

ORDINANCE NO. 28987

An ordinance granting a revocable license to Radiant Outdoor, LLC, to occupy, maintain, and utilize portions of Pacific Avenue right-of-way located near the intersection of Pacific Avenue and Griffin Street adjacent to City Block 53 within the limits hereinafter more fully described, for the purpose of installing and maintaining 12 lights that illuminate a supergraphic facade; providing for the terms and conditions of this license; providing for the annual compensation to be paid to the City of Dallas; providing for payment of the publication fee; and providing an effective date of this license and ordinance.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:**

**SECTION 1.** That a revocable license, hereinafter referred to as "license", subject to the restrictions and conditions of this ordinance, is hereby granted to Radiant Outdoor, LLC, a Texas limited liability company, its successors and assigns, hereinafter referred to as "**GRANTEE**" to occupy, maintain, and utilize for the purpose set out hereinbelow the tracts of land described in Exhibit A, hereinafter referred to as "licensed area" which is attached hereto and made a part hereof.

**SECTION 2.** That this license is granted for a term of eight (8) years, unless sooner terminated according to other terms and provisions herein contained.

**SECTION 3.** That **GRANTEE** shall pay to the City of Dallas the sum of **ONE THOUSAND SEVEN HUNDRED SEVENTEEN AND NO/100 (\$1,717.00) DOLLARS** annually for the license herein granted, said sum to become due and payable on the 2nd day of January each year, in advance, during the term hereof; provided, however, that the first payment due hereunder in the sum of **ONE THOUSAND SEVEN HUNDRED SEVENTEEN AND NO/100 (\$1,717.00) DOLLARS** shall become due and payable upon the final passage of this ordinance and shall cover the consideration for 2013. Such consideration shall be in addition to and exclusive of any other taxes or special assessments required by law to be paid by **GRANTEE**. Should **GRANTEE** fail to pay the above stated annual fee within sixty (60) days of the due date, the Director of Department of Sustainable Development and Construction may terminate this license.

All sums payable to the City of Dallas hereunder shall be paid to the City Controller of the City of Dallas and deposited in Fund 0001, Department DEV, Unit 1181, Revenue Source 8200. In the event **GRANTEE's** check for the license fee is dishonored, **GRANTEE** shall pay to the City a processing fee of \$25.00 for each dishonored check. Additionally, all monies owed to the City under this license shall be subject to the assessment of interest at a rate of 10% a year from the day after any monies become due until it is paid in full, in accordance with Section 2-1.1 of the Dallas City Code.

**SECTION 4.** That the licensed area shall be used by **GRANTEE** for the following purpose under the direction of the Director of Department of Sustainable Development and Construction of the City of Dallas: install, maintain, and use 12 lights that illuminate a supergraphic facade.

**SECTION 5.** That this license is subject to the provisions set forth in EXHIBIT B, attached hereto and made a part hereof.

**SECTION 6.** That this license is nonexclusive and is made expressly subject and subordinate to the right of the City to use the licensed area for any public purpose. The Governing Body of the City of Dallas reserves the right to terminate and cancel this license at will by Resolution passed by said Governing body. Upon termination, all rights granted hereunder shall thereupon be considered fully terminated and cancelled and the City of Dallas shall not be held liable by reason thereof. Said resolution shall be final and shall not be subject to review by the Courts. **GRANTEE** shall have the right of cancellation upon giving the City of Dallas sixty (60) days written notice of its intention to cancel, and in either event upon the termination or cancellation by the City or **GRANTEE**, as the case may be, this license shall become null and void and **GRANTEE** or anyone claiming any rights under this instrument shall remove, to the extent required by the Director of Department of Sustainable Development and Construction, any improvements and encroachments from the licensed area at **GRANTEE's** expense. Failure to do so shall subject **GRANTEE** to the provisions contained in EXHIBIT B, Subsection (a). All work shall be done at the sole cost of **GRANTEE** and to the satisfaction of the Director of Department of Sustainable Development and Construction.

**SECTION 7.** That this license is subject to the requirements of all other applicable City of Dallas codes and ordinances.

**SECTION 8.** That the license granted hereby shall not become effective until and unless **GRANTEE** files a final acceptance, in writing, to the terms and conditions of this ordinance with the Director of Department of Sustainable Development and Construction and said written acceptance shall be forwarded to the City Secretary of the City of Dallas. In the event said written final acceptance is not filed within six (6) months after the passage of this ordinance as provided for herein, then the Director of Department of Sustainable Development and Construction, or her designee, may terminate this license.

**SECTION 9.** That upon receipt of **GRANTEE's** final written acceptance, the Director of Department of Sustainable Development and Construction, or her designee, is hereby authorized to execute a NOTICE OF LICENSE and to file same in the deed records of Dallas County, Texas. Additionally, the Director of Department of Sustainable Development and Construction, or her designee, is hereby authorized to execute a cancellation of Notice of License upon termination by the City or **GRANTEE** and to file such cancellation of Notice of License in the deed records of Dallas County, Texas.

**SECTION 10.** That the terms and conditions contained in this ordinance shall be binding upon **GRANTEE**, its successors and assigns.

**SECTION 11.** That this license may not be assigned without prior written approval from the Director of Department of Sustainable Development and Construction, or her designee. Such assignment shall recite that it is subject to the terms, restrictions, and conditions contained in this ordinance. The assignee shall deliver evidence of ownership of property abutting the licensed area, and a copy of the assignment, along with the assignee's written acceptance of the provisions of this ordinance, to the Director of Department of Sustainable Development and Construction within 10 days of such assignment; said assignment and written acceptance shall be forwarded to the City Secretary of the City of Dallas.

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Should **GRANTEE** fail to obtain prior written approval for assignment of this license or fail to provide the City of Dallas with the required written acceptance and a copy of the assignment, the Director of Department of Sustainable Development and Construction, or her designee, may terminate this license.

**SECTION 12.** That the City Secretary is hereby authorized and directed to certify a copy of this ordinance for recordation in the Deed Records of Dallas County, Texas, which certified copy shall be delivered to the Director of Department of Sustainable Development and Construction, or her designee. Upon receipt of the fee for the year 2012, an acceptable certificate of insurance, and the fee for publishing this ordinance which **GRANTEE** shall likewise pay, the Director of Department of Sustainable Development and Construction, or her designee, shall deliver to **GRANTEE** the certified copy of this ordinance. The Director of Department of Sustainable Development and Construction, or her designee, shall be the sole source for receiving certified copies of this ordinance for one year after its passage.

**SECTION 13.** This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

**APPROVED AS TO FORM:**  
**THOMAS P. PERKINS, JR.**  
City Attorney

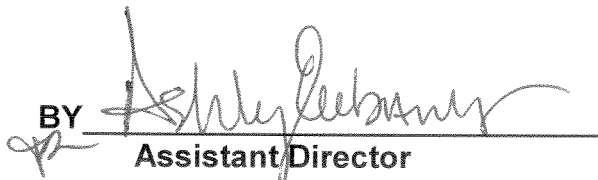
**THERESA O'DONNELL**  
Director of Department of Sustainable  
Development and Construction

BY



Assistant City Attorney

BY



Assistant Director

Passed \_\_\_\_\_

MAY 22 2013

AERIAL LICENSE AGREEMENT  
Part of Pacific Avenue  
Adjacent to City of Dallas Block 53  
City of Dallas, Dallas County, Texas

28987

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EXHIBIT A

**BEING** a 360 square feet or (0.0083 acres) tract of land situated in the John Grigsby Survey, Abstract No. 495, City of Dallas, Dallas County, Texas, adjacent to City Block 53 and being part of Pacific Avenue as recorded at the City Secretary's Office in Ordinance Book 1-A, Page 131, (variable width public right-of-way) at a distance of 10.00 feet above the existing sidewalk and extending upward a distance of 210.00 feet; said tract being adjacent to that certain tract of land conveyed to TOG HOTELS DOWNTOWN DALLAS LLC by Special Warranty Deed with Vendors Lien, as recorded in Instrument Number 20070220513, Official Public Records, Dallas County, Texas (O.P.R.D.C.T.), said 0.0083 acre tract of land also being more particularly described by metes and bounds as follows:

**COMMENCING** at an "X" cut in concrete found at the intersection of the Southerly right-of-way line of said Pacific Avenue with the Westerly right-of-way line of North Griffin Street (92' public right-of-way);

**THENCE** South 76°00'00" West, along the Southerly right-of-way line of said Pacific Avenue, a distance of 8.94 feet to a building corner on the exterior face of a building on said Southerly right-of-way line of Pacific Avenue, same being the **POINT OF BEGINNING** of the herein described tract of land.

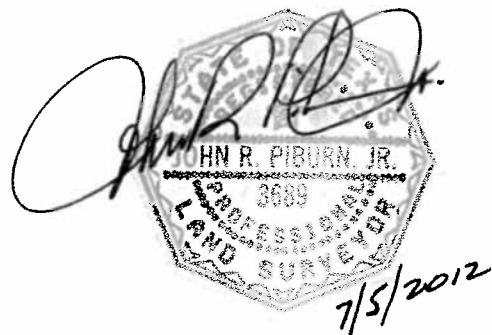
**THENCE** South 76°00'00" West, along said Southerly line of Pacific Avenue and along the exterior face of said building, a distance of 45.00 feet, from which a building corner bears South 76°00'00" West, a distance of 44.42 feet;

**THENCE** North 14°00'00" West, departing said Southerly line of Pacific Avenue and said exterior face of said building, a distance of 8.00 feet to an "X" cut in concrete set for corner;

**THENCE** North 76°00'00" East, parallel and 8.00 feet northerly from said exterior face of building, a distance of 45.00 feet to an "X" cut in concrete set for corner;

**THENCE** South 14°00'00" East a distance of 8.00 feet to the **POINT OF BEGINNING** and containing 360 square feet or 0.0083 acres of land, more or less.

- \* Bearings are based on the Southerly right-of-way line of Pacific Avenue (variable width r.o.w.) (N 76°00'00" E) according to deed recorded as Instrument No. 20070220513, Official Public Records, Dallas County, Texas.



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Dallas, Texas 75243  
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(For SPRG use only)	
Reviewed By:	JL
Date:	7-6-12
SPRG NO.:	2378

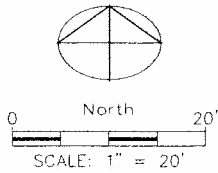
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## AERIAL LICENSE AGREEMENT

Part of Pacific Avenue  
Adjacent to City of Dallas Block 53  
City of Dallas, Dallas County, Texas

EXHIBIT A

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Pacific Avenue

(variable width public r.o.w.)  
(Ordinance Book 1-A, Pg. 131)  
(Vol. 4404, Pg. 476)

S 14°00'00" E  
8.00'

P.O.B.

P.O.C.

N 76°00'00" E X cut set  
45.00'N 14°00'00" W  
8.00'

44.42'

building corner  
c.m.Building  
FaceS 76°00'00" W  
45.00'S 76°00'00" W  
8.94'Building  
CornerX cut fnd.  
c.m.

4' Sidewalk Easement

N. Griffin Street

(92' public r.o.w.)  
(Vol. 5564, Pg. 282)  
(Vol. 5514, Pg. 28)  
(Vol. 5512, Pg. 28)

180.00'

LICENSE AGREEMENT

360 Sq. Ft. (0.0083 Ac.)

BLOCK 53

TOG HOTELS DOWNTOWN DALLAS LLC  
Instr. No. 20070220513  
(O.P.R.D.C.T.)

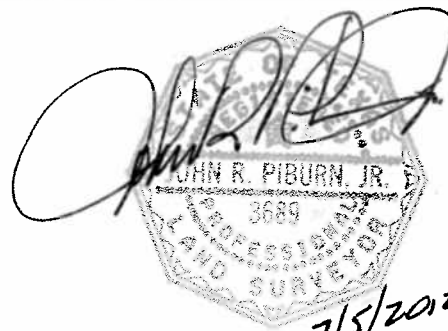
## NOTES:

Bearings are based on the Southerly right-of-way line of Pacific Avenue (variable width r.o.w.) (N 76°00'00" E) according to deed recorded as Instrument No. 20070220513, Official Public Records, Dallas County, Texas.

X cut = "X" cut  
c.m. = controlling monument  
O.P.R.D.C.T. = Official Public Records, Dallas County, Texas  
P.O.B. = Point of Beginning  
P.O.C. = Point of Commencing

(For SPRG use only)

Reviewed By: JL  
Date: 7-6-12  
SPRG NO.: 2378



**PIBURN & CARSON**

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July 5, 2012  
Project No. 12008

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**EXHIBIT B  
COMMERCIAL ENTITY  
ADDITIONAL LICENSE PROVISIONS**

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That this license is granted subject to the following additional conditions, terms and reservations:

- (a) That at such time as this license is terminated or canceled for any reason whatsoever, **GRANTEE**, upon orders issued by the City acting through the Director of Sustainable Development and Construction, or designee, shall remove all installations, improvements and appurtenances owned by it situated in, under or attached to the licensed area, and shall restore the premises to its former condition in accordance with the requirements of the Director of Sustainable Development and Construction at the sole cost of **GRANTEE**. In the event, upon termination of this license, **GRANTEE** shall fail to remove its installations, improvements and appurtenances and to restore the licensed area in compliance with orders issued by City, or such work is not done to the satisfaction of the Director of Sustainable Development and Construction, then in either event the City shall have the right to do all work necessary to restore said area to its former condition or cause such work to be done, and to assess the cost of all such work against **GRANTEE**; in neither event shall the City of Dallas be liable to **GRANTEE** on account thereof.
- (b) It is further understood that if and when the City of Dallas, in the exercise of its discretion, shall determine that the grade of any street, sidewalk or parkway should be modified or changed, or that any other work should be done in connection with any public improvement which will affect the licensed area, and/or any of **GRANTEE's** installations and improvements thereon, any modifications or changes to **GRANTEE's** facilities in the licensed area or in construction or reconstruction of any public improvement attributable to **GRANTEE's** use of the licensed area and/or its installations and improvements thereon, shall be made at the sole expense of **GRANTEE** and to the satisfaction of the Director of Sustainable Development and Construction.
- (c) At such time as this license is granted, it is agreed, and a condition hereof, that **GRANTEE** shall procure and keep in full force and effect **Commercial General Liability Insurance** coverage issued by an insurance company authorized and approved by the State of Texas, acceptable to the City of Dallas and issued in the standard form approved by the Texas Department of Insurance. The insured provisions of this policy must name the City of Dallas as an additional insured protecting the City of Dallas against any and all claims for damages to persons or property as a result of or arising out of the use, operation and maintenance by **GRANTEE** of the licensed area and **GRANTEE's** installations, improvements, landscaping and equipment in connection therewith and located therein. The Commercial General Liability coverage must include, but not limited to, Premises/Operations, Independent Contractors and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of not less than \$500,000 per occurrence and \$500,000 annual aggregate. This insurance shall also include coverage for underground, explosion and collapse hazards (i.e. not excluded). If this insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than

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twelve (12) months following termination of this license and removal of the installations, improvements and appurtenances and restoration of the licensed area pursuant to paragraph (a) above. Coverage, including any renewals, shall contain the same retroactive date as the original policy applicable to this license. The City of Dallas reserves the right to review the insurance requirements set forth herein during the effective term of the license and to adjust insurance coverages and their limits when deemed necessary and prudent by the City of Dallas' Risk Management based upon changes in statutory law, court decisions, or the claims history of the industry as well as the City of Dallas.

1. **GRANTEE** agrees that with respect to the above required insurance, all insurance contracts and certificates of insurance will contain and state, in writing, that coverage shall not be canceled, nonrenewed or materially changed except after thirty (30) days written notice by certified mail to Department of Sustainable Development and Construction.
  2. **GRANTEE** shall carry said insurance at its expense and shall furnish the City of Dallas proof of such insurance. In the event said insurance should terminate during the licensing term hereof, or **GRANTEE** fails to furnish proof of insurance coverage in accordance with the specifications as required by this section, the Director of Sustainable Development and Construction, or designee, may terminate the license granted herein.
- (d) **GRANTEE** is prohibited from using the licensed area in any manner which violates Federal, State or local laws, regulations, rules and orders, regardless of when they become or became effective, including without limitation, those related to health, safety, noise, environmental protection, waste disposal and water and air quality, and shall provide satisfactory evidence of compliance upon the request of the City of Dallas. Should any discharge, leakage, spillage, emission or pollution of any type occur upon or from the licensed area due to **GRANTEE's** use and occupancy thereof, **GRANTEE**, at its expense, shall be obligated to clean up the licensed area to the satisfaction of the City of Dallas and any governmental body having jurisdiction thereover. The City of Dallas may, at its option, clean the licensed area. If the City of Dallas elects to do so, **GRANTEE** shall promptly pay to the City of Dallas the reasonable cost of such cleanup upon receipt of bills therefore. **GRANTEE** agrees that the indemnity provisions contained in paragraph (g) herein shall be fully applicable to the requirements of this paragraph, in event of **GRANTEE's** breach of this paragraph, or as a result of any such discharge, leakage, spillage, emission or pollution arising out of the **GRANTEE's** use of the licensed area.
- (e) This license is subject to all State laws, the provisions of the Charter of the City of Dallas as it now exists, or may hereafter be adopted or amended, and the ordinances of the City of Dallas now in effect or those which may hereafter be passed or adopted. The City of Dallas shall have the right to increase or decrease the compensation to be charged for the use contemplated by this grant in

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accordance with the provisions of the Dallas City Code as it now exists, or as may hereafter be adopted or amended.

- (f) The Governing Body of the City of Dallas reserves the right, at any time without notice, to terminate and cancel this license, by resolution, upon a finding by the Governing Body that this license is inconsistent with the public use of the property or whenever the purpose or use of the license is likely to become a nuisance and all rights granted hereunder shall thereupon be considered fully terminated and canceled and the City of Dallas shall not be held liable by reason thereof. The decision of the Governing Body of the City in this matter shall be final and binding upon all parties insofar as the City's determination as to whether the **GRANTEE's** use of this license constitutes a nuisance or is inconsistent with the public use of the property.
- (g) As a condition hereof, **GRANTEE** agrees and is bound to the extent allowed by law to defend, indemnify and hold the City of Dallas, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for bodily injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by the use, occupancy and maintenance of the licensed area or **GRANTEE's** installations and improvements within the licensed area, from any act or omission of any representative, agent, customer and/or employee of **GRANTEE**, or by **GRANTEE's** breach of any of the terms or provisions of this license, or by any negligent or strictly liable act or omission of **GRANTEE**, its officers, agents, employees or contractors in the use, occupancy and maintenance of **GRANTEE's** installations and improvements within the licensed area; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City of Dallas, its officers, agents, employees or separate contractors, and in the event of joint and concurring negligence or fault of both the **GRANTEE** and the City of Dallas, responsibility and liability, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to the City of Dallas under Texas law and without waiving any defenses of the parties under Texas law. This obligation to indemnify and defend shall also include any claim for damage that any utility or communication company, whether publicly or privately owned, may sustain or receive by reason of **GRANTEE's** use of the licensed area or **GRANTEE's** improvements and equipment located thereon. In addition to the foregoing, **GRANTEE** covenants and agrees never to make a claim of any kind or character whatsoever against the City of Dallas for damage of any kind that it may suffer by reason of the installation, construction, reconstruction, operation or maintenance of any public improvement, utility or communication facility on the licensed area, whether presently in place or which may in the future be constructed or installed, including but not limited to, any water or wastewater mains or storm sewer facilities, regardless of

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whether such damage is due to flooding, infiltration, backflow or seepage caused from the failure of any installation, natural causes, City's negligence, or from any other cause whatsoever.

- (h) This license is subject to any existing utilities or communication facilities, including drainage, presently located within the licensed area, owned and/or operated by the City of Dallas or any utility or communications company, public or private, and to any vested rights presently owned by an utility or communications company, public or private, for the use of the licensed area for facilities presently located within the boundaries of said licensed area. It is the intent of the foregoing that this permission herein is made expressly subject to the utilization of the licensed area for communication and utility purposes, both public and private, including drainage, over, under, through, across and along the licensed area. No buildings shall be constructed or placed upon, over or across the licensed area in such a manner as to interfere with the operation of any utilities and communication facilities. All and any communication company and utility, both public and private, shall have the right to remove and keep removed all or parts of any buildings which may in any way endanger or interfere with the construction, maintenance or efficiency of its respective systems within the licensed area. All communication companies and utilities, both public and private, shall have the full right to remove and keep removed all parts of any buildings, fences, trees, or other improvements or growths which in any way may endanger or interfere with the construction, maintenance and efficiency of its respective system and shall at all times have the full right of ingress and egress to or from and upon the licensed area for the purpose of constructing, relocating, inspecting, patrolling, maintaining and adding to or removing all or part of its respective systems without the necessity at any time of procuring the permission of anyone.