



CITY COUNCIL STAFF REPORT

DATE: May 1, 2013

CONSENT

SUBJECT: APPROVE RENEWAL OF LICENSE AGREEMENT WITH THE PALM SPRINGS WALK OF STARS AND APPOINT A CITY REPRESENTATIVE TO SERVE ON THE WALK OF STARS SELECTION COMMITTEE

FROM: David H. Ready, City Manager

BY: Community and Economic Development Department

SUMMARY

The City Council will consider renewal of a license agreement with the Palm Springs Walk of Stars and appoint a City Representative to serve on the Walk of Stars Selection Committee.

RECOMMENDATION:

1. Approve renewal of the License Agreement with the Palm Springs Walk of Stars (A4981).
2. Appoint a City Representative to serve on the Walk of Stars Selection Committee.
3. Authorize the City Manager and/or his designee to execute all necessary documents.

STAFF ANALYSIS:

The Palm Springs Walk of Stars Program has been operating since 1992 under a license agreement with the City of Palm Springs. The Walk of Stars Program raises funds to support the installation and maintenance of "Stars" within the City's public rights-of-way.

The proposed agreement is essentially the same terms and conditions with the addition of two items. First, the agreement allows for the City to have a Council representative participate in the selection of each honoree for the Walk of Stars. Therefore, it is requested that Council appoint a member to serve on the Walk of Stars Selection Committee. The current Walk of Stars Selection Committee has 12 members.

Second, the Walk of Stars agrees to provide, at their expense, one star annually to the City for the purpose of honoring a Palm Springs International Festival Award Winner. Details of the award and placement would be worked out between the City Council and Film Festival at a later date.

This agreement will be for a one (1) year term, and is automatically extended up to four (4) additional one-year terms. However, the City reserves the right to terminate this agreement for convenience with 180-days' notice.

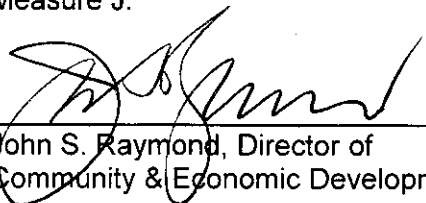
ITEM NO. 5B

The Palm Springs Walk of Stars is responsible for all expenses related to their program including relocation of stars. Typically, there are one or two stars replaced in any given year. However, the redevelopment of the Desert Fashion Plaza into the new Downtown Palm Springs project will result in the need to relocate approximately 50 stars at a cost of up to \$100,000. As this was not envisioned in the original license agreement, it is acknowledged that due to the major financial burden such a relocation would place on the Walk of Stars, staff recommends this special case be handled as part of the City's renovation project.

Also, attached is a letter proposal from the Walk of Stars requesting an expansion of the program to allow corporate stars at a cost of \$100,000 per star. If Council chooses to include this new category of star, the City Attorney will add the required language to the final executed agreement.

FISCAL IMPACT:

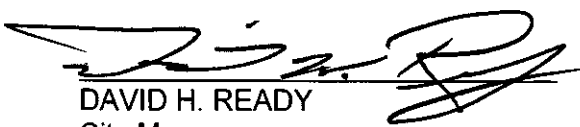
There is no fiscal impact to the City for this program, as all related expenses are the responsibility of the Palm Springs Walk of Stars, a California non-profit organization. However, relieving the Walk of Stars of relocation costs for the Downtown Palm Springs project will result in up to \$100,000 in costs added to the City's overall construction budget funded through Measure J.



John S. Raymond, Director of
Community & Economic Development



Diana R. Shay
Redevelopment Coordinator



DAVID H. READY
City Manager

Attachments:

Walk of Stars License Agreement
Letter proposal for Corporate Star Program



February 25th, 2013

CITY MANAGER
FEB 25 2013
CITY OF PALM SPRINGS

David Ready
City Manager
City of Palm Springs

Dear David,

Thank you for meeting with Lew DaSilva and myself last week. The Palm Springs Walk Of Stars would like to propose to the City of Palm Springs that we initiate a corporate star program. We propose to charge \$100,000 per corporate star and the funds collected would be used for star maintenance and replacement. We of course would have to pay 15-20% sales commission on the \$100,000 received per star. We would also like to use approximately \$40,000.00 of the funds to build an APP whereby the public would be able to access and find out information about all the stars, the stars location, date of ceremony and bios on each star.

We also propose using a portion of the funds to pay for and sponsor a minimum of four of the Palm Springs International Film Festival Stars each year.

Please let us know if you feel that our plan is workable with the City.

Thank you in advance for your consideration.

Best regards,
Bob

Robert Alexander
President
Palm Springs Walk Of Stars

BOARD OF DIRECTORS

PRESIDENT

Robert Alexander
Producer/Businessman

VICE PRESIDENT

Lewis DaSilva
Accountant/Realtor

SECRETARY

Kathleen Bennett
Businesswoman

TREASURER

Marilyn Ball
Producer/Businesswoman

DIRECTORS

William Beck
Entertainment Executive

John Bolivar
Producer/Musician

Allan Bregman
Entertainment Executive

Charles Dunn
Businessman

Clancy Grass
Producer/Entrepreneur

Herb Gronauer
Celebrity Agent

Jamie Hughes
Businesswoman

Susan Stafford
Entertainment Ambassador
Actress

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pswalkofstars@aol.com
www.PalmSpringsWalkofStars.com

LICENSE AGREEMENT
The Palm Springs Walk of Stars

THIS LICENSE AGREEMENT ("License") is made and entered into this ____ day of _____, 2013, by and between the CITY OF PALM SPRINGS, a California charter city and a municipal corporation ("City") and THE PALM SPRINGS WALK OF STARS, a California nonprofit organization ("Licensee"), which together may be referred to as Parties.

RECITALS

A. City is the fee owner of the public rights-of-way within the City of Palm Springs, California ("Property").

B. The "Walk of Stars Program" ("Program") raises funds to support the installation and maintenance of "Stars," as defined below, within the public rights-of-way, and within a few private sidewalk areas, to honor personalities associated with the City in addition to show business celebrities who have made an impact worldwide in the area of show business.

C. For the past 20 years, the City has allowed the Program to be conducted within the public rights-of-way of the City's downtown district area.

D. City believes that the City, its citizens, and visitors benefit from such a Program and desires to continue the Program with Licensee as memorialized in this License.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises and conditions set forth herein, the Parties hereto incorporate the recitals set forth above and further agree as follows:

1.0 LICENSEE'S OBLIGATIONS AND RIGHTS

1.1 Grant of Access. City hereby grants to Licensee, its employees, agents and guests, a non-exclusive license and permission to enter upon and use a portion of the Property ("License Area") for the limited purposes of installing and maintaining the Walk of Stars. Subject to the requirements set forth in Section 3.0, additional Stars may be installed in the downtown district area without location approval by the City. However, should Licensee desire to install additional Stars outside of the downtown district area, Licensee must first obtain written approval from the Contract Officer. Moreover, to the extent that Licensee has, or desires to add, Stars on a privately-owned sidewalk, Licensee shall be required to comply with the requirements of Section 1.4 below.

Licensee expressly acknowledges that this License is non-exclusive and that members of the public may also access the License Area. The License granted herein shall be valid for the term set forth below only, and can be terminated prior to the expiration of the term without cause upon thirty days advance written notice to the other party hereto. The granting of this License is a privilege and not a right, and is revocable by the City at any time. The City may also require the relocation or removal of the Stars at any time without liability to Licensee.

1.2 Scope of Use. Pursuant to this License, Licensee may use the License Area to maintain and operate the Program, subject to approval by the City.

1.2.1 Licensee's Responsibilities. The Licensee shall be responsible for all costs and expenses related to this License including, but not limited to, the installation of the Stars, procurement of insurance, Star dedication ceremonies, office administration, accounting, cleaning, friction testing, and maintenance and removal of the Stars when requested by City.

1.3 Description of Stars. Each "Star" shall be a solid sandblasted granite block, approximately thirty-six inches (36") wide by thirty-six inches (36") long by three inches (3") thick, and shall be installed flush with the existing sidewalk. The exposed surface of each Star shall be sandblasted consistent with the requirements in Section 1.5 and shall include a design in the shape of a star, with a palm tree encircled inside the star, and the words "The Palm Springs Walk of Stars." A copy of the design is attached to this License and is incorporated herein as Exhibit "A." The failure to install a Star consistent with Exhibit "A" shall constitute a default of this License.

1.4 Stars on Private Property. Should Licensee desire to install a Star on a portion of sidewalk that is privately owned, before Licensee may install such a Star, Licensee must first provide the City, to the City's satisfaction, (i) written approval from the owner(s) of the private property, and (ii) proof of comprehensive liability insurance which covers such property and names the property's owner as an additional insured.

1.5 Donor Waiver. The Licensee shall obtain a written waiver and release from all donors or contributors waiving and releasing all rights, title, and interest in the Stars. A copy of the waiver is attached to this License as Exhibit "B." The Licensee shall also obtain a waiver prior to the installation of each Star installed after the execution of this License.

1.6 Photographic Inventory. Each year that this License is in effect, on the anniversary of this License, Licensee shall submit to the City a new photographic inventory, with new photographs of each Star, depicting the condition of each Star at that time.

1.7 Compliance with Law. All work and services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency of competent jurisdiction.

1.8 Licenses, Permits, Fees, and Assessments. Licensee shall obtain, at its sole cost and expense, such licenses, permits, and approvals as may be required by law for the performance of the services required by this License. Licensee shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from, or are necessary for, the Licensee's performance of the services required by this License, and shall indemnify, defend and hold harmless City against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

1.9 License Not Assignable. This License shall become effective immediately and is personal to the Licensee and is not assignable. Any attempt by Licensee to assign this License or to sell or otherwise transfer Licensee's assets shall terminate this License immediately.

1.10 Modification of License Area. Any future modification of the License Area which is required by law shall be undertaken at Licensee's sole expense, subsequent to receipt of written approval by the City.

1.11 Donation for Star. Licensee shall not require, assess, or suggest an amount in excess of \$10,000.00 for each star without the prior written approval of the City Manager.

2.0 OWNERSHIP OF STARS

2.1 Ownership of Stars. The Parties agree that, during the term of this License, Licensee is the owner of all of the Stars which are part of the Program within the City as of the date of this License, as depicted in the photographic inventory required pursuant to Section 1.6. The Parties also agree that, during the term of this License, Licensee shall be the owner of all additional Stars which are added to the Walk of Stars Program within the City consistent with the requirements set forth herein. Upon termination of this License for any reason, subject to Section 2.3, all rights to the Stars shall automatically transfer to City.

2.2 Irrevocable Offer to Dedicate. Licensee hereby makes an irrevocable offer to dedicate to City, as a gift, all Stars now existing and subsequently installed in the public rights-of-way within the City.

2.3 Acceptance Dedication. Within sixty (60) days of the termination of this License, the City may, at its sole discretion, accept or reject the dedication of all of the Stars located within the public rights-of-way. Should City refuse to accept the dedication of the Stars, Licensee agrees that it shall remove all of the Stars within the License Area, at Licensee's sole cost, within a reasonable time not to exceed one hundred twenty (120) days.

3.0 SELECTION AND DEDICATION OF STARS

3.1 Selection Criteria. Honorees for the Walk of Stars shall be selected by the Palm Springs Walk of Stars Selection Committee pursuant to selection criteria established by the Committee. The selection criteria shall not be changed without the written approval of the City. A copy of the selection criteria is attached to this License and incorporated herein as Exhibit "D." In addition to the honorees selected by the Committee, one star annually shall be provided to the City at no cost for the purpose of honoring a Palm Springs International Film Festival Award Winner. Licensee shall cooperate and work with the City Manager to secure a timely and appropriate placement of each such star.

3.2 Selection Committee. In consideration for the right to install the Stars in the public rights-of-way, the Licensee agrees that, the City may, at its election, have its representative participate in the selection of each honoree for the Walk of Stars. The City representative, if any, shall be selected by the City Council.

3.3 Dedication Ceremonies. Licensee shall provide thirty (30) days prior written notice of each dedication ceremony for a Star to the Contract Officer and shall obtain any necessary permits for such ceremony. Costs incurred in connection with dedication ceremonies shall not be reimbursable from the Fund.

4.0 MAINTENANCE AND CONDITION OF THE PROPERTY

4.1 Removal or Relocation of Stars. Certain events, such as street and sidewalk construction or construction on adjacent property, may at times require the removal or relocation of a Star. If such removal or relocation becomes necessary, the City shall meet and confer with the Licensee to facilitate the relocation of the Star to a mutually agreed upon location. However, if the parties are unable to agree upon a location, the new location shall be determined in the City's sole discretion. The cost of relocation shall be borne solely by Licensee and shall be carried out within the timeframes set by City, but City shall give Licensee at least thirty (30) days notice. If Licensee fails to timely accomplish the relocation, the City may remove the Star at Licensee's sole expense.

4.2 Maintenance. Licensee shall be responsible for the on-going maintenance, repair and cleaning of the Stars installed in the public rights-of-way and shall keep the Stars in first class condition and repair.

4.2.1 Licensee's Maintenance Program. No later than March 1st of each year during the term of this License, Licensee shall submit a plan for its annual "Maintenance Program" with details regarding how and when Licensee shall clean and maintain the Stars. The Maintenance Program shall be approved by the Contract Officer and may be amended' from time to time as necessary to fulfill the terms of this License. The Maintenance Program shall include a regular program to test for the maintenance of a coefficient of friction of at least 0.75 on the sandblasted surface of each Star, as described in Section 4.2.3. The Licensee shall be responsible for all costs and expenses related to the Maintenance Program during the term of this License. At a minimum, each Star shall be cleaned at least two (2) times per year. At Licensee's election, the cleaning may be undertaken in segments of the entire Program. It is not mandatory that all of the Stars be cleaned at the same time. However, upon Licensee's receipt of a written request from the City to clean a particular or group of Stars, Licensee shall arrange for such Star(s) to be cleaned within seven (7) days, even if such Star or group of Stars have already received their two annual cleanings. Failure to comply with such a request shall constitute a default of this License.

4.2.2 City Sidewalk Cleaning. The City agrees to use best efforts to coordinate its periodic sidewalk cleaning with the Licensee's Maintenance Program to maximize efficiency. Sidewalk cleaning during the Fall season typically occurs during September or October. The City shall give the Licensee ten (10) days' written notice of the City's Fall sidewalk cleaning, then shall work with the Licensee to coordinate the cleaning with the Licensee's Maintenance Program.

4.2.3 Coefficient of Friction Testing. Within one hundred eighty (180) days from the execution of this License, Licensee shall submit to the City a written statement from a qualified contractor demonstrating that the surface of each Star in existence as of such time has been tested in accordance with the test methods established by the American Society for Testing and Materials

(ASTM) for measuring the coefficient of friction and that the testing demonstrates that each Star has been sandblasted to achieve an average dry, static coefficient friction of at least 0.75. Upon initial testing, should any Stars fail to produce a coefficient of friction of at least 0.75, Licensee shall arrange for such Stars to be sandblasted until retesting demonstrates a coefficient of friction of at least 0.75.

Every second year that this License remains in existence, starting with the third year, Licensee shall re-test the coefficient of friction for each then-existing Star pursuant to the then applicable ASTM standards, and shall submit a written statement from a qualified contractor verifying that the coefficient of friction of each Star is at least 0.75. Should any Stars fail to produce a coefficient of friction of at least 0.75, Licensee shall arrange for such Stars to be sandblasted until retesting demonstrates a coefficient of friction of at least 0.75.

4.2.4 ASTM Acceptable Test Methods. As of the execution of this License, the parties agree that there are currently two acceptable ASTM methods for testing the coefficient of friction of the Stars. These methods are:

(i) C-I028-96: This is the standard test method used to determine the static coefficient of friction of ceramic tile and other like surfaces by the horizontal dynamometer pull-meter method and is the most common test used to measure slip resistance in the field. This test method, which uses a portable horizontal pull meter, may be used under both wet and dry conditions and uses Neolite heel assemblies.

(ii) F-1677-96: This is the standard test method for portable inclinable articulated strut slip testers (PIAST). This mechanism measures the slip resistance of footwear sole, heel or related materials against planar walkway surfaces or walkway surrogates in either the laboratory or the field under dry, wet or contaminated conditions.

4.3 Maintenance Fund. Currently the prorated annual maintenance expense (including annual friction testing) of each Star is estimated at Seventy Five Dollars (\$75.00) while the expense to remove and replace each Star including patching and restoring the sidewalk is estimated to be Two Thousand Dollars (\$2,000) per star. On average, two stars per year are replaced. Much of the cost of existing maintenance comes from the sale of new Stars. It is the goal of the parties to create a self-sustaining fund which will pay for maintenance, or if necessary, removal of the Stars. It is estimated that the average balance in the Fund should be Twenty Thousand Dollars (\$20,000.00) to adequately meet the City's needs.

4.3.1 Fund Contributions. Upon the installation of each new Star, Licensee shall deposit into the Fund the then-current portion of the total cost of each Star, as determined by the Star Cost Breakdown in Exhibit "C," which has been allocated to the on-going maintenance, repair, and cleaning of the Star. In addition, at all times during the term of this License, Licensee shall use its best efforts in fund-raising to supplement the Fund. Licensee shall have the goal to therefore correct the under-funding of the Fund within three (3) years.

Licensee shall have the goal of making contributions of at least Fifteen Thousand Dollars (\$15,000) per year to the Fund. The parties shall meet annually, on or about May 1, to determine the sufficiency of the Fund for the long-term maintenance, repair and cleaning of the Stars, and shall

determine if it is necessary to increase the amount allocated from the cost of a new Star to long-term maintenance, repair and cleaning.

4.3.2 Permitted Fund Expenditures. Use of the Fund is limited to expenditures incurred in connection with the maintenance, cleaning, and repair of the Stars, as described in the Maintenance Program, which has been approved by the City, and this Section. Licensee shall submit invoices for all eligible expenditures of the Fund to the City's Director of Finance in a form approved by the City along with a letter requesting the amount to be released from the Fund. City agrees to use the Fund, to the extent that monies are available, to pay Licensee from the Fund for all eligible expenses within thirty (30) days of its receipt of an invoice and request from Licensee.

4.3.3 Ownership of Fund on Termination. Upon termination of this License, if the City agrees to continue the Program, the City shall retain the Fund; or, if the City elects to discontinue the Program and requests that the Stars be removed, the Fund shall be used to remove the Stars and the remaining balance of the Fund, if any, shall be returned to Licensee.

4.4 Coefficient of Friction. The surface of each Star shall be sandblasted to achieve an average dry static coefficient of friction of at least 0.75. Due to the City's concerns regarding liability for slipping, the City retains the right to require the Licensee to periodically test the coefficient of friction of any or all Stars. If the coefficient of friction falls below 0.75 for any Star, such Star shall be sandblasted or otherwise treated to achieve a coefficient of at least 0.75, or, at the sole option of City, shall be removed.

4.5 Damage or Destruction of Stars. If more than fifty percent (50%) of the Stars are destroyed or damaged as a result of a catastrophic event to the extent that, in City's reasonable discretion, Licensee may no longer use the License Area for the intended purposes, Licensee may elect to either: (i) submit a written request for termination of this License to the City which shall be effective thirty (30) days after the date of the damage or destruction; or (ii) upon consent of the City, use that portion of the License Area specified by the City on a temporary basis until such time as the Stars can be repaired or reconstructed. Any such repair or reconstruction shall be completed at the sole expense of Licensee and in an expeditious manner.

4.6 Failure to Comply with Performance Standards. Should Licensee fail to comply with the performance standards set forth in this License including, but not limited to, the maintenance standards described in Section 4.2 and the coefficient of friction described in Section 4.4, the City may elect to: (i) impose liquidated damages pursuant to Section 7.4, (ii) abate the performance failure and seek reimbursement of its costs from Licensee, or (iii) terminate the License pursuant to Section 7.3.

5.0 COORDINATION OF WORK

5.1 Representative of Licensee. Robert Alexander, President of The Palm Springs Walk of Stars, is hereby designated as being the principal and representative of Licensee to act in its behalf with respect to the work and services specified herein and make all decisions in connection therewith.

5.2 Contract Officer. The City Manager of the City, or his or her designee, is hereby designated as being the representative of the City authorized to act in its behalf with respect to the work and services specified herein and make all decisions in connection therewith ("Contract Officer").

5.3 Independent Contractor. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Licensee, its agents or employees, perform the services required herein, except as otherwise set forth herein. Licensee shall perform all services required herein as an independent contractor of City and shall remain under only such obligations as are consistent with that role. Licensee shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City.

6.0 INSURANCE AND INDEMNIFICATION

6.1 Insurance. The Licensee shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this License including any extension thereof, the following policies of insurance:

6.1.1 Comprehensive General Liability Insurance. A policy of comprehensive general liability insurance written on a per occurrence basis in an amount not less than either (i) a combined single limit of \$1,000,000.00 or (ii) bodily injury limits of \$500,000.00 per person, \$1,000,000.00 per occurrence and \$500,000.00 products and completed operations and property damage limits of \$1,000,000.00 per occurrence and \$1,000,000.00 in the aggregate.

6.1.2 Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Licensee and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Licensee in the course of carrying out the work or services contemplated in this License.

All of the above policies of insurance shall be primary insurance and shall name the City, its officers, employees and agents as additional insureds. The insurer shall waive all rights of subrogation and contribution it may have against the City, its officers, employees, and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or canceled without providing thirty (30) days prior written notice by registered mail to the City. In the event any of said policies of insurance are canceled, the Licensee shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 6.1 to the Contract Officer. No work or services under this License shall commence until the Licensee has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City.

The Licensee agrees that the provisions of this Section 6.1 shall not be construed as limiting in any way the extent to which the Licensee may be held responsible for the payment of damages to any persons or property resulting from the Licensee's activities or the activities of any person or persons for which the Licensee is otherwise responsible.

6.2 Sufficiency of Insurer or Surety. Insurance required by this License shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the City's Risk Manager due to unique circumstances. In the event that the City's Risk Manager determines that the work or services to be performed under this License creates an increased or decreased risk of loss to the City, the Licensee agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the City's Risk Manager; provided that the Licensee shall have the right to appeal its determination of increased coverage to the City Council of City within ten (10) days of receipt of notice from the City's Risk Manager.

6.3 Indemnification. Licensee agrees to indemnify the City, its officers, agents and employees against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, including paying any legal costs, attorneys' fees, or paying any judgment (herein "claims and liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with (i) the performance of, or failure to perform, any obligation by Licensee to be performed under the terms of this License, (ii) Licensee's use of the License Area, or (iii) the conduct of Licensee's business or any activity, work or things done, permitted or suffered by Licensee in or about the License Area or adjacent property. The obligations of Licensee under this Article 6 shall survive expiration or earlier termination of this License.

6.4 Assumption of All Risks and Liabilities. Licensee, as a material part of the consideration to City, hereby assumes all risk of damage to the License Area, including, without limitation, injury to persons in, upon or about the License Area during Licensee's use of the License Area or other activities of Licensee or Licensee's officers, agents, employees or invitees on the License Area. Licensee hereby waives all claims with respect thereof against City. City shall not be liable for any injury to the License Area, a Star, or injury to or death of Licensee or its officers, agents, employees or invitees, or injury to or death of any other person in or about the License Area from any cause except to the extent caused by the negligence or willful misconduct of the City or its officers, agents, employees or invitees.

7.0 TERM, TERMINATION AND LIQUIDATED DAMAGES

7.1 Term. Unless earlier terminated in accordance with Section 7.2 below, this License shall continue in full force and effect for one (1) year commencing from the date of execution. The term shall be automatically extended for four (4) additional one-year terms ("Renewal Term") unless City notifies Licensee in writing at least thirty (30) days prior to expiration of a term that the City has elected not to renew this License. Any Renewal Term shall be on the same terms and conditions set forth in this License.

7.2 Termination Prior to Expiration of Term. Either party may terminate this License at any time, with or without cause, upon thirty (30) days' written notice to the other party. Upon receipt of the notice of termination, the Licensee shall immediately cease all work or services hereunder except as may be specifically approved by the Contract Officer.

7.3 Termination for Default. If termination is due to the failure of Licensee to fulfill its obligations under this License, City may give Licensee thirty (30) days' written notice of the termination and the reasons therefor to Licensee. Licensee may be found to be in default for Licensee's failure to comply with any term or condition of this License, to acquire and maintain all required insurance policies, bonds, licenses, and permits, or failure to make satisfactory progress in performing the License. Upon termination under this provision, all goods, materials, documents, data and reports prepared by Licensee under this License shall become the property and be delivered to the City on demand. The City may, upon termination of this License, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this License.

7.4 Liquidated Damages. Since the determination of actual damages for any failure to comply with the performance standards, as referenced in Section 4.6, or for the failure of Licensee to surrender the License Area in an undamaged condition, as required by Section 7.5, would be extremely difficult or impractical to determine in the event of a breach of this License, Licensee agrees that it shall be liable for and shall pay to the City the sum of Two Hundred Dollars (\$200) as liquidated damages for each day, or portion thereof, that Licensee allows such failure to continue. If necessary, the City may withdraw any monies payable as liquidated damages from the Fund.

7.5 Waste, Damage or Destruction: Surrender of Property. The Licensee shall not allow any waste, damage or destruction to occur in or to the License Area or within a reasonable adjacent perimeter thereto. When this License terminates, upon such termination, Licensee, at its sole expense, shall repair any waste, damage or destruction and shall restore the License Area to that condition existing prior to Licensee's use of the License Area. Should Licensee fail to vacate the License Area in an undamaged condition, City may arrange for the cleaning and/or repair of the License Area, the cost of which will be immediately reimbursed by Licensee, and Licensee will be additionally penalized pursuant to Section 7.4, regarding liquidated damages.

8.0 REPORTS AND RECORDS

8.1 Reports. The Licensee shall issue quarterly reports regarding the Fund, Fund balance, the annual goal, contribution amounts, fundraising efforts, and all efforts to clean, repair and maintain Stars within the License Area. Each report shall be in a format acceptable to the Contract Officer and shall be delivered to the City on the fifteenth day of each April, July, October, and January during the term of the License. The parties shall meet annually to determine the sufficiency of the Fund for the long-term maintenance, repair, and cleaning of the Stars, and shall determine if increases in the amount of the contributions are necessary to meet the annual goal.

8.2 Records. Upon receipt of written notice from the City, Licensee shall use reasonable business efforts to provide City or City's designees with copies of books and records pertaining to Licensee's operations. Licensee shall use reasonable business efforts to promptly provide the City with any additional information relevant hereto which is not specified in this Section.

8.3 Ownership of Documents. All reports, records, documents and other materials prepared by Licensee, its employees, subcontractors, and agents in the performance of this License shall be reviewable by the City and copies of such materials shall be delivered to City upon request of the Contract Officer or upon the termination of this License, and Licensee shall have no claim for

compensation as a result of the exercise by City of its full rights of ownership of the documents and materials hereunder.

9.0 MISCELLANEOUS

9.1 Covenant Against Discrimination. Licensee covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this License. Licensee shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin or ancestry.

9.2 Non-liability of Officers and Employees. No officer or employee of the City shall be personally liable to the Licensee, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Licensee or to its successor, or for breach of any obligation of the terms of this License.

No officer, director or board member of the Licensee shall be personally liable to the City in the event of any default or breach by the Licensee or for any amount which may become due to the City, or for breach of any obligation of the terms of this License.

9.3 Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this License nor shall any such officer or employee participate in any decision relating to the License which affects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Licensee warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this License.

9.4 Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, CITY OF PALM SPRINGS, P.O. Box 2743, Palm Springs, California 92263, and in the case of the Licensee, to the address designated on the execution page of this License.

9.5 Interpretation. The terms of this License shall be construed in accordance with the meaning of the, language used and shall not be construed for or against either party by reason of the authorship of this License or any other rule of construction which might otherwise apply.

9.6 Integration: Amendment. It is understood that there are no oral agreements between the parties hereto affecting this License and this License supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this License. This License may be amended at any time by the mutual consent of the parties by an instrument in writing.

9.7 Severability. In the event that part of this License shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this License which are hereby declared as severable and be interpreted to carry out the intent of the parties unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this License meaningless.

9.8 Waiver. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to, or approval of any act by the other party requiring the party's consent or approval, shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this License.

9.9 Attorneys' Fees. If either party to this License is required to initiate or defend or made a party to any action or proceeding in any way connected with this License, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees, whether or not the matter proceeds to judgment.

9.10 Governing Law/Venue. This License shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this License shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county.

9.11 Compliance with Law. All services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered.

9.12 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this License, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

9.13 Corporate Authority. The persons executing this License on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this License on behalf of said party, (iii) by so executing this License, such party is formally bound to the provisions of this License, and (iv) the entering into this License does not violate any provision of any other agreement to which said party is bound.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

"CITY"
CITY OF PALM SPRINGS,
a California charter city and a
municipal corporation

DAVID H. READY, ESQ., PhD.
City Manager

ATTEST:

JAMES THOMPSON
City Clerk

APPROVED AS TO FORM:

DOUGLAS C. HOLLAND, ESQ.
City Attorney

"LICENSEE"
THE PALM SPRINGS WALK OF STARS,
a California non-profit organization

ROBERT ALEXANDER
Authorized Agent

EXHIBIT "A"

Star Design

**HEMET VALLEY
MONUMENTS
and MEMORIAL ADVISORS**

508 Willowood St
Oranmore, CA 92261

(800) 244-3288

(909) 845-4627
Fax (909) 769-8684

March 24, 1997

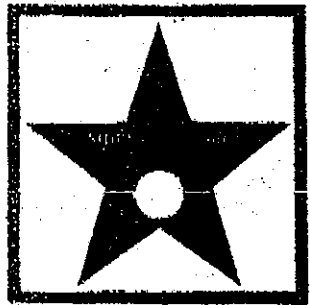
To Whom It May Concern

Re: Material used for Palm Springs Walk of Stars

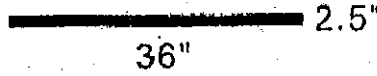
The material is of natural granite, reddish in color. The size is 36"x36"x2.5", with the top side polished.

During the process of making the piece of granite look like a star, about 40% of the polish is removed in the area surrounding the star. This leaving about 60% of the 36"x36" polished.

Front View



Side View



Sincerely,

Josef Zett
Hemet Valley Monuments

EXHIBIT "A"

Star Design



EXHIBIT "B"

Donor Waiver

THE PALM SPRINGS WALK OF STARS PROGRAM

WAIVER OF DONOR



BOARD OF DIRECTORS

PRESIDENT

Robert Alexander
Producer/Businessman

VICE PRESIDENT

Don Phares
Real Estate Investor

SECRETARY

Kathleen Bennett, CA&ME
Marketing/Public Relations

TREASURER

Susan Stafford
Entertainment
Ambassador/Actress

DIRECTORS

Manlynn Bell
Producer/Businesswoman

William Bach
Entertainment Executive

John Belovar
Producer/Musician

Allan Bergman
Entertainment Executive

Dave Carran
Restaurant Consultant

Lewis De Silva
Accountant/Realtor

Clancy Grass
Producer/Entrepreneur

Herk Grossman
Celebrity Agent

Janie Hughes
Businesswoman

Charles Dumm
Businessman

Art Shane
Photographic/Publisher

P.O. Box 1156
Palm Springs, CA 92263
760 / 416.5811
Fax 760 / 329.3129
pswalkofstars@aol.com
www.PalmSpringsWalkofStars.com

1. PALM SPRINGS WALK OF STARS PROGRAM Palm Springs, a corporation (herein "County") and PALM SPRINGS WALK OF STARS (herein "PSWS") have agreed that the Contractor shall install solid sandblasted granite blocks (the "Stars") in the public right of way to honor prominent personalities associated with Palm Springs. However, Palm Springs is concerned with liability to pedestrians and must retain the right to require proper care of the Stars and the right to require removal and/or relocation of the Stars if necessary without incurring liability to the donors. Therefore, Palm Springs' approval of the Stars has been based on receiving: (a) An irrevocable offer to dedicate to Palm Springs as a gift all Stars installed in the public right of way, and (b) The written waiver and release of any and all donors or contributors of any rights, title or interest in the Stars. It should be expressly understood, however, that the Stars are the property of PSWS and not the County until the offer to dedicate is accepted.

2. WAIVER WITH RESPECT TO MODIFICATION OR REMOVAL The Donor, its agents, heirs, successors and assigns hereby waive any and all rights, title, causes of action or interest in the Star towards which the contribution was made. Donor understands that PSWS and/or the County have the right to alter, relocate or remove the Star at any time, and Donor waives any and all causes of action, damages, rights to receive any notice and/or compensation, or to object to the alteration, relocation, removal or destruction of the Star.

3. INDEMNIFICATION OF DONOR PSWS agrees to indemnify the donor, its agents, heirs, successors and assigns against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, including paying any legal costs, attorneys fees, or paying any judgment (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent acts or omissions of PSWS hereunder.

4. WAIVER OF RIGHT TO SUE Donor, its heirs, successors and assigns hereby waive any right to sue PSWS or Palm Springs for breach of any written or oral representation with respect to the Walk of Stars Program including, but not limited to, the Revocable License and Maintenance Agreement, except that Donor shall not waive any right to enforce the indemnification covenant of PSWS contained in Section 3 above.

Name of Star: _____

Date: _____ By: _____
(Donor Name)

Address: _____

City, State, Zip: _____

EXHIBIT "C"

Star Cost Breakdown

PALM SPRINGS WALK OF STARS EXPENSES (PAGE 1 OF 3)

| PER STAR COST | EXPENSE | INCOME FROM STAR SALES |
|---------------------------------|--------------------|-------------------------------|
| Sound | \$200.00 | |
| Star Mfg. | \$948.90 | |
| Star Installation | \$1,000.00 | |
| City Maintenance Acct. | \$1,000.00 | |
| City Proclamation | \$100.00 | |
| Flowers for the ladies | \$100.00 | |
| Plaque | \$200.00 | |
| Loading & Unloading | \$100.00 | |
| Charlie Chaplin | \$100.00 | |
| TOTAL COST PER STAR | \$3,748.90 | |
| Based on an average of 10 stars | \$37,489.00 | \$100,00.00 |
| Based on an average of 15 stars | \$56,233.50 | \$150,000.00 |
| Based on an average of 20 stars | \$74,978.00 | \$200,000.00 |

EXHIBIT "C"

Star Cost Breakdown

PALM SPRINGS WALK OF STARS ANNUAL EXPENSES (PAGE 2 OF 3)

| DESCRIPTION | ONGOING MONTHLY EXPENSES |
|--|---------------------------------|
| Electricity for booth | \$25.00 |
| Booth Rental for cleaning machine | \$200.00 |
| Storage for Books | \$83.00 |
| Telephone | \$130.00 |
| Office-Computers, phone, fax | \$500.00 |
| Office Supplies and Postage | \$100.00 |
| Bob Alexander-Public Relations (Interacts with all star recipients and sponsors and hosts all ceremonies, supplies van and gas for all dedications) | \$1,200.00 |
| Star Pins | \$50.00 |
| AOL | \$16.99 |
| Web Server | \$26.00 |
| Secretary/Bookkeeper | \$886.000 |
| ITEX | \$11.00 |
| TOTAL MONTHLY | \$3,207.99 |
| TOTAL ANNUAL | \$38,495.88 |

EXHIBIT "C"

Star Cost Breakdown

PALM SPRINGS WALK OF STARS EXPENSES (PAGE 3 OF 3)

| DESCRIPTION | ANNUAL EXPENSES |
|--|------------------------|
| Star replacement 2 stars at \$1,948.90 ea. | \$3,897.80 |
| Star cleaning | \$1,000.00 |
| Scholarships | \$1,000.00 |
| Accounting | \$1,300.00 |
| Liability Insurance | \$1,160.16 |
| State Filing | \$20.00 |
| Co-efficient of friction test | \$2,000.00 |
| Chamber of Commerce | \$220.00 |
| Star paint | \$213.04 |
| Star painting | \$4,000.00 |
| Star repairs | \$2,400.00 |
| Contingency | \$6,000.00 |
| Total | \$23,211.00 |

GRAND TOTAL-EXPENSES

| | | | |
|----------------|---------|------------------------|-------------|
| PER STAR COST | \$3,748 | STARS X 10 STARS (AVG) | \$37,489.00 |
| MONTHLY COSTS | | | \$38,735.88 |
| ANNUAL COSTS | | | \$23,211.00 |
| TOTAL EXPENSES | | | \$99,435.88 |

INCOME FROM SALE OF 10 STARS *\$100,000.00*

EXHIBIT "D"

Selection Criteria

STAR DEDICATION CRITERIA

The Palm Springs Walk of Stars board of directors has adopted the following star dedication criteria. These criteria will serve as a guideline to honor deserving personalities by placing a **Golden Palm Star** onto the sidewalks of Palm Springs.

1. Place: Palm Canyon Drive, Tahquitz Canyon Way and Museum Drive.
2. Honorees must have by their presence in this area, contributed to the charm, worldwide prominence and name recognition of Greater Palm Springs.
3. Persons that meet the criteria listed below will be considered as candidates. The inscriptions on the stars are relevant to the honoree's field of achievement and are shown in bold for each category. Every effort will be made to link a Pioneer's star with a historically related location as well as all other stars to be placed at a mutually agreeable location. However, all decisions to the eligibility of a candidate, the placement of a star, and the inscription on the star, rest with the Star Dedication committee and are final.

a) Show Business: Stage/Radio/Film/TV

Show business persons who have distinguished themselves worldwide as actors, producers, directors, playwrights, cinematographers, musicians, either on Stage, Radio, Film, and/or Television, as well as persons who have otherwise become prominent in the field of Entertainment.

b) Literary: Authors, Playwrights, Screen Writers

Persons who have penned literary works of considerable distinction and have achieved national and international recognition in the field of entertainment. Special merits are given to literary works produced into films or television specials.

c) **Pioneers/Civic:** Mayor, Civic Personality, Community Leader, Distinguished Tribal Personality, Chief, etc. A Meritorious Star may be awarded to local persons prominently and historically linked to the development of Greater Palm Springs, i.e., early settlers, tribal members, civic personalities with significant historical achievement who have distinguished themselves in the service to the community.

d) Humanitarians:

A Meritorious Star may be awarded to persons who have greatly distinguished themselves in the service to their fellow man by enduring and self-less contributions to charitable causes, and by their altruistic deeds achieved exulted recognition within the community.



BOARD OF DIRECTORS

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Robert Alexander
Producer/Businessman

VICE PRESIDENT

Dan Phares
Real Estate Investor

SECRETARY

Kathleen Bennett, CMMC
Marketing/Public Relations

TREASURER

Susan Stafford
Entertainment
Ambassador/Actress

DIRECTORS

Merilyn Bell
Producer/Businesswoman

William Beck
Entertainment Executive

John Bolivar
Producer/Musician

Allan Brogan
Entertainment Executive

Dave Corcos
Restaurant Consultant

Leavis Da Silva
Accountant/Realtor

Clancy Grass
Producer/Entrepreneur

Mark Grossauer
Celebrity Agent

Janie Hughes
Businesswoman

Charles Dunn
Businessman

Hal Slaine
Photographer/Publisher

P.O. Box 1156
Palm Springs, CA 92263
760 / 416.5911
Fax 760 / 320.5129
pswalkofstars@aol.com
www.PalmSpringsWalkofStars.com

EXHIBIT "D"

Selection Criteria

e) **Sports:** Athletes who have excelled in their respective field of sports and have greatly contributed to the worldwide prominence of Greater Palm Springs.

f) **Military:**

Congressional Medal awardees only.

g) **The Palm Springs International Film Festival 's Annual Special Honoree**

*The committee is comprised of the Palm Springs Walk of Stars board of directors.



BOARD OF DIRECTORS

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Producer/Businessman

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Ambassador/Actress

DIRECTORS
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Producer/Businesswoman
William Boch
Entertainment Executive
John Bolivar
Producer/Musician

Allan Boegman
Entertainment Executive
Dave Carlson
Restaurateur/Consultant

Lewis De Silva
Accountant/Editor
Clancy Grass
Producer/Entrepreneur

Herb Gronauer
Celebrity Agent
Janie Hughes
Businesswoman

Charles Duman
Businessman
Hal Sloane
Photographer/Publisher

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Palm Springs, CA 92263
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fax 760/320-3129
pswalkofstars@aol.com
www.PalmSpring-WalkofStars.com

STAR DEDICATION CRITERIA

4. The donation for each star is presently set at \$10,000. That amount is a tax deductible donation to the Walk of Stars, a charitable 501C-3, not-for-profit public benefit corporation (Tax ID #95-350-8485), reported as such to the IRS, and is not refundable. A portion of any unused donation will be submitted to the Walk of Stars scholarship fund supporting local high school seniors seeking careers in the performing arts.

A \$5,000 deposit is due at star confirmation date, the remaining balance of \$5,000 is due 30 days prior to star dedication day. This cost includes all expenses related to the shipping, manufacturing and imbedding of the Star, a City Proclamation, a Walk of Stars Plaque, the sound needed for the dedication ceremony, flowers for lady honorees, publicity, press releases, radio/TV interviews, liability insurance and applicable fees.

5. Any expenses exceeding the above mentioned items, such as special "pomp and circumstance," i.e., bands, celebrity MC, chairs, street closures, special security, cocktail reception, etc., shall be borne by the sponsoring entity. The Palm Springs Walk of Stars committee will, however, assist in arranging and handling of these special particulars, if so requested.

6. It is required, by law that the star sponsoring entity signs a Waiver of Donor form prior to a star dedication. All donations towards a star are tax deductible, as allowed by law.

7. The Palm Springs Walk of Stars, an equal opportunity organization, is non-discriminating in its evaluation and confirmation of star candidates. Race, creed, religion or ethnic heritages of candidates are absolute non-factors. Candidates are solely selected on achievements, within their endeavors and contributions to the community. Candidates are required to complete and submit the Palm Springs Walk of Stars Application Form.

8. All business aspects of the Palm Springs Walk of Stars, a non-profit 501C-3, public benefit corporation, are administered by its board of directors. The decisions of the board of directors in matters relating to the Palm Springs Walk of Stars are final.

EXHIBIT "D"

Selection Criteria



STAR DEDICATION APPLICATION

This is an application for a Golden Palm Star to be placed on the sidewalks of Palm Springs as part of the Palm Springs Walk of Stars program. Decision as to the eligibility of candidates, the placement of a star, and the inscription on the star rest with the Palm Springs Walk of Stars committee and are final. Requirements and guidelines are set forth in the Palm Springs Walk of Stars Star Dedication Criteria. The donation is \$10,000 which, if approved, is payable by the candidate or his/her sponsor in accordance with the Star Dedication Criteria.

CATEGORY (Select one. Please refer to the Star Dedication Criteria form for more information.):

Show Business: Stage/Radio/Film/TV

- Literary: Authors, Playwrights, Screen Writers
- Pioneers/Civic: Mayor, Civic Personality, Community Leader, Distinguished Tribal Personality, Chief, etc.
- Humanitarians
- Sports: Athletes
- Military: Congressional Medal Awardees only
- The Palm Springs International Film Festival's Annual Special Honoree

NOMINEE

SPONSOR

- Self
- Other: _____

SUBMITTED BY

First Name _____ Last Name _____

Please be sure to complete the information on the Star Dedication Criteria form so that we may contact you. Please submit one eight by ten glossy photo to go along with your bio for eventual use in a Palm Springs Walk Of Stars book that will be sold to the public.

BOARD OF DIRECTORS

PRESIDENT

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Producer/Businessman

VICE PRESIDENT

Dave Phoenix
Real Estate Investor

SECRETARY

Kathleen Bennett, C.A.M.P.
Marketing/Public Relations

TREASURER

Susan Stafford
Entertainment
Ambassador/Actress

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Producer/Businesswoman

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Entertainment Executive

John Bolivar
Producer/Musician

Allan Bragman
Entertainment Executive

Dave Carlson
Restaurateur Consultant

Louis Da Silva
Accountant/Reciter

Clancy Grass
Producer/Entrepreneur

Mark Grossauer
Celebrity Agent

Janis Hughes
Businesswoman

Charles Inzun
Businessman

Hal Slaane
Photographer/Publisher

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pswalkofstars@aol.com
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EXHIBIT "D"
Selection Criteria

REASON FOR NOMINATION

Please review the Star Dedication Criteria and describe how the individual meets the criteria. Use the form on the back and attach an additional sheet if necessary (up to 500 words.) Please note that a completed Application Form is required for all candidates. A sheet with additional information accompanies this form.

A sheet with additional information accompanies this form.

EXHIBIT "D"

Selection Criteria

†

FOR OFFICE USE ONLY

Approved Not Approved

Number of board members in favor of approval _____

Number of board members opposing approval _____

Date: _____

Signed on behalf of the board of directors: _____

Date: _____

Comments: