

Exempt Recording Requested per  
Government Code Section 6103

WHEN RECORDED MAIL TO:

CITY OF COSTA MESA  
City Clerk  
P.O. Box 1200  
Costa Mesa, CA 92628-1200

Recorded in Official Records, County of Orange  
Gary Granville, Clerk-Recorder

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**INDEMNIFICATION AND MAINTENANCE COVENANT AGREEMENT  
RELATED TO USE OF EASEMENT  
(South Coast Metro) PA 00-02**

This INDEMNIFICATION AND MAINTENANCE COVENANT AGREEMENT RELATED TO USE OF EASEMENT (the "Agreement") is entered into as of this 18th day of December, 2000, by and between THE CITY OF COSTA MESA, a California municipal corporation (the "City"), and PWREF/MCC-SOUTH COAST, L.L.C., a Delaware limited liability company (hereinafter "PWREF"), and ROY K. SAKIOKA & SONS, a California general partnership, MARJACK, LLC, a California limited liability company, JKS-SF, LLC, a California limited liability company, and THE ARTHUR MASAKI SAKIOKA FAMILY TRUST (collectively, "Owner").

**RECITALS**

A. PWREF is the ground lessee of that certain real property located in the City of Costa Mesa, County of Orange, State of California, consisting of a portion of the South Coast Metro Center, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (hereinafter the "Property"). PWREF is the successor-in-interest to BRE/South Coast LLC, a Delaware limited liability company, and McCarthy & Co. — South Coast Metro, LLC, a California limited liability company (collectively, "BRE"), as ground lessee of the Property and, as such, holds all of the right, title, and interest formerly held by BRE in the Property and the permits and approvals referred to in Recitals D, E, G, and H hereinbelow.

B. Owner is the owner of record of the Property.

C. City holds an approximately twenty (20)-foot wide easement for storm drain purposes under and through a portion of the Property as shown and dedicated to City on the map of Tract No. 10950, attached hereto as Exhibit B and incorporated herein by this reference (hereinafter the "Easement"). City currently owns and maintains an approximately 54-inch diameter subterranean storm drain pipeline (the "Storm Drain") within the Easement.

D. BRE obtained approval for development of a parking structure and related facilities upon the Property from the City Council by action taken on February 22, 2000, Resolution No. 00-9 and Planning Action No. PA00-02 (hereinafter the "Development").

Notwithstanding Recital E and Exhibit C to this Agreement, it is understood that the Parking Structure Portion of the Easement Area shall mean the portion of the Easement upon and over which the Parking Structure is actually constructed and maintained, which for purposes of this Agreement shall be the area within the Easement between and including the manholes to be constructed by PWREF at either end of the Parking Structure within the Easement in accordance with Paragraph 3 below. In the event of any conflict between the actual location of the Parking Structure Portion of the Easement Area as reflected on Exhibit C to this Agreement and the location of the Parking Structure Portion of the Easement Area as actually constructed and determined in accordance with this Paragraph 1, the language of this Paragraph shall control.

2. Indemnification. PWREF shall defend, indemnify and hold harmless City and its elected and appointed boards, officers, agents and employees from and against any and all claims, liabilities, and losses of any nature whatsoever, including reasonable attorney fees and costs, for damage to property or persons, including death, arising out of or in any way connected with:

- a. The construction, connection, use, maintenance, reconstruction, replacement or operation of said Laterals;
- b. Rain or surface water, including any type of pollutant contained therein, deposited or retained upon the Property due to any failure of the Laterals, the connections to the City's storm drain and/or the portion of the public storm drain system located within the Parking Structure and any extension thereof for 20 feet beyond the footprint of any building or structure to function as planned and/or intended;
- c. The discharge of any type of pollutant from the Property to the City's storm drain facilities, which discharge is not in compliance with the requirements of the Water Quality Management Plan; and
- d. Any failure or collapse of or damage to the City's storm drain facilities over which the said Parking Structure is constructed or which are located in the vicinity of said Parking Structure. In the event of any such failure, collapse or damage, PWREF, in addition to defending, indemnifying and holding the City harmless, shall also reimburse the City for all its costs, direct and indirect, to reconstruct said storm drain facilities.

The aforesaid indemnity obligation shall apply regardless of the fault or negligence of the indemnitor or indemnitees, excepting only that said indemnity obligation shall not apply if the claim, liability, or loss arises out of the sole, active negligence of the City.

Nothing in the Agreement is intended to transfer to the City or otherwise release PWREF or its respective successors or assigns from any liability which any of them may now or in the future have under federal, state or local laws or regulations relating to the discharge or release of any type of pollutant from or

6. Water Quality Management Plan Requirements. PWREF shall implement and comply with all Best Management Practices and other requirements set forth in the City-approved Water Quality Management Plan.

7. Successors and Assigns; Limitation on Owner's Rights and Obligations. This Agreement and the covenants made herein shall inure to the benefit of and be binding on the successors, assigns, heirs and legal representatives (collectively, the "Successors") of the parties hereto. Upon the transfer or assignment by PWREF or any of its Successors of its or their interest in the Parking Structure Portion of the Easement Area, the rights and obligations of PWREF or such Successor hereunder automatically shall be transferred and assigned and the transferor or assignor shall be released from any further obligations hereunder as to City only. Unless PWREF or its Successor(s) have executed a separate agreement with Owner, terminating any such obligation or liability as between PWREF and/or its Successor(s) and Owner, any transfer or assignment shall not release PWREF and/or its Successor(s) from any liability or obligations as to Owner with respect to occurrences, events, or omissions during the period of PWREF's or any of its Successor(s)' possession of the Property and/or holding of the leasehold estate. Neither PWREF nor any Successor of PWREF shall assign its interest in the Parking Structure Portion of the Easement Area to any person or entity that does not have the financial capability of performing the transferor or assignor's obligations hereunder.

Notwithstanding any other provision contained in this Agreement, in no event shall Owner have any rights, obligations or liabilities hereunder unless and until (i) the leasehold interest of PWREF or any Successor of PWREF terminates or expires as to the Parking Structure Portion of the Easement Area and (ii) PWREF or its Successor surrenders possession of the Parking Structure Portion of the Easement Area to Owner, or Owner otherwise recovers possession of said Parking Structure Portion of the Easement Area. Further, in no event, shall Owner have any liability or obligations with respect to any occurrences, events or omissions, during any period prior to (i) the leasehold interest of PWREF or any Successor of PWREF terminating or expiring as to the Parking Structure Portion of the Easement Area and (ii) PWREF or its Successor surrenders possession of the Parking Structure Portion of the Easement Area to Owner, or Owner otherwise recovers possession of said Parking Structure Portion of the Easement Area.

PWREF shall notify City of any such transfer or assignment within thirty (30) days of said transfer or assignment. Any Successor of PWREF shall execute a written acknowledgement consenting to the terms, conditions and obligations of this Agreement. If a Successor of PWREF's leasehold interest in the subject Property and/or the Parking Structure Portion of the Easement Area fails to comply with the requirements herein, it will be considered a material breach of this Agreement.

Upon (i) termination or expiration of the leasehold interest of PWREF or its Successor in the Parking Structure Portion of the Easement Area and (ii) the first to occur of either the surrender of possession to Owner or Owner's recovery of possession, Owner hereby consents and agrees to assume PWREF's obligations stated herein. PWREF shall provide notice to the City within thirty (30) days of the transfer, assignment, termination or expiration of its leasehold interest in the Property and/or the Parking Structure Portion of the Easement Area. Neither

**CITY OF COSTA MESA,**  
a municipal corporation

Dated: JAN. 8, 2001

By:   
Mayor

ATTEST:

APPROVED AS TO FORM

By: Mary T. Elliott  
Deputy City Clerk

  
City Attorney

**PWREF/SOUTH COAST, L.L.C.**

Dated: 12/20/00

By:   
Its: Dawn Drake  
Vice President

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

**ROY K. SAKIOKA & SONS,**  
a California general partnership

**By: THE ROY K. SAKIOKA TRUST,**  
general partner

By: \_\_\_\_\_  
JOHNNY KATSUI SAKIOKA,  
Co-Trustee of The Roy K. Sakioka Trust  
U/D/T dated July 13, 1982, as amended

By: \_\_\_\_\_  
ARTHUR MASAKI SAKIOKA,  
Co-Trustee of The Roy K. Sakioka Trust  
U/D/T dated July 13, 1982, as amended

By: \_\_\_\_\_  
MARY KIYOKO SAKIOKA,  
Co-Trustee of The Roy K. Sakioka Trust  
U/D/T dated July 13, 1982, as amended

By: **THE TOMIO SAKIOKA TRUST,**  
general partner

By: *Johnny Katsui Sakioka*  
JOHNNY KATSUI SAKIOKA,  
Co-Trustee of The Tomio Sakioka Trust  
U/D/T dated July 13, 1982, as amended

By: *Arthur Masaki Sakioka*  
ARTHUR MASAKI SAKIOKA,  
Co-Trustee of The Tomio Sakioka Trust  
U/D/T/ dated July 13, 1982, as amended

By: *Mary Kiyoko Sakioka*  
MARY KIYOKO SAKIOKA,  
Co-Trustee of the Tomio Sakioka Trust  
U/D/T/ dated July 13, 1982, as amended

By: **THE ARTHUR MASAKI**  
**SAKIOKA FAMILY TRUST,** general partner

By: *Arthur Masaki Sakioka*  
ARTHUR MASAKI SAKIOKA  
Co-Trustee of The Arthur Masaki Sakioka  
Family Trust U/D/T dated November 25, 1986,  
as amended

By: *Marilyn Sakioka*  
MARILYN SAKIOKA,  
Co-Trustee of The Arthur Masaki Sakioka  
Family Trust U/D/T dated November 25, 1986,  
as amended

**MARJACK, LLC**  
a California limited liability company,  
tenant in common

By: *Roy T. Sakioka 12/20/00*  
ROY T. SAKIOKA, Manager

By: *Phyllis T. Sakioka 12-20-00*  
PHYLLIS T. SAKIOKA, Manager

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

On \_\_\_\_\_ before me, \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

(Seal)

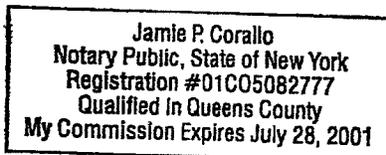
*New York*  
STATE OF CALIFORNIA )  
*New York* ) ss.  
COUNTY OF ORANGE )

On December 20, 2000 before me, Darren Drake and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

*Jamie P. Corallo*

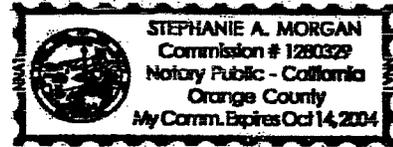
(Seal)



STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

On December 20, 2000 before me, Stephanie A. Morgan and Phyllis T. Sakioka, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



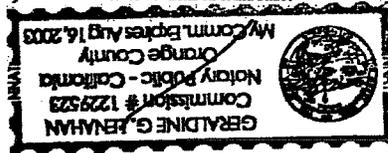
(Seal)

Stephanie A. Morgan

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

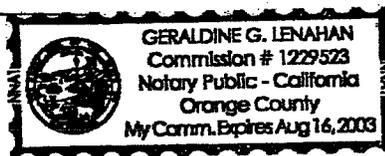
On December 20, 2000 before me, Geraldine G. Lenahan ~~and~~ personally appeared Johnny Katsui Sakioka, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



(Seal)

Geraldine Lenahan



STATE OF CALIFORNIA )  
 )  
COUNTY OF ~~ORANGE~~ <sup>VENTURA</sup> ) ss.

On 12-21-00, before me, a Notary Public in and for said State, personally appeared Arthur Masaki Sakioka, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the within instrument such person(s) or the entity upon behalf of which such person(s) acted, executed such instrument.

WITNESS my hand and official seal.



*Christina N. Mangione*  
Notary Public

STATE OF CALIFORNIA )  
 )  
COUNTY OF ~~ORANGE~~ <sup>VENTURA</sup> ) ss.

On 12-21-00, before me, a Notary Public in and for said State, personally appeared Marilyn Sakioka, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the within instrument such person(s) or the entity upon behalf of which such person(s) acted, executed such instrument.

WITNESS my hand and official seal.

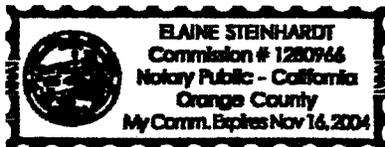


*Christina N. Mangione*  
Notary Public

STATE OF CALIFORNIA )  
 )  
COUNTY OF ORANGE ) ss.

On 1/8/2001, before me, a Notary Public in and for said State, personally appeared Elizabeth Cowan, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the within instrument such person(s) or the entity upon behalf of which such person(s) acted, executed such instrument.

WITNESS my hand and official seal.



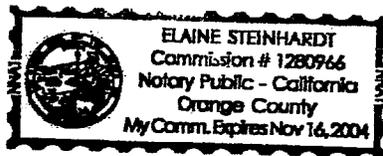
[SEAL]

Elaine Steinhart  
Notary Public

STATE OF CALIFORNIA )  
 )  
COUNTY OF ORANGE ) ss.

On 1/8/2001, before me, a Notary Public in and for said State, personally appeared Elizabeth Cowan, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the within instrument such person(s) or the entity upon behalf of which such person(s) acted, executed such instrument.

WITNESS my hand and official seal.



[SEAL]

Elaine Steinhart  
Notary Public