

City Attorney Recommended Version

**AMENDMENT TO THIRD AMENDED AND RESTATED
DEVELOPMENT AGREEMENT**

This Amendment to the Third Amended and Restated Development Agreement (“Amendment”) is executed this ___ day of _____ 2010 (“Effective Date”), by and among the CITY OF LOS ANGELES, a municipal corporation (“City”), L.A. ARENA LAND COMPANY, LLC, a Delaware limited liability company (“LandCo”), FLOWER HOLDINGS, LLC, a Delaware limited liability company (“Flower Holdings”), OLYMPIC AND GEORGIA PARTNERS, LLC, a Delaware limited liability company (“OGP”), LA LIVE THEATRE, LLC a Delaware limited liability company (“LA Live Theatre”), LA LIVE PROPERTIES, LLC, a Delaware limited liability company (“LA Live Properties”), FIDM RESIDENTIAL, INC., a California corporation (“FIDM”), and FIG CENTRAL FEE OWNER, LLC a Delaware limited liability company (“Figueroa Central Owner”) and collectively with City, LandCo, Flower Holdings, OGP, LA Live Theatre, LA Live Properties, FIDM and Figueroa Central Owner (the “Parties”) pursuant to California Government Code Section 65868, and the implementing procedures of the City.

RECITALS

A. City, LandCo and Flower Holdings entered into that certain Development Agreement dated December 11, 2001 and recorded on December 18, 2001 in the Official Records of Los Angeles County, California, as Instrument No. 01-2421128 (the “Development Agreement”) after adoption by the City Council as Ordinance No. 174227 on September 4, 2001, as amended by Amendment to Development Agreement dated December 10, 2003, by and among City, LandCo and Flower Holdings and recorded in the Official Records of Los Angeles County, California as Instrument No. 04-0100217 (as amended, the “Original Development Agreement”).

B. The Original Development Agreement was amended and restated in its entirety by that Amended and Restated Development Agreement dated December 14, 2005 by and among the City, LandCo, Flower Holdings, FIDM and Figueroa South Land and recorded on December 19, 2005 in the Official Records of Los Angeles County, California, as Instrument No. 053119740. The Original Development Agreement was further amended and restated in its entirety by that Second Amended and Restated Development Agreement dated May 22, 2007 by and among the City, LandCo, Flower Holdings, FIDM, and Figueroa South Land and recorded on May 29, 2007 in the Official Records of Los Angeles County, California as Instrument No. 2007-1291167. The Original Development Agreement was further amended and restated in its entirety by that Third Amended and Restated Development Agreement dated April 2, 2008 by and among the City, LandCo, Flower Holdings, OGP, LA Live Theatre, LA Live Properties, FIDM, Figueroa South Land and Figueroa Central Owner. The Original Development Agreement as amended and restated shall be hereinafter referred to as the “Amended and Restated Development Agreement.”

C. The Parties desire to enter into this Amendment, pursuant to Section 6.8 of the Amended and Restated Development Agreement, to expand the Development Agreement Property to include four additional adjacent parcels owned by LandCo, identified as APN 5138-005-032, north of and immediately adjacent to the Olympic North Properties as identified on

Attachment 3 (the “Additional Parcels”); to increase the maximum permitted floor area of the LASED Specific Plan Properties to provide for additional office, production and broadcast studio uses; increase the maximum height permitted on the expanded Olympic North Properties; and to make other minor modifications.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and conditions herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to amend the Amended and Restated Development Agreement as follows:

Section 1. Olympic North Properties. To accommodate the expansion of the Olympic North Properties to include the Additional Parcels and additional development within the Olympic North Properties, Sections 1.12, 1.15, 1.21, 1.30 and 3.2.3.1 and Attachments 1 and 2 of the Amended and Restated Development Agreement shall be amended for the Olympic North Properties as follows:

(a) Section 1.12 is hereby amended to add “the Fifth Implementation of the DDA, the Sixth Implementation of the DDA, the Seventh Implementation of the DDA” after “the Fourth Implementation of the DDA”.

(b) To include the additional 0.7 acres of the Additional Parcels into the Development Agreement Property, Section 1.15 is hereby amended by replacing “27.1 acres” with “27.8 acres”.

(c) Section 1.21 is hereby amended to replace “Ordinance No. 178134” with “Ordinance No. [xxx]”.

(d) To include the additional floor area and acreage permitted within the Development Agreement Property and clarify the uses permitted within the Development Agreement Property, Section 1.30 is hereby amended by replacing “5,977,806 square feet of floor area” with “6,290,018 square feet of floor area”, replacing “27.1 acres” with “27.8 acres”, and adding “production and broadcast studio,” after “office space, including”.

(e) To clarify the Applicable Rules for the Additional Parcels, as defined below, Section 2.3.1 is hereby amended to add “(3) reduced in density, intensity or use from what is set forth in the Applicable Rules for the Additional Parcels as of the Effective Date;” and to renumber the previous subsequent subsections (3) and (4) to (4) and (5) respectively.

(f) Attachment 1 is hereby replaced with Attachment 1 of this Amendment, entitled Development Agreement Property.

(g) Attachment 2 is hereby replaced with Attachment 2 to this Amendment, entitled LASED Specific Plan Properties.

(h) Applicable Rules.

(i) Development Agreement Properties Other than the Additional Parcels. For the Development Agreement Properties other than the Additional Parcels, the Applicable Rules are set forth in Section 1.4 of the Amended and Restated Development Agreement. Pursuant to Section 1.4, the amendments to the LASED Specific Plan and Los Angeles Municipal Code adopted concurrent with the adoption of this Amendment shall be included within the Applicable Rules as if such amendments were in effect as of the Original Effective Date.

(ii) Additional Parcels. For the Additional Parcels, the Applicable Rules are the rules, regulations, ordinances and officially adopted policies of the City in force as of the Effective Date, including but not limited to the LASED Specific Plan and the Municipal Code. Notwithstanding the language of this Section or any other language in this Agreement, all specifications, standards and policies regarding the design and construction of public works facilities, if any, shall be those that are in effect at the time the applicable Project plans are being processed for approval and/or under construction. Further, the Applicable Rules shall include (i) the Citywide programs which will be enacted after the Effective Date, for storm water pollution abatement mandated by the Federal Water Pollution Control Act of 1972, and subsequent amendments to the Act; and (ii) a change in the downtown parking requirements if ultimately adopted by the City Council after the Effective Date to the extent the change is consistent with the Central City Community Plan Update as recommended by City Planning Commission action, dated November 12, 1998, CPC No. 94-0225CAU.

(iii) Special Events Fees. Notwithstanding anything above or otherwise in the Amended and Restated Development Agreement, the Applicable Rules shall include Sections 41.20, 41.20.1, and 80.08.7(e) of the Los Angeles Municipal Code, as added and amended by Ordinance No. 180881.

Section 2. City Procedures and Actions.

(a) Planning Commission Action. The Planning Commission held a duly noticed public hearing on November 12, 2009, and recommended approval of this Amendment on the same date.

(b) City Council Action. The City Council on [xxx], after conducting a duly noticed public hearing, adopted Ordinance No. [xxx], to become effective on the thirty-first day after publication, or on the forty-first day after posting, approving this Amendment, found that its provisions are consistent with the City's General Plan, the Central City Community Plan, the LASED Specific Plan, and the Municipal Code, and authorized the execution of this Amendment.

Section 3. Notices. Any notices, demands and communications directed to LandCo, Flower Holdings, OGP, LA Live Theater, or LA Live Properties pursuant to the Amended and Restated Development Agreement or this Amendment shall be delivered to the following addresses, respectively, in conformance with the provisions of Section 6.15 of the Amended and Restated Development Agreement:

If to LandCo:

Mr. Ted Tanner
L.A. Arena Land Company, LLC
800 West Olympic Boulevard, Suite 305
Los Angeles, California 90015

with copies to:

Mr. Eduardo Cervantes
L.A. Arena Land Company, LLC
714 West Olympic Boulevard, Suite 401
Los Angeles, California 90015

Mr. David A. Goldberg, Esq.
Latham & Watkins
355 South Grand Avenue
Los Angeles, California 90071

If to Flower Holdings:

Mr. Ted Tanner
Flower Holdings, LLC
800 West Olympic Boulevard, Suite 305
Los Angeles, California 90015

with copies to:

Mr. Eduardo Cervantes
Flower Holdings, LLC
714 West Olympic Boulevard, Suite 401
Los Angeles, California 90015

Mr. David A. Goldberg, Esq.
Latham & Watkins
355 South Grand Avenue
Los Angeles, California 90071

If to OGP:

Mr. Ted Tanner
Olympic and Georgia Partners, LLC
800 West Olympic Boulevard, Suite 305
Los Angeles, California 90015

with copies to:

Mr. Eduardo Cervantes
Olympic and Georgia Partners, LLC
714 West Olympic Boulevard, Suite 401
Los Angeles, California 90015

Mr. David A. Goldberg, Esq.
Latham & Watkins
355 South Grand Avenue
Los Angeles, California 90071

If to LA Live Theatre:

Mr. Ted Tanner
LA Live Theatre, LLC
800 West Olympic Boulevard, Suite 305

with copies to:

Mr. Eduardo Cervantes
LA Live Theatre, LLC
714 West Olympic Boulevard, Suite 401

Los Angeles, California 90015

Los Angeles, California 90015

Mr. David A. Goldberg, Esq.
Latham & Watkins
355 South Grand Avenue
Los Angeles, California 90071

If to LA Live Properties:
Mr. Ted Tanner
LA Live Properties, LLC
800 West Olympic Boulevard, Suite 305
Los Angeles, California 90015

with copies to:
Mr. Eduardo Cervantes
LA Live Properties, LLC
714 West Olympic Boulevard, Suite 401
Los Angeles, California 90015

Mr. David A. Goldberg, Esq.
Latham & Watkins
355 South Grand Avenue
Los Angeles, California 90071

Section 4. Effectiveness of Amendment. This Amendment is dated for convenience only and shall only become effective on the date which is the latest of (i) the date this Amendment is executed by LandCo, Flower Holdings, OGP, LA Live Theatre, LA Live Properties, FIDM, and Figueroa Central Owner and (ii) the date this Amendment is approved and executed by the City.

Section 5. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

Section 6. No Other Changes, Consistency. Notwithstanding any changes and deletions contained herein, all other provisions of the Amended and Restated Development Agreement remain the same. In the event of any conflict between the terms of the Amended and Restated Development Agreement and this Amendment, the terms of this Amendment shall govern.

Section 7. Severability. If any provision of this Amendment should be determined by a court to be invalid or unenforceable, the remaining provisions of this Amendment shall remain in full force and effect and continue to be binding on both Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the date first written above.

“City”

CITY OF LOS ANGELES, a municipal corporation of the State of California

APPROVED AS TO FORM:
Carmen Trutanich,
City Attorney

By:
Antonio Villaraigosa, Mayor

By:
Laura Cadogan
Deputy City Attorney
DATE: _____, 2010

ATTEST:
June Lagmay, City Clerk

By:
.....Deputy
DATE: _____, 2010

L.A. Arena Land Company, LLC
a Delaware limited liability company

APPROVED AS TO FORM:

By:
Name: David A. Goldberg
of Latham & Watkins LLP

By:
Name: Ted Tanner
Title: Vice President

Counsel for L.A. Arena Land Company, LLC

Flower Holdings, LLC,
a Delaware limited liability company

APPROVED AS TO FORM:

By:
Name: David A. Goldberg
of Latham & Watkins LLP

By:
Name: Ted Tanner
Title: Vice President

Counsel for Flower Holdings, LLC

Olympic and Georgia Partners, LLC,
a Delaware limited liability company

By:
Name: Ted Tanner
Title: Vice President

LA Live Theatre, LLC
a Delaware limited liability company

By:
Name: Ted Tanner
Title: Vice President
LA Live Properties, LLC, a Delaware
limited liability company

By:
Name: Ted Tanner
Title: Vice President

FIDM Residential, Inc.

By:
Name:
Title:

Fig Central Fee Owner LLC, a Delaware
limited liability company

By:
Name: Oskar Brecher
Title: Authorized Signatory

APPROVED AS TO FORM:

By:
Name: David A. Goldberg
of Latham & Watkins LLP

Counsel for Olympic and Georgia Partners,
LLC

APPROVED AS TO FORM:

By:
Name: David A. Goldberg
of Latham & Watkins LLP

Counsel for LA Live Properties, LLC

By:
Name:
Counsel for FIDM Residential, Inc.

APPROVED AS TO FORM:

By:
Name: John W. Whitaker
of DLA Piper US LLP

Counsel for Fig Central Fee Owner LLC