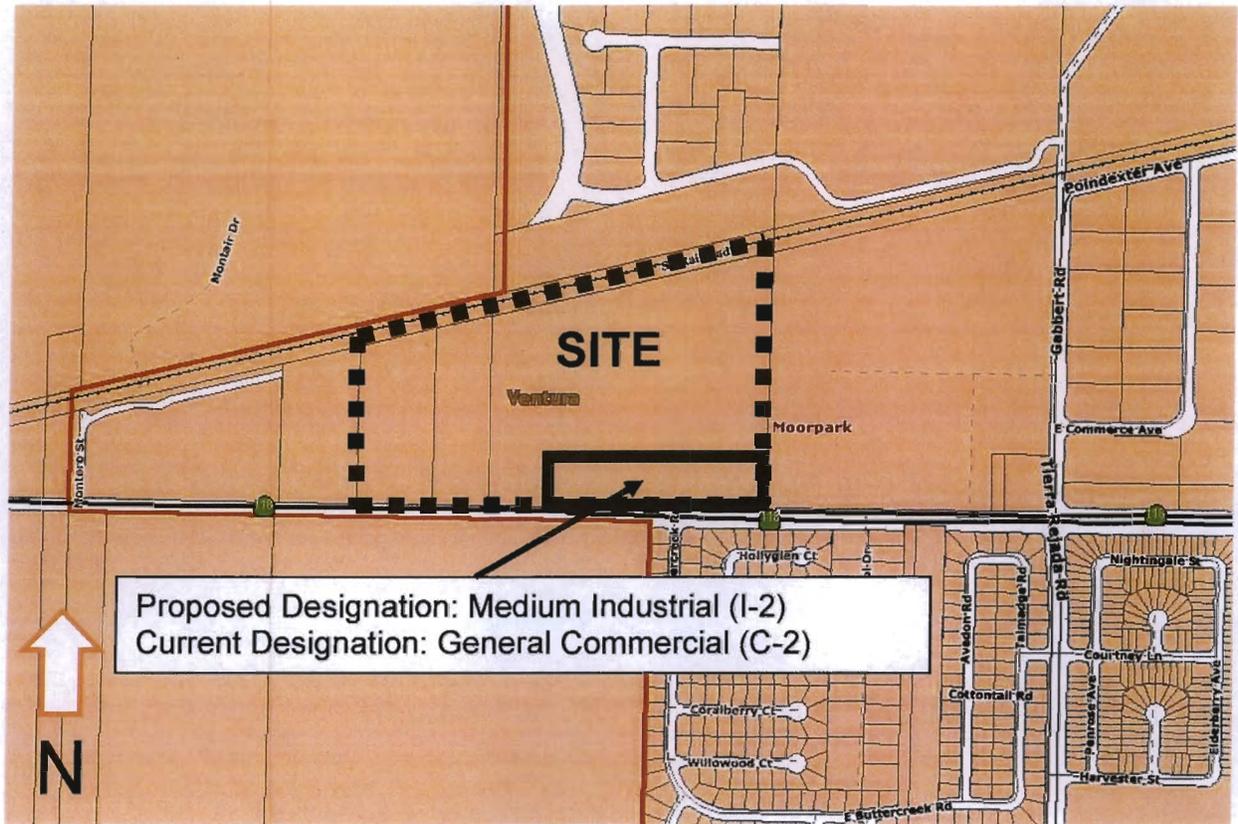


EXHIBIT A

GENERAL PLAN AMENDMENT NO. 2009-01

10.75 acres located on the north side of Los Angeles Avenue, west of Gabbert Road

EXHIBIT B

**MITIGATED NEGATIVE DECLARATION
UNDER SEPARATE COVER**

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF MOORPARK, CALIFORNIA, APPROVING ZONE CHANGE NO. 2009-01 FOR A CHANGE OF ZONING ON 10.75 ACRES ON THE NORTH SIDE OF LOS ANGELES AVENUE, WEST OF GABBERT ROAD, ON THE APPLICATION OF TRILIAD DEVELOPMENT, INC. FOR LOS ANGELES AVENUE LLC

WHEREAS, on March 23, 2009, Triliad Development, Inc., on behalf of Los Angeles Avenue LLC, filed applications for General Plan Amendment 2009-01, Zone Change No. 2009-01, Industrial Planned Development No. 2009-01, Conditional Use Permit No. 2009-01, and Development Agreement No. 2009-02 in association with a proposed 559,450 square-foot motion picture studio complex project with 12 soundstages, 3 office buildings, 18 studio support buildings, and surface parking on a 44.467 acre site located on the north side of Los Angeles Avenue, west of Gabbert Road; and

WHEREAS, on May 3, 2011, the Planning Commission adopted Resolution No. PC-2011-563, which included a recommendation that the City Council approve Zone Change No. 2009-01, for a change of zoning from Commercial Planned Development (CPD) to Medium Industrial (M-2), on 10.75 acres located on the north side of Los Angeles Avenue, west of Gabbert Road, as part of the project; and

WHEREAS, at a duly noticed public hearing on October 5, 2011, the City Council considered the agenda report for the project affected by Zone Change No. 2009-01 and any supplements thereto and written public comments; opened the public hearing and took and considered public testimony both for and against the proposal, closed the public hearing and reached a decision on this matter; and

WHEREAS, the City Council has read, reviewed, considered and adopted a Mitigated Negative Declaration prepared for the project referenced above.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES ORDAIN AS FOLLOWS:

SECTION 1. Zone Change No. 2009-01 is consistent with the General Plan as amended by General Plan Amendment No. 2009-01.

SECTION 2. The Zoning Map described and referenced in Chapter 17.12 of Title 17, Zoning, of the Municipal Code of the City of Moorpark is hereby amended as shown in Exhibit "A" attached hereto.

SECTION 3. If any section, subsection, sentence, clause, phrase, part or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of

competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, phrases, parts or portions be declared invalid or unconstitutional.

SECTION 4. This Ordinance shall become effective thirty (30) days after its passage and adoption.

SECTION 5. The City Clerk shall certify to the passage and adoption of this ordinance; shall enter the same in the book of original ordinances of said City; shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof, cause the same to be published once in the Moorpark Star a newspaper of general circulation, as defined in Section 6008 of the Government Code, for the City of Moorpark, and which is hereby designated for that purpose.

PASSED AND ADOPTED this ____ day of October, 2011.

Janice S. Parvin, Mayor

ATTEST:

Maureen Benson, City Clerk

Attachments:

Exhibit A – Zone Change Map: 10.75 acres located on the north side of Los Angeles Avenue, west of Gabbert Road

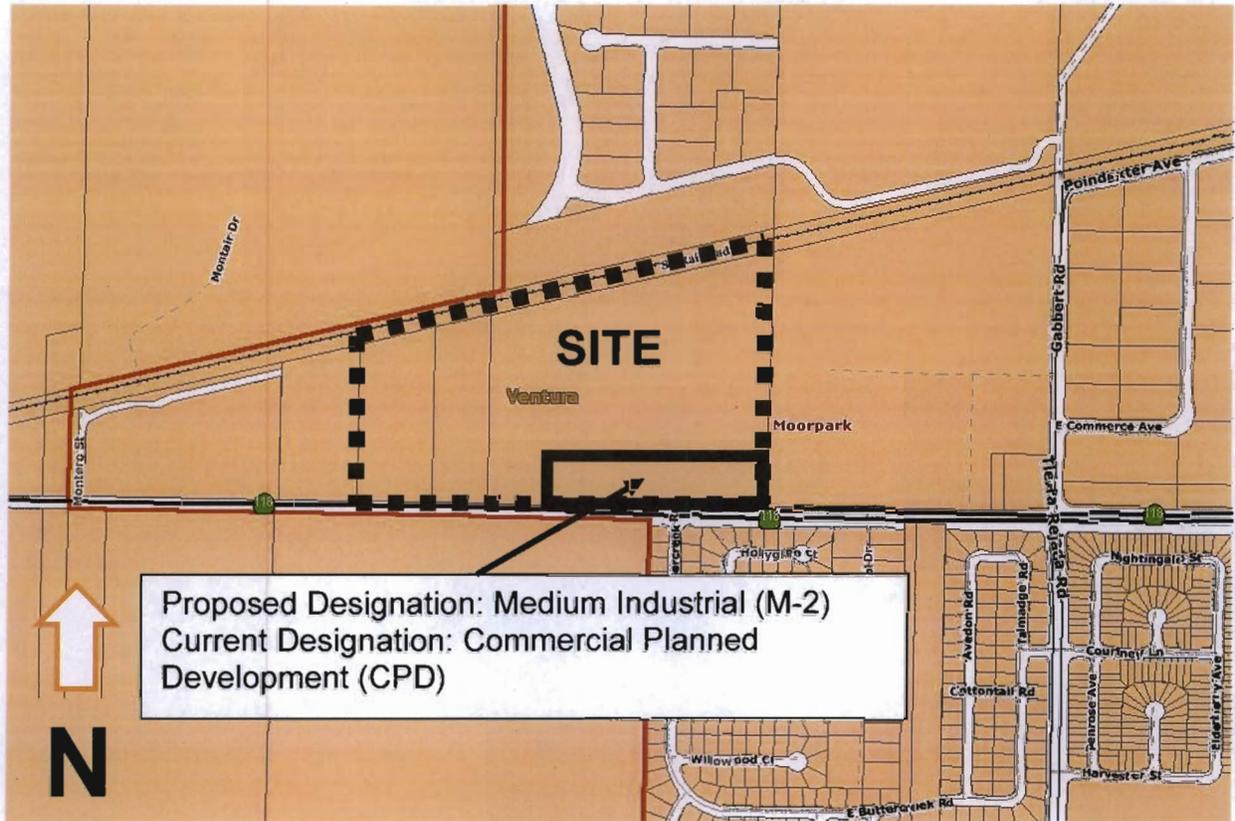


EXHIBIT A

ZONE CHANGE NO. 2009-01

10.75 acres located on the north side of Los Angeles Avenue, west of Gabbert Road

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF MOORPARK, CALIFORNIA, ADOPTING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MOORPARK AND LOS ANGELES AVENUE LLC, PEGH INVESTMENTS, LLC, THE RONALD NEWBURG LIVING TRUST, AND THE RICHARD S. HELD RETIREMENT TRUST

WHEREAS, Section 65864, Article 2.5, Chapter 4, Division 1, Title 7 of the State Planning and Zoning Law provides that cities may enter into contractual obligations known as Development Agreements with persons having equitable interest in real property for development of that property; and

WHEREAS, Los Angeles Avenue LLC, PEGH Investments, LLC, The Ronald Newburg Living Trust, and The Richard S. Held Retirement Trust, the owners of the land with an application for General Plan Amendment No. 2009-01, Zone Change No. 2009-01, Industrial Planned Development No. 2009-01, and Conditional Use Permit No. 2009-01 have applied to the City of Moorpark to seek a Development Agreement with the City pursuant to Chapter 15.40 of the Moorpark Municipal Code; and

WHEREAS, the Planning Commission of the City of Moorpark on May 3, 2011, adopted Resolution No. PC-2011-563 recommending to the City Council approval of Development Agreement No. 2009-02, proposed in conjunction with the project initiated by Triliad Development, Inc. for Los Angeles Avenue LLC PEGH Investments, LLC, The Ronald Newburg Living Trust, and the Richard S. Held Retirement Trust, consisting of General Plan Amendment No. 2009-01, Zone Change No. 2009-01, Industrial Planned Development No. 2009-01, and Conditional Use Permit No. 2009-01; and

WHEREAS, the City Council on October 5th, 2011, adopted the Mitigated Negative Declaration for the project referenced above, as having been completed in accordance with the California Environmental Quality Act, (CEQA), the CEQA Guidelines and the City's CEQA procedures; and

WHEREAS, a duly noticed public hearing was conducted by the City Council on October 5th, 2011, to consider the Development Agreement and to accept public testimony related thereto; and

WHEREAS, the City Council has considered all points of public testimony relevant to the Development Agreement and has given careful consideration to the content of the Development Agreement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Moorpark does hereby find as follows:

A. The Development Agreement is consistent with the General Plan as amended by General Plan Amendment No. 2009-01

B. The Development Agreement and the assurances that said agreement places upon the project are consistent with the intent and provisions of the Mitigated Negative Declaration.

C. The Development Agreement is necessary to ensure the public health, safety and welfare.

SECTION 2. The City Council hereby adopts Development Agreement No. 2009-02 (attached hereto) between the City of Moorpark, a municipal corporation, and Los Angeles Avenue LLC, PEGH Investments, LLC, the Ronald Newburg Living Trust, and the Richard S. Held Retirement Trust and the City Clerk is hereby directed to cause one copy of the signed, adopted agreement to be recorded with the County Recorder no later than ten (10) days after the City enters into the development agreement pursuant to the requirements of Government Code Section 65868.5.

SECTION 3. Upon the effective date of this ordinance, the Community Development Director shall cause the property that is the subject of the Development Agreement to be identified on the Zoning Map of the City by the designation "DA" followed by the dates of the term of said Agreement.

SECTION 4. If any section, subsection, sentence, clause, phrase, part or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, phrases, parts or portions be declared invalid or unconstitutional.

SECTION 5. This Ordinance shall become effective thirty (30) days after its passage and adoption.

SECTION 6. The City Clerk shall certify to the passage and adoption of this ordinance; shall enter the same in the book of original ordinances of said City; shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof, cause the same to be published once in the Moorpark Star a newspaper of general circulation, as defined in Section 6008 of the Government Code, for the City of Moorpark, and which is hereby designated for that purpose.

PASSED AND ADOPTED this ____ day of October, 2011.

Janice S. Parvin, Mayor

ATTEST:

Maureen Benson, City Clerk

Attachment:

EXHIBIT A - Development Agreement No. 2009-02

Recording Requested By
And When Recorded Return to:

CITY CLERK
CITY OF MOORPARK
799 Moorpark Avenue
Moorpark, California 93021
EXEMPT FROM RECORDER'S FEES
Pursuant to Government Code
§ 6103

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MOORPARK
AND

LOS ANGELES AVENUE LLC,
PEGH INVESTMENTS, LLC,
THE RONALD NEWBURG LIVING TRUST, AND
THE RICHARD S. HELD RETIREMENT TRUST

THIS AGREEMENT SHALL BE RECORDED WITHIN TEN DAYS OF EXECUTION BY ALL PARTIES HERETO PURSUANT TO THE REQUIREMENTS OF GOVERNMENT CODE §65868.5

DEVELOPMENT AGREEMENT

This Development Agreement ("the Agreement") is made and entered into on _____, by and between the CITY OF MOORPARK, a municipal corporation, (referred to hereinafter as "City") and Los Angeles Avenue LLC, PEGH Investments, LLC, The Ronald Newburg Living Trust, and The Richard S. Held Retirement Trust, the owners of real property within the City of Moorpark generally referred to as Industrial Planned Development Permit 2009-01, (referred to hereinafter individually as "Developer"). City and Developer are referred to hereinafter individually as "Party" and collectively as "Parties." In consideration of the mutual covenants and agreements contained in this Agreement, City and Developer agree as follows:

1. **Recitals.** This Agreement is made with respect to the following facts and for the following purposes, each of which is acknowledged as true and correct by the Parties:
 - 1.1. Pursuant to Government Code Section 65864 et seq. and Moorpark Municipal Code chapter 15.40, City is authorized to enter into a binding contractual agreement with any person having a legal or equitable interest in real property within its boundaries for the development of such property in order to establish certainty in the development process.
 - 1.2. Prior to approval of this Agreement, but after the approval of the Mitigated Negative Declaration (MND), Mitigation Measures, and Mitigation Monitoring and Reporting Program ("the MMRP") for the Project Approvals as defined in subsection 1.3 of this Agreement, the City Council of City ("the City Council") approved General Plan Amendment No. 2009-01 ("GPA 2009-01"), Zone Change No. 2009-01 (ZC 2009-01), Industrial Planned Development Permit No. 2009-01 (IPD 2009-01) and Conditional Use Permit No. 2009-01 (CUP 2009-01, for approximately 44.467 acres of land within the City ("the Property"), as more specifically described in Exhibit "A" attached hereto and incorporated herein.
 - 1.3. GPA 2009-01, ZC 2009-01, IPD 2009-01, and CUP 2009-01 [collectively "the Project Approvals"; individually "a Project Approval"] provide for the development of the Property and the construction of certain off-site improvements in connection therewith ("the Project").
 - 1.4. By this Agreement, City desires to obtain the binding agreement of Developer to develop the Property in accordance with the Project

DRAFT October 5, 2011

Approvals and this Agreement. In consideration thereof, City agrees to limit the future exercise of certain of its governmental and proprietary powers to the extent specified in this Agreement.

- 1.5. By this Agreement, Developer desires to obtain the binding agreement of City to permit the development of the Property in accordance with the Project Approvals and this Agreement. Developer anticipates developing the Property over a minimum of three (3) years. In consideration thereof, Developer agrees to waive its rights to legally challenge the limitations and conditions imposed upon the development of the Property pursuant to the Project Approvals and this Agreement and to provide the public benefits and improvements specified in this Agreement.
 - 1.6. City and Developer acknowledge and agree that the consideration that is to be exchanged pursuant to this Agreement is fair, just and reasonable and that this Agreement is consistent with the General Plan of City, as amended by GPA 2009-01.
 - 1.7. On May 3, 2011, the Planning Commission of City commenced a duly noticed public hearing on this Agreement, and at the conclusion of the hearing recommended approval of the Agreement.
 - 1.8. On October 5, 2011, the City Council commenced a duly noticed public hearing on this Agreement, and at the conclusion of the hearing on October __, 2011, approved the Agreement by Ordinance No. ____ ("the Enabling Ordinance").
2. Property Subject To This Agreement. All of the Property shall be subject to this Agreement. The Property may also be referred to hereinafter as "the site" or "the Project".
 3. Binding Effect. The burdens of this Agreement are binding upon, and the benefits of the Agreement inure to, each Party and each successive successor in interest thereto and constitute covenants that run with the Property. Whenever the terms "City" and "Developer" are used herein, such terms shall include every successive successor in interest thereto, except that the term "Developer" shall not include the purchaser or transferee of any lot within the Project that has been fully developed in accordance with the Project Approvals and this Agreement.
 - 3.1. Constructive Notice and Acceptance. Every person who acquires any right, title or interest in or to any portion of the Property except any lot within the Project that has been fully developed in accordance with the Project Approvals and this Agreement shall be, conclusively deemed to have consented and agreed to be bound by this Agreement, whether or not any reference to the Agreement is contained in the instrument by which such person acquired such right, title or interest.

DRAFT October 5, 2011

- 3.2. Release Upon Transfer. Upon the sale or transfer of any of Developer's interest in any portion of the Property, that Developer shall be released from its obligations with respect to the portion so sold or transferred subsequent to the operative date of the sale or transfer, provided that the Developer (i) was not in breach of this Agreement at the time of the sale or transfer and (ii) prior to the sale or transfer, delivered to City a written assumption agreement, duly executed by the purchaser or transferee and notarized by a notary public, whereby the purchaser or transferee expressly assumes the obligations of Developer under this Agreement with respect to the sold or transferred portion of the Property. Failure to provide a written assumption agreement hereunder shall not negate, modify or otherwise affect the liability of the purchaser or transferee pursuant to this Agreement. Nothing contained herein shall be deemed to grant to City discretion to approve or deny any such sale or transfer, except as otherwise expressly provided in this Agreement.
4. Development of the Property. The following provisions shall govern the subdivision, development and use of the Property.
- 4.1. Permitted Uses. The permitted and conditionally permitted uses of the Property shall be limited to those that are allowed by the Project Approvals and this Agreement.
- 4.2. Development Standards. All design and development standards, including but not limited to density or intensity of use and maximum height and size of buildings, that shall be applicable to the Property are set forth in the Project Approvals and this Agreement.
- 4.3. Building Standards. All construction on the Property shall adhere to all City building codes in effect at the time the plan check or permit is approved per Title 15 of the Moorpark Municipal Code and to any federal or state building requirements that are then in effect (collectively "the Building Codes").
- 4.4. Reservations and Dedications. All reservations and dedications of land for public purposes that are applicable to the Property are set forth in the Project Approvals and this Agreement.
5. Vesting of Development Rights.
- 5.1. Timing of Development. In Pardee Construction Co. v. City of Camarillo, 37 Cal.3d 465 (1984), the California Supreme Court held that the failure of the parties therein to provide for the timing or rate of development resulted in a later-adopted initiative restricting the rate of development to prevail against the parties' agreement. City and Developer intend to avoid the result in Pardee by acknowledging and

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providing that Developer shall have the right, without obligation, to develop the Property in such order and at such rate and times as Developer deems appropriate within the exercise of its subjective business judgment.

In furtherance of the Parties intent, as set forth in this subsection, no future amendment of any existing City ordinance or resolution, or future adoption of any ordinance, resolution or other action, that purports to limit the rate or timing of development over time or alter the sequencing of development phases, whether adopted or imposed by the City Council or through the initiative or referendum process, shall apply to the Property provided the Property is developed in accordance with the Project Approvals and this Agreement. Nothing in this subsection shall be construed to limit City's right to insure that Developer timely provides all infrastructure required by the Project Approvals, Subsequent Approvals, and this Agreement.

- 5.2. Amendment of Project Approvals. No amendment of any of the Project Approvals, whether adopted or approved by the City Council or through the initiative or referendum process, shall apply to any portion of the Property, unless the Developer has agreed in writing to the amendment.
- 5.3. Issuance of Subsequent Approvals. Applications for land use approvals, entitlements and permits, including without limitation subdivision maps (e.g. tentative, vesting tentative, parcel, vesting parcel, and final maps), subdivision improvement agreements and other agreements relating to the Project, lot line adjustments, preliminary and final planned development permits, use permits, design review approvals (e.g. site plans, architectural plans and landscaping plans), encroachment permits, and sewer and water connections that are necessary to or desirable for the development of the Project (collectively "the Subsequent Approvals"; individually "a Subsequent Approval") shall be consistent with the Project Approvals and this Agreement. For purposes of this Agreement, Subsequent Approvals do not include building permits.

Subsequent Approvals shall be governed by the Project Approvals and by the applicable provisions of the Moorpark General Plan, the Moorpark Municipal Code and other City ordinances, resolutions, rules, regulations, policies, standards and requirements as most recently adopted or approved by the City Council or through the initiative or referendum process and in effect at the time that the application for the Subsequent Approval is deemed complete by City (collectively "City Laws"), except City Laws that:

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- (a) change any permitted or conditionally permitted uses of the Property from what is allowed by the Project Approvals;
- (b) limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the number of proposed buildings or other improvements from what is allowed by the Project Approvals.
- (c) limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner, provided that all infrastructure required by the Project Approvals to serve the portion of the Property covered by the Subsequent Approval is in place or is scheduled to be in place prior to completion of construction;
- (d) are not uniformly applied on a City-wide basis to all substantially similar types of development projects or to all properties with similar land use designations;
- (e) prohibit or regulate development on slopes with grades greater than 20 percent, including without limitation Moorpark Municipal Code Chapter 17.38 or any successor thereto, within the Property; or
- (f) modify the land use from what is permitted by the City's General Plan Land Use Element at the operative date of this Agreement or that prohibits or restricts the establishment or expansion of urban services including but not limited to community sewer systems to the Project.

5.4. Term of Subsequent Approvals. The term of any Subsequent Approval, except a tentative subdivision map or subdivision improvement or other agreements relating to the Project, shall be one year; provided that the term may be extended by the decision maker for four (4) additional one (1) year periods upon application of the Developer holding the Subsequent Approval filed with City's Community Development Department prior to the expiration of that Approval. Each such Subsequent Approval shall be deemed inaugurated, and no extension shall be necessary, if a building permit was issued and the foundation received final inspection by City's Building Inspector prior to the expiration of that Approval. The term of any tentative subdivision map, should one be approved by City during the term of this Agreement, shall be as set forth under the Subdivision Map Act, Government Code Section 66410 et seq. and Title 16 Subdivisions, of the Moorpark Municipal Code.

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It is understood by City and Developer that certain Subsequent Approvals may not remain valid for the term of this Agreement. Accordingly, throughout the term of this Agreement, any Developer shall have the right, at its election, to apply for a new permit to replace a permit that has expired or is about to expire.

5.5. Modification of Approvals. Throughout the term of this Agreement, Developer shall have the right, at its election and without risk to or waiver of any right that is vested in it pursuant to this section, to apply to City for modifications to Project Approvals and Subsequent Approvals. The approval or conditional approval of any such modification shall not require an amendment to this Agreement, provided that, in addition to any other findings that may be required in order to approve or conditionally approve the modification, a finding is made that the modification is consistent with this Agreement and does not alter the permitted uses, density, intensity, maximum height, size of buildings or reservations and dedications as contained in the Project Approvals.

5.6. Issuance of Building Permits. No building permit, final inspection or certificate of occupancy will be unreasonably withheld from Developer if all infrastructure required by the Project Approvals, Subsequent Approvals, and this Agreement to serve the portion of the Property covered by the building permit is in place or is scheduled to be in place prior to completion of construction and all of the other relevant provisions of the Project Approvals, Subsequent Approvals and this Agreement have been satisfied. Consistent with subsection 5.1 of this Agreement, in no event shall building permits be allocated on any annual numerical basis or on any arbitrary allocation basis.

6. Developer Agreements.

6.1. Developer shall comply with (i) this Agreement, (ii) the Project Approvals, (iii) all Subsequent Approvals for which it was the applicant or a successor in interest to the applicant and (iv) the MMRP of the MND and any subsequent or supplemental environmental actions.

6.2. All lands and interests in land dedicated to City shall be free and clear of liens and encumbrances other than easements or restrictions that do not preclude or interfere with use of the land or interest for its intended purpose, as reasonably determined by City.

6.3. As a condition of and just prior to the issuance of a building permit for each studio, office, support, or institutional building within the boundaries of the Property, Developer shall pay City a development fee as described herein (the "Development Fee"). The Development Fee may be expended by City in its sole and unfettered discretion. On

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the operative date of this Agreement, the amount of the Development Fee shall be Forty-Four Thousand Three Hundred Twenty-Five Dollars (\$44,325.00) per gross acre of industrial land as determined consistent with Section 7.7 of this Agreement. This fee shall be prorated for each building permit based on building area and a total of 559,450 square feet of gross floor area for the entire Project, as follows:

Fee Per Square Foot of Building Area =

$$\frac{(\text{Project Acres as Determined per Section 7.7}) \times \$44,325.00/\text{Acre}}{559,450 \text{ Square Feet of Building Area}}$$

The fee shall be adjusted annually commencing January 1, 2013 by the larger increase of a) or b) as follows:

- a) The Consumer Price Index (CPI) increase shall be determined by using the information provided by the U.S. Department of Labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles /Riverside/Orange County metropolitan area during the prior year. The calculation shall be made using the month of October over the prior October.
- b) The calculation shall be made to reflect the change in the Caltrans Highway Bid Price Index for Selected California Construction Items for the latest twelve (12) month period available on December 31 of the preceding year.

In the event there is a decrease in both of the referenced Indices for any annual indexing, the Development Fee shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase.

- 6.4. As a condition of and just prior to the issuance of the first building permit for a studio, office, support, or institutional building within the boundaries of the Property, Developer shall pay City a traffic mitigation fee as described herein ("Citywide Traffic Fee"). The Citywide Traffic Fee may be expended by City in its sole and unfettered discretion. On the operative date of this Agreement, the amount of the Citywide Traffic Fee shall be Twenty-Nine Thousand, Seven-Hundred Dollars (\$29,700.00) per gross acre of industrial land as determined consistent with Section 7.7 of this Agreement. This fee shall be prorated for each building permit based on building area and a total of 559,450 square feet of gross floor area for the entire Project, as follows:

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Fee Per Square Foot of Building Area =

$$\frac{(\text{Project Acres as Determined per Section 7.7}) \times \$29,700.00/\text{Acre}}{559,450 \text{ Square Feet of Building Area}}$$

Commencing on January 1, 2013, and annually thereafter, the contribution amount shall be increased to reflect the change in the Caltrans Highway Bid Price Index for Selected California Construction Items for the twelve (12) month period available on December 31 of the preceding year ("annual indexing"). In the event there is a decrease in the referenced Index for any annual indexing, the current amount of the fee shall remain until such time as the next subsequent annual indexing which results in an increase.

- 6.5. Prior to the issuance of the building permit for each studio, office, support, or institutional building within the boundaries of the Property, Developer shall pay an Air Quality Fee of sixty-three cents (\$0.63) for each square-foot of office building area and twenty-eight cents (\$0.28) for each square foot of studio, support or institutional building area. The Air Quality Fee shall satisfy the Transportation System Management Fee requirement for the Project and may be expended by City in its sole discretion for reduction of regional air pollution emissions and to mitigate residual Project air quality impacts.
- 6.6. (This section is intentionally left blank.)
- 6.7. Prior to the issuance of the building permit for each studio, office, support, or institutional building within the boundaries of the Property, Developer shall pay a fee in lieu of the dedication of parkland and related improvements (Park Fee). The amount of the Park Fee shall be fifty cents (\$0.50) for each square-foot of building area.
- 6.8. (This section is intentionally left blank.)
- 6.9. (This section is intentionally left blank.)
- 6.10. Developer agrees to cast affirmative ballots for the formation of one or more assessment districts and levying of assessments for the maintenance of parkway and median landscaping; street lighting, including but not limited to all water and electricity costs; the road identified in Section 6.23 of this Agreement if it is dedicated and accepted as a public street; and if requested by the City Council, parks for the provision of special benefits conferred by same upon properties within the Project.

Developer further agrees to, prior to occupancy of the first building of the Project, form a "back up" assessment district for the maintenance

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of all Project landscaping maintained by Developer visible from adjacent public rights-of-way as determined by the Community Development Director and Public Works Director/City Engineer, and Project drainage improvements maintained by Developer, should City need to recover costs if Developer fails to maintain such landscaping and drainage facilities. Any facilities to be included in an assessment district or "back up" assessment district shall have all utilities on separate meters from the Project.

In the event Developer files for and is granted a tentative subdivision map as a Subsequent Approval, Developer agrees to form one or more property owner associations and to obligate said associations to provide for maintenance of the road called for by Section 6.23 of this Agreement if private, as well as any parkway and median landscaping, landscaping within Property visible from adjacent public rights-of-way, street lighting, storm water detention and/or debris basins and related drainage facilities, or other amenities in the event the aforementioned assessment district is dissolved or altered in any way or assessments are reduced or limited in any way by a ballot election of property owners or if the assessment district is invalidated by court action. The obligation of said property owner associations shall be more specifically defined in the conditions of approval of any subdivision map granted as a Subsequent Approval.

- 6.11. In addition to fees specifically mentioned in this Agreement, Developer agrees to pay all City capital improvement, development, and processing fees at the rate and amount in effect at the time the fee is required to be paid. Said fees include but are not limited to Library Facilities Fees, Police Facilities Fees, Fire Facilities Fees, Art in Public Places Fees, drainage, entitlement processing fees, and plan check and permit fees for buildings and public improvements. Developer further agrees that unless specifically exempted by this Agreement, it is subject to all fees imposed by City at the operative date of this Agreement and such future fees imposed as determined by City in its sole discretion so long as said fee is imposed on similarly situated properties.
- 6.12. Developer shall pay the Los Angeles Avenue Area of Contribution (AOC) fee for the gross area of land on which the studio complex and parking areas are located prior to the issuance of the first permit for occupancy. The AOC fee shall be the dollar amount in effect at the time of issuance of the building permit for each building. Developer will receive credit toward the payment of this fee for the cost of the core improvements in Los Angeles Avenue as detailed in subsection 6.24 of this Agreement, beginning at and including the curb face on the north side of Los Angeles Avenue to the southern extent of public right-of-

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way improvements, and for the signalization improvements at the Los Angeles Avenue/North Hills Parkway intersection as detailed in subsection 6.21 of this Agreement. Developer will not receive credit toward the payment of this fee for the cost of parkway and sidewalk improvements adjacent to the southerly property line.

- 6.13. The street improvements for all streets scheduled for dedication to the City shall be designed and constructed by Developer to provide for a 50-year life as determined by the City Engineer.
- 6.14. Developer agrees that any fees and payments pursuant to this Agreement shall be made without reservation, and Developer expressly waives the right to payment of any such fees under protest pursuant to California Government Code Section 66020 and statutes amendatory or supplementary thereto. Developer further agrees that the fee it has agreed to pay pursuant to subsection 6.3 of this Agreement is not a public improvement fee collected pursuant to Government Code Section 66006 and statutes amendatory or supplementary thereto.
- 6.15. Developer agrees to comply with Section 15.40.150 of the Moorpark Municipal Code and any provision amendatory or supplementary thereto for annual review of this Agreement and further agrees that the annual review shall include evaluation of its compliance with the approved MND and MMRP. Developer agrees within ninety (90) days of the operative date of this Agreement to deposit Twenty-Five Thousand Dollars (\$25,000.00) for the cost of annual reviews for the life of this Agreement.
- 6.16. (This section is intentionally left blank.)
- 6.17. Developer agrees that any election to acquire property by eminent domain shall be at City's sole discretion, and only after compliance with all legally required procedures including but not limited to a hearing on a proposed resolution of necessity.
- 6.18. Prior to recordation of this Agreement, Developer shall pay all outstanding City processing costs related to preparation of this Agreement, Project Approvals, and MND, should the deposit fund for this project have a negative balance.
- 6.19. In the event any of the "referenced Index" or "CPI" referred to in any portion of Section 6 above, are discontinued or revised, such successor index with which the "CPI" and or "referenced Index" are replaced shall be used in order to obtain substantially the same result as would otherwise have been obtained if either or both the "CPI" and "referenced Index" had not been discontinued or revised.

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- 6.20. Developer shall dedicate the full right-of-way for North Hills Parkway along the reach of the Project from Los Angeles Avenue on the south to the railroad on the north. Dedication will include any slope and construction easements necessary for the construction of the road improvements and maintenance of the road, including slopes and retaining walls. Developer agrees to participate in a community facilities district or other financing mechanism acceptable to the City for the construction of North Hills Parkway or alternatively Developer will be allowed to pay two million dollars (\$2,000,000.00) which will be the Developer's full pro-rata share of improvements of North Hills Parkway.

Commencing on January 1, 2013, and annually thereafter, the contribution amount for Developer's full pro-rata share if improvements of North Hills Parkway shall be increased to reflect the change in the Caltrans Highway Bid Price Index for Selected California Construction Items for the twelve (12) month period available on December 31 of the preceding year ("annual indexing"). In the event there is a decrease in the referenced Index for any annual indexing, the current amount of the fee shall remain until such time as the next subsequent annual indexing which results in an increase.

- 6.21. Developer agrees to pay for all costs of installation and to install traffic signals at the intersection of Los Angeles Avenue and North Hills Parkway and the intersection of the Property entrance and North Hills Parkway. The traffic signals shall be synchronized with those on Los Angeles Avenue and North Hills Parkway to the satisfaction of the City Engineer. The traffic signal at Los Angeles Avenue and North Hills Parkway shall be installed prior to occupancy of the first building. The traffic signal at North Hills Parkway and the Property entrance shall be installed as conditions warrant as determined by the City Manager upon a recommendation from the City Engineer.

- 6.22. (This section is intentionally left blank.)

- 6.23. Developer agrees to construct and maintain a private road (road) perpendicular to North Hills Parkway and to connect said road to the existing access easement for the adjacent properties to the west in substantial conformance with the design presented for the Project Approvals, and consistent with City standards for commercial and industrial roads. Developer shall also extend said road approximately 369 feet to the west across the 6.0 acre property immediately to the west (APN 511-0-200-165) to line up with the driveway in the southern parking lot of the 10.83 acre property further west (APN 511-0-200-175) and shall improve the road across this adjoining property with a 40-foot wide roadway within a 60-foot-wide easement to City standards, including concrete gutters, curbs, and sidewalk on one side

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of the street. Developer further agrees that the private road shall be open to public access, primarily for access from North Hills Parkway to the parking lot for the project subject to this Agreement, as well as the two properties to the west (APN 511-0-200-165 and 511-0-200-175). The road will be constructed west from North Hills Parkway approximately 175 feet to the existing flood control channel prior to occupancy of the first building of the Project, and completed across the 6.0 acre property immediately to the west prior to occupancy of the 325,000th square foot of gross floor area.

Prior to issuance of a grading permit, Developer shall provide an Irrevocable Offer of Dedication to the City of an easement for the purpose of providing legal access to the adjacent properties to the west, effective upon each adjacent property owner agreeing to contribute to Developer a pro rata share of the cost to maintain the road. The City of Moorpark shall not assume any responsibility for the offered property or any improvements to the property until this action has been accepted by the City Council. If accepted by the City of Moorpark, this easement may be fully assignable to the property owners to the west of this property, as an easement appurtenant for access, ingress and egress purposes and all uses appurtenant thereto.

As an alternative, the road may be offered for acceptance by the City Council as public right-of-way should the developer be unable to obtain an agreement for maintenance with adjacent property owners. If accepted by City as public right-of-way, maintenance costs for said road shall be paid for through an assessment district per Section 6.10 of this Agreement. Developer understands City is not obligated to accept said road as a public right-of-way or to form an assessment district.

The form of the Irrevocable Offer of Dedication and other required appurtenant documents required to satisfy the above requirements shall be to the satisfaction of the Community Development Director, City Engineer, and the City Attorney.

- 6.24. Developer agrees to acquire all necessary property and Caltrans and City permits, and construct improvements in Los Angeles Avenue to Caltrans-approved design plans for the project frontage for a four-lane divided highway with a raised median east of North Hills Parkway and a concrete curb and gutter and concrete sidewalk on both sides of Los Angeles Avenue east of the North Hills Parkway crosswalk at Los Angeles Avenue, and a left turn lane/raised median, tapering to a two-lane highway west of North Hills Parkway. Street trees, at standard city-required spacing, shall be planted on the south side of Los

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Angeles Avenue east of North Hills Parkway and on the north side of Los Angeles Avenue for the reach of the Project.

- 6.25. Developer agrees to execute a tri-party maintenance agreement with Caltrans and the City of Moorpark to guarantee maintenance of the landscaping along both the north and south sides of Los Angeles Avenue along the property frontage.
- 6.26. Developer agrees to allow City to install a City Welcome Sign on the pedestrian/cart bridge across North Hills Parkway, or an alternative location on the Property to the satisfaction of the City, should a pedestrian/cart bridge not be constructed. Developer will contribute Twenty-Five Thousand Dollars (\$25,000.00) for the construction and erection of the sign. The funds may be expended by City in its sole and unfettered discretion. The fee shall be paid prior to the occupancy of the first building. Developer agrees that the design of the sign, including the lighting, shall be at the City's sole discretion.

7. City Agreements.

- 7.1. City shall commit reasonable time and resources of City staff to work with Developer on the expedited and parallel processing of applications for Subsequent Approvals for the Project area and shall use overtime and independent contractors whenever possible. Developer shall, upon written pre-approval, assume any risk related to, and shall pay the additional costs incurred by City for, the expedited and parallel processing.
- 7.2. If requested in writing by Developer and limited to City's legal authority, City at its sole discretion shall proceed to acquire, at Developer's sole cost and expense, easements or fee title to land in which Developer does not have title or interest in order to allow construction of public improvements required of Developer including any land which is outside City's legal boundaries. The process shall generally follow Government Code Section 66462.5 et seq. and shall include the obligation of Developer to enter into an agreement with City, guaranteed by cash deposits and other security as the City may require, to pay all City costs including but not limited to, acquisition of the interest, attorney fees, appraisal fees, engineering fees, City staff costs, and City overhead expenses of fifteen percent (15%) on all out-of-pocket costs.
- 7.3. The City Manager is authorized to sign an early grading agreement on behalf of City to allow rough grading of the Project prior to City Council approval of a final subdivision map. Said early grading agreement shall be consistent with the conditions of approval for IPD 2009-01 and contingent on City Engineer and Community Development Director
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acceptance of a Performance Bond in a form and amount satisfactory to them to guarantee implementation of the erosion control plan and completion of the rough grading and construction of on-site and off-site improvements. In the case of failure to comply with the terms and conditions of the early grading agreement, the City Council may by resolution declare the surety forfeited.

- 7.4. City agrees that whenever possible as determined by City in its sole discretion to process concurrently all land use entitlements for the same property so long as said entitlements are deemed complete.
- 7.5. City agrees that the Park Fee required under subsection 6.7 of this Agreement meets Developer's obligation for park land dedication provisions of state law and City codes.
- 7.6. City agrees that credit will be given toward the Art in Public Places Fee required pursuant to subsection 6.11 of this Agreement and Chapter 17.50 of the Moorpark Municipal Code by the integration of artwork into the wall required immediately south of the flood control channel along the Los Angeles Avenue frontage, if said artwork is approved by Caltrans and by the City Council pursuant to the procedures in Chapter 17.50 of the Moorpark Municipal Code.
- 7.7. Unless otherwise specified in the applicable fee resolutions or the Municipal Code, all development fees based on project area shall be calculated using the area for private use after dedication of public rights of way. The private road providing access from North Hills Parkway to the property to the west, and the exclusive easements to the Watershed Protection District for flood control purposes shall not be included in the area for the calculation of development fees. Unless otherwise specified in the applicable fee resolutions or the Municipal Code, all development fees based on building floor area shall be calculated using gross floor area as defined by the Zoning Ordinance.
- 7.8. City shall facilitate the reimbursement to Developer of any costs incurred by Developer that may be subject to partial reimbursement from other developers as a condition of approval of a tract map, development permit, or development agreement with one or more other developers.
- 7.9. With the acceptance of the \$25,000 City Welcome Sign contribution addressed in Section 6.26 of this Agreement, City agrees to be responsible for any costs associated with construction and maintenance of said City Welcome Sign.
- 7.10. City agrees, if requested by Developer, to facilitate discussions with property owners to the west (APN 511-0-200-165 and 511-0-200-175)

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regarding participation in a maintenance agreement of the road from North Hills Parkway parallel with Los Angeles Avenue to serve properties to the west required per Section 6.23 of this Agreement. City further agrees to consider accepting said road as a public street (with formation of an assessment district for maintenance) should Developer be unable to reach an agreement with neighboring property owners. To the extent provided by law, the City would provide for reimbursement for the extension of said road beyond the western property line.

- 7.11. City agrees to give Developer credit toward the payment of the Los Angeles Avenue Area of Contribution Fee as noted in Section 6.12 for the cost of the core improvements in Los Angeles Avenue as detailed in subsection 6.25 of this Agreement, beginning at and including the curb face on the north side of Los Angeles Avenue to the southern extent of public right-of-way improvements, and for the signalization improvements at the Los Angeles Avenue/North Hills Parkway intersection as detailed in subsection 6.21 of this Agreement. Developer will not receive credit toward the payment of the Los Angeles Area of Contribution fee for the cost of parkway and sidewalk improvements adjacent to the southerly property line.
8. Supersession of Agreement by Change of Law. In the event that any state or federal law or regulation enacted after the date the Enabling Ordinance was adopted by the City Council prevents or precludes compliance with any provision of the Agreement, such provision shall be deemed modified or suspended to comply with such state or federal law or regulation, as reasonably determined necessary by City.
9. Demonstration of Good Faith Compliance. In order to ascertain compliance by Developer with the provisions of this Agreement, the Agreement shall be reviewed annually in accordance with Moorpark Municipal Code Chapter 15.40. of City or any successor thereof then in effect. The failure of City to conduct any such annual review shall not, in any manner, constitute a breach of this Agreement by City, diminish, impede, or abrogate the obligations of Developer hereunder or render this Agreement invalid or void. At the same time as the referenced annual review, City shall also review Developer's compliance with the MMRP.
10. Authorized Delays. Performance by any Party of its obligations hereunder, other than payment of fees, shall be excused during any period of "Excusable Delay", as hereinafter defined, provided that the Party claiming the delay gives notice of the delay to the other Parties as soon as possible after the same has been ascertained. For purposes hereof, Excusable Delay shall mean delay that directly affects, and is beyond the reasonable control of, the Party claiming the delay, including without limitation: (a) act of God; (b) civil commotion; (c) riot; (d)

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strike, picketing or other labor dispute; (e) shortage of materials or supplies; (e) damage to work in progress by reason of fire, flood, earthquake or other casualty; (f) failure, delay or inability of City to provide adequate levels of public services, facilities or infrastructure to the Property including, by way of example only, the lack of water to serve any portion of the Property due to drought; (g) delay caused by a restriction imposed or mandated by a governmental entity other than City; or (h) litigation brought by a third party attacking the validity of this Agreement, a Project Approval, a Subsequent Approval or any other action necessary for development of the Property.

11. Default Provisions.

11.1. Default by Developer. The Developer shall be deemed to have breached this Agreement if it:

- (a) practices, or attempts to practice, any fraud or deceit upon City; or willfully violates any order, ruling or decision of any regulatory or judicial body having jurisdiction over the Property or the Project, provided that Developer may contest any such order, ruling or decision by appropriate proceedings conducted in good faith, in which event no breach of this Agreement shall be deemed to have occurred unless and until there is a final adjudication adverse to Developer; or
- (b) fails to make any payments required under this Agreement; or
- (c) materially breaches any of the provisions of the Agreement.

11.2. Default by City. City shall be deemed in breach of this Agreement if it materially breaches any of the provisions of the Agreement.

11.3. Content of Notice of Violation. Every notice of violation shall state with specificity that it is given pursuant to this subsection of the Agreement, the nature of the alleged breach, and the manner in which the breach may be satisfactorily cured. Every notice shall include a period to cure, which period of time shall not be less than ten (10) days from the date that the notice is deemed received, provided if the defaulting party cannot reasonably cure the breach within the time set forth in the notice such party must commence to cure the breach within such time limit and diligently effect such cure thereafter. The notice shall be deemed received when personally delivered or upon the third (3rd) day after deposit in the United States mail, registered or certified, postage prepaid, return receipt requested, to the Parties at the addresses set forth in Exhibit "B" attached hereto and incorporated herein, in accordance with Section 20 hereof.

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- 11.4. Remedies for Breach. The Parties acknowledge that remedies at law, including without limitation money damages, would be inadequate for breach of this Agreement by any Party due to the size, nature and scope of the Project. The Parties also acknowledge that it would not be feasible or possible to restore the Property to its natural condition once implementation of the Agreement has begun. Therefore, the Parties agree that the remedies for breach of the Agreement shall be limited to the remedies expressly set forth in this subsection. Prior to pursuing the remedies set forth herein, notice and an opportunity to cure shall be provided pursuant to subsection 11.3 herein.

The remedies for breach of the Agreement by City shall be injunctive relief and/or specific performance.

The remedies for breach of the Agreement by Developer shall be injunctive relief and/or specific performance, including, in the case of a failure to pay a fee required hereunder, to compel such payment. In addition, if the breach is of subsections 6.10, 6.12, 6.13, 6.14, 6.15, 6.18, 6.20, 6.21, 6.22, 6.23, 6.24, and 6.25 of this Agreement, City shall have the right to withhold the issuance of building permits to Developer throughout the Project from the date that the notice of violation was given pursuant to subsection 11.3 hereof until the date that the breach is cured as provided in the notice of violation.

Nothing in this subsection shall be deemed to preclude City from prosecuting a criminal action against any Developer who violates any City ordinance or state statute.

12. Mortgage Protection. At the same time that City gives notice to Developer of a breach, City shall send a copy of the notice to each holder of record of any deed of trust on the portion of the Property in which Developer has a legal interest ("Financier"), provided that the Financier has given prior written notice of its name and mailing address to City and the notice makes specific reference to this section. The copies shall be sent by United States mail, registered or certified, postage prepaid, return receipt requested, and shall be deemed received upon the third (3rd) day after deposit.

Each Financier that has given prior notice to City pursuant to this section shall have the right, at its option and insofar as the rights of City are concerned, to cure any such breach within fifteen (15) days after the receipt of the notice from City. If such breach cannot be cured within such time period, the Financier shall have such additional period as may be reasonably required to cure the same, provided that the Financier gives notice to City of its intention to cure and commences the cure within fifteen (15) days after receipt of the notice from City and thereafter diligently prosecutes the same to completion. City shall not commence legal action against Developer by reason of Developer's breach without allowing the Financier to cure the same as specified herein.

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Notwithstanding any cure by Financier, this Agreement shall be binding and effective against the Financier and every owner of the Property, or part thereof, whose title thereto is acquired by foreclosure, trustee sale or otherwise.

13. Estoppel Certificate. At any time and from time to time, Developer may deliver written notice to City and City may deliver written notice to Developer requesting that such Party certify in writing that, to the knowledge of the certifying Party, (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended, or if amended, the identity of each amendment, and (iii) the requesting Party is not in breach of this Agreement, or if in breach, a description of each such breach. The Party receiving such a request shall execute and return the certificate within thirty (30) days following receipt of the notice. City acknowledges that a certificate may be relied upon by successors in interest to the Developer who requested the certificate and by holders of record of deeds of trust on the portion of the Property in which that Developer has a legal interest.
14. Administration of Agreement. Any decision by City staff concerning the interpretation and administration of this Agreement and development of the Property in accordance herewith may be appealed by the Developer to the City Council, provided that any such appeal shall be filed with the City Clerk of City within thirty (30) days after the affected Developer receives notice of the staff decision. The City Council shall render its decision to affirm, reverse or modify the staff decision within sixty (60) days after the appeal was filed. The Developer shall not seek judicial review of any staff decision without first having exhausted its remedies pursuant to this section.
15. Amendment or Termination by Mutual Consent. In accordance with the provisions of Chapter 15.40 of the Moorpark Municipal Code of City or any successor thereof then in effect, this Agreement may be amended or terminated, in whole or in part, by mutual consent of City and the affected Developer.
 - 15.1. Exemption for Amendments of Project Approvals. No amendment to a Project Approval shall require an amendment to this Agreement and any such amendment shall be deemed to be incorporated into this Agreement at the time that the amendment becomes effective, provided that the amendment is consistent with this Agreement and does not alter the permitted uses, density, intensity, maximum height, size of buildings or reservations and dedications as contained in the Project Approvals.
16. Indemnification. Developer shall indemnify, defend with counsel approved by City, and hold harmless City and its officers, employees and agents from and against any and all losses, liabilities, fines, penalties, costs, claims, demands, damages, injuries or judgments arising out of, or resulting in any way from, Developer's performance pursuant to this Agreement.

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Developer shall indemnify, defend with counsel approved by City, and hold harmless City and its officers, employees and agents from and against any action or proceeding to attack, review, set aside, void or annul this Agreement, or any provision thereof, or any Project Approval or Subsequent Approval or modifications thereto, or any other subsequent entitlements for the project and including any related environmental approval.

17. Time of Essence. Time is of the essence for each provision of this Agreement of which time is an element.
18. Operative Date. This Agreement shall become operative on the date the Enabling Ordinance becomes effective pursuant to Government Code Section 36937.
19. Term. This Agreement shall remain in full force and effect for a term of ten (10) years commencing on its operative date, unless said term is amended or the Agreement is sooner terminated as otherwise provided herein. Upon notice in accordance with subsection 20 below the Developer may notify City at least one hundred eighty (180) days in advance of the term of this Agreement that an additional term is necessary for the completion of the Project. City may, at its sole and unfettered discretion, extend the agreement for a term of not less than one (1) year and no more than ten (10) years. Said extension of the term of this Agreement may include the addition of any new fees which may be in effect at the time of the extension request.

Expiration of the term or earlier termination of this Agreement shall not automatically affect any Project Approval or Subsequent Approval that has been granted or any right or obligation arising independently from such Project Approval or Subsequent Approval.

Upon expiration of the term or earlier termination of this Agreement, the Parties shall execute any document reasonably requested by any Party to remove this Agreement from the public records as to the Property, and every portion thereof, to the extent permitted by applicable laws.

20. Notices. All notices and other communications given pursuant to this Agreement shall be in writing and shall be deemed received when personally delivered or upon the third (3rd) day after deposit in the United States mail, registered or certified, postage prepaid, return receipt requested, to the Parties at the addresses set forth in Exhibit "B" attached hereto and incorporated herein.

Any Party may, from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified.

21. Entire Agreement. This Agreement and those exhibits and documents referenced herein contain the entire agreement between the Parties regarding the subject matter hereof, and all prior agreements or understandings, oral or

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written, are hereby merged herein. This Agreement shall not be amended, except as expressly provided herein.

22. Waiver. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar; nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless it is executed in writing by a duly authorized representative of the Party against whom enforcement of the waiver is sought.
23. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall be effective to the extent the remaining provisions are not rendered impractical to perform, taking into consideration the purposes of this Agreement.
24. Relationship of the Parties. Each Party acknowledges that, in entering into and performing under this Agreement, it is acting as an independent entity and not as an agent of any of the other Parties in any respect. Nothing contained herein or in any document executed in connection herewith shall be construed as creating the relationship of partners, joint ventures or any other association of any kind or nature between City and Developer, jointly or severally.
25. No Third Party Beneficiaries. This Agreement is made and entered into for the sole benefit of the Parties and their successors in interest. No other person shall have any right of action based upon any provision of this Agreement.
26. Recordation of Agreement and Amendments. This Agreement and any amendment thereof shall be recorded with the County Recorder of the County of Ventura by the City Clerk of City within the period required by Chapter 15.40 of the Moorpark Municipal Code of City or any successor thereof then in effect.
27. Cooperation Between City and Developer. City and Developer shall execute and deliver to the other all such other and further instruments and documents as may be necessary to carry out the purposes of this Agreement.
28. Rules of Construction. The captions and headings of the various sections and subsections of this Agreement are for convenience of reference only, and they shall not constitute a part of this Agreement for any other purpose or affect interpretation of the Agreement. Should any provision of this Agreement be found to be in conflict with any provision of the Project Approvals or the Subsequent Approvals, the provision of this Agreement shall prevail. Should any provision of the Implementation Plan be found to be in conflict with any provision of this Agreement, the provisions of the Implementation Plan shall prevail.
29. Joint Preparation. This Agreement shall be deemed to have been prepared jointly and equally by the Parties, and it shall not be construed against any Party

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on the ground that the Party prepared the Agreement or caused it to be prepared.

- 30. Governing Law and Venue. This Agreement is made, entered into, and executed in the County of Ventura, California, and the laws of the State of California shall govern its interpretation and enforcement. Any action, suit or proceeding related to, or arising from, this Agreement shall be filed in the appropriate court having jurisdiction in the County of Ventura.
- 31. Attorneys' Fees. In the event any action, suit or proceeding is brought for the enforcement or declaration of any right or obligation pursuant to, or as a result of any alleged breach of, this Agreement, the prevailing Party shall be entitled to its reasonable attorneys' fees and litigation expenses and costs, and any judgment, order or decree rendered in such action, suit or proceeding shall include an award thereof.
- 32. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which constitute one and the same instrument.

IN WITNESS WHEREOF, the Developer and City of Moorpark have executed this Development Agreement on the date first above written.

CITY OF MOORPARK

Janice S. Parvin
Mayor

OWNER/DEVELOPER

LOS ANGELES AVENUE LLC

By: _____

Its: _____

PEGH INVESTMENTS, LLC

By: _____

Its: _____

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THE RONALD NEWBURG LIVING TRUST

By: _____

Its: _____

THE RICHARD S. HELD RETIREMENT TRUST

By: _____

Its: _____

ALL SIGNATURES MUST BE NOTARIZED

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EXHIBIT A
LEGAL DESCRIPTION

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EXHIBIT "B"

ADDRESSES OF PARTIES

To City:

City of Moorpark
799 Moorpark Avenue
Moorpark, CA 93021
Attn: City Manager

To Developer:

Los Angeles Avenue LLC

PEGH Investments, LLC

The Ronald Newburg Living Trust

The Richard S. Held Retirement Trust

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RESOLUTION NO. 2011-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, APPROVING INDUSTRIAL PLANNED DEVELOPMENT PERMIT NO. 2009-01 AND CONDITIONAL USE PERMIT NO. 2009-01 TO ALLOW A 559,450 SQUARE-FOOT MOTION PICTURE STUDIO COMPLEX WITH 12 SOUNDSTAGES, 3 OFFICE BUILDINGS, 18 STUDIO SUPPORT BUILDINGS, AND SURFACE PARKING, WITH BUILDING HEIGHTS ABOVE 30 FEET ON A 44.467 ACRE SITE LOCATED ON THE NORTH SIDE OF LOS ANGELES AVENUE, WEST OF GABBERT ROAD, ON THE APPLICATION OF TRILIAD DEVELOPMENT, INC. FOR LOS ANGELES AVENUE LLC

WHEREAS, on March 23, 2009, Triliad Development, Inc., on behalf of Los Angeles Avenue LLC, filed applications for General Plan Amendment 2009-01, Zone Change No. 2009-01, Industrial Planned Development No. 2009-01, Conditional Use Permit No. 2009-01, and Development Agreement No. 2009-02 in association with a proposed 559,450 square-foot motion picture studio complex project with 12 soundstages, 3 office buildings, 18 studio support buildings, and surface parking on a 44.467 acre site located on the north side of Los Angeles Avenue, west of Gabbert Road; and

WHEREAS, on May 3, 2011, the Planning Commission adopted Resolution No. PC-2011-563, which included recommendations that the City Council approve Industrial Planned Development Permit No. 2009-01 and Conditional Use Permit No. 2009-01 to allow a 559,450 square-foot motion picture studio complex with 12 soundstages, 3 office buildings, 18 studio support buildings, and surface parking, with building heights above 30 feet on the 44.467 acre project site; and

WHEREAS, at a duly noticed public hearing on October 5, 2011, the City Council considered the agenda report for Industrial Planned Development Permit No. 2009-01 and Conditional Use Permit No. 2009-01 and any supplements thereto and written public comments; opened the public hearing and took and considered public testimony both for and against the proposal, closed the public hearing; and

WHEREAS, the City Council has read, reviewed considered, and adopted the proposed Mitigated Negative Declaration prepared for the project referenced above.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. PLANNED DEVELOPMENT FINDINGS: Based upon the information set forth in the staff report(s), accompanying studies, and oral and written

CC ATTACHMENT 8

public testimony, the City Council makes the following findings in accordance with City of Moorpark, Municipal Code Section 17.44.030:

1. The site design, including structure location, size, height, setbacks, massing, scale, architectural style and colors, and landscaping, is consistent with the provisions of the general plan, any applicable specific plans, zoning ordinance, and any other applicable regulations in that the proposed project meets or exceeds the Ordinance requirements for setbacks, parking, and landscaping, meets the conditional use permit findings for increased height, and meets or exceeds the existing General Plan and zoning designation requirements for the property;
2. The site design would not create negative impacts on or impair the utility of properties, structures or uses in the surrounding area in that the project has been designed in a manner consistent with the Moorpark General Plan and Municipal Code, and conditions of approval have been proposed to mitigate potential negative impacts; and
3. The proposed uses are compatible with existing and permitted uses in the surrounding area in that the proposed building colors and architecture are designed to be compatible with each other and the proposed buildings are located in such a manner so as not to cause problems with the use of the adjacent properties and conditions of approval have been added to mitigate any potential incompatibility.

SECTION 2. CONDITIONAL USE PERMIT FINDINGS: Based upon the information set forth in the staff report(s), accompanying studies, and oral and written public testimony, the City Council makes the following findings in accordance with City of Moorpark, Municipal Code Section 17.44.040:

1. The proposed use is consistent with the provisions of the general plan, zoning ordinance, and any other applicable regulations in that the zoning ordinance allows for building heights up to 60 feet subject to a conditional use permit, the site is not with a protected scenic area as described in the City's General Plan, and no unique visual resources would be affected by the implementation of the project;
2. The proposed use is compatible with both existing and permitted land uses in the surrounding area in that building heights up to 60 feet could be conditionally permitted for any permitted development of this site, and this site has been consistently designated for industrial and/or commercial uses since the City's incorporation in 1983 and surrounding and existing land uses have been developed or proposed with these designations in mind;
3. The proposed use is compatible with the scale, visual character, and design of surrounding properties in that the proposed building heights, colors, and architecture are designed specifically for this use to blend in with each other and

the proposed buildings are located in such a manner so as not to cause conflicts with the use of the adjacent properties. Architectural appurtenances may exceed the maximum building height standards, provided that they do not add floor area and are evaluated on a case-by-case basis as part of the permit and conditions of approval addressing items such as general maintenance, landscaping, and items such as exterior vents, equipment and ladders have been added to mitigate any potential incompatibility;

4. The proposed use would not be obnoxious or harmful, or impair the utility of neighboring property or uses in that conditions of approval have been proposed to regarding architecture, parking, noise, lighting, and hours of operation; and
5. The proposed use would not be detrimental to the public health, safety, convenience, or welfare in that environmental mitigation measures and conditions of approval have been put in place to mitigate any effects upon the public health, safety, convenience, or welfare.

SECTION 3. CITY COUNCIL APPROVAL: The City Council approves:

- A. Industrial Planned Development No. 2009-01, subject to the special and standard Conditions of Approval included in Exhibit A, attached hereto and incorporated herein by reference; and
- B. Conditional Use Permit No. 2009-01, subject to the special and standard Conditions of Approval included in Exhibit A, attached hereto and incorporated herein by reference.

SECTION 4. The effective date of this resolution and shall be concurrent with the effective date of the Resolution for General Plan Amendment No. 2009-01, and the Ordinances for Zone Change No. 2009-01 and Development Agreement No. 2009-02, whichever occurs last.

SECTION 5. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

PASSED AND ADOPTED this 5th day of October, 2011.

Janice S. Parvin, Mayor

ATTEST:

Maureen Benson, City Clerk

Resolution No. 2011-____
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Exhibit A: Standard and Special Conditions of Approval for Industrial Planned Development No. 2009-01 and Conditional Use Permit No. 2009-01

EXHIBIT A
CONDITIONS OF APPROVAL FOR INDUSTRIAL PLANNED DEVELOPMENT NO.
2009-01 AND CONDITIONAL USE PERMIT NO. 2009-01

STANDARD CONDITIONS OF APPROVAL

The applicant shall comply with Standard Conditions of Approval for Planned Development Permits and Conditional Use Permits as adopted by City Council Resolution No. 2009-2799 (Exhibits A and B), except as modified by the Development Agreement for this project and the following Special Conditions of Approval. In the event of conflict between a Standard and Special Condition of Approval, the Special Condition shall apply. In the event of a conflict between the Development Agreement for this project and any Standard or Special Condition of Approval, the terms of the Development Agreement shall apply.

SPECIAL CONDITIONS FOR INDUSTRIAL PLANNED DEVELOPMENT NO. 2009-01 AND CONDITIONAL USE PERMIT NO. 2009-01

1. These entitlements shall not be effective until the Development Agreement between the City of Moorpark and Los Angeles Avenue LLC for this project is fully executed. The project shall comply with (i) the terms of the Development Agreement, (ii) the Standard and Special Conditions of Approval for IPD No. 2009-01 and CUP No. 2009-01, and (iii) the Mitigation Monitoring and Reporting Plan of the Mitigated Negative Declaration prepared for this project.
2. All public and private road improvements, including curb, gutter, sidewalk, and landscaping required as part of this project must be completed prior to occupancy of the first building unless alternative timing is provided for in the Development Agreement. On the south side of Los Angeles Avenue west of Mira Sol Drive, where there is insufficient room for street trees within the sidewalk, vine pockets with a City-approved irrigation system must be added along the property line walls to the satisfaction of the City Engineer/Public Works Director and Community Development Director.
3. The applicant shall be responsible for all costs associated with the processing of an annexation application through the City and Ventura County LAFCo for the additional Los Angeles Avenue right-of-way needed as part of this project.
4. Prior to issuance of any building permits, the applicant shall submit a fence and wall plan consistent with fence and wall design on the approved plans to the satisfaction of the Community Development Director. All fences/walls along project boundaries as shown on the approved plans must be in place prior to occupancy of any buildings on site, unless an alternative schedule is approved by the Community Development Director.
5. Prior to issuance of a Zoning Clearance for each building permit, colors and materials shall be submitted to the Community Development Director for review and approval. Exterior downspouts may be used on the studio buildings and interior support buildings, subject to review and approval by the Community

Development Director, but the office buildings along the Los Angeles Avenue and North Hills Parkway frontages must have interior downspouts.

6. Prior to the issuance of each building permit, the applicant shall provide a sample of the glass to be used, along with the manufacturer's specifications for exterior reflectance, for review and approval by the Community Development Director. Glass used along the Los Angeles Avenue and North Hills Parkway street frontages shall not exceed 8% exterior reflectance.
7. Concurrent with the lighting review to determine compliance with Chapter 17.30 of the Moorpark Municipal Code, the applicant shall provide the Community Development Director exhibits demonstrating that all lighting fixtures are architecturally compatible with the buildings and landscaping.
8. Prior to issuance of a Zoning Clearance for each building plan check, the final number of parking spaces provided for each phase will be reviewed and approved by the Community Development Director.
9. The applicant shall provide a comprehensive parking regulation plan for review and approval of the Community Development Director prior to the issuance of any building permits. The plans must identify locations where overnight parking of trucks, trailers, and other vehicles associated with the studio use will be located. All parking spaces must be available exclusively for the studio project and not for any other use. The applicant shall post the parking lots with signage to the satisfaction of the Community Development Director in compliance with the Moorpark Municipal Code and California Vehicle Code indicating that unauthorized vehicles will be towed away. Any use by the applicant of parking spaces for something other than the parking of vehicles for the studio project is subject to a separate permit. As part of the plan, a covenant and agreement shall be provided for recordation tying the property containing the parking area west of North Hills Parkway to the rest of the project property for as long as the parking is needed to the satisfaction of the Community Development Director and City Attorney.
10. Prior to operation of the parking lot shuttle, the applicant must obtain an encroachment permit or license agreement for any crossing of a public right-of-way and provide a shuttle operation plan to the satisfaction of the City Engineer/Public Works Director.

Fire Department Conditions

11. All production studio sound stages, approved production facilities and production locations shall meet the requirements of Chapter 48 of the 2010 California Fire Code and NFPA 140 of the National Fire Protection Association Standards.
12. In accordance with the Fire Code and the Ventura County Fire Department requirements, extended use operational permits shall be obtained prior to ongoing hazardous activities. These permits shall only be valid for onsite use and will expire 1 year from the date of issue. Examples of required extended use operational permits are listed below:
 - a. Storage, handling and use of compressed and flammable gases

- b. Storage, handling and use of compressed and flammable liquids
 - c. Storage, handling and use of explosives and blasting agents
 - d. Storage, handling and use of hazardous materials
 - e. High piled combustible storage, typically 12ft high or more
 - f. Hot work, cutting, welding and grinding
 - g. Spraying or dipping
13. In accordance with the Fire Code and the Ventura County Fire Department requirements, single use operational permits shall be obtained from this department prior to each individual hazardous activities. Examples of required single use operational permits are listed below:
- a. Use of pyrotechnic special effects
 - b. Open flames
 - c. Tents- temporary membrane structures
 - d. Presence of motor vehicles for filming or exhibition purposes within a building
 - e. Change in use or occupancy– anytime a change in use or occupancy is intended by the owner (e.g., for live audience shows, wrap parties, etc.)
 - f. Seating arrangements of all live audience stages
 - g. Cast and crew on a set will exceed 99 persons
 - h. If a set is of significant size and will be used for an extended time period. Six or more weeks.
14. Some single use operational permits due to size, scope and the compounded hazards associated with the activity proposed may be denied or required to have a standby fire safety officer(s). The Fire Marshal may place conditions on such permits on a case-by-case basis. The cost of this position shall be funded by the studio or production company.
15. Ventura County Fire Department, Fire Prevention Staff shall only be designated to serve as a standby fire safety officer for live audience shows. The cost of this position shall be funded by the studio or production company.
16. Welding and other hot work shall comply with Article 26 of the 2010 California Fire Code. A fire watch shall be required for all hot work activities.
17. A designated on-site Fire Department Fire Inspector may be required at this facility in the future. The hours and duration of the position will be dependent upon the volume and type of filming activity. This position could be filled as a part or full time position and may be fixed term or permanent. The cost of this position shall be funded by the studio. Funding for this position may allow for a waiver of some or all of the fees required for permits in condition #2 and #3.
18. In conjunction with the Fire Department, studio management shall develop a fire safety guidebook for production companies considering filming at the studio. The

guide shall provide information regarding general fire safety practices and the permit requirements and process. Prior to the commencement of filming, a meeting shall be held with the production company to review the guidebook and ensure they are aware of Fire Department and studio safety requirements regarding filming.

19. Drive aisles that are part of required emergency access shall be maintained clear of vehicle parking and equipment storage. Such drive aisles shall be clearly marked in accordance with Fire Department specifications.
20. Approved storage containers shall be provided for pyrotechnic special effects.
21. Decorative materials (drapes, drops, cut greens, etc.) shall meet the flame-retardant requirements of Title 19 California Code of Regulations, Chapter 5, and Chapter 8, Sections 807.4.2.4 and 807.4.5.
22. The cost of any fire and life safety equipment used exclusively for production activities on site shall be the responsibility of the studio (heat guns, etc.)
23. A safety plan shall be developed for the facility that will aid Fire Department personnel responding to an emergency at the site. It shall include a site map identifying the buildings and areas of the studio, procedures for different types of emergencies (fire, medical, natural disaster, etc.) and communications.
24. The following building features shall be provided on all sound stages:
 - a. All exit doors shall be provided with panic hardware and swing in the direction of travel
 - b. A kill switch for shutting off electrical power to the building shall be provided in an easily accessible, conspicuous location. It shall be maintained secure with a Knox locking device of some type.
 - c. Because of the unique building features that do not allow for roof ventilation, a smoke evacuation system shall be required. This system shall be on its own electrical circuit to ensure continued operation when power has been shut off to the rest of the building.

- END -