

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

City Clerk  
City of Costa Mesa  
Post Office Box 1200  
Costa Mesa, CA 92628-1200

(Space Above This Line For Recorder's Use Only)

**HOLD HARMLESS AGREEMENT  
RE STREET ABANDONMENT**

THIS HOLD HARMLESS AGREEMENT RE STREET ABANDONMENT (the "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2005 between THE CITY OF COSTA MESA, a California municipal corporation (the "City"), on the one hand, and ORANGE COUNTY PERFORMING ARTS CENTER, a California non-profit, public benefit corporation ("OCPAC") and SOUTH COAST REPERTORY, INC., a California non-profit, public benefit corporation ("SCR"), on the other hand. OCPAC and SCR are collectively referred to as "Indemnitor."

**RECITALS**

A. OCPAC is the owner of certain real property (the "OCPAC Property") more particularly described in Exhibit A attached hereto. SCR is the owner of certain real property (the "SCR Property") more particularly described in Exhibit B attached hereto. The OCPAC Property and the SCR Property are contiguous to Town Center Drive along the portion thereof between the cross-walk at Park Center Drive and Avenue of the Arts (the "Street"). The Street is more particularly described in Exhibit C attached hereto. OCPAC and SCR are also the owners of the portions of the Street included within or adjacent to, respectively, the OCPAC Property and the SCR Property.

B. The City currently holds an easement interest in the Street. OCPAC and SCR have filed an application with the City requesting the City to abandon the Street and convey the City's interest in the portion of the Street owned by OCPAC to OCPAC and the City's interest in the portion of the Street owned by SCR to SCR. In connection with such abandonment and conveyance, the City has requested indemnity and hold harmless protection from Indemnitor.

C. The City, OCPAC and SCR are also parties to a certain Development Agreement for Segerstrom Center For The Arts dated March 5, 2001 (the "Development Agreement") and recorded August 31, 2001 as Instrument No. 2001-0613542 in the Office of the County Recorder of Orange County, California (the "Official Records"). Moreover, OCPAC and SCR are also parties to a certain Declaration and Grant of Rights and Easements dated August 31, 2001 and recorded September 11, 2001 as Instrument No. 2001-0641068 in the Official Records (the

“Declaration”). OCPAC and SCR desire to obtain certain acknowledgements by the City with respect to the Development Agreement and the Declaration.

#### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises contained herein, the parties agree as follows:

1. Indemnity. In consideration of (a) the abandonment by the City of the Street and (b) the conveyance by the City of its easement interest in the Street to OCPAC and SCR, Indemnitor agrees to defend, indemnify and hold harmless the City, its officials, employees and agents (the “Indemnified Parties”) from and against any cost, liability, claim, suit, proceeding or demand of any nature whatsoever arising out of (i) the improvements contained on, above, under or within the Street as of the date of conveyance of the City’s interest in the Street to OCPAC and SCR, other than any utility lines located in the Street, not abandoned by the City and to be maintained by the City and (ii) any improvements made on, above, under or within the Street after conveyance of the City’s interest in the Street to OCPAC and SCR. The City shall, concurrently, with recordation of this Agreement, assign to OCPAC any warranties from third party contractors with respect to the Street and any utilities lines therein abandoned by the City. Similarly, upon any future City abandonment of any retained utilities lines, the City shall assign to OCPAC any Warranties of third party contractors with respect to such utilities lines. Payment shall not be a condition precedent to recovery upon the foregoing indemnification provision. The foregoing indemnification provision shall be deemed to include a covenant by Indemnitor to defend the Indemnified Parties against all claims for which indemnification is available pursuant to this provision with legal counsel selected by the liability insurance carrier for Indemnitor, or otherwise reasonably satisfactory to the Indemnified Parties.

2. Claim Procedure. In the event that any Indemnified Party receives a claim as to which such Indemnified Party believes indemnification is available pursuant to this Agreement, then:

(a) The Indemnified Party shall promptly notify Indemnitor in writing and furnish to Indemnitor a copy of any written claim or complaint.

(b) So long as Indemnitor promptly undertakes and diligently conducts the defense of such Indemnified Party:

(i) The Indemnified Party shall not admit liability or settle the claim without the approval of Indemnitor.

(ii) Indemnitor shall control the defense of the claim and make all decisions concerning defense or settlement of the claim.

(iii) The Indemnified Party shall cooperate in such defense/settlement as reasonably requested by Indemnitor, but without out-of-pocket cost to such Indemnified Party, including execution of any settlement documents in connection with a settlement of such claim.

(iv) Any attorney or expert retained by the Indemnified Party with respect to such claim shall be paid by the Indemnified Party, and Indemnitor shall not be responsible for the fees and costs of such attorney or expert, except where retention of such attorney or expert is made necessary by a conflict between the interests of Indemnitor and Indemnitee, including but not limited to, Indemnitor's assertion of claims or cross-claims against Indemnitee in connection with any such claim or action and Indemnitor, upon demand, fails to retain separate counsel, approved by Indemnified Party, to represent the Indemnified Party.

(v) Promptly upon a final judgment upon or settlement of such claim, Indemnitor shall cause any amount due the claimant to be paid in full.

(c) If Indemnitor declines or fails to promptly undertake the defense of such claim, or having undertaken such defense fails to pursue the same, then the Indemnified Party shall be free to defend or settle such claim upon such terms as the Indemnified Party determines, and such defense or settlement shall not defeat or diminish the rights of the Indemnified Party to indemnification and reimbursement pursuant to paragraph 1.

Failure of an Indemnified Party to promptly notify Indemnitor of any claim for which indemnification and defense is available pursuant to paragraph 1 shall not defeat the rights of such Indemnified Party pursuant to paragraph 1 unless such failure prejudices the ability of Indemnitor to defend such claim.

3. Insurance. At all times during the term of this Agreement, Indemnitor shall obtain and maintain an insurance policy or policies in form reasonably acceptable to the City consisting of comprehensive general liability, including premises operations, products/completed operations, blanket contractual coverage, and personal injury insurance coverages.

(a) At commencement of the term, and thereafter from time to time as may be required, Indemnitor shall provide to City certificates of insurance from an insurance company certified to do business in the State of California, with original endorsements, evidencing the coverage required herein.

(b) Indemnitor shall provide the following insurance, with Best's Class B or better carriers:

(i) Workers' Compensation insuring statutory Workers' Compensation limits as required by the California Labor Code;

(ii) Commercial general liability insurance covering third party liability risks, including without limitation, contractual liability, in a minimum amount of \$2,000,000 (two million) combined single limit per occurrence for bodily injury, personal injury and property damage. If the policy contains a general aggregate limit, then the aggregate limit shall not be less than \$2,000,000 (two million dollars);

(iii) Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than Two Million Dollars (\$2,000,000.00), combined single limits, per occurrence and aggregate;

(c) Endorsements shall be obtained for the policies providing the above insurance for the following three provisions:

i. Additional Insureds:

"The City of Costa Mesa and its elected and appointed boards, officers, agents, volunteers and employees are additional insureds with respect to this subject contract with City."

ii. Notice:

"Said policy shall not terminate, nor shall it be cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to City."

iii. Other Insurance:

"Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."

4. Other Matters re Indemnification.

(a) The obligations of Indemnitor under paragraphs 1 through 3 shall be joint and several obligations of OCPAC and SCR.

(b) The indemnification and defense obligations of Indemnitor pursuant to paragraphs 1 and 2 shall not extend to any claims arising out of the active negligence or willful misconduct of the City, its employees, agents, representatives, contractors or consultants.

5. Indemnitor's Maintenance Obligation.

Pursuant to the terms of the Development Agreement, paragraph IV of Exhibit "F," OCPAC and SCR were obligated to secure a reciprocal easement agreement, in a form approved by the City Attorney, relieving City of responsibility for the maintenance and upkeep of Town Center Drive as a prerequisite to City's vacation of Town Center Drive, and requiring the parties to the required reciprocal easement agreement to assume responsibility for such maintenance and upkeep. OCPAC and SCR have entered into a Grant of Easements and License agreement ("the Grant") with Center Tower Associates, LLC, a California limited liability company ("CTA"), in a form approved by the City Attorney, to be recorded concurrently herewith, which requires, *inter alia*, that the Managing Owner (as that term is defined in the Grant) shall maintain, or cause to be maintained the easement area to be vacated by the City in a first class and safe condition according to the terms of the Grant, and, as to that portion that is a "Private Road" (as that term is defined in the Grant), as if the vacated easement area had remained a public road. OCPAC and SCR agree that the City shall have the right to enforce, by any available legal means, including but not limited to, an action for breach of contract, an action for declaratory relief,

injunctive relief, and/or specific performance, against OCPAC and SCR, regardless of whether either of them is the Managing Owner under the Grant, the maintenance obligations with respect to the vacated easement area contained in Paragraph 10 or elsewhere in the Grant. Should the Grant ever be terminated by agreement or otherwise, the City may nonetheless enforce the identical maintenance obligations with respect to the entire vacated easement area against OCPAC, SCR and any of their successors, assigns, and agents, as if the maintenance provisions of the Grant were set forth in full herein.

6. Recognition by City. The City acknowledges and agrees that:

(a) Acceptance of the conveyance of the City's interest in the Street by OCPAC and SCR and modification of the definition of "Common Area" set forth in the Declaration by OCPAC and SCR shall collectively satisfy all obligations of OCPAC and SCR pursuant to Paragraph IV of Exhibit "F" to the Development Agreement. The City further agrees that Park Center Drive north of the Street and Town Center Drive west of the Street shall not be abandoned or vacated.

(b) Abandonment and conveyance of the City's interest in the Street shall not trigger any obligations of OCPAC or SCR pursuant to Exhibit "H" to the Development Agreement.

7. Term of Agreement. This Agreement shall become effective upon recordation of a copy hereof in the Official Records and shall remain in effect until recordation in the Official Records of an instrument executed by all parties hereto or their successors in interest terminating this Agreement.

8. Successors and Assigns. This Agreement shall inure to the benefit of and be binding on the successors, assigns, heirs and legal representatives of the parties hereto. To the fullest extent legally possible, all of the covenants of Indemnitor shall run with both the OCPAC Property and the SCR Property and shall bind the successors in title to each of the OCPAC Property and the SCR Property. Similarly, the benefit of such covenants shall inure to successors in interest to the City. Indemnitor shall notify the City in writing of any transfer of its fee title to, respectively, the OCPAC Property and/or the SCR Property, which notice shall set forth the name and address of the transferee and shall identify the parcel or portion thereof transferred.

9. Attorneys' Fees. In the event that any action or proceeding is brought arising out of or in connection with this Agreement, the prevailing party or parties to such action or proceeding shall be entitled to recover from the losing party or parties its or their reasonable attorneys' fees incurred both at trial and on appeal, including necessary costs and expenses, and any judgment, decree or decision rendered in such action or proceeding shall include an award therefor.

10. Addition to Common Area. By their signatures hereto, OCPAC and SCR agree that the Street shall, upon conveyance of the City's interest therein to OCPAC and SCR, become a part of the Common Area subject to the Declaration.

11. Notice. Any notice, demand, request, consent, approval, designation or other communication ("notice") which any party is required or desires to give or make or communicate to any other party shall be in writing and shall be given or made or communicated by personal delivery, reputable courier service or United States registered or certified mail, return receipt requested, to the party to whom the notice is directed at the address of the parties set forth below, or at any other address as the parties may later designate:

To OCPAC: Orange County Performing Arts Center  
600 Town Center Drive  
Costa Mesa, CA 92626  
Attn: President and Vice President of Facilities

To SCR: South Coast Repertory Theater  
655 Town Center Drive  
Costa Mesa, CA 92626  
Attn: Managing Director

with a copy to:

Bryan Cave LLP  
2020 Main Street  
Suite 600  
Irvine, CA 92614  
Attn: William B. Tate II

To City: City Clerk  
City of Costa Mesa, Rm. 101  
77 Fair Drive  
Costa Mesa, CA 92628

with a copy to: Kimberly Hall Barlow, City Attorney  
Jones & Mayer  
3777 N. Harbor Blvd.  
Fullerton, CA 92833

Any notice so sent shall be deemed to have been given, made or communicated, as the case may be, if personally delivered, on the date of delivery, or if sent by courier service or deposited in the United States mail as registered or certified mail, return receipt requested, with postage thereon fully prepaid, on the date of receipt or refusal indicated on the delivery or return receipt.

12. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument. It shall not be necessary for both parties to execute the same counterpart(s) of this Agreement for this Agreement to become effective.

13. Integration; Amendments. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior oral or written

discussions, negotiations and agreements with respect to the subject matter hereof. This Agreement may be amended only by a written agreement executed and acknowledged by the parties hereto or their respective successors in interest. Nothing herein is intended to or does affect the effectiveness or enforceability of the Development Agreement, and this Agreement is not intended to supplant or supercede the Development Agreement.

14. California Law. This Agreement concerns real property located in the State of California. This Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed by and construed in accordance with the laws of such State. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, California, or any other appropriate court in such county, and the Indemnitor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

15. Severability. The provisions of this Agreement are severable, and if any part of it is found to be unenforceable, the other provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date first above written.

CITY:

CITY OF COSTA MESA, a municipal corporation

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

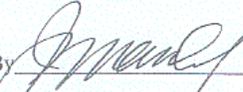
ATTEST:

\_\_\_\_\_  
City Clerk

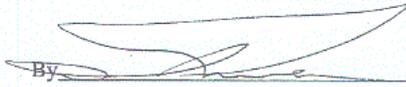
APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ORANGE COUNTY PERFORMING  
ARTS CENTER, a California  
non-profit, public benefit corporation

By   
Title: President OC PAC

SOUTH COAST REPERTORY, INC.,  
a California non-profit, public benefit corporation

By   
Title: General Manager

STATE OF California

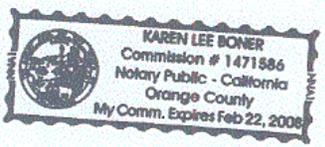
COUNTY OF Orange

On May 2, 2005, before me, Karen Lee Boner, Notary Public, personally appeared Jerry Elliott Mandel and \_\_\_\_\_, personally known to me OR proved to me

on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Karen Lee Boner  
Signature of Notary



STATE OF California

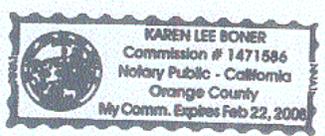
COUNTY OF Orange

On May 2, 2005, before me, Karen Lee Boner, Notary Public, personally appeared David Michael Emmes and \_\_\_\_\_, personally known to me OR proved to me

on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Karen Lee Boner  
Signature of Notary



STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me OR proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me OR proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary

OCPAC PROPERTY

Parcel 1

Lots 3, 4 and 5 of Tract 11762 in the City of Costa Mesa, County of Orange, State of California as per map recorded in Book 511, Pages 41 to 43 inclusive of Miscellaneous Maps in the office of the County Recorder of Orange County.

Parcel 2

Parcels 1, 2, 3 and 4, in the City of Costa Mesa, County of Orange, State of California as shown on a map filed in Book 327, Pages 16, 17 and 18 of Parcel Maps, in the office of the County Recorder of Orange County.

EXHIBIT "A"

OC732017.6

SCR PROPERTY

Parcel 1

Parcel 1, in the City of Costa Mesa, County of Orange, State of California shown on Lot Line Adjustment No. LL-2001-02 recorded September 11, 2001 as Instrument No. 2001-0641069 of Official Records of Orange County, California.

EXHIBIT "B"

OC732017.6

RBF Consulting  
14725 Alton Parkway  
Irvine, California 92618

December 17, 2004  
JN10-103650  
Page 1 of 2

LEGAL DESCRIPTION

**ABANDONMENT OF A PORTION  
OF TOWN CENTER DRIVE**

That certain parcel of land situated in the City of Costa Mesa, County of Orange, State of California being that portion of Town Center Drive as shown on Tract No. 11762 filed in Book 511, Pages 41 through 43 of Miscellaneous Maps, together with that portion of Parcel 1 as described in and shown on City of Costa Mesa Lot Line Adjustment No. LL-2001-02 recorded September 11, 2001 as Instrument No. 20010641069 of Official Records, both in the Office of the County Recorder of said Orange County, described as follows:

COMMENCING at the easterly terminus of that certain course shown as being "North 89°05'11" West 290.64 feet" in the southerly line of Town Center Drive on Parcel Map No. 99-112 filed in Book 327, Pages 16 through 18 of Parcel Maps, in the Office of the County Recorder of said Orange County; thence along said southerly line North 89°05'11" West 12.08 feet to the **TRUE POINT OF BEGINNING**; thence continuing along said southerly line, the southerly line of Town Drive Center Drive as described in the Easement Deed in favor of the City of Costa Mesa recorded August 18, 1983 as Instrument No. 83-360718 of Official Records, in the Office of the County Recorder of said Orange County and the southerly line of Town Center Drive as described in the Easement Deed in favor of the City of Costa Mesa recorded July 13, 1978 in Book 12755, Page 1857 of Official Records, in the Office of the County Recorder of said Orange County, through the following courses: North 89°05'11" West 278.56 feet to the beginning of a tangent curve concave northerly and having a radius of 259.00 feet; thence along said curve westerly 142.40 feet through a central angle of 31°30'04"; thence tangent from said curve North 57°35'07" West 50.03 feet to the beginning of a tangent curve concave southerly and having a radius of 201.00 feet; thence along said curve westerly 107.75 feet through a central angle of 30°42'53"; thence tangent from said curve North 88°18'00" West 47.50 feet; thence leaving said last mentioned southerly line North 01°42'00" East 58.00 feet to an angle point in the northerly line of Town Center Drive as shown on said Tract No. 11762; thence along said northerly line through the following courses: South 88°18'00" East 47.50 feet to the beginning of a tangent curve concave southerly and having a radius of 259.00 feet; thence along said curve easterly 138.84 feet through a central angle of 30°42'53"; thence tangent from said curve South 57°35'07" East 50.03 feet to the beginning of a tangent curve concave northerly and having a radius of 201.00 feet; thence along said curve easterly 110.51 feet through a central angle of 31°30'04"; thence tangent from said curve South 89°05'11" East 277.67 feet to a point on a non-tangent curve concave easterly and having a radius of 75.00 feet, a radial line of said

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EXHIBIT "C"

RBF Consulting  
Abandonment of a Portion  
Of Town Center Drive

December 17, 2004  
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Page 2 of 2

curve from said point bears South 67°13'06" East; thence leaving said northerly line along said curve southerly 59.56 feet through a central angle of 45°30'01" to the **TRUE POINT OF BEGINNING**.

**CONTAINING:** 0.828 acres, more or less.

**SUBJECT TO** all Covenants, Rights, Rights-of-Way and Easements of Record.

**EXHIBIT "B"** attached and by this reference made a part hereof.

\_\_\_\_\_  
Gregory A. Helmer, L.S. 5134

