PLANNING COMMISSION AGENDA REPORT

MEETING DATE: JANUARY 26, 2009 — ITEM NUMBER: VII.1

SUBJECT: DA-08-05 TWO YEAR REVIEW OF PACIFIC ARTS PLAZA (FORMERLY TWO TOWN CENTER) DEVELOPMENT AGREEMENT (DA-00-04) BOUNDED BY BRISTOL STREET, ANTON BOULEVARD, AVENUE OF THE ARTS AND 405 FREEWAY

DATE: JANUARY 9, 2009

FOR FURTHER INFORMATION CONTACT: MINOO ASHABI, AIA, SENIOR PLANNER
(714) 754-5610

DESCRIPTION

Two-year review of the development agreement between the City of Costa Mesa and Maguire Properties.

APPLICANT

Mr. Mark Lammas is the authorized agent for Maguire Properties.

RECOMMENDATION

Based on the evidence in the record, determine and find that Maguire Properties has demonstrated good faith compliance with the terms and conditions of Development Agreement DA-00-04.

MINOO ASHABI, AIA
Senior Planner

KIMBERLY BRANDT AICP
Asst. Development Svs. Director

BACKGROUND

Pacific Arts Plaza (Formerly Two Town Center) is a 6.26 acre subarea of South Coast Plaza Town Center and is bounded by Anton Boulevard, 405 Freeway, Bristol Street and Avenue of the Arts. A vicinity map is provided as Attachment 1.

The following is a list of Council actions related to execution and implementation of Development Agreement DA-00-04:

- On July 16, 2001, the Costa Mesa City Council approved Development Agreement DA-00-04 between the City and FSP Two Town Center/Fifth Street Properties. The Agreement was approved in conjunction with a Preliminary Master Plan for South Coast Plaza Town Center and Final Environmental Impact Report No. 1047. In October 2002, Council approved the Two Town Center Master Plan, which allowed construction of an 18-story high-rise (400,000 sq. ft.) and a five-level parking structure (770 new spaces) in addition to the demolition of the South Coast Cinema Building (12,000 sq. ft.) and two-level parking structure.

- On November 8, 2004, Council took action delegating future periodic reviews to the Planning Commission and to allow formal periodic reviews to be conducted every two years. Intervening annual reviews are conducted at staff level.

- On January 16, 2007, Council approved General Plan Amendment GP-06-02 that allowed transfer of building area within the Pacific Arts Plaza sub area. Proposed new development within this sub area includes:

    1. One high-rise tower with 180 residential units at the southeastern corner of Anton Boulevard and Park Center Drive.
    2. The demolition of the existing 5-story, 67,450 square-foot bank building.

This development agreement was last reviewed by the Planning Commission on January 8, 2007.

ANALYSIS

The Agreement provides assurances to the Developer that they may proceed with development, in conformance with existing land use regulations for a period of 20 years. In exchange for these assurances, the City realizes public benefits in the form of the creation/enhancement of a world-class performing arts district within a cohesive and pedestrian-friendly mixed-use environment as well as additional public revenues.

Section 3.5, Periodic Review, of the Agreement requires a periodic review of the Developer's performance of its obligations under the Agreement. The purpose of the periodic review is to determine whether or not the Developer has demonstrated "good faith" compliance with the Agreement's terms.

Obligations on Part of the Developer

1. *Preservation of Noguchi California Scenario*. The Developer has provided for the preservation, maintenance, public accessibility, and validated parking for visitors of the Noguchi California Scenario. A Land Use Restriction related to these provisions will be in effect until 2050.

2. *Creation and Implementation of the TAD Plan*. The Theater and Arts District (TAD) was approved by Council in February 2004. The TAD Plan provides consistency of theme and excellence of design for prominent aspects of the public and outdoor private spaces in the South Coast Plaza Town Center. An amendment to TAD was approved by Council on May 6, 2008, that reallocated the funds required by TAD to be focused on a comprehensive sign program. The sign program is anticipated to be implemented in 2009.

3. *Provision of Excess Parking Capacity in TAD Plan*. The Developer has proposed parking provisions in the TAD Plan which would allow for the equitable use of excess parking capacity in the Two Town Center parking structures in nonbusiness hours for patrons of the performing arts venues located in the Town Center. As required by the Agreement, parking charges to the patrons of performing arts venues shall not exceed prevailing parking charges for venue event parking at other comparable facilities in Orange County. In addition, the applicant is currently providing a 50 percent discount on venue parking charges to Costa Mesa residents.

4. *Provision of Traffic Improvements*. Environmental Impact Report No. 1047 for the South Coast Plaza Town Center required traffic improvements at Bristol Street/Sunflower Avenue and Fairview Road/South Coast Drive. The restriping work related to these traffic improvements were at a total cost of about $5,000 to the Developer. These improvements were implemented in 2002. The Bristol Street/Sunflower improvement involved the conversion of a third northbound through lane to a shared through/right turn lane. At Fairview/South Coast, a second eastbound through lane was converted to a shared through/right turn lane. Other traffic improvements are to be implemented when final building permits for the Town Center Master Plan Development are issued.

5. *Fulfillment of Additional Public Benefits*. The Developer has fulfilled an additional public benefit described in Exhibit "H" of the Agreement, by donating land for the Avenue of the Arts Freeway off-ramp. This land was appraised at more than $1,100,000 and provided significant traffic mitigation benefits and improved access to Town Center and the surrounding area.

6. *Final Master Plan Approval*. Approval of the Two Town Center Final Master Plan occurred in October 2002. The Final Master Plan involved the development of an 18-story, 400,000 sq. ft. office building, four-level parking structure, and demolition of the cinema building and existing two-level structure.

Because the Developer has not yet submitted building plans for construction, there are no other obligations that they need to fulfill at this time. When the plans are submitted for plan check, some remaining obligations identified in the development agreement include the following:

1. *Provision of Bristol and Paularino Traffic Improvement*. On a fair share basis, the Developer will provide for the addition of a second northbound left-turn lane and a second westbound left-turn lane at Bristol and Paularino. This traffic improvement is estimated to be implemented by Year 2015.

2. *Provision of Park Center and Sunflower Traffic Improvement*. On a fair share basis, the Developer will provide for the following traffic improvements: (1) conversion of a northbound through lane to a shared left/through lane, (2) conversion of a southbound left-turn lane to a shared left/through lane, (3) conversion of southbound through lane to a right-turn lane, and (4) implementation of split phasing for north/south direction. This traffic improvement is estimated to be implemented by Year 2015.

3. *Payment of Fire Protection Impact Fee*. The Developer will be responsible for payment of a fire protection impact fee (currently $0.285 per square foot of new development). This fee is due prior to issuance of an occupancy permit for new development.

Obligations on Part of the City

In accordance with Section 2.2 of the Agreement, the City has assured that the Developer has vested rights to carry out and complete the Two Town Center Master Plan.

The City Attorney and Transportation Services have also reviewed the development agreement and concur that the Developer is in compliance with the terms of the Agreement.

ALTERNATIVES

If the Planning Commission finds the Developer is not in compliance with the Agreement's terms, evidence supporting that determination would be required.

CONCLUSION

Staff has reviewed the Agreement's terms and conditions and believes the Developer is in compliance. The Planning Commission's determination can be made by minute order.

Attachments:
1. Vicinity Map
2. Applicant's Letter dated December 19, 2008
3. Development Agreement DA-00-04

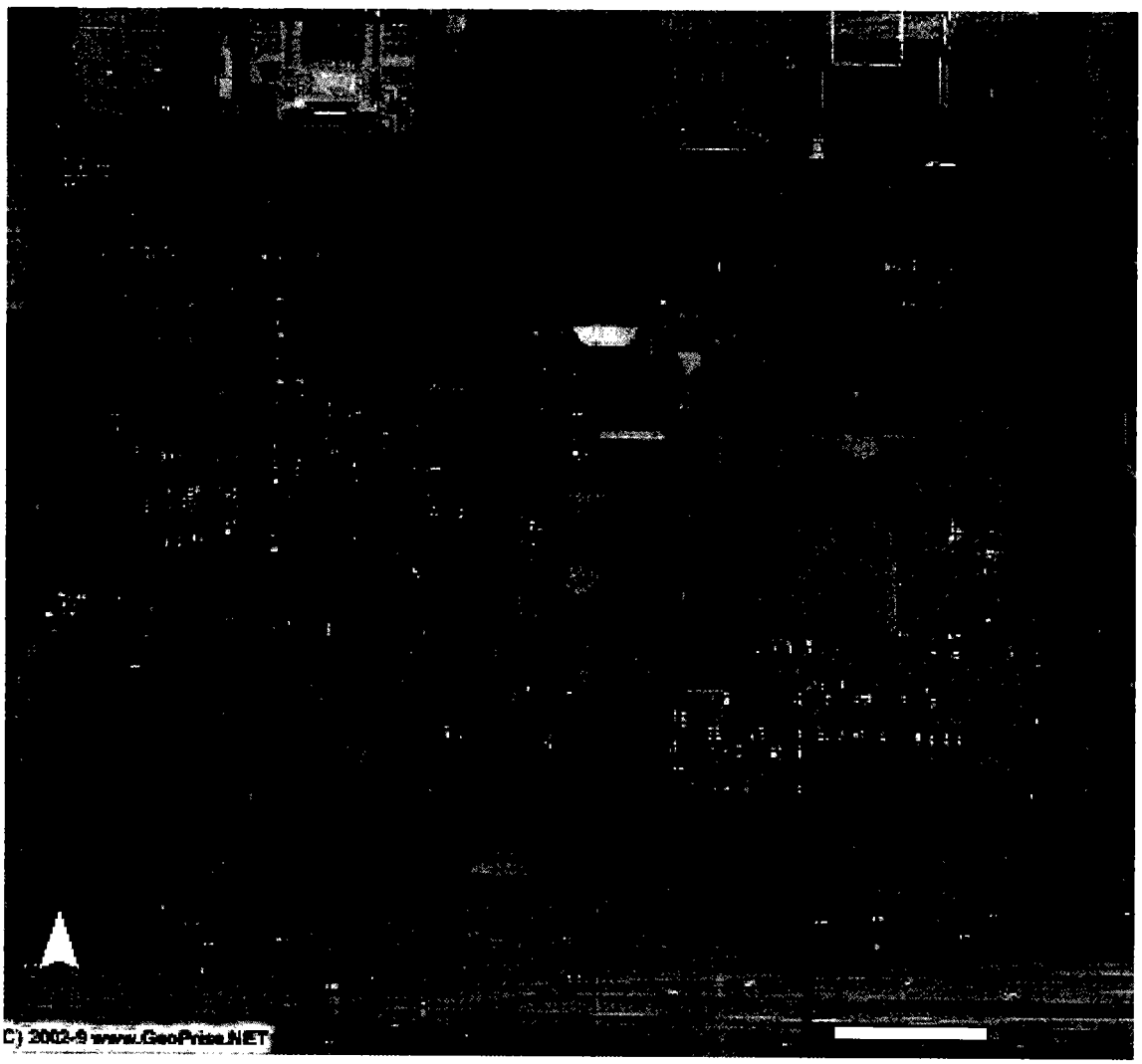
cc: Deputy City Manager - Dev. Svs. Director
City Attorney
Public Svs. Director
City Engineer
Fire Protection Analyst
Staff (4)
File (2)

Mark Lammas
Maguire Properties
333 South Grand Avenue, Suite 400
Los Angeles, CA 90071

File: 012609DA0004Review	Date: 011509	Time: 3:30 p.m.

ATTACHMENT 1

Pacific Arts Plaza
Development Agreement DA-00-04



ATTACHMENT 2

Maguire

December 19, 2008

Via Hand Delivery

Minoo Ashabi, AIA
Senior Planner
City of Costa Mesa
77 Fair Drive
Costa Mesa, California 92628

DEC 23 2008

RE: Pacific Arts Plaza – DA-00-04 Annual Review

Dear Ms. Ashabi:

This letter is provided to formally request the City of Costa Mesa's required periodic review of the Pacific Arts Plaza Development Agreement (DA-00-04). Attached, please find the following required items:

1. City of Costa Mesa Notification E-mail dated November 20, 2008
2. A completed Planning Application Form
3. A check in the amount of $1,350.00 for the processing fee
4. Radius Map and Required Mailing Labels

Maguire Properties continues in the process of refining the proposed construction documents for submission for plan check and permitting. Thank you for your help with regard to this review.

Should you have questions, please contact me at 714/384-5500.

Best regards,

Maguire Properties, LP

Karen Graham
General Manager

Attachments

CC:: Mark Lammas - Maguire Properties
Ted Bischak - Maguire Properties
Bob Goodwin - Maguire Properties

Maguire Properties

3200 Park Center Drive
Suite 1150
Costa Mesa, California 92626

714 384 5500 Main
714 384 5515 Fax
www.maguireproperties.com

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

CITY OF COSTA MESA
77 Fair Drive
Costa Mesa, CA 92626
Attn: City Clerk

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

NO FEE
20010556976 03:17pm 08/13/01
109 73 A12 63
0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00

(Space Above This Line For Recorder's Use)

This Development Agreement for Two Town Center and Downey Savings Development Property is recorded at the request and for the benefit of the City of Costa Mesa and is exempt from the payment of a recording fee pursuant to Government Code §6103

CITY OF COSTA MESA

By: MARY T. ELLIOTT
Its: DEPUTY CITY CLERK
Dated: JULY 27, 2001

Mary T. Elliott

DEVELOPMENT AGREEMENT FOR TWO TOWN CENTER AND DOWNEY SAVINGS DEVELOPMENT PROPERTIES (DA-00-04)

by and between

CITY OF COSTA MESA

and

FSP TWO TOWN CENTER, LLC and FIFTH STREET PROPERTIES-DS, LLC

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Exhibit "A" - Legal Description of the Property.
Exhibit "B" - Maps showing Property and its location.
Exhibit "C" - Existing Development Approvals.
Exhibit "D" - Existing Land Use Regulations.
Exhibit "E" - Future Development Approvals
Exhibit "F" - Declaration of Land Use Restrictions
Exhibit "G" - TAD Plan
Exhibit "H" - Additional Public Benefits
Exhibit "I" - FAR and Trip Budgets
Exhibit "J" – Existing Restaurants and Retail Establishments
Exhibit "K" – Schedule of Traffic Mitigation Improvements

DEVELOPMENT AGREEMENT FOR TWO TOWN CENTER AND DOWNEY SAVINGS

This Development Agreement for the Two Town Center and the Downey Savings Development Properties (the "Agreement") is executed this day 27th of JULY, 2001, by and between the CITY OF COSTA MESA, a general law city, ("CITY"), on one hand, and FSP TWO TOWN CENTER, LLC, a Delaware limited liability company and FIFTH STREET PROPERTIES-DS, LLC, a Delaware limited liability company (collectively "OWNER") on the other hand. CITY and OWNER are individually referred to herein as a "Party" and collectively referred to herein as the "Parties".

RECITALS

A. OWNER is the fee owner of that certain real property (the "Property," defined below) on which the Two Town Center and Downey Savings Project (the "Project," defined below) is to be located, which property is more fully described in Exhibit "A" and shown on the map set forth on Exhibit "B", both attached hereto. The Property is currently developed with four (4) office buildings consisting of approximately 672,666 square feet of building area, 28,945 square feet of restaurant uses, 8,100 square feet of retail uses, 19,200 square feet of theater uses, the Noguchi California Scenario outdoor sculpture garden, surface and structure parking, and related driveway, landscaping and other improvements. OWNER desires to develop the Project as a major high-quality mixed-use office, restaurant, and retail development that requires substantial long-term planning, comprehensive design, significant investment by OWNER in public and private infrastructure, and an assurance of stable land use entitlements in order to maximize the potential for OWNER to finance and develop it. Accordingly, OWNER has requested that CITY enter into this Agreement to provide certain assurances that the Project will be permitted to proceed in accordance with and subject to the provisions set forth herein and in CITY's "Existing Land Use Regulations", CITY's "Existing Development Approvals", the Theatre and Arts District Plan ("TAD Plan") and the "Future Development Approvals" to be obtained by OWNER, all as more particularly set forth herein.

B. Pursuant to California Government Code section 65865, the CITY adopted its Resolution No. 88-53, on July 19, 1988, establishing procedures and requirements for the approval of development agreements ("CITY's Development Agreement Procedures and Requirements"). OWNER has applied to CITY pursuant to California Government Code Sections 65864-65869.5 and pursuant to said Resolution for approval of the Agreement set forth herein.

C. CITY has determined that development of the Project will provide significant benefits to the community and that the Project promotes the public health, safety, and welfare for the following reasons, among others: (i) the Project ensures the comprehensive planning of a high quality Project on the Property that will enhance the image and stature of the CITY; (ii) the Project establishes a balance of land uses that benefits various segments of the community; (iii)

the Project will generate significant public tax revenues that can be utilized to provide police, fire, recreation and other essential and important public services to the community; (iv) the Project will put the Property to productive use consistent with the objectives of CITY's General Plan; (v) the Project will provide a long-term source of employment opportunities for residents of the CITY and the surrounding region; (vi) the Project promotes the CITY's objective of creating a pedestrian-oriented restaurant and commercial retail environment along the south side of Anton Boulevard; (vii) the Project will provide enhanced public access and visibility to the Noguchi California Scenario outdoor sculpture garden, a significant public art resource in the CITY; (viii) OWNER will participate in the development and implementation of the TAD Plan; (ix) the Project will be reconfigured to accommodate the freeway off-ramp at Avenue of the Arts and to present an attractive major entry into Town Center; (x) the Project will contribute to the mitigation of traffic impacts through traffic impact fees, the construction of additional parking and improvement of access to and circulation within the Project; (xi) the Project will provide the additional public benefits listed in Exhibit "H," and (xii) the Project will generate substantial development impact fee revenue that will assist CITY and other public agencies in the financing of public improvements of benefit to the community and the region, including, without limitation, needed transportation, school, park, storm drainage, and sanitary sewer facilities. In consideration for OWNER's provision of the foregoing public benefits, and agreement with the CITY to advance the dedication of the land required to accommodate the construction of the Avenue of the Arts freeway off-ramp, pursuant to the Dedication Agreements, defined below, CITY has determined that it is appropriate to enter into this Agreement to provide assurances to OWNER that the Project will be permitted to proceed in accordance with and subject to the provisions set forth herein and in CITY's Existing Land Use Regulations, CITY's Existing Development Approvals, the TAD Plan and the Future Development Approvals to be obtained by OWNER, all as more particularly set forth herein.

D. In connection with its approval of the Project, Final Program Environmental Impact Report No. 1047 ("FEIR") was prepared by the CITY and certified by the City Council on February 5, 2001. The FEIR is a Program EIR that analyzed potential adverse environmental impacts of full buildout for the Project, in addition to the potential adverse impacts of other development in the Town Center area, including the proposed STC Project and the proposed SCA Project.

E. On November 13, 2000, the Planning Commission of CITY held a public hearing on OWNER's application for approval of this Agreement and recommended to the CITY Council of CITY that this Agreement be approved. On February 5, 2001, the CITY Council also held a public hearing on OWNER's application for approval of this Agreement.

F. In accordance with the Development Agreement Statute, CITY's Development Agreement Procedures and Requirements, and applicable law, on July 16, 2001, the CITY Council, adopted its Ordinance No. 01-6 approving this Agreement.

COVENANTS:

Based upon the foregoing Recitals, which are incorporated into this Agreement by this reference, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both Parties, CITY and OWNER agree as follows:

1.0 DEFINITIONS AND EXHIBITS

1.1 Definitions

The following terms when used in this Agreement shall have the meanings set forth below:

(a) The term "Agreement" shall mean this Development Agreement for the Project by and between the City of Costa Mesa and OWNER, as the same may be amended from time to time.

(b) The term "CITY" shall mean the City of Costa Mesa, a municipal corporation organized and existing under the laws of the State of California.

(c) The term "Theatre and Arts District Plan" ("TAD Plan") shall mean an element of the North Costa Mesa Specific Plan applicable to the Town Center (also referred to as Subarea 4 of the North Costa Mesa Specific Plan) to be adopted by CITY as provided in Exhibit G of this Agreement and any subsequent amendments to said element. The TAD Plan will establish a set of parameters to promote compatibility of theme and excellence of design for prominent aspects of the public places in the Town Center to promote the area as a cultural arts district. The plan may include, but is not limited to, voluntary common design guidelines and mandatory standards regarding pedestrian and vehicular streetscapes, lighting, public art, street furniture, signage, landscaping, pedestrian and vehicular circulation, view linkage and other components. Entry and monument signs, display banners and other signs identifying the Theatre and Arts District shall conform to the regulations in the TAD Plan. The name of the Theatre and Arts District shall prominently include the name of the City. The TAD Plan will also discuss the enhanced amenities treatment of the public streets in the Town Center, an estimated cost for implementing these amenities, and alternative funding mechanisms to pay for installing and maintaining these amenities. The TAD Plan will also contain regulations addressing the hours of operation, access by the public, and parking fee restrictions for the parking structures in the Town Center to ensure the availability of sufficient parking for patrons of the cultural arts facilities in the Town Center. The TAD Plan will recognize OWNER's need to have available sufficient parking for OWNER's tenants and their invitees. Persons who are residents of the City of Costa Mesa attending a cultural arts venue during evenings (after 6 p.m.), on weekends or on holidays shall be provided a discount of fifty percent (50%) off the price for parking otherwise applicable to the general public attending such cultural arts venue at the following parking structures: (i) the existing parking structure adjacent to the California Scenario sculpture garden and (ii) the two proposed parking structures to be constructed south of Anton Boulevard and

west of Park Center Drive, adjacent to proposed Building H. In accordance with the provisions of Section 2.3.1, the provisions of the TAD Plan are not intended to change or replace the covenants agreed to in this Agreement for the development of the Project. Subject to the provisions of Exhibit "G", Paragraph D, all references in this Agreement to compliance with (or the effect of) the TAD Plan shall mean compliance (or effect) from and after the date the TAD Plan is adopted by the CITY (subject to the provisions of Section 2.3.1).

(d) The term "CITY's Development Agreement Procedures and Requirements" means the CITY Resolution No. 88-53 adopted on July 19, 1988 titled "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, ESTABLISHING PROCEDURES AND REQUIREMENTS FOR CONSIDERATION OF DEVELOPMENT AGREEMENTS."

(e) The term "Dedication Agreements" shall mean the agreement entered into by and between Fifth Street Properties, LLC, a Delaware limited liability company, and CITY dated as of January 3, 2000 and recorded as Document No. 20000057842 in the Official Records of County Recorder of the County of Orange ("Dedication Agreement No. 1"), and the agreement entered into by and between the same parties dated as of April 3, 2000 and recorded as Document No. 20000182744 in the Official Records of County Recorder of the County of Orange ("Dedication Agreement No. 2").

(f) The term "Development Agreement Statute" shall mean Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 of Title 7 of the California Government Code.

(g) The terms "Development," "development" and "develop" mean the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of infrastructure and public facilities related to the Project whether located within or outside the Property; the construction, demolition, reconstruction and redevelopment of buildings and structures; and the installation of landscaping.

(h) The term "Development Approvals" means all land use, zoning and building permits and entitlements subject to approval or issuance by CITY in connection with Development of the Project, including, but not limited to:

Parcel maps and/or lot line adjustments;
Conditional use permits, final development permits and variances;
Parking approvals and variances
Zoning changes;
Preliminary and/or Final Master Plan approvals or amendments;
Grading and building permits;
Demolition permits; and
Occupancy permits for new buildings.

(i) The term "Development Exaction" means any requirement of CITY in connection with or pursuant to any Land Use Regulation, the TAD Plan or Development Approval for the dedication of land, the construction of public improvements or public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

(j) The term "Effective Date" means the later of: (i) 12:01 a.m. on the thirty-first (31st) day following the City Council's adoption of its ordinance approving this Agreement, subject to the provisions of the California Elections Code relating to referendum petitions, or (ii) satisfaction of the condition precedent set forth in Section 2.1.1(1) relating to the written consent and subordination requirement for the holder(s) of all deeds of trust and/or mortgages encumbering any portion of the Property.

(k) The term "Existing Development Approvals" means all of the Development Approvals for the Project approved or issued on or before the date of execution of this Agreement by both parties. Existing Development Approvals include Development Approvals listed in Exhibit "C" attached hereto and incorporated herein by this reference.

(l) The term "Existing Land Use Regulations" means all of CITY's Land Use Regulations in effect as of the date that the City Council adopts an ordinance approving this Agreement. The Existing Land Use Regulations are listed on Exhibit "D" and incorporated herein by reference.

(m) The term "FAR" or "Floor Area Ratio" means the gross floor area of all buildings within a project divided by the project lot area. Gross floor area is the total building area of all floors within the walls of all structures except elevator and other vertical shafts (including stairwells) and elevator equipment areas. Parking structures are not considered building area for purposes of calculating Floor Area Ratio. Project lot area is the total area of a project excluding all required dedications or reservations for public improvements, including but not limited to streets, parks, schools, flood control channels; provided, however, that in accordance with the provisions of the Dedication Agreements, as referenced in Section 2.2.17 and defined herein, and the provisions of this Agreement, the Project lot area to be used for FAR calculations shall include the area of any portions of the Property which have been dedicated or conveyed to the CITY, to the California Department of Transportation ("Caltrans"), or to any other public agency after January 25, 2000 for public use, street or highway purposes in connection with the ongoing public works project to improve the 405 Freeway and State Route 55 or in connection with the improvement of Park Center Drive on the Property in the event that this private street is dedicated to and accepted by the City as a public street.

(n) The term "Future Development Approvals" means Development Approvals, including any amendments or modifications thereto, required or requested subsequent to the date of execution of this Agreement by both parties in connection with the Development of the Property in accordance with the Existing Land Use Regulations. Some of the Project's Development Approvals are listed in Exhibit "E" attached hereto and incorporated herein by this reference.

(o) The term "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations and official policies of CITY governing land use development and building construction, including, without limitation: the permitted use of land; the density or intensity of use; subdivision requirements; the maximum height and size of proposed buildings; Development Exactions; regulations regarding the rate, time or sequence of development; and the design, improvement and construction standards and specifications applicable to the Development of the Property.

(p) The term "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other secured lender, and their successors and assigns.

(q) The term "OWNER" shall collectively mean FSP Two Town Center, LLC, a Delaware limited liability company, and Fifth Street Properties-DS, LLC, a Delaware limited liability company, and their successors and assigns, as referred to in Section 3.12 of this Agreement.

(r) The term "Program EIR" means an Environmental Impact Report prepared on a series of actions that can be characterized as one large project consistent with the provisions of section 15168 of the Guidelines (Title 14 Cal. Code Regs. §15000 et. seq.) for the California Environmental Quality Act.

(s) The term "Property" means the real property legally described in Exhibit "A" and depicted on the map set forth in Exhibit "B," both attached hereto, on which the Project structures are proposed to be located.

(t) The term "Project" or "TTC Project" means the demolition of the existing theater and some of the existing restaurant and retail uses on the Property and the construction of two (2) new office buildings totaling 400,000 square feet of office uses (in the aggregate), 20,600 square feet of replacement of restaurant uses, two new parking structures, the reconfiguration and revision of the existing surface parking, circulation improvements and landscaping.

(u) The term "SCA Project" means the proposed development of the Segerstrom Center for the Arts property by the Orange County Performing Arts Center, which includes, among other things, construction of a symphony hall and a museum/arts academy, the expansion of the Orange County Performing Arts Center and the expansion of the South Coast Repertory Theater.

(v) The term "STC Project" means the proposed development of the real property located at (1) the southeast corner of the intersection of Bristol Street and Sunflower Avenue with a new 339,025 square foot office building and related parking structure, which in conjunction with the STC Project owner's demolition to occur of other office space in the Town Center will result in a net additional 255,000 square feet of new office space; and (2) the northeast corner of the intersection of Bristol Street and Anton Boulevard with a 186 room hotel consisting of 186,000 square feet.

(w) The term "Subsequent Land Use Regulations" means any Land Use Regulations adopted and effective after the Effective Date of this Agreement.

(x) The term "Town Center" means the area bounded on the south by Interstate 405, on the west by Bristol Street, on the north by Sunflower Avenue and on the east by Avenue of the Arts.

(y) The term "Trip Budget" means the maximum number of AM and PM peak hour trips allocated to a project site. The Trip Budget is derived by multiplying the project area by the allowable Floor Area Ratio and by the AM and PM peak hour trip generation rates for the applicable land use classification.

(z) The term "Party" shall refer singularly to CITY or OWNER and collectively to CITY and OWNER.

(aa) The term "Reservations of Authority" shall have the meaning ascribed in Section 2.3 of this Agreement.

1.2 Exhibits

The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit "A" - Legal Description of the Property.
Exhibit "B" - Maps showing Property and its location.
Exhibit "C" - Existing Development Approvals.
Exhibit "D" - Existing Land Use Regulations.
Exhibit "E" - Future Development Approvals
Exhibit "F" - Declaration of Land Use Restrictions
Exhibit "G" - TAD Plan
Exhibit "H" - Additional Public Benefits
Exhibit "I" - FAR and Trip Budgets
Exhibit "J" - Existing Restaurants and Retail Establishments
Exhibit "K" - Schedule of Traffic Mitigation Improvements

2.0 AGREEMENT AND ASSURANCES

2.1 Agreement and Assurances on the Part of OWNER

From and after the Effective Date, OWNER, in accordance with its sound business judgment, agrees to work towards development of the Project in accordance with the Existing Land Use Regulations, the Existing Development Approvals, its obligations regarding the TAD Plan (subject to the provisions of Section 2.3.1), and the Future Development Approvals to be obtained pursuant hereto. Not by way of limitation of the foregoing, in connection with development of the Project, OWNER shall, subject to the provisions of this Agreement, comply

with all conditions imposed by CITY on the Existing Development Approvals, all applicable requirements of the TAD Plan (subject to the provisions of Section 2.3.1), and all valid conditions consistent with this Agreement that CITY may impose on the Future Development Approvals.

OWNER represents that it intends to pursue development of the Project in accordance with this Agreement with reasonable diligence as it deems appropriate in its sound business judgment and consistent with its business goals. In this regard, it is understood that OWNER's development of the Property and each element thereof depends upon a number of factors including, but not necessarily limited to, development and finalization of site plans and building programs, market demand and supply, the availability of financing, interest rates, and other conditions outside of OWNER's control. Accordingly, nothing in this Agreement shall be construed as requiring OWNER to develop the Property or the Project, or any phase of the Project, and any failure to develop the Property or the Project shall not be deemed a default by OWNER of its obligations set forth in this Agreement. OWNER intends to develop the Property as a single, integrated development project, that each phase of the Project will be dependent upon the completion and occupancy of each other phase, and that the viability of each phase of the Project will be dependent upon Developer completing and occupying the other phases of the Project in accordance with this Agreement.

In addition to the foregoing, OWNER covenants as follows:

2.1.1 Public Benefits.

As consideration for entering into this Agreement, CITY has received and will receive from OWNER numerous public benefits. In order to provide the CITY with assurance of these public benefits, OWNER hereby agrees as follows:

(1) FSP Two Town Center, LLC ("FSP") represents that it owns the property on which the Noguchi California Scenario, an outdoor sculpture garden (the "Garden," more particularly described in Exhibit F) is located. FSP shall provide for the preservation, maintenance and the public accessibility of the Garden in accordance with the provisions of Declaration of Land Use Restrictions in the form attached hereto as Exhibit "F" (the "Declaration of Land Use Restrictions"), which shall be executed and recorded with the Orange County Clerk-Recorder within ten (10) days of the Effective Date and prior to the issuance of any building permits for the construction of the new office buildings in the Project. FSP further agrees to perform each and all of its Declaration of Land Use Restriction obligations on a timely basis and these obligations shall continue to be binding for as long as the Declaration of Land Use Restrictions remains in full force and effect.

Notwithstanding any provision of this Agreement to the contrary (except as set forth in Sections 3.7 and 3.28), neither OWNER nor the CITY shall have any rights and obligations under this Development Agreement (or any portion thereof, including, without limitation, under the Declaration of Land Use Restrictions) unless and until the holder(s) of all deeds of trusts and/or mortgages encumbering all or any portion of the Property shall, within 180 days of the date hereof, both (i) consent in writing to the execution and delivery of this Development Agreement by OWNER and (ii) execute a commercially reasonable subordination agreement, in a form approved by the City Attorney, which approval shall not be unreasonably withheld, subordinating the lien of such holder's deed of trust or mortgage to the provisions of this Development Agreement and the Declaration of Land Use Restrictions. OWNER agrees that no building permit shall issue and no Project construction shall occur on the Property pursuant to the approvals issued by the CITY on February 5, 2001 unless OWNER has obtained the lender consent and subordination addressed herein within said 180 day period, or such additional time period as the parties may agree upon. If such consent and subordination is not obtained as required herein, all rights and obligations of each party herein shall be null and void and this Agreement shall be a nullity on the 181st day following the execution of this Agreement, except that OWNER's agreement that absent such consent and subordination no building permit shall issue and no construction shall occur pursuant to the February 5, 2001 approvals, shall become effective upon execution of this Agreement and shall survive the termination of the Agreement. In the event of such termination, OWNER shall be required to apply for and obtain new Development Approvals in place of the February 5, 2001 approvals, in order to develop the Project on the Property.

(2) OWNER shall participate in the creation and implementation of the TAD Plan in accordance with and subject to the provisions of Exhibit "G" attached hereto.

(3) OWNER shall make available for use in the TAD Plan, its nonbusiness hours excess parking capacity in its parking structures on the Property in order to allow the TAD Plan to equitably use such excess parking capacity, in conjunction with the TAD Plan's use of parking facilities owned by others in the Town Center, by patrons of the performing arts venues located within Town Center.

OWNER's current business hours generally extend from 8:00 a.m. through 7:00 p.m. during weekdays and from 8:00 a.m. through 1:00 p.m. on Saturdays. The parties acknowledge that OWNER's current business hours may change in the future consistent with the practices of other first class office projects in Orange County. OWNER shall determine in good faith its excess parking capacity during nonbusiness hours, taking into account (and giving priority to) the needs of OWNER's tenants (and such tenants' business visitors), as the same shall change from time to time. OWNER shall not be required under the TAD Plan to regulate or permit use by performing venue and public art patrons of the Property's parking facilities during the normal business hours of the Property, as the same may exist from time to time. Parking charges charged to patrons of the performing arts venues for such parking use shall not exceed prevailing parking charges for venue event parking at comparable venue facilities in Orange County; provided, however, subject to presentation of reasonable evidence of such residence (and parking use for attendance at the performing arts venue), OWNER shall provide a fifty percent (50%) discount on such venue parking charges to residents of the City of Costa Mesa.

The parties acknowledge that Section 1.2 of the Declaration of Land Use Restrictions separately establishes OWNER's obligations to provide public access and parking for visitors to the Garden.

Nothing in this Agreement shall impair the applicability of the CITY's agglomerated parking program described in ZE-81-207 and any modification thereof to the Property and its parking facilities.

(4) Environmental Impact Report No. 1047 ("EIR"), prepared in conjunction with the STC project, details specific traffic improvements at four intersections located in the CITY, as identified on Exhibit "K" hereto, that will be necessary to mitigate potentially significant impacts of the STC, SCA and TTC projects. These impacts are anticipated to occur as these projects reach certain levels of development. OWNER shall pay its fair share (among the owners of the STC Project, TTC Project and SCA Project), relative to traffic impacts generated by each project at each individual intersection, of the total cost for such mitigation when CITY causes the mitigation to be done.

(5) The Project is subject to a CITY Fire Protection Impact Fee Program which requires payment by OWNER of $0.285/square foot of new development. The fee is calculated on gross floor area and is due prior to issuance of an occupancy permit for new development.

(6) In addition the development of the Project pursuant to this Agreement shall result in the additional public benefits described in Exhibit "H" attached hereto.

(7) OWNER shall work diligently, in accordance with and subject to Exhibit "G" with the other ownership entities within Town Center to develop a method for financing all public improvements that may be required by the TAD Plan, including but not limited to design, construction, installation and maintenance of such improvements.

(8) Notwithstanding any other provision of this Agreement, should a final decision of a court acting within its area of jurisdiction determine that any Project approval issued by the CITY was improperly issued, the CITY shall be entitled to impose such additional conditions and mitigation measures which the CITY, in the reasonable exercise of its discretion, determines are appropriate to insure proper issuance of the challenged Project approval and shall otherwise be authorized to comply with any lawful order issued by the court. Except as otherwise provided by law, CITY shall use reasonable efforts to insure that such new conditions or compliance requirements are consistent with the terms of this Agreement. If OWNER, in its sole discretion, determines that any of the proposed new conditions or compliance requirements are unacceptable it may elect to withdraw the challenged Project application.

2.2 Agreement and Assurances on the Part of CITY

CITY hereby agrees that commencing on the Effective Date, and continuing during the entire remaining term of this Agreement, OWNER shall have the vested right to carry out and complete the Project in accordance with the express provisions of this Agreement, the Existing Land Use Regulations, the Existing Development Approvals, the obligations of the OWNER under this Agreement with respect to the TAD Plan and once the same have been obtained, the Future Development Approvals, to the full extent permitted by the Development Agreement Statute. Nothing in this Agreement shall provide OWNER with any rights, vested or otherwise, relating to any project other than the Project. In furtherance of such agreement and assurance,

and pursuant to the authority and provisions set forth in the Development Agreement Statute, CITY further hereby agrees and acknowledges as follows:

2.2.1 **General**

The uses permitted hereunder, the density and intensity of development, the maximum height and size of buildings, and all other matters affecting land use and development of the Project shall be as set forth in the express provisions of this Agreement and the Existing Land Use Regulations, the Existing Development Approvals, the TAD Plan and, once the same have been obtained, the Future Development Approvals. In addition, OWNER'S applications for Future Development Approvals shall be reviewed pursuant to the provisions of the CITY's Existing Land Use Regulations and the TAD Plan with the exception that the applicable notice and appeal, reconsideration and review provisions shall be those in existence at the time of any appeal, request for reconsideration or review, or required notice.

2.2.2 **Phasing and Allocation of Square Footage Between the Two New Office Projects.**

The CITY acknowledges that it is OWNER's intention that (A) two new office buildings (the "New Office Building(s)") be developed as the primary new additions of commercial space for the Project, (B) essentially all of the new restaurant and retail space to be developed hereunder will simply be in replacement of existing restaurant and retail space in the Property which will be eliminated hereunder, (C) approximately 265,000 square feet of the new office space represented by the addition of the two New Office Buildings assumes closure and demolition of the existing cinema/theater facility in the Property (at least in terms of calculation of PM Trips) (the "Existing Theater"), and (D) although the addition of approximately 400,000 square feet of new office space in the Property may be created through construction of two new office buildings, the precise dimensions, floorplate and overall size of each such office structure has not been finalized.

(a) In connection therewith, OWNER presently intends to seek project approvals of CITY in approximately three phases as follows:

(1) Phase 1, consisting of the first New Office Building (which may include demolition of existing restaurant and retail space and the incorporation in the new improvements of replacement restaurant and retail space) and a parking facility providing additional new parking capacity sufficient to provide parking in accordance with the parking standards in the existing Land Use Regulations. Such first New Office Building shall contain not less than eighty-five thousand (85,000) square feet of office space, and shall contain not more than three hundred thousand (300,000) square feet of office space.

(2) Phase 2, consisting of the reconfiguration of the existing parking structure within the Property. Subject to planning review by CITY, Phase 2 may be commenced

concurrently with, following, or prior to commencement of construction of Phase 1, as determined by OWNER in its sole and absolute discretion; and

(3) Phase 3, consisting of development of the second New Office Building and a new parking facility (in addition to then-existing parking facilities) in the Property (if and to the extent the then existing parking facilities do not contain a sufficient number of parking spaces such that following completion of the Second Office Building there shall be parking spaces available in accordance with existing CITY parking requirements). It is OWNER's intent that such second New Office Building shall contain an amount of commercial office space which, when aggregated with the size of the first New Office Building, shall not exceed 400,000 square feet of commercial office space in the two New Office Buildings. Development of Phase 3 may require demolition and/or incorporation into the new improvements of the existing restaurants and retail space specifically identified as such on Exhibit "J" attached hereto ("Existing Restaurants and Retail"). In addition, to the extent the same is not incorporated into Phase 1, Phase 3 may include the development of up to 28,945 square feet of replacement restaurant space and up to 8,100 square feet of replacement retail space.

(b) Subject to the height limitations and overall size limitations set forth in subparagraphs (ii)(a)(1) and (3) above, OWNER shall be permitted to seek approval for the allocation of the 400,000 square feet of new commercial office space anticipated to be created with the New Office Buildings between the first New Office Building and the second New Office Building in such proportions as OWNER shall select; provided, however, that in connection with development of the same, OWNER shall comply with all conditions imposed by CITY on the Existing Development Approvals and all valid conditions consistent with this Agreement that CITY may impose on the Future Development Approvals.

(c) OWNER may apply for a reduction in the required parking ratios in accordance with the provisions of Section 13-89.5 of the City's Municipal Code. In no event shall OWNER be required to provide parking capacity in excess of that required pursuant to the parking standards in City's Existing Land Use Regulations.

2.2.3 CITY's Consideration and Approval of Requested Changes in the Project

CITY acknowledges that the OWNER may in the future desire to change or modify the precise location, configuration, size and height of the proposed buildings and develop a mix of proposed uses after the Effective Date of this Agreement based upon more precise planning, changes in market demand, changes in development occurring in the vicinity, and similar factors. In such event, CITY shall cooperate with OWNER to expeditiously review and take final action on such requested changes in accordance with CITY's Existing Land Use Regulations and the TAD Plan. OWNER reserves the right to reduce the densities and intensities of uses and the heights and sizes of buildings below the maximums permitted by this Agreement. In no event, however, shall OWNER have the right hereunder to increase the density, intensity or

uses in the Project without fully complying with procedures in the Land Use Regulations and TAD Plan in effect at such time as the request/application to increase the density, intensity or uses is processed with the CITY. No change to the Project which is consistent with the Existing Land Use Regulations and the TAD Plan shall require an amendment of this Agreement and, in the event any change in the Project proposed by OWNER is approved by the CITY, the references in this Agreement to the Project or applicable portion thereof shall be deemed to refer to the Project as so changed. In addition, the parties intend that if parcelization of the Property is authorized and approved under the Subdivision Map Act and the Existing Land Use Regulations, such parcelization may occur without any additional Development Exactions, beyond those contemplated by this Agreement and the Existing Land Use Regulations, other than processing fees.

2.2.4 Timing of Development

The Parties acknowledge that the most efficient and economic development of the Project depends upon numerous factors such as market orientation and demand, interest rates, competition, and similar factors. Accordingly, except as expressly provided in this Agreement, the timing, sequencing, and phasing of development shall be as determined by OWNER in its sole subjective business judgment and discretion unless it is a condition to a discretionary decision for a Future Development Approval or a Project change to which the OWNER consents. Not by way of limitation of the foregoing, the Parties acknowledge and agree that no moratorium, initiative, ordinance, resolution, or other land use regulation or limitation which is adopted after the Effective Date of this Agreement and which directly or indirectly relates to the conditioning, rate, timing, or sequencing of development of the Project, shall apply to or govern the development of the Project during the term hereof, whether any such regulation or limitation affects or applies to parcel or subdivision maps (whether tentative, vesting tentative, or final), building permits, occupancy permits, or any other licenses, permits, or entitlements to use issued or granted by CITY.

2.2.5 Reservations and Dedication of Land for Public Purposes

In recognition of the significant contributions and dedications by OWNER, as provided in the Dedication Agreements, OWNER shall not be required to dedicate, convey, or transfer any interest in land or to construct or install public improvements or facilities in conjunction with the Project, except (i) as expressly provided for in the Existing Development Approvals, (ii) as expressly set forth in the provisions of this Agreement, or (iii) as authorized by Existing Land Use Regulations in conjunction with the processing of Future Development Approvals. The provisions of this Section 2.2.5 are not intended to preclude the CITY's ability to require minor additional dedications and exactions such as curb cuts, turn pockets, interior streets, and signalization of intersections reasonably necessitated by the impacts of the development of the Project or the Property, in connection with Future Development Approvals as presently authorized by the Existing Land Use Regulations.

2.2.6 Development Exactions.

Except as otherwise expressly set forth in this Agreement and as authorized under the Existing Development Approvals, CITY shall not impose Development Exactions in conjunction with OWNER's development of the Property or the Project, excepting only those Development Exactions which are authorized by the Existing Land Use Regulations; provided, however, that the foregoing limitation on Development Exactions does not apply to (i) generally applicable processing, plan check, building permit, and inspection fees for the Project (it being understood that, as to such fees, OWNER shall pay the same fees that would be applicable in the absence of this Agreement), or (ii) any Development Exaction that is imposed, levied, collected, or required by any public agency, utility, district, or joint powers authority, including but not limited to the San Joaquin Hills Transportation Corridor Agency, Newport-Mesa Unified School District, Costa Mesa Sanitary District, and Mesa Consolidated Water District

2.2.7 FAR and Trip Budget.

The Project is a development proposal within the Town Center. The Town Center is considered to be a project under single ownership or control at the time of the initial plan submittal and approval. Thus, under CITY zoning code sections 13-68 and 13-69, the FAR and trip budget shall be determined on the Town Center as a whole, rather than on a parcel by parcel basis. The Project, although part of the same CEQA process as the STC Project and the SCA Project, shall be considered a separate project for purposes of determining FAR and trip budget. The FAR and trip budget for the Project shall be provided in attached Exhibit "I".

2.2.8 Future Environmental Review.

The potential environmental impacts of the Project were analyzed in the Program FEIR. Future Development Approvals will be reviewed in light of the Program FEIR to determine if any additional environmental documentation will be required. The determination will be made consistent with the applicable provisions of CEQA and the State CEQA Guidelines.

2.2.9 Other Governmental Permits.

Provided that OWNER pays the actual cost of such cooperation, as reasonably estimated by CITY, after CITY has approved the development of any portion of the Project, CITY shall cooperate with OWNER in its efforts to obtain such additional permits and approvals as may be required by any other governmental or quasi-governmental agencies having jurisdiction over such portion of the Project which permits and approvals are consistent with CITY's approval(s) and which are consistent with this Agreement. CITY does not warrant or represent that any other governmental or quasi-governmental permits or approvals will be granted. As provided for in the Dedication Agreements, CITY will work cooperatively with OWNER to seek an operational modification from Caltrans for a revised circulation pattern for the new Avenue of the Arts off-ramp to provide a left turn lane and entrance from the off-ramp

into the existing parking structure on the Property, as shown in the Revised Circulation Alternative exhibit to the Dedication Agreements.

2.2.10 CITY Review of Applications for Future Development Approvals.

CITY acknowledges and represents that the Future Development Approvals listed in Exhibit "E" are a non-exhaustive list of discretionary CITY development and building approvals that OWNER is required to obtain in order to complete the development of the Project. All subsequent consideration by CITY of OWNER'S applications for Future Development Approvals for the Project shall be subject to the terms and conditions set forth in this Agreement.

To the extent permitted by the Development Agreement Statute, in no event shall CITY disapprove, condition, or delay the processing of any applications for any Future Development Approval for reasons inconsistent with the Existing Land Use Regulations, the Existing Development Approvals, the TAD Plan or the express provisions of this Agreement. If CITY is unable to timely process any of OWNER'S applications for Future Development Approvals, upon OWNER'S request CITY shall consider engaging qualified outside consultants reasonably acceptable to OWNER to aid in such processing, provided that OWNER shall be required to advance all charges to be incurred by CITY for such outside consultants. In this regard, OWNER, in timely manner, will provide CITY with all documents, applications, plans and other information necessary for CITY to carry out its obligations hereunder and will cause OWNER'S planners, engineers, and all other consultants to submit in a timely manner all required materials and documents therefor.

2.2.11 Vested Rights to Future Development.

After the date that CITY approves an application for a Future Development Approval, OWNER shall have the vested right to develop pursuant to said Future Development Approval, the Existing Development Approvals, the Existing Land Use Regulations and the TAD Plan to the same extent that OWNER has the vested right to develop pursuant to the Existing Development Approvals.

2.2.12 Traffic Impact Fee.

From the Effective Date through the term of this Agreement, the CITY traffic impact fee for the Project shall be as follows: (a) from the Effective Date through the fifth anniversary of the Effective Date, the traffic impact fee shall be the sum of One Hundred Ninety-Five Dollars ($195.00) per average daily trip ("ADT"), with the ADT to be calculated and credits against the fee to be determined, if applicable, in accordance with the CITY's Existing Land Use Regulations; (b) from the day after the fifth anniversary of the Effective Date through the tenth anniversary of the Effective Date, the traffic impact fee shall be the lesser of Two Hundred Dollars ($200.00) per ADT or the actual traffic impact fee that would be payable at the time in the absence of this Agreement; and (c) from the day after the tenth anniversary of the Effective

Date through the remaining term of this Agreement, the traffic impact fee shall be the amount that would be payable at the time in the absence of this Agreement.

2.2.13 Tentative Subdivision and Parcel Maps.

Subject to the provisions of Section 2.2.3, with respect to applications by OWNER for tentative subdivision and parcel maps for portions of the Property, CITY agrees that OWNER may file and process vesting tentative maps in accordance with Chapter 4.5 (commencing with Section 66498.1) of Division 2 of Title 7 of the California Government Code and the applicable provisions of CITY's subdivision ordinance. If final maps are not recorded for the entire Property before such tentative map(s) (whether or not any such tentative map is a vesting tentative map) would otherwise expire, the term of such tentative map(s) automatically shall be extended for the term of this Agreement.

2.2.14 Subject to Dedication Agreements.

Nothing in this Agreement shall be construed to modify the obligations of the PARTIES as set forth in the Dedication Agreements. If there is any conflict between the Dedication Agreements and this Agreement, the provisions of the Dedication Agreements shall govern.

2.3 Reservation of Authority

Notwithstanding anything to the contrary set forth in this Agreement, the following laws, ordinances, regulations, resolutions, plans, standards and official policies adopted or approved after the Effective Date of this Agreement shall apply to and govern development of the Project (collectively, the "Reservations of Authority"):

2.3.1 Theater and Arts District Plan.

The TAD Plan which will be adopted for the purposes described in Section 1.1(c) for the Town Center in order to establish a compatible theme and architectural features to promote and accentuate the area as a world-class cultural arts center for the City of Costa Mesa and Orange County community; provided, however, that notwithstanding any provision of this Agreement to the contrary:

(i) the financial obligations of the OWNER under the TAD Plan for (A) TAD Plan preparation costs by the City shall not exceed the sum of $50,000.00, and (B) funding TAD Plan public improvements shall not exceed $1,300,000.00, in accordance with the provisions of Exhibit "G;"

(ii) the TAD Plan shall not be applied to the Property in a manner inconsistent with the limitations set forth in Section 2.1.1 (3) hereof;

(iii) the TAD Plan shall not limit the use, location, height, size, floor area, density or intensity of the Project on the Property permitted by Section 2.2 of this Agreement;

(iv) In lieu of any other Development Exactions being imposed under the TAD Plan, at the time OWNER applies for issuance of a building permit(s) by CITY for construction of the first 85,000 square feet of its Project, OWNER shall pay to CITY the sum of $200,000.00 for use by the CITY for TAD Plan purposes in the Town Center; following such $200,000.00 payment, no other Development Exactions shall be imposed under the TAD Plan.

Subject to the remaining provisions of this Section 2.3.1 and Exhibit G, Paragraph D, (i) any Project building for which a building permit has not been issued shall be subject to all elements of the TAD Plan (including all amendments of the TAD Plan) applicable to such building which are adopted prior to issuance of the building permit for such building, and (ii) following issuance of a building permit for a building on the Property, all elements of the TAD Plan thereafter adopted shall not be applicable to such building, other than to the extent the TAD Plan would be applicable to such building if this Development Agreement were not then in effect.

2.3.2 Processing Fees.

Generally applicable processing fees for the CITY's actual cost as may be reasonably estimated by CITY for processing applications for Development Approvals.

2.3.3 Consistent Future CITY Regulations.

CITY ordinances, resolutions, regulations, and official policies governing development and building which are in furtherance of and not in conflict with this Agreement, the Existing Development Approvals, the Existing Land Use Regulations, and the TAD Plan (consistent with the provisions of Section 2.3.1) shall apply to the Property and the Project.

2.3.4 Overriding State and Federal Laws and Regulations.

State and federal laws and regulations which are adopted or approved after the Effective Date of this Agreement which override OWNER's vested rights set forth in this Agreement shall apply to the Property and the Project, together with any CITY land use ordinances, resolutions, regulations, and official policies which are adopted or approved after the Effective Date of this Agreement and which are necessary to enable CITY to comply with such overriding State and federal laws and regulations, provided, however, that (a) OWNER does not waive its right to challenge or contest the validity of any such future State, federal, or local laws, regulations, ordinances, resolutions, or official policies, on their face or as applied to the Property and the Project; and (b) in the event that any such State or federal law or regulation (and/or any valid CITY ordinance, resolution, regulation, or official policy undertaken pursuant

thereto) prevents or precludes compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such overriding State, federal or local law, regulation, resolution, or official policy and this Agreement shall remain in full force and effect to the extent that it is not inconsistent with such overriding law, regulation, resolution or official policy and that performance of the remaining provisions of this Agreement would not be inconsistent with the intent and purposes of this Agreement. OWNER or CITY shall have the right to challenge, by appropriate judicial proceedings any such new law or regulation preventing compliance with the terms of this Agreement or the modification or suspension of this Agreement. In the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

2.3.5 **Public Health and Safety.**

Future CITY ordinances, resolutions, regulations and official policies which are reasonably necessary to protect the persons on the Property or in the immediate community, or both, from conditions dangerous to their health or safety, or both.

2.3.6 **Updated Uniform Codes.**

Provisions of the building standards set forth in the California Building Standards Code in effect in the CITY at the time of the issuance of the building permit for a building or structure shall apply to the Property and the Project, including any valid local modifications to the State standards in effect at such time, including without limitation the applicable provisions of the Uniform Building Code, Uniform Plumbing Code, Uniform Mechanical Code, National Electrical Code, and Uniform Fire Code.

2.3.7 **Public Works Improvement Standards.**

To the extent OWNER is constructing or installing public works or facilities, the standards in effect for such public works or facilities at the time of CITY's issuance of a permit, license, or other authorization for construction or installation of same.

2.3.8 **Assessment District and/or Community Facilities District.**

The provisions of any benefit assessment district, community facilities district, business improvement district, or similar financing district that is validly formed pursuant to applicable law and made applicable to the Property and similarly situated property; provided, however, that OWNER does not hereby consent to the formation of any such district or to the imposition of any benefit assessment, special tax, fee, or charge against OWNER or the Property with respect thereto, and OWNER expressly reserves all of its legal rights with respect to the formation of any such district and the imposition of any assessment, special tax, fee, or charge against OWNER or the Property, including without limitation such rights to object and protest that would exist in the absence of this Agreement.

2.3.9 **Regulations In Conflict.**

Any regulations not set forth in this Section 2.3 which are in conflict with the Project provided OWNER has given written consent to the application of such regulations to development of the Property.

3.0 GENERAL PROVISIONS

3.1 Effective Date of Agreement.

Subject to the applicable provisions of the California Elections Code relating to referendum petitions, this Agreement shall be effective on the Effective Date.

3.2 Duration of Agreement.

This Agreement shall be operative commencing on the Effective Date and continue thereafter until the date that is twenty (20) years after the Effective Date, unless otherwise extended by the Parties, subject to earlier termination upon the completion, performance, and discharge of all obligations hereunder. In this regard, at the request of OWNER, the term of this Agreement shall expire as to any separate legal parcel comprising the Property on the later of the following dates: (i) the date on which CITY issues its final certificate of occupancy or final inspection permitting occupancy of the completed building improvements for the development authorized by this Agreement or (ii) such later date or dates on which the initial tenants or occupants of the completed building improvements commence occupancy of the premises. Upon termination of this Agreement as to the Property as a whole or any separate legal parcel, each Party agrees to cooperate with the other in executing such document in recordable form as may be reasonably requested by the other Party to (i) memorialize said termination and (ii) remove this Agreement as a matter affecting title to the Property or such legal parcel on a title report, commitment or policy issued by any reputable title insurer. OWNER shall pay CITY's reasonable costs for preparation and review of such documents, including attorney fees incurred by CITY in such review and preparation. Notwithstanding the foregoing, subject to the provisions of 2.1.1(1), the term of the Declaration of Special Land Use Restrictions shall be as set forth in Exhibit "F".

3.3 Binding Effect of Agreement.

The Property is hereby made subject to this Agreement. Development of the Project on the Property is hereby authorized and shall be carried out in accordance with the terms of this Agreement.

3.4 Ownership of Property.

OWNER represents and covenants that it is the fee owner of the Property.

3.5 Periodic Review.

The periodic review described in Resolution No. 88-53 is applicable to this Agreement. In no event shall CITY's failure to conduct or complete a periodic review of OWNER's performance result in a termination or modification of OWNER's rights hereunder or constitute breach by the CITY of this Agreement.

3.6 Defaults and Remedies

3.6.1 Notice and Opportunity to Cure

Before this Agreement may be terminated or action may be taken to obtain judicial relief, the Party seeking relief ("Nondefaulting Party") shall comply with the notice and cure provisions of this Section 3.6.1. The Nondefaulting Party in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other Party (the "Defaulting Party") to perform any material duty or obligation of the Defaulting Party in accordance with the terms of this Agreement. However, the Nondefaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure. The Defaulting Party shall be deemed in "default" of its obligations set forth in this Agreement if said breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such default within ten (10) days after the date of such notice (for monetary defaults) or within thirty (30) days after the date of such notice (for non-monetary defaults). If, however, a non-monetary default cannot be cured within such thirty (30) day period, but can be cured in twenty-four (24) months, as long as the Defaulting Party does each of the following: (i) notifies the Nondefaulting Party in writing with a reasonable explanation as to the reasons the asserted default is not curable within the thirty (30) day period; (ii) notifies the Nondefaulting Party in writing of the Defaulting Party's reasonable, proposed course of action to cure the default, subject to the reasonable approval of the Nondefaulting Party; (iii) promptly commences to cure the default within the thirty (30) day period; (iv) makes periodic reports every three (3) months to the Nondefaulting Party as to the progress of the program of cure; and (v) diligently prosecutes such cure to completion; then in such event the Defaulting Party shall not be deemed in breach of this Agreement.

3.6.2 Default Remedies

Subject to the foregoing, in the event of an uncured default, the Nondefaulting Party, at its option, may institute legal action to cure, correct, or remedy such default, to enjoin any threatened or attempted violation or to enforce the terms of this Agreement by specific performance or other equitable remedies. In no event shall monetary damages of any kind be available as a remedy for breach of this Agreement. In addition, in the event of an uncured material default by OWNER, CITY reserves its available remedies under the Development Agreement Statute and CITY's Development Agreement Procedures and Requirements to amend or terminate this Agreement; provided, however, that OWNER does not hereby consent to any unilateral amendments to this Agreement that increase or materially alter OWNER's obligations

hereunder (or violate Sections 2.1.1(3) and 2.3.1) or that are not limited in purpose and effect to measures needed to cure or remedy the particular default in question. The remedies set forth in this Section 3.6.2 shall be the exclusive remedies of the PARTIES hereto with respect to this Agreement.

3.6.3 No Cross-Defaults

In the event that this Agreement is assigned by OWNER in connection with a sale or transfer of a portion of the Property to an entity in which OWNER has no interest and a default subsequently occurs with respect any part of the Property so transferred or sold, such default shall not be considered a default as to any non-transferred, remaining Property and the CITY shall not be entitled to any equitable remedies with respect to the non-defaulted portion of the Property or the owner of said Property or to enforce or terminate this Agreement with respect thereto. Notwithstanding the foregoing, the CITY shall be entitled to all equitable remedies with respect to the nondefaulted portion of the Property and owner of said Property to enforce or terminate this Agreement with respect to any default which existed on such nondefaulted portion prior to the sale by OWNER.

3.6.4 Force Majeure

Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, or other cause, without fault and beyond the reasonable control of such Party. If any such events shall occur, the time for performance by either party of any of its obligations hereunder shall be extended by the parties for the period of time that such events prevented such performance.

3.7 Cooperation in the Event of Legal Challenge

In the event of any legal action instituted by a third party, including without limitation any other governmental entity or official, challenging the validity of this Agreement or any Development Approval granted pursuant to this Agreement, the parties agree to cooperate fully with each other in defending such action (including any actions reasonably requested to mitigate the impact of such action); provided, however, that OWNER shall indemnify and hold the CITY harmless from any judgment, cost and/or expenses related thereto, including but not limited to any attorney fees and expert consultant and witness costs, reasonably incurred by CITY in the defense of such action. Subject to Section 2.1.1(1) herein and any other provision of this Agreement, this Section 3.7 shall become effective and binding upon execution of this Agreement by all Parties hereto.

3.8 Mortgagee Rights

3.8.1 Encumbrances on the Property

The Parties hereto agree that this Agreement shall not prevent or limit OWNER, in any manner, at OWNER's sole and absolute discretion, from encumbering the Property or any portion thereof or any improvements thereon with any mortgage, deed of trust, sale and leaseback, or other form of secured financing ("Mortgage") with respect to the construction, development, use, or operation of the Project.

3.8.2 Mortgagee Protection

To the extent legally permissible , this Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof, including the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. Any acquisition or acceptance of title or any right or interest in or with respect to the Property or any portion thereof by the holder of a Mortgage (a "Mortgagee"), pursuant to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination or otherwise, shall be subject to all of the terms and conditions of this Agreement and any such Mortgagee who takes title to the Property or any portion thereof shall be entitled to the benefits arising under this Agreement provided Mortgagee complies with Section 3.8.3 below.

3.8.3 Mortgagee Not Obligated

Notwithstanding the provisions of this Section 3.8, Mortgagee will not have any obligation or duty pursuant to the terms set forth in this Agreement to perform the obligations of OWNER or other affirmative covenants of OWNER hereunder, or to guarantee such performance, except that the Mortgagee shall have no vested right to develop the Project without fully complying with the terms of this Agreement and executing and delivering to CITY in a form and with terms reasonably acceptable to CITY an assumption agreement of OWNER's obligations hereunder.

3.8.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure

Each Mortgagee shall, upon written request to CITY, be entitled to receive written notice from CITY of the results of the periodic review conducted pursuant to Section 3.5. and of any default by OWNER of its obligations set forth in this Agreement. CITY shall, within ten (10) days of sending the notice of default to OWNER, provide a copy of such notice to each Mortgagee who has submitted a written request to CITY for a copy of such notice.

3.9 Notices

3.9.1 Notices Include

As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

3.9.2 Form of Notice

All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below; (ii) on the date of delivery or refusal shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below; (iii) on the date of delivery or refusal, when delivered by Federal Express or other commercial express delivery services providing acknowledgements of receipt; (iv) on the date of delivery when delivered by facsimile providing verification of delivery and receipt; or (v) on the date of delivery shown in the records of the telegraph company after transmission by telegraph to the recipient named below. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to CITY:
City of Costa Mesa
77 Fair Drive
Post Office Box 1200
Costa Mesa, CA 92628-1200
Attn: City Manager

With Copy to:
City of Costa Mesa
77 Fair Drive
Post Office Box 1200
Costa Mesa, CA 92628-1200
Attn: City Attorney

If to OWNER:
FSP Two Town Center, L.L.C.
c/o CWP Capital Management, LLC
633 West Fifth Street, 72nd Floor
Los Angeles, CA 90071
Attn: Mr. James R. Anderson

Fifth Street Properties-DS, LLC
c/o CWP Capital Management, LLC
633 West Fifth Street, 72nd Floor
Los Angeles, CA 90071
Attn: Mr. James R. Anderson

With copies to: Paul, Hastings, Janofsky & Walker
555 South Flower Street, 23rd Floor
Los Angeles, CA 90071-2371
Attn: Patrick A. Ramsey, Esq.

3.9.3 Changes In Noticed Parties

Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3.10 Severability

If any term, provision, covenant, or condition set forth in this Agreement is held by the final judgment of a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, covenants, and conditions shall continue in full force and effect to the extent that the basic intent of the Parties as expressed herein can be accomplished. In addition, in such event the Parties shall cooperate in good faith in an effort to amend or modify this Agreement in a manner such that the purpose of the invalidated or voided provision, covenant, and condition can be accomplished to the maximum extent legally permissible; provided, however, that in no event shall either Party be required to agree to an amendment or modification of this Agreement that materially adversely impacts its rights or materially increases its obligations or risks as set forth herein.

3.11 Time of Essence

Time is of the essence in the performance of each provision of this Agreement as to which there is a time element.

3.12 Successors and Assigns

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. To the extent of OWNER's (and its successors and assigns) interest in the Property, the covenants of OWNER set forth in this Agreement shall be covenants running with the land and enforceable to the full extent permitted by applicable law.

Nothing set forth in this Agreement shall prohibit OWNER from selling, leasing, subleasing, or otherwise transferring all or any portion of the Property together with a transfer or assignment of all of the rights and obligations of this Agreement as they apply to such portion of the Property, and CITY's approval or consent shall not be required in connection therewith. Upon the effective date of any such sale, lease, sublease, or other transfer, the seller, lessor, sublessor, or other transferor automatically shall be released from any executory obligations to

CITY hereunder with respect to the portion of the Property so sold, leased, subleased, or transferred; provided, however, that unless CITY releases the seller, lessor, sublessor, or other transferor in writing, it shall remain responsible to CITY for performance of any obligations as to which it was in default as of the effective date of the transfer.

3.13 Effect of Termination on Title

OWNER and CITY agree that if this Agreement terminates as to any portion of the Property, it shall not thereafter continue as an obligation that applies to such portion of the Property.

3.14 Parties in Interest

This Agreement and all of its terms, conditions, and provisions are entered into only for the benefit of the Parties executing this Agreement (and their respective successors in interest), and not for the benefit of any other individual or entity. No other person shall have any right of action based upon any provision of this Agreement.

3.15 Further Actions and Instruments

Each Party shall cooperate with and provide reasonable assistance to the other Party to the extent necessary to implement this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement. OWNER shall pay CITY's reasonable costs, including attorney fees, incurred in complying with this Section 3.15.

3.16 Estoppel Certificates

Either Party hereunder may, at any time, but in no event exceeding six (6) times during any calendar year, deliver written notice to the other Party requesting such Party to certify in writing that, to the best knowledge of the certifying Party, (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended or modified, or if so amended, identifying the amendments, and (iii) the requesting Party is not in default in the performance of its obligations set forth in this Agreement or, if in default, to describe therein the nature and amount of any such defaults. A Party receiving a request hereunder shall execute and return such certificate within a reasonable time following the receipt thereof. OWNER shall pay CITY's reasonable costs, including attorney fees, incurred in complying with this Section.

3.17 Recordation

No later than ten (10) days after the Effective Date of this Agreement, the CITY Clerk shall record a copy of this Agreement in the Official Records of the Recorder's Office of Orange County and furnish a copy bearing the recording information to OWNER.

3.18 Section Headings

All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

3.19 Rules of Construction

As used herein, the singular of any word includes the plural and the masculine gender includes the feminine.

3.20 Mutual Covenants

The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

3.21 Releases

CITY hereby covenants and agrees that upon completion of the Project as provided under this Agreement, or any portion thereof, at the request of OWNER, CITY shall execute and deliver to the Orange County Recorder an appropriate release of OWNER of further obligations under this Agreement, for the portion of the completed Project. OWNER shall pay CITY's reasonable costs, including attorney fees, incurred in complying with this Section.

3.22 Applicable Law

This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

3.23 Project as a Private Undertaking

It is understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the

terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between CITY and OWNER is that of a government entity regulating the development of private property and the OWNER of such property.

3.24 Approvals, Reasonableness

Except when this Agreement specifically authorizes a Party to withhold its approval or consent in its sole and absolute discretion, when either CITY or OWNER shall require the approval or consent of the other Party in fulfilling any covenant, provision, or condition set forth herein, such approval or consent shall not be unreasonably withheld, conditioned, or delayed by the Party from whom such approval or consent is sought. Any approval authority provided in this Agreement to the CITY's Development Services Director or to the CITY'S Planning Commission shall be subject to the CITY's normal appeals process.

3.25 Amendments and Waivers

No modification or amendment of this Agreement or any of the provisions hereof shall be effective for any purpose unless set forth in a writing signed by duly authorized representatives of both Parties. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. No waiver of any right or remedy in respect to any occurrence or event shall be deemed a waiver of any right or remedy in respect to any other or subsequent occurrence or event.

3.26 Authority to Execute

The persons executing this Agreement warrant and represent that they have the authority to execute this Agreement and represent that they have the authority to bind the Parties for which they are signing to the performance of the obligations hereunder.

3.27 Entire Agreement

This Agreement (including the Exhibits hereto) constitutes the entire understanding and agreement of the Parties and supersedes all previous negotiations, discussions and agreement between the Parties with respect to all or part of the subject matter hereof. No parol evidence shall be permitted to contradict or vary the terms of this Agreement.

3.28 Litigation Expenses

In any judicial proceeding or arbitration between the Parties (collectively, "Action") in any way connected with or arising out of the terms and provisions of this Agreement, the prevailing Party in such Action shall be awarded all of its reasonable costs and expenses (whether or not the same would be recoverable pursuant to Code of Civil Procedure §§ 1033.5 or 1717 in the absence of this Agreement), including but not limited to expert witness fees, attorney

fees, and costs of investigation and preparation prior to the commencement of the Action. The right to recover such costs and expenses shall accrue upon commencement of the Action, regardless of whether the Action is prosecuted to a final judgment or decision. Notwithstanding Section 2.1.1(1) herein and any other provision of this Agreement, this Section 3.28 shall become effective and binding upon execution of this Agreement by all Parties hereto.

3.29 Separation of the Parcels

In the event that in the future the owner of either Downey Savings Property or the owner of the Two Town Center Property, each as shown on Exhibit "B" attached hereto, desires to sever its property from the other property or create a separate development parcel according to the Existing Land Use Regulations, such owner may propose to CITY allocations of the development rights authorized pursuant to this Agreement and allocations of OWNER's financial and other obligations under this Agreement. The proposed allocations shall be subject to approval of the City Planning Commission, which approval shall not be unreasonably withheld, after a noticed, public hearing.

IN WITNESS WHEREOF, each of the Parties has executed this Agreement on the date first above written

CITY OF COSTA MESA

By: _____
Mayor of the City of Costa Mesa

ATTEST:

By: _____
Deputy City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney of the City of Costa Mesa

FIFTH STREET PROPERTIES-DS, L.L.C.
a Delaware limited liability company

By: CWP Capital Management, LLC
a Delaware limited liability company

By: _____
Its: Partner/COO

By: _____
Its: Partner/CEO

[Signatures Continued on Following Page]

FSP TWO TOWN CENTER, L.L.C.
a Delaware limited liability company

By: CWP Capital Management, LLC
a Delaware limited liability company

By:_____
Its: Partner/COO

By:_____
Its: Partner/CEO

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On JULY 2, 2001, before me, AHMED A. KARAMALI, personally appeared BRETT J. MUNGER 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.

AHMED A. KARAMALI
Commission # 1269816
Notary Public - California
Los Angeles County
My Comm. Expires Jul 3, 2004

Notary Public

[SEAL] Ahmed A. Karamali

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On JULY 2, 2001, before me, AHMED A. KARAMALI, personally appeared MICHAEL W. CROFT 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.

AHMED A. KARAMALI
Commission # 1269816
Notary Public - California
Los Angeles County
My Comm. Expires Jul 3, 2004

Notary Public

[SEAL] Ahmed A. Karamali

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On July 27, 2001, before me, Cheryl Rae Helwig, personally appeared Elizabeth A. 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 instrument the person(~~s~~) or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

Witness my hand and official seal.

CHERYL RAE HELWIG
Commission # 1182626
Notary Public - California
Orange County
My Comm. Expires Jun 3, 2002

Cheryl Rae Helwig
Notary Public

[SEAL]

STATE OF CALIFORNIA)
) ss.
COUNTY OF Orange)

On July 27, 2001, before me, Cheryl Rae Helwig, personally appeared Mary T. Elliott 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.

CHERYL RAE HELWIG
Commission # 1182626
Notary Public - California
Orange County
My Comm. Expires Jun 3, 2002

Cheryl Rae Helwig
Notary Public

[SEAL]

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

TWO TOWN CENTER DEVELOPMENT PROPERTY

That certain real property located in the City of Costa Mesa, County of Orange, State of California and more particularly described as follows:

Parcel 1:

Parcel 1, in the City of Costa Mesa, County of Orange, State of California, as per map recorded in Book 137 pages 5 and 6 of Parcel Maps, in the office of the county recorder of said county.

Parcel 2:

Parcel 2, in the City of Costa Mesa, County of Orange, State of California, as per Map recorded in Book 98 pages 7 and 8 of Parcel Maps, in the office of the county recorder of said county.

Parcel 3:

An exclusive easement for ingress, egress and surface use together with the right to pave over or construct buildings or other permanent structures upon the land described as follows:

That portion of the land allotted to James McFadden in degree of partition of the Rancho Santiago De Santa Ana, recorded in Book "B" of judgments of the 17th Judicial District Court of California, in the County of Orange, State of California, being a strip of land of varying width lying contiguous to and westerly of that certain Parcel deeded to Orange County Flood Control District as recorded in Book 1950 Page 109 of Official Records, that is more specifically described as follows:

Beginning at the Southwest corner of said Parcel; thence northerly along the west line of said Parcel to the Northwest corner, said corner being on the center line of Sunflower Avenue; thence north 89E 57' 37" West, 5.00 feet along said center line; thence south 0E 30' 35" East, 1313.92 feet to a point; thence south 0E 04' 04" West 878.62 feet; thence south 10E 06' 15" West, 20.62 Feet; thence South 0E 04' 04" West 450.00 feet; thence South 89E 40' 20" East, 10.00 feet to the point of beginning.

Excepting therefrom that portion lying northerly of a line that is parallel with and southerly 53 feet from the center line, and its easterly prolongation, of Anton Boulevard, as said centerline is described in a deed recorded in Book 7474, Page 592 of Official Records.

Also excepting therefrom that portion lying southerly of a line that is 720.00 feet southerly of said center line, measured along and being normal to the reference line of a strip of land described in the deed recorded in Book 1950, Page 109 of Official Records.

Parcel 4:

An exclusive easement for ingress, egress and surface use together with the right to pave over or construct buildings or other permanent structures upon the land described as follows:

That portion of the land allotted to James McFadden in Decree of Partition of the Rancho Santiago de Santa Ana, recorded in Book "B" of Judgments of the 17th Judicial District Court of California, in the County of Orange, State of California, being a strip of land 55 feet in width being 35 feet westerly and 20 feet easterly of the following described line:

Beginning at a point in the center line of Sunflower Ave., distant thereon South 89E 56' 50" East, 937.06 feet from a 3/4 inch iron pipe marking the intersection thereof with the center line of Bristol Street, and running thence South 0E 26' 50" East 1313.74 feet to a point; thence from said point South 0E 07' 50" West 1347.9 feet, more or less, to a point in the northerly line of block "D" of Berry Tract, as per Book 9 Page 6, miscellaneous records of Los Angeles County, California, distant easterly along said northerly line, 0.28 feet from the northwest corner of Lot 1 in Block "D" and westerly along said northerly line, 527.83 feet from an axle marking the Northwest corner of Lot 4, of Berry Rancho as shown by survey in Book 7 Page 35, Records of Orange County, California.

Except therefrom that portion lying northerly of a line that is parallel with and southerly 53.00 feet from the center line, and its easterly prolongation, of Anton Boulevard, as said center line is described in a deed recorded in Book 7474, Page 592 of Official Records.

Also excepting therefrom that portion lying southerly of a line that is 720.00 feet southerly of said center line, measured along and being normal to the reference line of a strip of land described in the deed recorded in Book 1950 Page 109 of Official Records.

Parcel 5:

An exclusive easement for ingress, egress and surface use together with the right to pave over or construct buildings or other permanent structures upon the land described as follows:

That portion of the land allotted to James McFadden in Decree of Partition of the Rancho Santiago de Santa Ana, recorded in Book "B" of Judgments of the 17th Judicial District Court of California, in the County of Orange, State of California, described as follows:

A strip of land of varying width lying contiguous to and easterly of that certain parcel deeded to Orange County Flood Control District as recorded in Book 1950 Page 109 of Official Records, Orange County, that is more specifically described as follows:

Beginning at the southeast corner of said parcel, thence northerly along the east line of said parcel to the northeast corner, said corner being on the centerline of Sunflower Avenue, thence south 8[illegible] 57' 37" east 10.00 feet along said centerline; thence south 0E 30' 35" east 313.62 feet to a point; thence south 0E 4' 04" west 879.04 feet; thence south 13E 58' 05" east 20.62 feet; thence south 0E 04' 04" west 450.00 feet; thence north 89E 40' 20" west 15.00 feet to the point of beginning.

Except any portion thereof not included within the land described in the deeds to Roy K. Sakioka and wife, recorded January 16, 1957 in Book 3771 Pages 158 and 159 of Official Records.

Also except therefrom that portion lying northerly of a line that is parallel with and southerly 53.00 feet from the center line, and its easterly prolongation, of Anton Boulevard, as said center line is described in a deed recorded in Book 7474 Page 592 of Official Records.

Also except therefrom that portion lying southerly of a line that is 720.00 feet southerly of said center line, measured along and being normal to the reference line of a strip of land described in the deed recorded in Book 1950 Page 109 of Official Records.

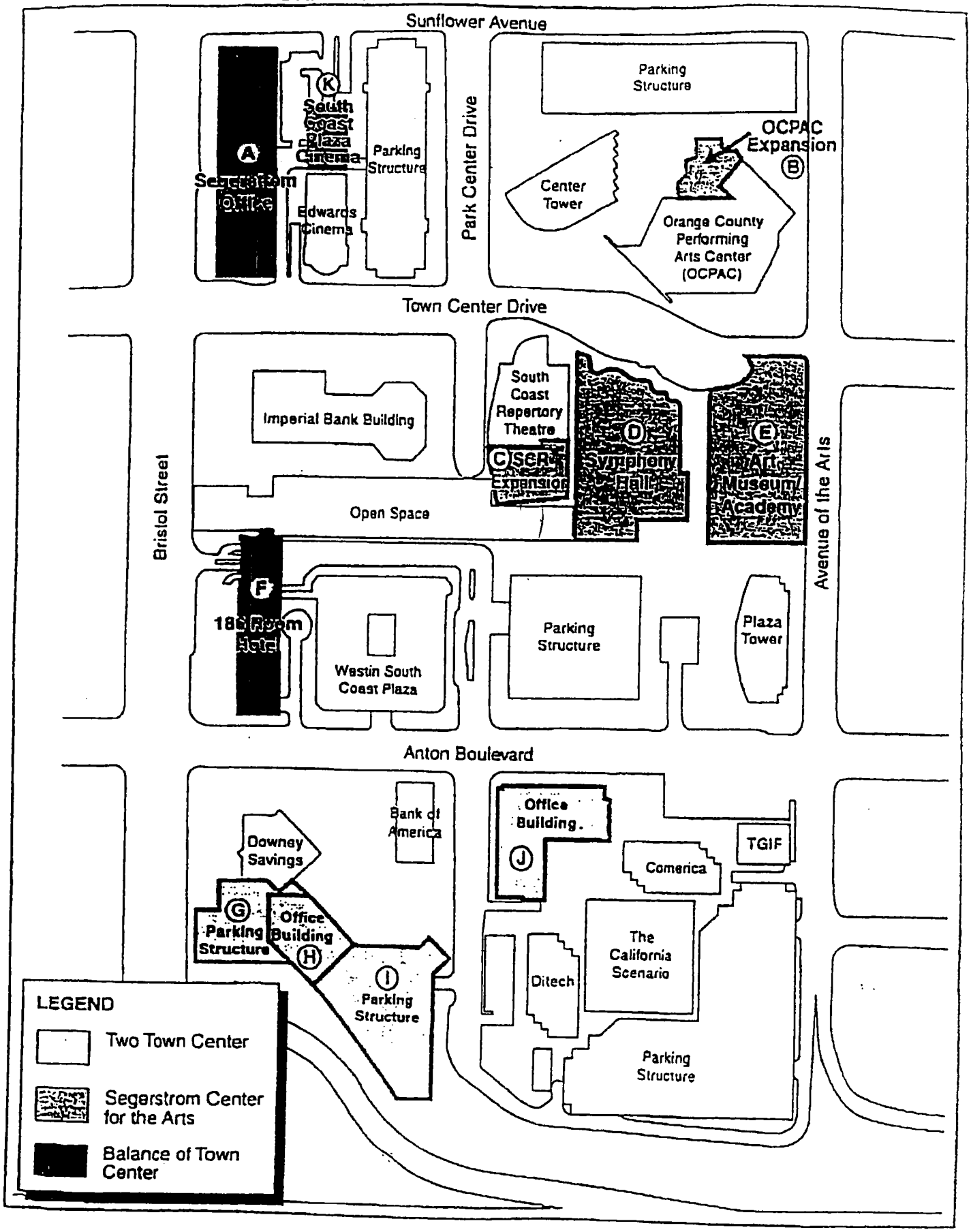
DOWNEY SAVINGS DEVELOPMENT PROPERTY

Parcel 1, in the city of Costa Mesa, County of Orange, state of California, as shown on a map filed in book 98, pages 7 and 8 of parcel maps, in the office of the county recorder of said county.

Excepting therefrom those portions of said parcel 1 described in the deeds to the city of Costa Mea recorded April 1, 1992 as instrument no. 92-202527, official records and recorded June 16, 1992 as instrument no. 92-404965, official records.

Also excepting all oil, gas, hydrocarbon, mineral and mineral rights in and under the premises, with the right to explore therefor, sell, lease and remove the same, but without right of entry therefor upon the surface, or within the upper 500 feet measured vertically downward from the natural surface, as reserved in the deed from south coast plaza, a California partnership, recorded June 15, 1977 in book 12243, page 808 of official records.

Assessor's Parcel No: 410-481-04



Michael Brandman Associates

00800014 • 7/2000

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STC Project Components

EXHIBIT "C"

LIST OF EXISTING DEVELOPMENT APPROVALS

Mitigation Monitoring Program for FEIR No. 1047 by CITY of Costa Mesa.

Preliminary Master Plan Amendment No. PA-00-38.

Development Agreement No. DA-00-04.

General Plan Amendment GP-00-02

North Costa Mesa Specific Plan Amendment SP-00-01

Dedication Agreements

EXHIBIT "D"

EXISTING LAND USE REGULATIONS

CITY of Costa Mesa General Plan

North Costa Mesa Specific Plan

Title 13 of the Costa Mesa Municipal Code (Planning, Zoning and Development Codes)

Resolution No. 88-53, A Resolution of the CITY Council of the CITY of Costa Mesa, California Establishing Procedures and Requirements for Consideration of Development Agreements.

All other ordinances, resolutions, regulations, and official policies governing land use development and building construction.

Preliminary Master Plan for Town Center, including all modifications and amendments thereof, one of which is ZE-81-207

THE APPLICABLE VERSIONS OF THESE DOCUMENTS ARE THOSE IN EFFECT ON THE EFFECTIVE DATE OF THIS AGREEMENT. COPIES OF THE EXISTING LAND USE REGULATIONS LISTED ABOVE ARE ON FILE IN THE CITY PLANNING DEPARTMENT.

EXHIBIT "E"

LIST OF FUTURE DEVELOPMENT APPROVALS

1. Master Plans for subsequent development components/buildings.

2. Minor conditional use permits to the extent the restaurant(s) seek approval for on-sale liquor after 11 PM or for live entertainment or dancing.

3. Planned sign program approval/amendment and sign permits.

4. Subdivision and/or parcel maps, or lot line adjustments necessary to facilitate development of the project.

5. Building, grading, demolition and occupancy permits and all other ancillary permits required by other uniform codes.

6. Any necessary City approvals that might be required by the TAD Plan to be adopted.

7. Possible Conditional Use Permits, variances that might be sought, including potential parking variances and street vacations.

Recorded in Official Records, County of Orange
Darlene Bloom, Interim Clerk-Recorder
NO FEE
20020365226 10:09am 05/01/02
115 15 D05 14
0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00

RECORDING
REQUESTED BY AND
WHEN RECORDED MAIL TO:

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

This document is recorded at the request and for the benefit of the City of Costa Mesa and is exempt from the the payment of a recording fee pursuant to Government Code §6103

IT
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MS
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CITY OF COSTA MESA

By: Mary T. Everett

DECLARATION OF SPECIAL LAND USE RESTRICTIONS

THIS DECLARATION OF SPECIAL LAND USE RESTRICTIONS (this "Declaration") is made as of JANUARY 22, 2002, by FSP TWO TOWN CENTER, L.L.C., a Delaware limited liability company, ("Declarant") with reference to the following facts:

A. Declarant is the owner of the real property (the "Land") situated in Orange County, California, more particularly described on EXHIBIT A attached hereto and by this reference incorporated herein.

B. The Land includes a significant artistic feature, the Noguchi California Scenario, an outdoor sculpture garden originally designed by Isamu Noguchi, which is located within the portion of the Land as depicted on EXHIBIT B attached hereto (the "Garden"). The plans for the Garden supplied by the Isamu Noguchi Foundation are on file with the City of Costa Mesa, Department of Development Services, dated February 19, 1981, by Fuller & Sadao PC, Architects. For purposes of this Declaration, the boundaries of the Garden are as shown on Page 1 of EXHIBIT B to this Declaration.

C. The parties recognize the world-class reputation of the sculptor Isamu Noguchi and the prominent example of his work in the California Scenario outdoor sculpture garden. The

intent of the parties is to maintain and preserve this garden area as a functioning and integral part of the surrounding project. To implement this intent, the parties have recorded this Declaration of Land Use restrictions which will govern this area for the next 50 years.

D. In recognition of the importance of the Garden and in consideration for the City of Costa Mesa (the "City") entering into Development Agreement No. DA-00-04 with Declarant (the "Development Agreement"), Declarant has agreed to provide for the preservation and maintenance of the Garden and for public accessibility of the Garden as set forth in this Declaration.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Declarant hereby covenants, agrees and declares as follows:

Section 1. LAND USE RESTRICTIONS.

1.1 Use Restrictions. Subject to the other provisions of this Declaration , Declarant shall preserve and maintain the Garden substantially in accordance with its existing configuration and functions as more fully shown in EXHIBIT B attached hereto and EXHIBIT C (pictures showing the Garden's sculptures) attached hereto, during the full term of this Declaration.

1.2 Public Access and Parking.

(a) Subject to the provisions of this Section 1.2, Declarant shall permit individuals who express interest in entering and viewing the Garden to do so on a reasonable basis during the Project's normal business hours for office space tenants and on weekends and holidays.

(b) All such access and entry shall be subject to closure (or partial closure) of the Garden at such times and for such periods as may reasonably be required (A) to conduct maintenance and repairs of the Garden and/or adjacent surface or subsurface areas (including, without limitation, the installation, maintenance, use and repair of underground utilities and other underground structures and related elements of the Project), (B) in order to prevent visitor exposure to dangerous conditions or (C) to conduct special events for such tenants, groups or individuals as Declarant may select in its discretion from time to time. Declarant may, in the exercise of its reasonable discretion, deny entry to, or, following entry, require departure from the Garden by such individuals as Declarant (or its agents) determine to be likely threats to the safety of persons and/or harm to the property.

(c) At no time shall any such permitted entry be characterized or construed in any way or manner as being evidence of or otherwise establishing any prescriptive easement or license, any right or interest by adverse possession, or any other similar right or interest in any individual or person. Declarant may take any action it determines to be necessary or appropriate to avert, avoid or refute any such claim.

(d) With respect to individuals to whom access to the Garden is permitted under this Section 1.2 and who evidence an interest in such access, Declarant shall upon request from such individuals provide validated parking or parking vouchers (or reasonably equivalent permission for parking), for which payment shall not be required, for parking within the Project's parking facilities to such individuals for periods that such entry is permitted pursuant to this Section 1.2 pursuant to such reasonable validation, voucher or other program as Declarant shall devise and implement from time to time; provided, however, that notwithstanding the foregoing, such parking validations or vouchers (or reasonably equivalent parking permission) need only be provided by Declarant (i) for periods of visitation solely to the Garden (and not to other Project and non-Project areas) and (ii) to the extent the parking needs of tenants and occupants of the Project, Project employees and their visitors and guests can otherwise be fully satisfied within the Project's parking facilities on a reasonably convenient basis.

Section 2. TERM.

2.1 Term. The restrictions and other provisions of this Declaration shall commence immediately and continue for a Term of fifty (50) years from the Effective Date of the Development Agreement. Nothing in this Declaration shall be construed to affect Declarant's obligations, if any exist, for preservation of the Garden pursuant to California Civil Code Section 987.

2.2 Modification or Termination of Restrictions. During the Term of this Declaration, the Declarant may apply to the CITY for its approval of the modification and/or if necessary termination of the restrictions imposed by this Declaration, or for material changes to significant elements of the Garden (including the two parking structure walls partially enclosing the Garden) as depicted in EXHIBITS B and C. The application shall be processed as an amendment to the South Coast Plaza Town Center Final Master Plan and shall require City Council review and approval, following a noticed public hearing. The notice for such public hearing shall be provided at least thirty (30) days in advance of the hearing, and shall, without limitation, include notice (i) published through a display advertisement on two (2) occasions in a newspaper of general circulation in the CITY; (ii) provided to homeowner associations in the CITY whose addresses are reasonably available to the CITY; (iii) provided on cable access television (or a comparable equivalent); and (iv) provided on the City's Web page. Declarant shall first advise the Isamu Noguchi Foundation, Inc. ("Foundation"), located at 32-37 Vernon Boulevard, Long Island City, New York, 11106, or any successor thereto, of the proposed changes to or termination of the Garden and request that the Foundation provide to the City its comments on the proposal in conjunction with Declarant's application. In connection with any such application by Declarant, the CITY shall retain the discretion whether to grant or deny such application. In reviewing such application, the factors which the CITY shall consider may include but are not limited to the following:

(a) The then existing physical and/or economic condition of the office building(s) and/or parking structure enclosing the Garden, according to reasonable business practices.

(b) The financial burden imposed by the maintenance costs of the Garden itself (taking into account replacement public funding sources, if any), according to reasonable business practices.

(c) Expiration of the useful life of the Garden itself (through the loss of viability of the redwood trees or other significant elements of the Garden), or other material change in circumstances, gives rise to the application to modify the Garden's elements or configuration;

(d) Damage and destruction of all or materially all of (i) the Garden or (ii) both of the Existing Office Buildings adjacent to the Garden, or the material damage to such structure(s) under circumstances where rebuilding of the same (or the rebuilt configuration of such structure(s)) shall require the use of a material portion of the Garden.

(e) Recommendations received from the Foundation (or any successor thereof), any academic or educational institutions, or professional associations, or any similar sources, that are submitted for the Council's consideration.

(f) Community values and reasonable aesthetic and artistic standards.

Notwithstanding the foregoing, in connection with the approval of any such application submitted by Declarant or its successors in interest, CITY may require Declarant or its successors in interest to provide within the Land a new open space plaza or art or sculpture garden area of equivalent size and artistic significance to any portion of the Garden which has been eliminated.

2.3 Maintenance and Repair. Declarant shall, in the exercise of its good faith discretion, conduct normal maintenance and repair of the Garden and adjacent structures including, without limitation, the installation, maintenance, use and repair of underground utilities and structures in the vicinity of the Garden. Such normal maintenance and repair shall not be considered to be a change in the Garden requiring a master plan alteration under Section 2.2 herein. In the event of an emergency, Declarant may immediately perform repair work in order to protect the health and safety of persons and property in the vicinity of the Garden. As soon as reasonably practicable following the commencement of such emergency, Declarant shall notify the City Manager, in writing, of the nature and scope of repairs made and/or to be made in the Garden. Declarant's authority to conduct maintenance and repair shall not be construed as authorization to materially change significant elements of the Garden. Absent a master plan amendment pursuant to Section 2.2 herein, Declarant shall, following the performance of maintenance and/or repair, restore the Garden to its pre-existing condition.

2.4 Declarant's Right to Terminate. Declarant shall have the right to terminate each and all of its obligations under Sections 1.1 through 1.2 above, effective upon delivery of written notice of termination to the City, if through a material default by the City of the Development Agreement, which is not cured pursuant to Section 3.6 of the Development Agreement, the

material benefits and rights granted to Declarant under Sections 2.2 through 2.2.14 of the Development Agreement are substantially impaired, eliminated or rendered unenforceable.

Section 3. ENFORCEMENT OF RESTRICTIONS.

3.1 General. This Declaration and its restrictions shall run and pass with each and every portion of the Land and shall be binding upon Declarant, its successors and assigns, and every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Land is and shall be conclusively deemed to have consented and agreed to every restriction, provision, covenant, condition, right and limitation contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in the Land. This Declaration is intended to be the exclusive means of governmental restriction to preserve the Garden during the Term of the Development Agreement. Notwithstanding any provisions of this Declaration to the contrary, in the event that new government ordinances or regulations are adopted which pertain to preservation of the Garden or the Declarant and the City agree in writing to a new means of preservation during the term of the Development Agreement, then the provisions of this Declaration (i)shall be replaced and superseded by such new preservation ordinance or regulation when it is determined by a final judicial decision to be applicable to the Garden, and (ii) shall thereupon cease to be of any force and effect.

3.2 Default and Remedy. In the event of any breach, violation or failure to perform or satisfy any of the covenants, conditions and restrictions set forth in this Declaration which has not been cured within the applicable cure period set forth below, it is recognized that the City, on behalf of its citizens, may suffer material injury or damage not compensable in money (including, but not limited to irreparable loss of an important cultural facility), and that City shall be entitled to bring an action in equity or otherwise for specific performance to enforce compliance with this Declaration or an injunction to enjoin the continuance of any such breach or violation thereof. Specific performance, injunctive relief and/or other equitable remedies shall be the exclusive remedies of City with respect to the enforcement of this Declaration.

3.3 Cure Period. In the event City determines that Declarant may be in breach of this Declaration, City shall provide written notice to Declarant specifying the manner in which the City believes that a violation may have occurred. Declarant shall have an opportunity to cure the breach or violation specified in the City's notice. The cure period shall commence when written notice is given to Declarant of a violation hereunder and shall end thirty (30) days thereafter; provided that if a default is not reasonably susceptible of cure within such 30-day period, then Declarant shall have a reasonable time to cure same so long as Declarant has commenced such cure promptly within the 30-day period and thereafter diligently prosecutes the cure to completion.

Section 4. MISCELLANEOUS PROVISIONS.

4.1 Inspections. Declarant hereby grants permission for appropriate City officials to enter the Garden from time to time for the purposes of determining compliance with this

With Copy to: City of Costa Mesa
77 Fair Drive
Post Office Box 1200
Costa Mesa, CA 92628-1200
Attn: City Attorney

If to OWNER: FSP Two Town Center, L.L.C.
c/o CWP Capital Management, LLC
633 West Fifth Street, 72nd Floor
Los Angeles, CA 90071
Attn: Mr. James R. Anderson

With copies to: Paul, Hastings, Janofsky & Walker
555 South Flower Street, 23rd Floor
Los Angeles, CA 90071-2371
Attn: Patrick A. Ramsey, Esq.

Any party may, from time to time, by written notice to the other, designate a different address or representative than set forth above. If any notice or other document is sent by registered or certified mail postage prepaid, addressed as set forth above, the same shall be deemed served or delivered 24 hours after deposit in the United States Mail. Notices delivered by overnight service shall be deemed to have been given 24 hours after delivery of the same, charges prepaid, to the U.S. Postal Service or private courier. Any notice or other document sent or delivered in any other manner shall be effective only if and when received.

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the date first above written.

FSP TWO TOWN CENTER, L.L.C.
a Delaware limited liability company

By: CWP Capital Management, LLC
a Delaware limited liability company

By: _____
Its: CEO

By: _____

Its: COO

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of LOS ANGELES } ss.

On JANUARY 22, 2002 (Date), before me, Ramey LJ Arnold, Notary Public (Name and Title of Officer (e.g., "Jane Doe, Notary Public")),

personally appeared Mike W. Croft (Name(s) of Signer(s)),

[X] personally known to me
[ ] 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.

RAMEY L. J. ARNOLD
Commission # 1323297
Notary Public - California
Los Angeles County
My Comm. Expires Oct 2, 2005

WITNESS my hand and official seal.

Ramey LJ Arnold

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

[ ] Individual
[ ] Corporate Officer — Title(s): _____
[ ] Partner — [ ] Limited [ ] General
[ ] Attorney in Fact
[ ] Trustee
[ ] Guardian or Conservator
[ ] Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of LOS ANGELES } ss.

On JANUARY 22, 2002 (Date), before me, Ramey LJ ARNOLD, NOTARY PUBLIC (Name and Title of Officer (e.g., "Jane Doe, Notary Public")),

personally appeared BRETT J MUNGER (Name(s) of Signer(s)),

[X] personally known to me
[ ] 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.

Ramey LJ Arnold
Signature of Notary Public

RAMEY L. J. ARNOLD
Commission # 1323297
Notary Public - California
Los Angeles County
My Comm. Expires Oct 2, 2005

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

[ ] Individual
[ ] Corporate Officer — Title(s): _____
[ ] Partner — [ ] Limited [ ] General
[ ] Attorney in Fact
[ ] Trustee
[ ] Guardian or Conservator
[ ] Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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EXHIBIT "A"

LEGAL DESCRIPTION OF THE LAND

Parcel 1, in the City of Costa Mesa, County of Orange, State of California, as per the map filed in Book 137, Pages 5 and 6 of Parcel Maps, in the Office of the Recorder of said County.

Excepting therefrom that portion of said Parcel 1 lying southerly of the following described line:

Commencing at the Southerly terminus of that certain course shown on said map as "North 00°48'45" West 79.21 feet" along the Westerly line of Said Parcel 1; thence along said course North 00°53'13" East 79.21 feet to the Northerly terminus thereof and the Point of Beginning of this description; thence North 66°53'51" East 27.36 feet to an angle point in the Southerly line of said parcel at the Northerly terminus of that certain course shown on said map as "North 00°48'45" West 100.00 feet".

The above exception is described as California Department of Transportation (CalTrans) Parcel No. 101372-2 in a Grant Deed not recorded as of the date shown below.

Also excepting therefrom that certain real property referred to as Parcel 101372-1 as described in a Quitclaim Deed recorded March 17, 2000 as Instrument No. 20000139936, Official Records of said County.

Containing 558,587 square feet or 12.823 acres more or less.

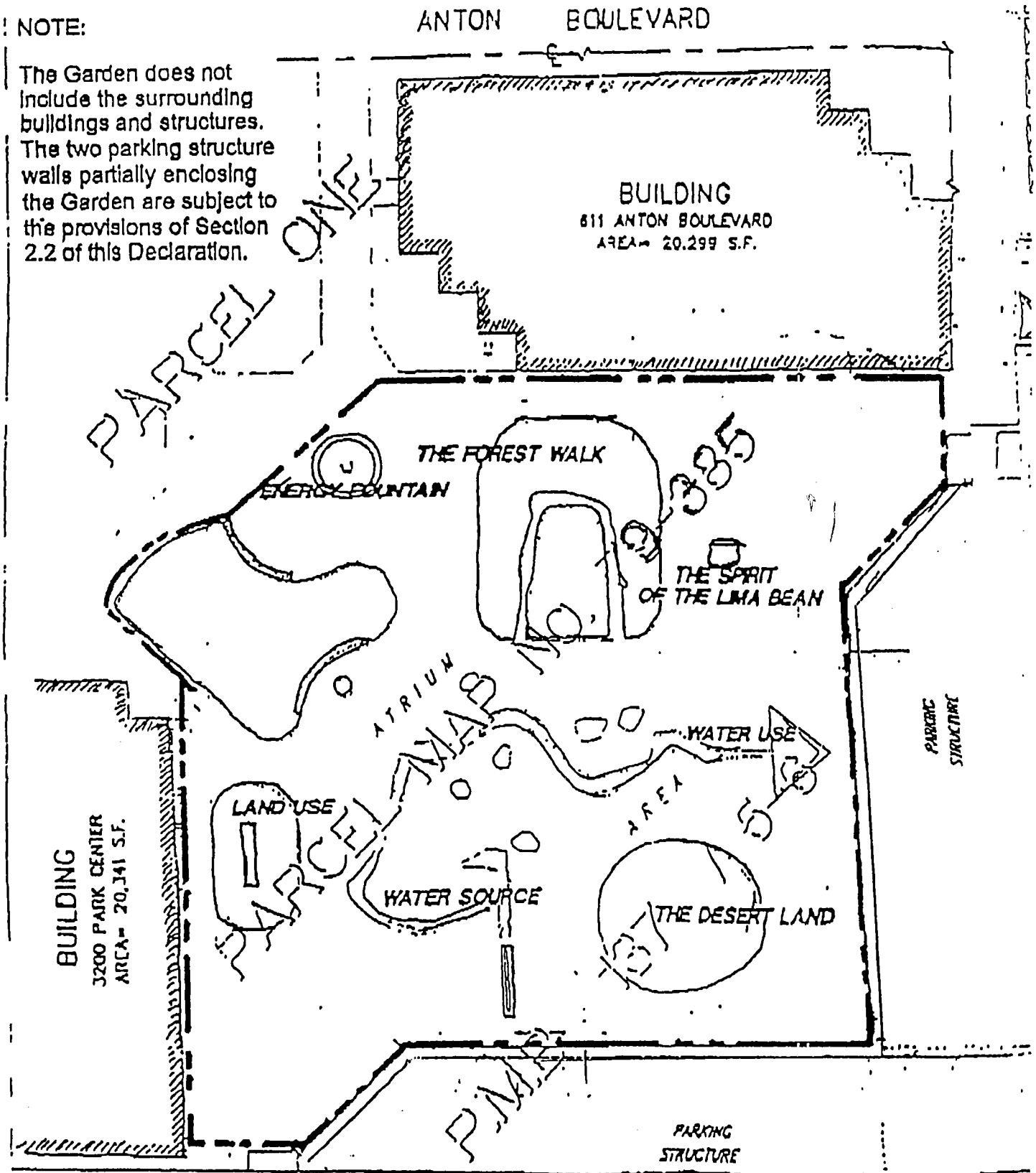
This legal description was prepared by me or under my supervision, and is not intended for use in the division and or conveyance of land in violation of the subdivision map act of the state of California.

Jeremy L Evans 6-21-07

Jeremy L. Evans P.L.S. 5282 Date

NOTE:

The Garden does not include the surrounding buildings and structures. The two parking structure walls partially enclosing the Garden are subject to the provisions of Section 2.2 of this Declaration.

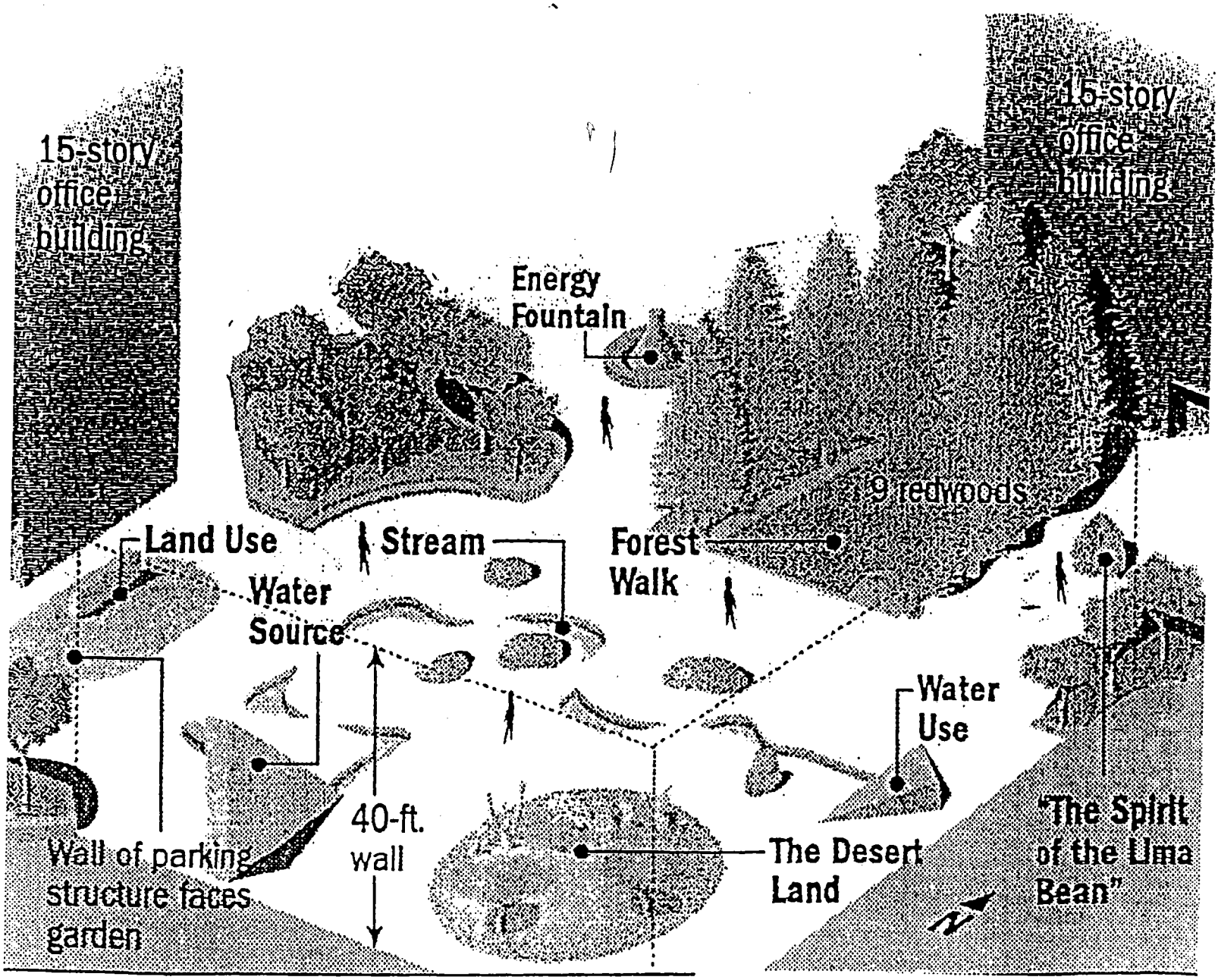


DESCRIPTION		SHEET 1 OF 1
EXHIBIT "B" - SKETCH TO ACCOMPANY LEGAL DESCRIPTION	COMMONWEALTH PARTNERS	SCALE: 1" = 50'
		DRAFTED: LL
NOGUCHI GARDENS, TWO TOWN CENTER IN THE CITY OF COSTA MESA		CHECKED: WAS

California Scenario is a 1.6-acre sculpture garden surrounded by office towers and a parking structure. Designed by Japanese American sculptor Isamu Noguchi, it uses stone, metal, moving water and vegetation to represent the state's diverse ecosystems.

NOTE:

This graphic depiction of the Garden's elements and its surroundings is not representative of the actual landscaping or vegetation that exists or may exist therein. The Garden does not include the surrounding buildings and structures. The two parking structure walls partially enclosing the Garden are subject to the provisions of Section 2.2 of this Declaration.



California Scenario is a 1.6-acre sculpture garden surrounded by office towers and a parking structure. Designed by Japanese American sculptor Isamu Noguchi, it uses stone, metal, moving water and vegetation to represent the state's diverse ecosystems.

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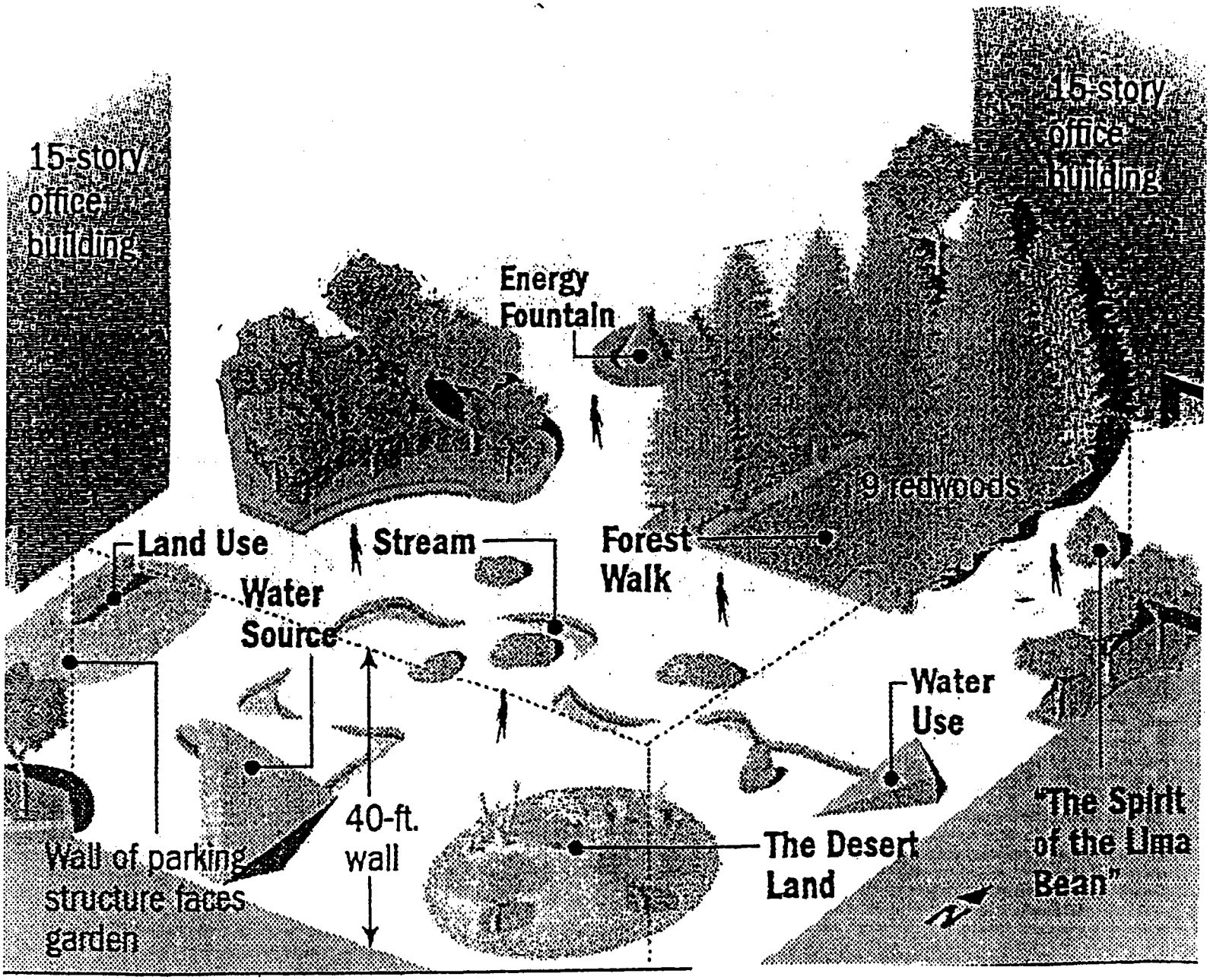

EXHIBIT "G"

THEATRE AND ARTS DISTRICT PLAN

A. OWNER shall work diligently with the other ownership entities within Town Center to develop a process that provides consistency of theme and excellence of design for prominent aspects of the public and outdoor private spaces in Town Center. These aspects include but are not limited to landscaping, signage, pedestrian and vehicular circulation, view linkage, surface treatment of pedestrian areas, street paving, parking for patrons of the cultural arts venues, individual sculptures and other art placed temporarily or permanently for the enjoyment of the public, benches, lighting standards and banner mounting poles, street furniture and other components. Entry and monument signs, display banners and other signs identifying the Theatre and Arts District shall conform to the regulations in the TAD Plan. The name of the Theatre and Arts District shall prominently include the name of the City. The purpose of this commitment is not to provide for the establishment of a rigid and inflexible set of pre-approved designs, but to provide for the creation of a context in which excellence in location-specific design can be accommodated without engendering aesthetic conflict.

B. OWNER shall further work diligently with the owners of the STC and SCA Projects to develop the TAD Plan. No later than eighteen (18) months following the Effective Date, OWNER shall submit to CITY for review, modification, and approval the proposed TAD Plan. If OWNER, in cooperation with the other said owners, has not submitted the TAD Plan for CITY approval within such 18 month period, CITY may proceed to prepare and adopt the TAD Plan itself. In this regard OWNER shall pay a pro rata share of all reasonable CITY costs incurred in the review, preparation and adoption of the TAD Plan, including costs for any consultant hired by the CITY. The pro rata share shall be determined by CITY at its sole discretion based upon a reasonable method as suggested by said owners. If the Plan is prepared by the CITY, OWNER's share of the costs of preparation of the TAD Plan shall not exceed Fifty Thousand Dollars ($50,000.00). Upon adoption of the TAD Plan, OWNER agrees to implement and comply with its provisions, in connection with the development of the Project.

C. OWNER and CITY acknowledge that (i) the development of a funding mechanism such as the formation of a Community Facilities District or other public financing district (the "Financing District") may be desirable for the long-term funding of public improvements contemplated by the TAD Plan, and (ii) the formation of such a financing district will require the cooperation of numerous landowners in the Town Center who are not parties to this Agreement. OWNER and CITY agree to use reasonable efforts to encourage such landowners to voluntarily participate in the formation of such a Financing District which is satisfactory to both OWNER and CITY. In the event that a Financing District is formed, OWNER's share of the cost of capital facilities to be funded by the Financing District and financed through the above-described financing shall not exceed One Million Dollars ($1,000,000) increased at the rate of 7% per annum from the Effective Date until payment by OWNER; provided, however, that notwithstanding any provision of the Development Agreement to the contrary, the maximum total increase shall be limited to $300,000.00. If a satisfactory

funding mechanism to pay for and maintain the public street amenities and other TAD Plan public improvements is not successfully adopted by CITY within two years of the adoption of the TAD Plan (or any extension of this period at CITY's sole discretion), then OWNER shall pay to CITY a pro rata share (based on a comparison of the total net increase of square footage in new Town Center construction resulting from (i) construction of the STC Project's office building and hotel with (ii) the construction of the buildings which comprise the Project) of 90% of the total costs to install the public street amenities and other TAD Plan public improvements in the Town Center up to a maximum OWNER share of $1,000,000.00 increased at the rate of 7% per annum from the Effective Date until payment by OWNER; provided however that notwithstanding any provision of the Development Agreement to the contrary, the maximum total increase shall be limited to $300,000.00. Any such financial obligations of OWNER shall become due and payable, as then estimated, at such time as the public street amenities and other TAD Plan public improvements are installed and shall be paid by OWNER to CITY within 30 days of OWNER's receipt of notice that said installation is about to begin (the "TAD Payment Notice"). If installation occurs in phases, OWNER shall be entitled to make payments for each phase of the public amenities and improvements when installation of such phase is about to begin. Following completion of such installation (or such phase of installation), and subject to OWNER's maximum payment obligation set forth herein for TAD Plan public improvements, OWNER shall pay to CITY the balance of any actual installation costs which exceeded the estimated costs paid by OWNER. OWNER' payment obligation hereunder shall be subject to the following limitation:

(1) If at the time that OWNER receives CITY's TAD Payment Notice OWNER has been issued a building permit(s) by CITY for the construction of at least 85,000 square feet of its Project (a "Project Building Permit"), then OWNER shall pay the full amount specified by CITY in its TAD Payment Notice(s).

(2) If OWNER has not been issued a Project Building Permit at the time that it receives CITY's TAD Payment Notice, then notwithstanding the amount specified in the TAD Payment Notice, OWNER may pay the full amount specified in the TAD Payment Notice, or pay that amount in annual increments limited to payments of the amount in the notice but not exceeding $100,000.00 for each one year period from the date of the CITY's approval of this Development Agreement, the second and subsequent increments due at the end of 12 month periods from the due date of the first increment.

(3) In the event that OWNER is issued a Project Building Permit subsequent to its receipt of any TAD Payment Notice(s), then OWNER shall at that time pay any balance remaining under such TAD Payment Notice(s).

If OWNER constructs some public street amenities, at its own cost, which are consistent with the TAD Plan, then the costs of said public improvements shall be credited against this maximum owner share of $1,000,000.00. OWNER shall have the right to construct any improvements to Park Center Drive specified in the TAD Plan as public street amenities with its own forces and, if Park Center Drive is dedicated to and accepted by the CITY, shall be given a credit against OWNER's obligation with respect to the public street amenities in the amount of its out of pocket expenditures related to such public improvements, approved in advance of construction by the City's Development Services Director as a component of the TAD Plan, which approval shall not be unreasonably withheld in view of anticipated total costs of public street improvements set forth in the TAD Plan, and constructed by OWNER (up to a maximum amount of Three Hundred Thousand Dollars ($300,000.00)). The public improvements shall be constructed by OWNER concurrently with the development of the portion of the Property adjoining the Park Center Drive improvements.

D. In lieu of any other Development Exactions being imposed under the TAD Plan, at the time OWNER applies for issuance of a building permit(s) by CITY for construction of the first 85,000 square feet of its Project, OWNER shall pay to CITY the sum of $200,000.00 for use by the CITY for TAD Plan purposes in the Town Center; following such $200,000.00 payment, no other Development Exactions shall be imposed under the TAD Plan.

E. If OWNER constructs some of the Project before the adoption of the TAD Plan, OWNER shall make all reasonable efforts to conform any newly constructed improvements within the publicly owned areas ("New Public Improvements") and outdoor private areas ("Outdoor Improvements") to the provisions being recommended for inclusion within the TAD Plan at the time OWNER commences installation of such New Public Improvements and Outdoor Improvements. As long as the New Public Improvements and Outdoor Improvements are in substantial conformance with the provisions being recommended for inclusion in the TAD Plan at the time OWNER commences installation of the New Public Improvements and Outdoor Improvements, OWNER shall not be required to make any later modifications to such New Public Improvements and Outdoor Improvements. If however, such improvements are not in substantial conformance with the said provisions being recommended at the time, then once the TAD Plan has been adopted, OWNER shall take all reasonable steps to bring the New Public Improvements and Outdoor Improvements into substantial conformance with the TAD Plan.

F. Failure of OWNER to comply with the provisions of this Exhibit "G" shall constitute a material breach of this Agreement and, if not corrected following the giving of notice and a reasonable opportunity to cure, shall be grounds for CITY to terminate this Agreement.

EXHIBIT "H"

ADDITIONAL PUBLIC BENEFITS

In addition to the public benefits described in Section 2.2 of the Agreement, the Project, when constructed, has provided or will provide in the future the following significant public benefits:

- Enhancements of the Project include but are not limited to, site markers, special paving, an enhanced perimeter, the enhancement of Park Center Drive, signage and a comprehensive lighting and furniture program.

- Donation of Land for the Avenue of the Arts Freeway Off-Ramp. The Developer has donated land (the value of which was appraised at more that $1,100,000 and which resulted in the loss of parking spaces and required the reconfiguration of the internal circulation, entry and drive) at the request of the City without compensation to accommodate the construction of the Avenue of the Arts freeway off-ramp, which will provide significant traffic mitigation benefits to Town Center and the surrounding area and will be a critical component of the Plan to be developed for Town Center by providing improved access to the City and Town Center. The City requested the Developer to make such donation in return for consideration of such donation during subsequent entitlement discussions and proceedings.

- Public Access to and Visibility of the Garden. Through the redesigned architecture of the new office building proposed for the south-west corner of Anton Boulevard and Park Center Drive the visibility of the Garden from the street and the public access to the Garden will be improved.

- Tax and Fee Revenues. The Project will generate significant public tax revenues and impact fee revenues for the City.

- Enhancement of Image and Stature of the City. The comprehensive plan for the Project, which provides for a balance of land uses benefiting various segments of the community, and the general high-quality nature of the Project will enhance the image and stature of the City.

- Long-Term Employment Opportunities. The Project and its tenants will provide a long-term source of employment opportunities for residents of the City and the surrounding region.

- Furtherance of the City's General Plan. The development of the Project will assure that the property encompassed by the Project will be put to productive use consistent with the objectives of the City's general plan for the area, including promoting the City's objective of creating a pedestrian-oriented restaurant and commercial retail environment along the south side of Anton Boulevard.

EXHIBIT "I"

FAR AND TRIP BUDGETS

SUBAREA	MAXIMUM ALLOWABLE FAR	MAXIMUM BUILDING SQUARE FOOTAGE	A.M. PEAK HOUR TRIP BUDGET	P.M. PEAK HOUR BUDGET
PROJECT	1.55	1,227,978	2,133	2,150
SCA PROJECT	1.67	815,285	246	984
STC PROJECT	1.98	2,118,550	2,764	3,453
TOTAL TOWN CENTER	1.77	4,161,813	5,143	6,587

EXHIBIT "J"

EXISTING RESTAURANTS AND RETAIL ESTABLISHMENTS

Amici Trattoria Italiana
655 Anton Boulevard
Costa Mesa, California

El Torito
633 Anton Boulevard
Costa Mesa, California

Jerry's Famous Deli
3210 Park Center Drive
Costa Mesa, California

TGI Fridays
601 Anton Boulevard
Costa Mesa, California

EXHIBIT "K"

1. SCHEDULE OF TRAFFIC IMPROVEMENTS

Intersection	Recommended Improvement
Bristol & Sunflower	Convert 3rd northbound through lane to a shared through/right-turn lane.
Fairview & South Coast	Convert 2nd eastbound through lane to shared through/right-turn lane.
Bristol & Paularino	Add a second northbound left-turn lane (revised recommendation). Add a second westbound left-turn lane instead of a second right-turn lane.
Park Center & Sunflower	Convert northbound through lane to a shared left/through lane. Convert southbound left-turn lane to a shared left/through lane and convert southbound through lane to a right-turn lane. Implement split phasing for north/south direction.