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**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>MOVIE GALLERY, INC., <u>et al.</u>,</b>	)	<b>Case No. 07-33849 (DOT)</b>
	)	
<b>Debtors.</b>	)	<b>(Jointly Administered)</b>
	)	

**OBJECTION OF THE MACERICH COMPANY, REEF MANAGEMENT COMPANY, WEST VALLEY PROPERTIES, WESTWOOD FINANCIAL CORPORATION, WATT MANAGEMENT COMPANY, SYWEST DEVELOPMENT, PRIMESTOR LOS JARDINES, LLC, J.H. SNYDER COMPANY, SOL HOFF COMPANY, LLC, AND BEVERLY WILCOX PROPERTIES, LLC TO THE MOTION OF THE DEBTORS FOR INTERIM AND FINAL ORDERS PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364(C), 364(D) AND 364(E) AND FED. R. BANKR. P. 4001 AND 9014 (I) AUTHORIZING DEBTORS TO OBTAIN SECURED POSTPETITION FINANCING ON SUPER-PRIORITY PRIMING LIEN BASIS, GRANTING ADEQUATE PROTECTION FOR PRIMING AND MODIFYING THE AUTOMATIC STAY, (II) AUTHORIZING DEBTORS TO USE CASH COLLATERAL OF EXISTING SECURED LENDERS AND GRANTING ADEQUATE PROTECTION FOR USE, (III) AUTHORIZING DEBTORS TO REPAY EXISTING REVOLVED INDEBTEDNESS UPON INTERIM APPROVAL AND (IV) PRESCRIBING FORM AND MANNER OF NOTICE AND SETTING THE TIME FOR THE FINAL HEARING**



The Macerich Company, RREEF Management Company, West Valley Properties, Westwood Financial Corporation, Watt Management Company, Sywest Development, Primestor Los Jardines, LLC, J.H. Snyder Company, Sol Hoff Company, LLC, and Beverly Wilcox Properties, LLC (the “Landlords”) hereby file their limited objection (The “Limited Objection”) to the Motion Of The Debtors For Interim And Final Orders Pursuant To 11 U.S.C. §§ 105, 361, 362, 363, 364(c), 364(d) And 364(e) And Fed. R. Bankr. P. 4001 And 9014 (I) Authorizing Debtors To Obtain Secured Postpetition Financing On Super-Priority Priming Lien Basis, Granting Adequate Protection For Priming And Modifying The Automatic Stay, (II) Authorizing Debtors To Use Cash Collateral Of Existing Secured Lenders And Granting Adequate Protection For Use, (III) Authorizing Debtors To Repay Existing Revolved Indebtedness Upon Interim Approval And (IV) Prescribing Form And Manner Of Notice And Setting The Time For The Final Hearing (the “Financing Motion”),<sup>1</sup> and respectfully represent as follows:

## **I. INTRODUCTION**

The Debtors’ attempt to secure liens against nonresidential real property leases – where the leases prohibit or restrict such liens – is invalid and improperly compromises contractual and Bankruptcy Code protections afforded to Landlords. The Bankruptcy Code does not render prohibitions or restrictions against encumbering leases unenforceable. Moreover, vitiating the legitimate protections created by the negotiated terms of the Debtors’ leases, state law, and the Bankruptcy Code, compromises the integrity of Landlords’ control over their spaces, their ability to market their properties, and risks defaults of the Landlords’ own financing and investment covenants. While the Landlords do not object to the Debtors’ granting an indirect lien solely on the proceeds of any sale or other disposition of the Leases (as defined below), this Court should modify any Final DIP Order to exclude the Leases from the Collateral.

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<sup>1</sup> Terms not otherwise defined herein shall have the meanings ascribed to them in the Financing Motion or Interim Order.

## **II. BACKGROUND FACTS**

1. Movie Gallery, Inc. and its affiliated Debtor entities (the “Debtors”)<sup>2</sup> filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code on October 16, 2007. The Debtors have continued to operate their businesses and manage their properties as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.<sup>3</sup>

2. Landlords are the owners or managing agents of numerous shopping centers (the “Centers”) throughout the United States wherein Debtors continue operates their retail stores (the “Premises”) pursuant to nonresidential real property leases (the “Leases”). The specific Landlord and location for each Lease subject to this Limited Objection is set forth in Exhibit “A” and is incorporated herein by this reference.

3. Most, if not all, of the Leases are leases “of real property in a shopping center” as that term is used in Section 365(b)(3). See In re Joshua Slocum, Ltd., 922 F.2d 1081, 1086-1087 (3rd Cir. 1990).

4. The Debtors filed the Financing Motion on October 16, 2007. On October 16, 2007, the Court also entered its interim order (the “Interim Order”) approving the Financing Motion on an interim basis.

5. The Landlords object to any attempt to mortgage, encumber, hypothecate, or otherwise pledge the Leases. Such request violates the terms of the Leases, which prohibit the Debtors from unilaterally encumbering the Leases and the Premises. In addition, there is no authority under the Bankruptcy Code to render these legitimate lease provisions invalid or unenforceable. To the extent that the Debtors and the DIP Lenders agree to exclude the Leases from the Collateral, the Landlords will withdraw this Limited Objection.

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<sup>2</sup> In addition to Movie Gallery, Inc., the Debtors include the following entities: Hollywood Entertainment Corporation; M.G. Digital, LLC; M.G.A. Realty I, LLC; MG Automation LLC; and Movie Gallery US, LLC.

<sup>3</sup> Unless otherwise specified, all statutory “Section” references are to 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”).

### **III. ARGUMENT**

#### **A. The Bankruptcy Code does not render invalid lease provisions that prohibit or restrict pledging, encumbering or otherwise hypothecating the Leases.**

6. The Debtors are seeking authority to encumber substantially all of their assets, including their interest in “now owned or hereafter acquired real and personal property, including but not limited to leasehold interests. . .” *See* Interim Order at ¶ 9; *see also* Financing Motion at ¶ 25(n). Moreover, the Interim Order renders unenforceable “any provision that restricts, limits or impairs in any way any Debtor’s ability or right to grant liens or security interest upon any of the Collateral. . .” *See* Interim Order at ¶ 12. The Debtors do not identify the provisions they claim are unenforceable and provide no support for the Bankruptcy Code rendering these terms unenforceable. Neither the Leases nor the Bankruptcy Code support such wholesale voiding of Landlords’ state law contractual rights and such language should not be included in any Final DIP Order.

7. The Leases contain specific and bargained-for language that prohibit or restrict the Debtors’ ability to grant a lien in the Leases and the Premises.<sup>4</sup> The pledge of the Leases as collateral would effectively strike the “anti-pledging” language of the Leases, or at the least, force this Court to deem the language inconsistent with the provisions of the Bankruptcy Code vis-à-vis the Debtors’ request for financing. Granting the Debtors’ request requires this Court to ignore these specific prohibitions, negotiated at arms-length, and which are enforceable under state law.

8. Provisions that restrict the ability to encumber leases are critical to Landlords’ ability to control their property, to comply with their own financing and investment covenants, and any compromise of these provisions detracts from the marketability of the Landlords’ property.

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<sup>4</sup> Counsel for the Landlords represents numerous locations. Providing the Leases, or even those provisions prohibiting and/or restricting pledging or encumbering each Lease would be overly voluminous and would far exceed the length of this Limited Objection. For that reason, the Landlords have not included the Leases with this Limited Objection, and instead have provided excerpted portions of a Lease that is representative of the Leases as Exhibit B hereto, which is incorporated herein by this reference. Landlords will have complete copies of the Leases available for the Court and interested parties at the Final Hearing.

9. Given the sweeping remedies granted to the DIP Lenders under the financing documents, in the event that the Debtors default under their obligations to the DIP Lenders, a grant of a security interest in the Leases, and any attendant exercise of remedies following a default, creates a de facto assignment of the Leases. There is no authority for the proposition that such an assignment (under the guise of pledging the Leases as collateral), independent of the safeguards of Sections 365(b)(3) and (f)(2), is permissible.<sup>5</sup>

10. The DIP Lenders are not in the business of operating retail video stores, and they do not (and likely would not) assert that they can comply with the material operating provisions contained in the Leases. This Court must not allow the Debtors to jettison the anti-pledging restrictions of the Leases, while enjoying the benefits of continued use of the properties during the course of their reorganization efforts. The Leases' provisions controlling the transfer of an interest in the Leases are material, negotiated at arms-length, and enforceable under the Bankruptcy Code.

11. A provision that restricts the Debtors' ability to pledge the Leases as collateral is not an anti-assignment provision and is not contrary to any bankruptcy policy. Rather, it is a reasonable restriction that allows Landlords to preserve clear title to their Leases. As a result, Landlords object to any encumbrance, lien, hypothecation or other pledge the Leases, and Landlord request this Court exclude the Leases from the DIP Lenders' Collateral and that Paragraph 12 be stricken from the Final DIP Order.

**B. The DIP Lenders do not need a security interest in the Leases to protect their interests.**

12. Prior to filing for bankruptcy protection, the Debtors did not encumber the Leases because such a lien is prohibited by the Leases. There is no legitimate reason to now grant the

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<sup>5</sup> Because these are shopping center leases, the Debtors must comply with the heightened protections granted to shopping centers landlords in connection with any such transfer of an interest in the Leases. Therefore, section 365(b)(3) (applicable to an assignment of a lease through Section 365(f)) applies, and any assignment of the Lease requires compliance with the special adequate assurance of future performance protections set forth in Sections 365(b)(3)(A) - (D). 11 U.S.C. § 365(b)(3).

DIP Lenders (non-debtor parties) a lien that violates the Leases where no such right existed under state law and no such liens existed pre-petition. Nothing in the Bankruptcy Code gives the DIP Lenders such rights where they did not exist pre-petition.

13. Moreover, DIP Lenders do not need a security interest in the Leases in order to liquidate their collateral should the Debtors default. All rights to realize upon the Collateral are preserved through both the Bankruptcy Court and state law remedies, none of which contemplate granting DIP Lenders a lien or other possessory right in the Landlords' property.

14. The Premises are owned by the Landlords, not the Debtors. The DIP Lenders have no right or need to force Landlords to relinquish control over the Premises to the DIP Lenders or accept a cloud to the Landlords' title to the Leases. The value in the Leases to the Debtors (and the DIP Lenders) is that which may be realized from their proceeds in a sale or other disposition of the leasehold interest. Granting a security interest in the Leases – even if it were not specifically prohibited by the Leases – serves no economic purpose, and should not be a component of any post-petition financing.

**C. The Court should limit any remedies that the DIP Lenders may exercise with respect to the Collateral at the Premises in accordance with the protections provided to Landlords in the Lease and Bankruptcy Code.**

15. The Interim Order and other financing documents provide the DIP Lenders with sweeping relief from the automatic stay to proceed against the Collateral upon an Event of Default, and upon five (5) business days' notice. *See* Interim Order at ¶¶ 15 - 17. The remedies contemplated by the Interim Order contain several provisions that offend the rights of Landlords, and for which Landlords believe no authority exists under the Bankruptcy Code.

16. The remedies afforded to the DIP Lenders in the event of a default by the Debtors are extreme. In the event of a default by the Debtors, DIP Lenders are granted relief from the automatic stay to take “any and all actions or remedies which DIP Lenders may deem appropriate to proceed against and realize upon the Collateral” upon five (5) business days notice to the Debtors' Counsel, counsel to the Committee, counsel to the Existing First Lien Agents, any trustee of the Debtors, if any, and the U.S. Trustee. *See* Interim Order at ¶ 15. While the

Interim Order provides notice to the Landlords in the event of an intent to enter onto the Premises, Landlords should receive notice of any default that may impact the Premises or the Leases. Notwithstanding Landlords' objection that any such control is prohibited by the Leases, it is critical that DIP Lenders provide notice to Landlords prior to DIP Lenders taking any action with respect to Collateral located at the Premises.

17. With respect to leasehold interests, the Interim Order permits the DIP Lenders:

to file and pursue. . .any motion or other appropriate pleading with this Court seeking the assumption, assignment or rejection of such of the leases with respect to the leasehold property as DIP Lenders shall specify and in the case of the assignment, assigned to such person or other entity as DIP Lenders shall specify and any such assignment shall be on the terms and conditions as are acceptable to DIP Lenders and subject to (i) higher and better offers to the extent required under Section 363 of the Bankruptcy Code and (ii) the affected lessor's rights under the applicable lease (to the extent such rights are enforceable or effective under Section 365 of the Bankruptcy Code) and the Bankruptcy Code.

*See* Interim Order at ¶ 16.

18. The language of Paragraph 16 provides the DIP Lenders with unfettered designation rights to seek the assumption, assumption and assignment, or reject of any of the Leases. The granting of designation rights through a financing order is excessive and inappropriate. Any grant of designation rights should be pursuant to a noticed motion and provide Landlords a meaningful opportunity to object and protect their interests. Furthermore, any eventual request to assume and assign the Leases must comply with the terms of the individual Lease and all the protections set forth in Section 365, including Section 365(b). Trak Auto Corp. v. West Town Ctr. LLC (In re Trak Auto Corp.), 367 F.3d 237, 243-44 (4th Cir. 2004).

19. Finally, the proposed relief allows DIP Lenders to enter upon, occupy, use and control any of the Debtors' personal property and leased property irrespective of contrary provisions in the Leases, or in state or local laws, as follows:

(b) Upon the acceleration of the Obligations following an Event of Default. . .[the] DIP Lenders. . .shall have the right. . .to: (i) enter upon, occupy and use any personal property, fixtures and equipment owned or leased by the Debtors. . .

Such DIP Lenders will be responsible for the payment of any applicable fees, rentals, royalties or other amounts due such lessor, licensor or owner of such property for the period of time that such DIP Lenders actually use the equipment or the intellectual property (but in no event for any accrued and unpaid fees, rentals or other amounts due for any period prior to the date that such dip lenders actually occupy or use such assets or properties; and

(c) Upon the acceleration of the Obligations following an Event of Default. . .[the] DIP Lenders. . .[upon] five (5) business days notice to any Debtor's real property lessor of DIP Lenders' intention to enter onto or into such lessor's leased premises to remove or otherwise dispose of any Collateral located at such leased premises in accordance with the terms of this paragraph, DIP Lenders shall have the right, following the expiration of such five (5) business days notice period described in this paragraph, to enter onto or into such leased premises for the purposes of removing the Collateral from the leased premises or selling such Collateral at the leased premises, in each case subject to the applicable terms of such Debtor's lease arrangement with such lessor to the extent enforceable or effective under the Bankruptcy Code and subject to the rights of the DIP Lenders provided for herein.

*See* Interim Order at ¶ 17(b) & (c).

20. The DIP Lenders request authority to enter onto the Centers for unspecified purposes, and for an indeterminate amount of time, exposing the Landlords and the Centers to unnecessary prejudice. The DIP Lenders are not parties to the Leases and have no rights to occupy and use Debtors' property. If this Court is inclined to grant any ability to enter onto the Premises, it should be specifically circumscribed as follows:

- Only after ten (10) days written notice to the affected Landlord;
- For the limited purpose of collecting and removing the Collateral;
- Pursuant to a written agreement on terms acceptable to the Landlords and in accordance with the Leases;
- DIP Lenders, their agents, or any entering party must provide Landlords with a certificate of insurance with respect to such entry, which certificate shall list the respective Landlord as an additional named insured co-insured, which insurance covers both personal injury and property damage;
- DIP Lenders are subject to any provision of the Leases regarding re-imbursement and/or indemnification of the Landlords; and
- Access to the Premises shall be limited to a period not to exceed thirty (30) days.

21. As stated above, the Debtors do not own the Premises and the Leases explicitly prohibits or restrict this attempted usurpation of Landlords' property rights. The Landlords



provide Debtors a right to occupy certain space in the Centers which is specifically circumscribed by the terms of the Leases. Debtors possess no right to use the Premises beyond those rights granted within the Leases. The DIP Lenders are not a party to the Leases and have no possessory right to the Premises.

22. To the extent that a liquidation of the Collateral would include any attempt to conduct any sale at the Premises, such use or sales are governed by the Leases, and the Debtors and any assignee (including a foreclosing lender) are bound by the terms of the Leases. *See* 11 U.S.C. §§ 365(b)(3) and (d)(3). Only the Bankruptcy Court can authorize the Debtors to conduct such sale, and it may do so only after carefully weighing the competing interests of the landlords and the debtor-tenant through a separate motion by the Debtors. *See, e.g., In re Ames Department Stores, Inc.*, 136 B.R. 357 (Bankr. S.D.N.Y. 1992). The wholesale disregard of the terms of the Leases contemplated by the Financing Motion and Interim Order is simply not supportable by the Bankruptcy Code or any caselaw. The Debtors have not, and cannot, justify exempting the DIP Lenders from the restrictions in the Leases, or the explicit requirements of the Bankruptcy Code.

23. Finally, the DIP Lenders must bear full financial responsibility not only for all charges arising under the Leases going forward, but also for prior unpaid rent or other charges for any limited access to the Premises. To the extent the DIP Lenders seek authority to essentially step into the shoes of the Debtors following a default, there is no reason to allow the DIP Lenders to exercise rights which would otherwise be prohibited by the Leases and “assume” the Leases for an indeterminate period of time without being held to cure outstanding post-petition defaults. The DIP Lenders should not, on the one hand, receive a superpriority administrative claim, and on the other hand be relieved from liability for the Debtors’ failure to remain current on post-petition rent obligations while the DIP Lenders attempt to realize upon their collateral. This result compels Landlords to continue to suffer as involuntary post-petition creditors, the very result that Section 365(d)(3) was intended to counteract. *See In re Warehouse Club, Inc.*, 184 B.R. 316, 318 (Bankr. N.D. Ill. 1994).

24. In addition to the foregoing, and to the extent not inconsistent with the relief sought here, the Landlords also join in the objection(s) of other real property lessors to the relief proposed by the Financing Motion, Interim Order, and any Final DIP Order.

#### **IV. CONCLUSION**

The Debtors provide no authority for, and demonstrate no necessity, to disregard the terms of the Leases and the protections granted Landlords under the Bankruptcy Code. Landlords did not create Debtors' financial maladies, and should not bear the consequences of this bankruptcy through loss of their contractual rights. The Court should limit any lien in favor of the DIP Lenders to only the proceeds obtained through the sale or other disposition of the Leases, and grant such other and further relief that it deems just and proper.

Dated: October 30, 2007

**BALLARD SPAHR ANDREWS & INGERSOLL, LLP**

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**EXHIBIT A**  
**REAL PROPERTY LEASES**

THE MACERICH COMPANY	
Lakewood Center	Lakewood, CA
Queens Center Expansion	Elmhurst, N.Y.
Chandler Fashion Center	Chandler, AZ
Washington Square	Portland, OR
RREEF MANAGEMENT COMPANY	
Brownstones	Brookfield, WI
Highlands Ranch	Flower Mount, TX
Potomac Yard	Alexandria, VA
Gateway Centre	Chicago, IL
Evergreen Village Shopping Center	Bellview, WA
WATT MANAGEMENT COMPANY	
Compton Town Center	Compton, CA
Van Nuys	Van Nuys, CA
WESTWOOD FINANCIAL CORPORATION	
Bobier & Santa Fe	Vista, CA
Illinois & El Cajon	San Diego, CA
Indian School & 19th	Phoenix, AZ
Magnolia Vineland	North Hollywood, CA
SYWEST DEVELOPMENT	
Pinole Ridge Shopping Center	Pinole, CA
Fruitvale Shopping Center	Oakland, CA
Union Landing Shopping Center	Union City, CA

WEST VALLEY PROPERTIES	
The Promenade	Modesto, CA
PRIMESTOR LOS JARDINES, LLC	
Los Jardines Shopping Center	Bell Gardens, CA
J.H. SNYDER COMPANY	
Downey Marketplace	Downey, CA
SOL HOFF COMPANY, LLC	
6350 McIntock	Tempe, AZ
BEVERLY WILCOX PROPERTIES, LLC	
2200 W. Beverly Blvd.	Montebello, CA

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of October, 2007, the foregoing Objection was filed with the Clerk of the Court using the Court's CM/ECF system and served electronically or via First-Class mail, postage prepaid, upon the persons required to be served pursuant to the Case Management Order entered in this case:

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Lynn L. Tavenner Paula S. Beran TAVENNER & BERAN PLC 20 N. Eighth Street, 2nd Fl. Richmond, VA 23219 <a href="mailto:Ltavenner@tb-lawfirm.com">Ltavenner@tb-lawfirm.com</a> <a href="mailto:pberan@tb-lawfirm.com">pberan@tb-lawfirm.com</a>	Richard T. Davis The Cafaro Company 2445 Belmont Avenue P.O. Box 2186 Youngstown, OH 44504-0186	Twentieth Century Fox Home Entertainment Attn: Al Leonard, Credit Manager 2121 Avenue of the Stars, Rm. 2500 Los Angeles, CA 90067
Twentieth Center Fox Home Entertainment LLC Attn: Dennis Franks, Esq. 2121 Avenue of the Stars, Rm. 1453 Los Angeles, CA 90067	Universal Studios John Roussey 100 Universal City Plaza 1140/6 Universal City, CA 91608	US Bank Corporate Trust Services Attn: Jack Ellerin EX GA ATPT 1349 Peachtree Street, Ste. 1050 Atlanta, GA 30309
US Bank National Assoc as Indentured Trustee Attn: Laura L. Moran, VP One Federal Street, 3rd Fl. Boston, MA 02110	Kristen E. Burgers Lawrence A. Katz VENABLE LLP 8010 Towers Crescent Drive Suite 300 Vienna, VA 22182-2707	Weingarten Realty Investors Attn: Amy P. Cole 2600 Citadel Plaza Drive Houston, TX 77008
Brad Godshall Robert B. Orgel James I. Stang PACHULSKI STANG ZIEHL & JONES LLP 10100 Santa Monica Boulevard Suite 1100 Los Angeles, CA 90067 <a href="mailto:bgodshall@pszjlaw.com">bgodshall@pszjlaw.com</a> <a href="mailto:rorgel@pszjlaw.com">rorgel@pszjlaw.com</a> <a href="mailto:jstang@pszjlaw.com">jstang@pszjlaw.com</a>	William H. Schwarzschild III WILLIAMS MULLEN Two James Center 1021 E. Cary Street P.O. Box 1320 Richmond, VA 23218-1320 <a href="mailto:tschwarz@williamsmullen.com">tschwarz@williamsmullen.com</a>	Brian F. Kenney MILES & STOCKBRIDGE 1751 Pinnacle Drive, Suite 500 McLean, VA 22102-3833 <a href="mailto:bkenney@milesstockbridge.com">bkenney@milesstockbridge.com</a>
Robert J. Feinstein PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 36th Fl. New York, NY 10017 <a href="mailto:rfeinstein@pszjlaw.com">rfeinstein@pszjlaw.com</a>		

/s/ Charles W. Chotvacs  
Charles W. Chotvacs



## LEASE

THIS LEASE (the "Lease") is made and entered into and is effective as of the 30<sup>th</sup> day of December, 1997, by and between COMPTON COMMERCIAL REDEVELOPMENT COMPANY, a California limited partnership and/or its assigns (hereinafter referred to as "Landlord"), and HOLLYWOOD ENTERTAINMENT CORPORATION, an Oregon corporation (hereinafter referred to as "Tenant").

### RECITALS:

- A. Landlord desires to lease certain property to Tenant, as more fully set forth herein, and Tenant desires to take and lease such property from Landlord, which property is more fully described below (as defined hereinbelow and hereinafter referred to as the "Premises").
- B. The Premises are shown cross-hatched on the Site Plan attached hereto and made a part hereof as Exhibit A-3. The address of the Premises is attached hereto and made a part hereof as Exhibit A-1.
- C. The Premises are an integral part of that certain retail center ("Shopping Center") situated in the City of Compton, California, and commonly known as "Compton Town Center." The Shopping Center contains certain additional lots and parcels of real property, and improvements thereon, which are not owned or controlled by Landlord. The real property where Ralph's, Sav-on and Burger King are located as marked on Exhibit A-3 is not owned by Landlord.
- D. The Shopping Center is described in the legal description attached hereto and made a part hereof as Exhibit A-2. The Shopping Center, as the same now exists, is depicted on Exhibit A-3 (herein referred to as the "Site Plan").

NOW, THEREFORE, for and in consideration of the rents reserved hereunder and the terms and conditions hereof, Landlord hereby rents, demises and leases to Tenant, and Tenant takes and leases from Landlord, the above-described Premises all upon the following terms and conditions:

### 1. BASIC LEASE PROVISIONS AND ENUMERATION OF EXHIBITS.

#### 1.1 Basic Lease Provisions.

- (a) Landlord: Compton Commercial Redevelopment Company,  
a California limited partnership  
  
Address of Landlord: 2716 Ocean Park #3040  
Santa Monica, California 90405  
Attention: Rebecca May  
Telephone: (310) 314-2549  
Federal Tax I.D. #: 95-3700140
- (b) Tenant: Hollywood Entertainment Corporation,  
an Oregon corporation  
  
Address of Tenant: 25600 S.W. Parkway Center Drive  
Wilsonville, Oregon 97070  
Attention: Donald J. Ekman, Esq.  
Telephone: (503) 570-1600

the completeness, accuracy, design sufficiency, or compliance of such plans or specifications with laws, ordinances, rules, and/or regulations of any governmental agency or authority. Tenant will provide Landlord with working drawings for Landlord's files.

**12. LIENS AND ENCUMBRANCES.**

**12.1 Liens.** Tenant shall keep the Premises and the Shopping Center in which the Premises are situated free from any liens arising out of any work performed, materials furnished, or obligations incurred by Tenant. Tenant retains the right to contest any lien or encumbrance upon the Premises provided that Tenant complies with all statutory obligations required to contest such liens. Landlord shall also keep the Premises and the Shopping Center free from any liens arising out of any work performed, materials furnished, or obligations incurred by Landlord.

**12.2 Encumbrances.** Tenant shall not cause or suffer to be placed, filed, or recorded against the title to the Premises or the Shopping Center in which the Premises are located, or any part thereof, any mortgage, deed of trust, security agreement, financing statement, or other encumbrance except for the Confirmation of Lease Terms; and further, in no event shall the lien of Tenant's mortgage, deed of trust, or other security agreement or financing statement cover the Premises or the Shopping Center, or any part thereof, nor any leasehold improvements, alterations, additions, or improvements thereto except trade fixtures, appliances, and equipment which are owned by Tenant and which are not, and which do not become, a part of the Premises.

**13. ASSIGNMENT AND SUBLETTING.**

**13.1 Landlord's Consent Required.** Except in the case of an Automatic Consent as defined below, Tenant shall not assign, transfer, mortgage, pledge, hypothecate, or encumber this Lease or any interest therein, nor sublet the whole or any part of the Premises, collectively "Assignment," without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Without in any way limiting Landlord's right to refuse to give such consent for any other reason or reasons, Landlord reserves the right to refuse to give such consent if, in Landlord's reasonable business judgment, the proposed assignee's or subtenant's use of the Premises would mean that Hazardous Substances, as defined in Section 29.1 below, would be present on the Premises. In the event Landlord does not consent to an Assignment by Tenant, Landlord shall provide Tenant with a reasonably detailed written explanation as to the reasons for withholding such consent. Landlord's consent to such Assignment to an assignee whose tangible net worth equals or exceeds FIVE MILLION DOLLARS (\$5,000,000), as determined in accordance with generally acceptable accounting principles, shall serve to release Tenant of all further liability under the Lease.

**13.2 Automatic Consent.** In the event Tenant elects to initiate an Assignment of the Lease, Tenant shall provide Landlord with a written notice of such Assignment and the intended use of the Premises. If Tenant provides in such notice that Tenant shall remain liable for the full and complete performance of the terms and conditions of the Lease to be performed by the assignee and there is no conflict in the proposed use with an exclusive use that Landlord has granted to then existing tenants within the Shopping Center or any then current use of any existing tenant or owner, Landlord shall be deemed to have unconditionally given its consent to such Assignment ("Automatic Consent") and no further action or notice shall be required by either Landlord or Tenant.

**13.3 No Assignment.** The sale or exchange of Tenant's stock in a public offering and the subsequent sale of Tenant's stock on a nationally recognized exchange or in NASDAQ, a change in ownership of Tenant as a result of a merger, consolidation, reorganization, joint venture, the exchange of stock between Tenant's parent company or a subsidiary or the sale of all or substantially all of Tenant's stock or the sale of all or substantially all of Tenant's assets shall not be considered an Assignment under this Section 13. Tenant shall not be required to obtain Landlord's consent and Landlord shall have no right to delay, alter or impede any of the foregoing transactions or combinations thereof.

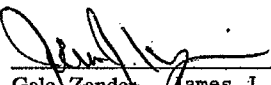
IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date and year first set forth above.

**LANDLORD:**

**COMPTON COMMERCIAL  
REDEVELOPMENT CORPORATION,**  
a California limited partnership

By: JS & W Associates, L.P.,  
a California limited partnership,  
its general partner

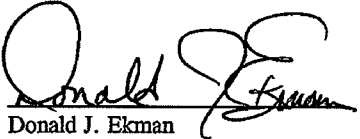
By: Watt Family Properties, Inc.,  
a California corporation,  
its general partner

By:   
~~Gale Zander~~ James J. Maginn  
~~Vice President~~ President

Date: 12/29/97

**TENANT:**

**HOLLYWOOD ENTERTAINMENT  
CORPORATION,** an Oregon corporation

By:   
Donald J. Ekman  
Senior Vice President and  
General Counsel

Date: 12/29/97