

Motion

BUDGET & FINANCE

On May 1, 2007, the City Council approved a five-year non-exclusive license agreement with the City of Los Angeles (dba the City Employees Club of Los Angeles) to sell merchandise bearing the City seal to Club members (Council file 07-0932, C116007).

On March 30, 2010, the City Council approved an amendment to C-116007 to allow the sale of reviewed and approved merchandise with the City logo to the general public, as well as to Club members (Council File 10-0330).

On August 28, 2012, the City Council approved a new licensing contract (Council file 10-0330-S1, C-120952) with a term of March 1, 2012 through February 28, 2017 and added language for the newly adopted First Source Hiring Ordinance.

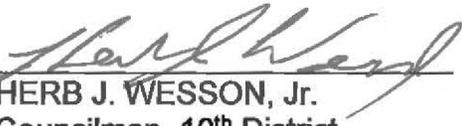
In order to continue this partnership, a new agreement must be approved. The new contract establishes a new five-year term from March 1, 2017 to February 28, 2022 (with a ratification clause retroactive to March 1, 2017). Approval of this contract will continue increased revenue and promotion of one-of-a-kind souvenirs for City residents, visiting tourists, and active and retired employees.

I THEREFORE MOVE that the City Council:

1. FIND that the City Employees Club of Los Angeles' request to use the City seal on approved merchandise serves as a public purpose.
2. APPROVE the licensing agreement (attached) with the City Employees Club of Los Angeles and AUTHORIZE the City Clerk to execute the agreement on behalf of the City for five-years from March 1, 2017 through February 28, 2022, subject to form by the City Attorney.
3. AUTHORIZE the City Clerk to collect and deposit royalties into the Intellectual Property Trust Fund, Fund 45V.

I FURTHER MOVE that the City Clerk be authorized to make any technical corrections or clarifications to the above instructions in order to effectuate the intent of this motion.

Presented By

  
HERB J. WESSON, Jr.  
Councilman, 10<sup>th</sup> District

Seconded By



  
JUL 30 2013

ORIGINAL

**CITY OF LOS ANGELES**  
**MERCHANDISE LICENSE AGREEMENT**

- 1 **Licensor:** CITY CLERK'S OFFICE  
OF THE CITY OF LOS ANGELES ("Licensor")  
200 North Spring Street  
City Hall East, Room 360  
Phone: (213) 978-1020
- Licensees:** LOS ANGELES CITY EMPLOYEE'S ASSOCIATION (dba City Employees Club of Los Angeles) ("Licensee"), a California non-profit corporation  
Address: 311 South Spring St  
Los Angeles, CA 90013  
Attention: John Hawkins  
Phone: (213) 620-0388; Facsimile: (213) 620-0598  
E-mail: [jhawkins@lacea.com](mailto:jhawkins@lacea.com)  
Tax ID No.: 95-1667955
- 2 **Property:** The trademarks and copyrighted works identified on Exhibit "B" ("Proprietary Subject Matter").
- 3 **Articles:** The following products utilizing, bearing, or otherwise relating to the Proprietary Subject Matter: Clothing (Class 25);\* Jewelry (Class 14); Toys and Sporting Goods (Class 28); Watches and Clocks; Hats and caps; Containers for beverages; Bags (duffle and tote); Portfolios; and Playing cards ("Articles").  
*\*As defined by the USPTO.*
- 4 **Term:** The Term shall commence on March 1, 2017 and expire on February 28, 2022 unless sooner terminated as provided in Exhibit "A" hereto ("Term")
- Ratification:** Due to the LICENSEE's need for the continuous sale of merchandise bearing the Los Angeles City Seal and payment of royalties to LICENSOR on an ongoing basis, LICENSEE may have sold merchandise and LICENSOR may have received royalty payments prior to the execution of this AGREEMENT. To the extent that said merchandise sold and royalty payments received in accordance with the terms and conditions of this AGREEMENT, those sold merchandise and royalty payments are hereby ratified.
- 5 **Exclusivity:**  Exclusive license  Non-exclusive license
- 6 **Royalty Rate** 3% of Gross Sales to City employees and 5% of Gross Sales to Non City employees ("Royalty Rate"), to be paid (payable to *City of Los Angeles IP Fund*) to licensor as indicated below.

- 7 **Advance:** \$0 Dollars ("Advance").
- 8 **Guarantee:** Nil Dollars (\$0) ("Guarantee").
- 9 **Channels of Distribution:** Retail Sales Only (at Licensee's direct points of sales).
- 10 **Earliest In-Store Date:** March 1, 2017 ("Earliest In-Store Date")
- 11 **Shipping Date:** N/A ("Shipping Date")
- 12 **Copyright and Trademark Notices:**

The following City of Los Angeles trademarks are used with permission:



All packaging and/or labeling materials shall bear the following notice:

*"The Los Angeles City Seal is a trademark of the City of Los Angeles. Use with permission."*

- 13 **Approvals:** All Articles and all related packaging and advertising must be approved by Licensor in writing (a) before commercial production and after production samples have been approved, (b) before commercial distribution or sale by Licensee. Such approvals or disapprovals are within Licensor's sole discretion, and any submission not approved in writing is deemed disapproved.
- 14 **Insurance Amount:** \$1 Million liability policy, with proof of license.
- 15 **Quality Control Samples & Finished Items:** (a) two first run production samples, (b) two production samples from each manufacturing run, plus as requested from time to time by Licensor for quality control purposes; and (c) five pieces of each finished Article.
- 16 **Additional Terms:** The attached Exhibit "A" (Standard Terms and Conditions) is incorporated herein by this reference.

By signing below, Licensee affirms that it is in agreement with the foregoing and that it has read and understands and agrees to be bound by Exhibit "A" (Standard Terms and Conditions) attached hereto and forming a part hereof. Licensee further agrees that this Agreement shall also serve as an invoice to Licensee with respect to the amounts payable as set forth above and Licensee agrees to pay such amounts to

Licensor as and when specified above. This Agreement shall not be binding upon Licensor until fully executed and delivered.

ACCEPTED AND AGREED TO:

**LOS ANGELES CITY  
EMPLOYEE'S ASSOCIATION  
(LICENSEE)**

**CITY OF LOS ANGELES, BY AND THROUGH  
THE LOS ANGELES CITY CLERK  
(LICENSOR)**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

ATTEST:

**MICHAEL N. FEUER,  
City Attorney**

**HOLLY L. WOLCOTT,  
City Clerk**

By: \_\_\_\_\_  
**TANEA YSAGUIRRE  
Deputy City Attorney**

By: \_\_\_\_\_  
**Deputy City Clerk**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT "A"**  
**CITY OF LOS ANGELES MERCHANDISE LICENSE AGREEMENT**  
**STANDARD TERMS AND CONDITIONS**

These Standard Terms and Conditions shall be deemed fully incorporated in the Merchandise License Agreement ("Underlying Agreement") to which this Exhibit "A" is attached, and these Standard Terms and Conditions and the Underlying Agreement shall hereinafter be collectively referred to as the "Agreement." All terms shall, unless expressly provided to the contrary herein, have the same respective meanings as set forth in the Underlying Agreement. Unless expressly provided to the contrary herein, to the extent that any provision of these Standard Terms and Conditions conflicts with any provision of the Underlying Agreement, the Underlying Agreement shall control.

17 FURTHER CONDITIONS ON GRANT OF RIGHTS. Licensor hereby grants to Licensee, and Licensee hereby accepts, the right and license to utilize during the Term the Proprietary Subject Matter solely on or in connection with the manufacture and sale of Articles in the Territory, subject to the terms and conditions hereunder. Licensee shall be entitled to sell Articles solely in the distribution channels set forth in Paragraph 9 of the Underlying Agreement. No such sales shall be on an approval, consignment, or guaranteed sale or return basis. Licensee agrees that it will not make or authorize any use, direct or indirect, of the Articles outside the Territory and that it will not intentionally sell Articles to persons who intend or are likely to resell them outside the Territory.

18 CONSIDERATION.

18.1 Upon execution of this Agreement by Licensee, Licensee shall pay Licensor non-refundable advance(s) against Royalties in the amount(s) specified in Paragraph 6. Licensee shall be entitled to apply the Advance against Royalties due Licensor hereunder with respect to the Term.

18.2 Licensee shall pay Licensor the Royalty Rate specified in Paragraph 6. Royalties shall be paid on all units of Articles sold by Licensee. For purposes of this Agreement, "Gross Sales" shall mean Licensee's gross sales (the gross invoice amount billed customers) of Articles sold during the Term pursuant to this Agreement. For purposes of this Agreement, if applicable, "Net Sales" shall mean Licensee's gross sales (the gross invoice amount billed customers) of Articles sold during the Term pursuant to this Agreement, minus approved discounts and actual returns. It is understood that credit against sales will be allowed only for actual returns of damaged goods, and that no credit against sales will be allowed on the basis of an accrual or reserve system. No other deductions shall be taken from Net Sales including, without limitation, deductions for cash or other discounts or uncollectible accounts. No costs incurred in the manufacture, sale, distribution, or promotion of Articles shall be deducted from any Royalties payable to Licensor. Licensee shall pay, and hold Licensor forever harmless from, all taxes, customs, duties, levies, impost or any other charges now or hereafter imposed or based upon the manufacture, deliver, license, sale, possession or use hereunder to or by Licensee of the Articles (including, but not limited to sales, use, inventory, income and value added taxes on sales of Articles), which charges shall not be deducted from Licensor's Royalties. In addition, Royalties shall be paid by the Licensee based

on Licensee's usual sales price where the billed price for the Articles is less than the usual sales price and the Licensee receives other compensation attributable to the distribution of the Articles separate from the price which appears on the respective invoice or where the sale is made by Licensee to an affiliate.

18.3 Unless expressly provided herein otherwise, Licensee shall not, without the express prior written consent of Licensor, permit the distribution or other marketing of any Articles on an F.O.B. or L.C. basis (as those terms are commonly understood in the international merchandising business). All Articles distributed or marketed (and subject to Licensor's prior written approval) on an F.O.B. or L.C. basis will be subject to royalties based on the greater of (a) a Royalty Rate computed on the same basis as if such Articles had been shipped directly to Licensee, or (b) a Royalty Rate equal to one-half of the Royalty Rate specified in Paragraph 6, but based on the retail sales price of Articles sold by Licensee's customers.

18.4 All royalties due Licensor as set forth in this Paragraphs 18.2 and 18.3 shall be collectively referred to as "Royalties." Royalties hereunder shall accrue when the Articles are sold, shipped, distributed, billed and/or paid for, whichever occurs first.

18.5 Licensee shall pay Licensor a minimum Royalties guarantee for the Term, inclusive of the Advance, in the amount specified in Paragraph 7, payable at the expiration or earlier termination of the Term.

#### 19 ACCOUNTING; AUDITING.

19.1 Licensee shall (i) render royalty reports ("Royalty Reports") to Licensor on a quarterly basis within 30 days after the close of each calendar quarter during the Term hereof, whether or not any payment is shown to be due to Licensor thereunder, and (ii) remit payments due Licensor, if any, along with such Royalty Reports. If the Territory covers more than one country, Royalty Reports shall be prepared on a country-by-country basis. Royalties, made payable to "The City of Los Angeles," shall be paid in U.S. Dollars and acceptance thereof by Licensor shall not preclude Licensor from questioning the correctness of same at any time. All Royalties shall be made without set-off of any amount whatsoever, whether based upon any claimed debt or liability of Licensor to Licensee. All Royalties and Royalty Reports shall be sent to licensor, as provided in Paragraph 6.

19.2 Licensee shall keep and maintain accurate books of account and records covering all transactions relating to this Agreement. Licensor shall be entitled to (i) audit and inspect such books and records at any time or times during or after the Term of the Agreement during reasonable business hours and upon five (5) days' prior written notice to Licensee, and (ii) make copies and summaries of such books and records. All such books of account and records shall be retained by Licensee for a minimum of three (3) years after expiration or termination of this Agreement. If Licensor's duly authorized representative discovers a deficiency in the Royalties paid to Licensor for any period under audit (an "Audit Deficiency"), Licensee shall promptly pay such Audit Deficiency to Licensor and, if such Audit Deficiency is five percent (5%) or more of the Royalties paid to Licensor for such audit period, Licensee shall also reimburse Licensor for all costs and expenses incurred by Licensor in connection with such audit. In calculating costs for an

internal auditor to perform such an audit, Licensor shall bill its personnel costs incurred in performing on an hourly basis at the hourly salaried rate of the personnel performing such services multiplied by 175%. If such Audit Deficiency is 20% or more of the Royalties paid to Licensor for such audit period, then in addition to the above, Licensor may, at its sole option, immediately terminate the Agreement upon notice to Licensee.

19.3 Without prejudice to any other rights of Licensor hereunder, time is of the essence regarding all payments due hereunder and Licensee shall pay interest on any Audit Deficiency, as well as on all delinquent Royalty payments hereunder, at two percent plus the "prime rate" established by the Bank of America in San Francisco, compounded annually at the rate from time to time in effect and calculated from the date on which such payment was due.

19.4 Licensor reserves the right to verify the actual scope of use of the licensed Property and payment of full compensation through various means including auditing. Upon such demand to verify, Licensee shall cooperate in a timely manner with the Licensor and its employees, officials, agents and consultants. Licensee is hereby on notice of the legal liabilities resulting from falsifying records to avoid or decrease payments to a governmental entity such as the Licensor City of Los Angeles, under the California False Claims Act (California Government Code §§ 12650 et seq.), including treble damages, costs of legal actions to recover payments and civil penalties of up to \$10,000 per false claim (Cal. Gov. Code § 12651(a)(7)).

## 20 NON-EXCLUSIVITY.

20.1 The license granted herein is non-exclusive and subject to terms and conditions of this Agreement including but not limited to restrictions listed in Paragraph 4.

## 21 COPYRIGHTS; TRADEMARKS.

21.1 Licensee's use of the Proprietary Subject Matter shall inure exclusively to the benefit of Licensor, and Licensee shall not acquire any rights therein. Licensee recognizes the value of the goodwill associated with the Proprietary Subject Matter, and that the Proprietary Subject Matter has acquired secondary meaning in the mind of the public. Licensee agrees, during the Term and thereafter, never to contest the rights of Licensor in such Proprietary Subject Matter or the validity of the license herein granted to it. Licensee shall not at any time apply for any registration of any copyright, trademark or other designation or claim of right which would affect the ownership or rights of Licensor in and to the Proprietary Subject Matter or file any document with any governmental authority to take any action which would affect any of such ownership or rights of and to the Proprietary Subject Matter, or assist anyone else in doing so.

21.2 Licensee shall affix on all Articles and Collateral Materials the trademark and copyright notices as listed in Paragraph 12.

21.3 Licensor and Licensee shall cooperate to ensure that third parties may not unlawfully infringe on or imitate the Proprietary Subject Matter or engage in any acts of unfair competition involving the Proprietary Subject Matter. Licensee

shall promptly notify the Licensor of any such infringements, imitations, or acts by third parties that comes to its attention. Licensor shall have the exclusive right, exercisable at its discretion, to institute in its own name and/or Licensee's name and to control all actions against third parties relating to a Licensor's copyrights, trademarks, and other proprietary rights in and to the Proprietary Subject Matter, at Licensor's expense. With respect to any such actions, Licensor shall direct the handling of the litigation and any settlement thereof. Licensor shall be entitled to receive and retain all amounts awarded, if any, as damages, profits or otherwise in connection with such suits. Licensee shall not, without Licensor's prior written consent, institute any suit or take any action on account of such infringements, imitations or unauthorized uses. If, with Licensor's consent, Licensee institutes, at solely Licensee's cost and expense, such a suit or action, Licensee shall be entitled to recover all reasonable costs and expenses in such suit or action from any financial recovery finally awarded or obtained and the remainder shall be treated as Net Sales hereunder. Licensor shall incur no liability to Licensee by reason of Licensor's failure or refusal to prosecute, or by Licensor's refusal to permit Licensee to prosecute, any alleged infringement by third parties, nor by reason of any settlement to which Licensor may agree. In suit or action brought by Licensee, Licensor may, at its own costs and fees, retain its authority and discretion as required by Los Angeles City Charter Sections 272 et seq.

21.4 Licensor can withdraw any element of the Proprietary Subject Matter, or any component part thereof, from the terms of this Agreement if Licensor determines that the exploitation therefor would or might violate or infringe the copyright, trademark or other proprietary rights of third parties, or subject Licensor to any liability or violate any law, court order, government regulation or other ruling of any governmental agency, or if, on account of the expiration or sooner termination of an agreement between Licensor and a third party from whom Licensor has obtained certain underlying rights relating to the exploitation of the Proprietary Subject Matter hereunder or otherwise, Licensor shall no longer have the right to act in the capacity herein contemplated on behalf of any third party or parties, or if Licensor determines that it cannot adequately protect its rights in the Proprietary Subject Matter under the copyright, trademark or other laws of the Territory. In the event of such withdrawal, Licensee shall destroy any Articles which are in Licensee's inventory and Licensor shall indemnify Licensee for the direct production cost of such destroyed Articles; provided, however, that Licensee furnishes Licensor with (i) a detailed inventory of such Articles, (ii) source documentation supporting such direct production costs, and (iii) an affidavit of destruction, in a form acceptable to Licensor, evidencing the same.

21.5 Licensee shall not use Licensor's name, or the Proprietary Subject Matter, other than as permitted hereunder and, in particular, shall not incorporate the Licensor's name or the Proprietary Subject Matter in the Licensee's corporate or business name in any manner whatsoever. Licensee agrees that in using the Proprietary Subject Matter it will in no way represent that it has any rights, title and/or interest in or to the Proprietary Subject Matter other than those expressly granted under the terms of this Agreement. Licensee further agrees that it will not use or authorize the use, either during or after the Term, of any configuration, trademark, trade name, or other designation confusingly similar to the Proprietary Subject Matter.

## 22 INDEMNIFICATION.

22.1 Licensor shall indemnify, hold harmless, and defend Licensee and its parents, subsidiaries, affiliates, officers, directors and employees against any intellectual property infringement claims, liabilities, demands, causes of action, judgments, settlements and expenses (including, but not limited to, reasonable attorneys' fees and court costs) arising solely out of Licensee's use of the Proprietary Subject Matter in the Articles or Collateral Materials as defined (in Paragraph 24.1) and authorized hereunder; provided, however, that Licensee must notify Licensor in writing within 10 calendar days after Licensee receives notification of any claim or suit (including but not limited to any cease and desist letter, infringement notice, request or demand for royalties or to obtain license, etc.) relating to the Proprietary Subject Matter. Licensor shall undertake and control the defense and settlement of any such claim or suit and Licensee shall cooperate fully with Licensor in connection herewith. In no event shall Licensor be liable for total damages, costs and fees exceeding the total royalties it has received under this Agreement nor be liable for any consequential damages or loss of profits that Licensee may suffer arising out of same. The foregoing indemnity shall not be construed to cover any claim with respect to which Licensee has committed to indemnify Licensor under Paragraph 22.2 below.

22.2 During and after the Term hereof, Licensee shall indemnify and hold harmless, Licensor, and its respective officials, commissioners, directors, representatives, employees and agents, and all persons whose names and/or likenesses are licensed hereunder (each, an "Indemnatee" and collectively "Indemnitees") from and against any and all claims, liabilities, demands, causes of action, judgments, settlements and expenses (including, but not limited to, reasonable attorneys' fees and court costs) ("Claim") arising out of or in connection with (i) the design, manufacture, packaging, distribution, shipment, advertising, promotion, sale, or exploitation of the Articles, (ii) any breach of any representation, warranty, or covenant made by Licensee hereunder, (iii) the failure of Licensee to perform any of its covenants or obligations contained in this Agreement, or (iv) third party intellectual property infringement claims other than Claims relating to the use of the Property Subject Matter. Without limiting the generality of the foregoing, Licensee's indemnity shall specifically apply to claims relating to or based upon defects in the Articles, whether hidden or obvious, and despite Licensor's approval of the Articles, it being agreed that any governmental order of recall or injunction against distribution and/or sale shall, as between Licensee and Licensor, be deemed conclusive proof of such defect for purposes of invoking Licensee's indemnity hereunder. The foregoing indemnity shall not be construed to cover any claim with respect to which Licensor has committed to indemnify Licensee under Paragraph 22.1 above. If any Claim is initiated against any Indemnatee with respect to which such Indemnatee may make a claim against Licensee pursuant to this Paragraph 22.2, then the Indemnatee shall give prompt written notice of such Claim to the Licensee; provided, however, that the failure to so notify the Licensee shall not relieve the Licensee from any liability under this Paragraph 22.2 unless, and only to the extent that, such failure results in prejudice to or forfeiture of, substantive rights or defenses of the Licensee. Thereafter, the Indemnatee shall have the right, at its option, to require Licensee, at Licensee's own expense, to assume the defense of such Claim subject to Los Angeles City Charter Sections 272 et seq. If the Indemnatee so elects to require the Licensee to assume the defense of such Claim, (i) Licensee shall keep the Indemnatee informed of all material developments and

events relating to such Claim, (ii) the Indemnitee shall have the right to participate, at its own expense, in the defense of such Claim (but such participation shall not be deemed to give the Indemnitee the right to control such defense), (iii) the Indemnitee shall cooperate as reasonably requested by Licensee in the defense of such Claim, and (iv) Licensee shall not settle such Claim without the prior written consent of the Indemnitee, which consent shall not be unreasonably withheld. If the Indemnitee does not elect to require the Licensee to assume the defense of any such Claim, then (a) all reasonable expenses relating to the defense of such Claim shall nonetheless be borne and paid by Licensee, (b) the Indemnitee shall keep Licensee informed of all material developments and events relating to such Claim, (c) Licensee shall have the right to participate, at its own expense, in the defense of such Claim (but such participation shall not be deemed to give Licensee the right to control such defense), (d) Licensee shall cooperate as reasonably requested by the Indemnitee in the defense of such Claim, and (e) the Indemnitee shall not settle such Claim without the prior written consent of the Licensee, which consent shall not be unreasonably withheld.

**23** INSURANCE. Licensee shall at all times while this Agreement is in effect and for three (3) years thereafter, obtain and maintain at its own expense, from a qualified insurance carrier with a Best rating of "A" insurance, including, without limitation, products, personal injury, advertising, and contractual liability coverage, which includes Licensor as an additional insured, along with its subsidiaries, affiliates, officers, directors, employees, representatives and agents. The amount of coverage shall be not less than the amount specified in Paragraph 14 combined single limit (with no deductible amount) for each single occurrence. The policy shall provide for 30 days' written notice to Licensor from the insurer by registered or certified mail, return receipt requested, in the event of any modification, cancellation or termination. Upon execution of this Agreement, Licensee shall furnish Licensor with a certificate of insurance issued by the carrier evidencing the same. In no event shall Licensee manufacture, advertise, distribute or sell any Articles prior to Licensor's receipt of such certificate of insurance.

**24** ARTWORK; APPROVALS; SAMPLES; QUALITY CONTROL.

**24.1** Licensee undertakes that the Articles as well as all packaging, hang tags, labels, press releases, advertising, promotion display or other materials of any and all types prepared in connection with the Articles (collectively the "Collateral Materials") shall be of the highest standard and quality and shall ensure that all Articles and the manufacture, distribution, sale, promotion and advertisement thereof comply with all federal, state and local laws and regulations.

**24.2** Licensee shall design and manufacture at its own costs the standard package of photographs, designs, materials, and artwork, as applicable, embodying the Proprietary Subject Matter ("Artwork") for use in the Articles or in the Collateral Materials.

**24.3** Licensee shall submit to Licensor and Licensor shall have absolute approval over all artwork (whether Artwork or artwork created by Licensee and/or its designees), all Articles and all Collateral Materials at all stages of development and production. Licensee may not manufacture, use, offer for sale, sell, advertise, ship

or distribute any Articles or Collateral Materials without Licensor's prior written approval. Licensee shall, at its own cost, submit to Licensor for approval, one (1) prototype of each Article ("Prototype") and each Collateral Material and one (1) drawing, storyboard or rough cut of each Article (collectively "Preliminary Artwork"), as applicable. All such Prototypes and/or Preliminary Artwork shall be sent to: City of Los Angeles at the address identified in the Underlying Agreement. Any submission of a Prototype and/or Preliminary Artwork, which is not approved in writing by Licensor shall be deemed disapproved. Any changes required by Licensor to any such Prototypes and/or Preliminary Artwork that have been approved by Licensor, shall be made by Licensee. Thereafter, Licensee shall submit final samples of all Articles and Collateral Materials to Licensor for final approval. With respect to all such samples that have received Licensor's final approval, Licensee shall not depart therefrom in any material respect, without Licensor's prior written approval. All Articles and Collateral Materials not approved by Licensor shall be destroyed or shall have the Proprietary Subject Matter removed. Such destruction shall be attested to in a certificate signed by one of Licensee's officers.

24.4 Licensee shall furnish to Licensor, without charge, a minimum number of samples of each finished Article from the first production run, together with its Collateral Materials, as is specified in Paragraph 15. Licensor shall not sell, ship, or distribute any Articles until all such samples have been furnished to Licensor. Licensor may, periodically, but not more often than twice per calendar year, during the Term, require that Licensee submit to Licensor, without charge, up to six (6) additional samples of Articles, together with Collateral Material, for subsequent review of the quality and copyright, trademark, and other legal notices on same and for any other purpose the Licensor deems appropriate. No Royalties shall be due or payable on all finished samples furnished to Licensor.

24.5 Licensee shall allow Licensor or its representative to enter Licensee's premises and all manufacturing facilities during regular business hours, upon prior notice, for the purpose of inspecting the Articles, the Collateral Materials, and the facilities in which they are manufactured and packaged. In the event that the quality standards referred to in this Agreement are not met, Licensee shall, upon written notice from Licensor, discontinue the manufacture and distribution of such Articles and/or the Collateral Materials related thereto, unless Licensee shall have remedied such failure of quality to Licensor's satisfaction within 10 days after Licensee's receipt of notice thereof; failure to effect such remedial measures shall entitle Licensor to terminate this Agreement upon notice to Licensee.

## 25 RESERVED RIGHTS.

25.1 Licensor reserves all rights not expressly granted to Licensee hereunder.

25.2 Licensor shall not be prevented from granting third parties the right to use the Proprietary Subject Matter in any manner whatsoever, except as otherwise provided herein.

25.3 Licensee acknowledges that the license granted herein does not include any right, title, or interest in or to the Property nor to any copyrights, patents, and/or trademarks therein or associated therewith.

26 MANUFACTURE AND DISTRIBUTION.

26.1 The Proprietary Subject Matter may only be used in connection with the manufacture, actual packaging and advertising of the Articles.

26.2 Licensee shall be entitled to sublicense the right to manufacture Articles to any third party ("Supplier"), in whole or in part, with Licensor's prior written consent. Licensee represents and warrants that it shall familiarize each such Supplier with the terms and conditions of this Agreement as they apply to such Supplier. In addition, Licensee acknowledges and agrees that Licensee's use of any such Supplier shall in no way derogate from or relieve Licensee of any of its obligations under this Agreement. Licensee further acknowledges and agrees that it shall be responsible and primarily liable for all activities and obligations of all such Suppliers with respect to the Articles. Furthermore, if Licensor so requests, Licensee shall cause each such Supplier to sign an agreement with Licensee for the manufacture of the Articles, in whole or in part, in a form satisfactory to Licensor.

26.3 Without the prior written consent of Licensor, Licensee shall not commence distribution, shipment, and sale of Articles prior to the Earliest In-Store Date specified in Paragraph 10.

26.4 Licensee shall commence distribution, shipment and sale of substantial quantities of Articles no later than the Shipping Date specified in Paragraph 11.

26.5 During the Term, and subject to the terms and conditions hereof, Licensee shall (i) continue to diligently and continuously distribute, ship and sell the Articles in the Territory, and (ii) use its best efforts to make and maintain adequate arrangements for the distribution, shipment and sale necessary to meet the demand for such Articles in the Territory.

26.6 Licensee shall sell to Licensor such quantities of the Articles as Licensor shall request at as low a rate and on as favorable terms as Licensee sells similar quantities of the Articles to the general trade. Furthermore, Royalties shall be payable on all such sales.

26.7 The Proprietary Subject Matter shall not be used in conjunction with any other licensed name, character, symbol, design, likeness or literary or artistic material, except that actual representations of an Article and its packaging may be shown in advertising showing other articles sold by Licensee, provided such use is not made in a manner that may be likely to cause doubt or confusion in the minds of the public as to the ownership of the Proprietary Subject Matter, and in no event may the Articles be packaged for sale with other articles.

26.8 Upon request by Licensor and upon 10 days' prior written notice to Licensee, Licensee agrees to provide Licensor with any and all lists compiled by Licensee in connection with Licensee's marketing of the Articles hereunder of names and addresses of customers or potential customers thereof. Licensor acknowledges and agrees that it can neither provide such lists to existing licensees who have

licenses for similar products in the Territory, nor utilize such lists for its own purposes for similar articles in the Territory during the Term.

26.9 In performing this Agreement, Licensee agrees to observe and contractually bind its subcontractors and Suppliers to observe City laws and policies related to sweat-free labor, prohibition of child labor, non-discrimination, affirmative action and equal opportunity in employment.

## 27 REPRESENTATIONS AND WARRANTIES.

27.1 Licensor represents and warrants to Licensee as follows: (i) Licensor owns or controls all rights in and to the Proprietary Subject Matter; and (ii) Licensor has the full right, authority and power to enter into this Agreement and to perform all its obligations hereunder. Licensor makes no representation or warranty as to the amount of receipts Licensee will derive or as to the quality or success of the Property.

27.2 Licensee represents and warrants to Licensor as follows: (i) Licensee has full power and authority to enter into this Agreement and perform its obligations herein; and (ii) Licensee's execution, delivery, and performance of this Agreement will not infringe upon the rights of any third party or violate the provisions of any agreement to which Licensee is a party.

## 28 TERMINATION.

28.1 In addition to any and all other remedies available to it hereunder, Licensor shall have the right to immediately terminate this Agreement upon written notice to Licensee upon the occurrence of any of the following:

28.1.1 Licensee makes, sells, offers for sale, uses or distributes any Article without having the prior written approval of Licensor as specified in Paragraph 24.3 or continues to make, sell, offer for sale, use or distribute any Article after receipt of notice from Licensor withdrawing approval of same.

28.1.2 Licensee becomes subject to any voluntary or involuntary order of any government agency involving the recall of any of the Articles because of safety, health or other hazards or risks to the public.

28.2 In addition to any and all other remedies available to it hereunder, on seven (7) days' prior written notice to Licensee, Licensor may terminate this Agreement (in which case such termination shall be effective immediately upon expiration of the seven (7) day notice period), upon the occurrence of any of the following circumstances, provided that during such seven (7) day period, Licensee fails to cure the breach to Licensor's satisfaction:

28.2.1 Licensee fails to immediately discontinue the advertising, distribution or sale of Articles, which do not contain the appropriate legal legend.

28.2.2 Licensee breaches any of the provisions of this Agreement relating to the unauthorized assertion of rights in the Proprietary Subject Matter.

28.2.3 Licensee fails to make timely payment of Royalties when due or fails to make timely submission of Royalty Reports when due. However, in the event Licensee has previously been given notification and time to cure a prior breach relating to Licensee's failure to remit a Royalty payment (including royalty advances or guarantees) and/or Royalty Report when due, then Licensor may terminate this Agreement immediately upon notice to Licensee and no further time to cure need be given to Licensee by Licensor regardless of whether or not Licensee cured any prior failure or breach.

28.3 In addition to any and all other remedies available to it hereunder, on 30 days' prior written notice to Licensee, Licensor may terminate this Agreement (in which case such termination shall be effective immediately upon expiration of the 30-day notice period), upon the occurrence of any of the following circumstances, provided that during such 30 day period, Licensee fails to cure the breach to Licensor's satisfaction:

28.3.1 Licensee fails to obtain or maintain insurance as required under Paragraph 23 hereof.

28.3.2 During any calendar quarter of the Term, if Licensee fails to reasonably satisfy Paragraphs 26.4 or 26.5, Licensor may terminate this Agreement as to such Article(s) in any country in the Territory or in whole, by written notice to Licensee.

28.3.3 Licensee fails to timely submit Prototype and/or Preliminary Artwork for approval by Licensor as provided in Paragraph 24.3.

28.3.4 A petition in bankruptcy is filed by or against Licensee; Licensee is adjudicated a bankrupt or insolvent, or makes an assignment for the benefit of creditors or an arrangement pursuant to any bankruptcy law; Licensee discontinues its business; or a receiver is appointed for Licensee or Licensee's business and such receiver is not discharged within 30 days.

28.3.5 Licensee or any of its controlling shareholders, officers, directors or employees take any actions in connection with the manufacture, sale, distribution or advertising of the Articles which damages or reflects adversely upon the Licensor, the Property and/or the Proprietary Subject Matter.

28.3.6 Licensee violates any of its other obligations or breaches any of its covenants, agreements, representations or warranties hereunder.

28.3.7 Licensee becomes unable to cause the Articles be sold on the Shipping Date, if and only if the Underlying Agreement specifies that Licensee's license hereunder is exclusive. At Licensor's sole discretion, the period to cure may be extended to postpone termination under this subparagraph.

## 29 EFFECT OF TERMINATION.

29.1 On expiration or termination of this Agreement, all Royalties (including unpaid portions of the Guarantee, if any) shall be immediately due and payable without set-off of any kind and no Advance or Guarantee paid to Licensor shall be

refunded to Licensee. Termination of this Agreement, or any portions thereof, by Licensor pursuant to Paragraph 29 shall in no way reduce, proportionally or otherwise, the Guarantee required to be paid to Licensor hereunder. Ninety (90) days before the expiration of the Term, and in the event of its sooner termination, 10 business days after receipt of notice of termination, a statement showing the number and description of Articles on hand or in process shall be furnished by Licensee to Licensor. Licensor shall have the right to take a physical inventory to ascertain or verify such inventory and statement. Refusal by Licensee to submit to such physical inventory by Licensor and/or failure by Licensee to render the final statement as and when required by this provision, shall result in a forfeiture by Licensee of Licensee's right to dispose of its inventory (as provided by Paragraph 29.2 hereof), Licensor retaining all other legal and equitable rights Licensor may have in the circumstances.

29.2 On expiration of this Agreement only (as compared to an early termination pursuant to Paragraph 29), Licensee shall have a period of 90 days commencing with the expiration date, in which to sell-off (on a non-exclusive basis) Articles which are on hand or in process as of the expiration date; provided, however; (i) Licensee complies with all the terms and conditions of this Agreement, including, but not limited to, Licensee's obligation to pay Royalties on and to account to Licensor for such sales; (ii) Licensee has not manufactured Articles solely or principally for sale during the sell-off period; and (iii) Licensee has given Licensor the right of first refusal to purchase such Articles at Licensee's cost of manufacture thereof, which purchase may be of some or all such units, in Licensor's sole discretion. Licensee shall not be authorized to dispose of the excess inventory in the sell-off period to the extent that it exceeds 10% of the total number of Articles sold during the Term, without Licensor's prior written consent. During the sell-off period, Licensor may use or license the use of the Proprietary Subject Matter in any manner, at any time, anywhere in the world.

29.3 On expiration or termination of this Agreement, except as noted in Paragraph 29.2 above, Licensee shall have no further right to exercise the rights licensed hereunder or otherwise acquired in relation to this Agreement and such rights shall forthwith revert to Licensor. All Artwork and other materials supplied to Licensee by Licensor hereunder shall be immediately returned to Licensor at Licensee's expense. All remaining Articles and component parts thereof shall be destroyed and Licensee shall promptly deliver to Licensor a certificate of destruction evidencing same. Licensee agrees that (i) its failure to cease the manufacture, sale and/or distribution of Articles upon the expiration or termination of this Agreement will result in immediate and irreparable damage to Licensor, (ii) there is no adequate remedy at law for such failure and (iii) in the event of such failure, Licensor shall be entitled to injunctive relief.

30.4 Upon expiration or termination of this Agreement, (i) if the Underlying Agreement specifies that the license granted hereunder is an exclusive license, Licensor shall be free to license others to use the Proprietary Subject Matter in connection with the manufacture, sale, distribution and promotion of the Articles in the Territory (it being acknowledged that Licensor has the full and complete right so to do during the Term if the license granted is a non-exclusive License), and (ii) Licensee shall refrain from further use of the Proprietary Subject Matter or any further reference, direct or indirect, thereto or to anything deemed by Licensor to be similar to the Proprietary Subject Matter, in connection with the manufacture, sale,

distribution or promotion of Licensee's products except as permitted in Paragraph 29.2 above. It shall not be a violation of any right of Licensee if Licensor should at any time during the Term enter into negotiations with another to license use of the Proprietary Subject Matter in respect to the Articles within the Territory provided that, in the event that the license granted to Licensee hereunder is an exclusive license, it is contemplated that such prospective license shall commence after termination of the Agreement.

30 **NOTICES.** All notices, demands, contracts or waivers hereunder shall be given in writing by mail, messenger, overnight air courier or fax addressed as indicated in the Underlying Agreement or as otherwise indicated in writing by a party hereto. The date of messengering or faxing shall be deemed to be the date of service. Three (3) business days from the date of mailing shall be deemed to be the date of service for mailed notices. One (1) business day from the date of overnight air courier handling shall be deemed to be the date of service for courier handled notices.

31 **NO MODIFICATION; WAIVER.** The terms of this Agreement shall not be modified except by an agreement in writing signed by both parties hereto. No waiver by either party of a breach or default hereunder shall be deemed a waiver by such party of a subsequent breach or default of a like or similar nature.

32 **ENTIRE AGREEMENT.** This Agreement shall constitute the entire understanding of the parties with respect to the subject matter, superseding all prior and contemporaneous promises, agreements and understandings, whether written or oral pertaining thereto.

33 **RELATIONSHIP OF THE PARTIES.** This Agreement does not appoint either party as the agent of the other party, or create a partnership of joint venture between the parties.

34 **GOVERNING LAW.** This Agreement shall be construed and interpreted pursuant to the laws of the State of California, and the parties hereto submit and consent to the jurisdiction of the courts of the State of California, including Federal Courts located therein, should Federal jurisdiction requirements exist, in any action brought to enforce (or otherwise relating to) this Agreement. Notwithstanding the preceding sentence, nothing contained in this Agreement shall preclude Licensor from bringing an action in any appropriate forum to enforce the terms and provisions of this Agreement. Licensee hereby consents to the exclusive jurisdiction of any State or Federal court empowered to enforce this Agreement in the State of California, Los Angeles County, and waives any objection thereto on the basis of personal jurisdiction or venue.

35 **SEVERABILITY.** If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, such decision shall not affect the validity or enforceability of any of the remaining provisions, which remaining provisions shall continue to have full force and effect.

36 **CONFIDENTIALITY.** Other than as may be required by any applicable law, government order or regulation, or by order or decree of any court of competent jurisdiction, Licensee shall refrain from publicly divulging or announcing, or in any

manner disclosing to any third party, any information or matters revealed to Licensee pursuant hereto or during negotiation, or any of the specific terms and conditions (including but not limited to Royalty Rates, Advances, Guarantees and Net Sales of Articles) of this Agreement. Licensee, however, understands that Licensor is a public entity and this Agreement might be made public as required by applicable law.

37 COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same Agreement.

38 FURTHER ASSURANCES. The parties hereto shall execute such further documents and perform such further acts as may be necessary to comply with the terms of this Agreement and consummate the transactions herein provided.

39 ATTORNEYS' FEES. If Licensor successfully brings any legal action or proceeding to enforce this Agreement, Licensor shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

40 HEADINGS. The headings contained in this Agreement are for convenience and reference purposes only. They do not form a part hereof and shall not affect the meaning or interpretation of this Agreement.

41 ASSIGNMENT. Licensee's rights and obligations hereunder are personal to Licensee and shall not be sublicensed, assigned, mortgaged or otherwise transferred or encumbered by Licensee or by operation of law unless otherwise previously agreed in writing by Licensor. In the event of any such assignment, Licensee shall pay the Royalties and the Guarantee due hereunder as directed by Licensor. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of Licensor.

42 EQUITABLE REMEDIES. Licensee acknowledges that its failure to perform any of the material terms or conditions of this Agreement shall result in immediate and irreparable damage to Licensor. Licensee also acknowledges that there may be no adequate remedy at all for such failures and that in the event thereof, Licensor shall be entitled to equitable relief in the nature of an injunction and to all other available relief, at law or in equity.

43 END OF STANDARD TERMS AND CONDITIONS.

**EXHIBIT "B"**  
**CITY OF LOS ANGELES MERCHANDISE LICENSE AGREEMENT**  
**TRADEMARKS AND COPYRIGHTED WORKS**

"Proprietary Subject Matter" used in Paragraph 3 is defined as:

1. The City Seal of the City of Los Angeles,



END OF EXHIBIT "B"