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CITY OF COSTA MESA
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Costa Mesa, CA 92626
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This Development Agreement for Segerstrom Town Center 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

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CITY OF COSTA MESA

By: MARY T. ELLIOTT
Its: DEPUTY CITY CLERK
Dated: APRIL 25, 2001

Mary T. Elliott

**DEVELOPMENT AGREEMENT FOR
SEGERSTROM TOWN CENTER
(DA-00-02)**

by and between

CITY OF COSTA MESA

and

SOUTH COAST PLAZA, a California general partnership

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- Exhibit "A" Legal Description of the Property
- Exhibit "B" Map showing Property and its location
- Exhibit "C" Existing Development Approvals
- Exhibit "D" Existing Land Use Regulations
- Exhibit "E" Future Development Approvals
- Exhibit "F" Project Benefits
- Exhibit "G" FAR and Trip Budgets
- Exhibit "H" Schedule of Traffic Improvements

**DEVELOPMENT AGREEMENT FOR
SEGERSTROM TOWN CENTER**

This Development Agreement for Segerstrom Town Center (the "Agreement") is executed this 5th day of March, 2001 by and between the CITY OF COSTA MESA, a general law city ("CITY"), and the SOUTH COAST PLAZA, a California general partnership, referred to herein as "OWNER." 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 property (the "Property" defined below) on which the Segerstrom Town Center Project (the "STC Project" defined below) is to be located, which property is more fully described in Exhibit "A" and shown in the map set forth on Exhibit "B", both attached hereto. The STC Project is part of a larger master project for Town Center that also includes Two Town Center ("TTC Project") and Segerstrom Center for the Arts ("SCA Project"). The OWNER may, in the future, desire to develop the Property. Accordingly, OWNER has requested that CITY enter into this Agreement to provide assurances that the Property will be permitted to be developed in accordance with and the subject to the provisions set forth herein and in CITY's "Existing Land Use Regulations", CITY's "Existing Development Approvals", the Cultural Arts and Theatre District Plan ("TAD Plan") and "the Future Development Approvals" to be obtained by developer, 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 STC Project in the future will provide significant benefits to the community and promote the public health, safety and welfare for the following reasons, among others: (i) development of the STC Project will generate significant tax revenues that can be utilized to provide police, fire and other essential important public services to the community; (ii) development will put the Property to productive use consistent with the objectives of the CITY's General Plan; (iii) OWNER will participate in the development and implementation of the TAD Plan; and (iv) development of the STC Project will provide a long term source of employment opportunities for residents of the CITY and the surrounding region. In consideration of OWNER's provision of these benefits, CITY has determined that it is appropriate to enter into this Agreement to provide assurances to OWNER that the STC Project will be permitted to be developed 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. This Agreement will promote and encourage the development of the STC Project by providing the OWNER with a greater degree of certainty of the OWNER's ability to

expeditiously and economically complete the development effort, and the parties agree that the consideration to be received by the CITY pursuant to this Agreement and the rights secured to the OWNER hereunder constitute sufficient consideration to support the covenants and agreements of the CITY and the OWNER.

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 of CITY also held a public hearing on OWNER's application for approval of this Agreement.

F. In connection with its approval of the STC 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 STC, TTC and SCA Projects.

G. In accordance with the Development Agreement Statute, CITY's Development Agreement Procedures and Requirements, and applicable law, on March 5, 2001, the City Council of CITY adopted its Ordinance No. 01-4 approving this Agreement.

C O V E N A N T S:

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 STC Project by and between the City of Costa Mesa and OWNER, as the same may be amended from time to time.

(b) The term "Balance of Town Center" shall mean that portion of Town Center north of Anton, exclusive of the SCA project. Included within the Balance of Town Center are a number of existing office buildings, parking structures, restaurants, and hotel as well as the proposed site for the new hotel and new office building.

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

(d) 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 F of this Agreement and any subsequent amendments thereto. 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 street-scapes, 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 district to ensure the availability of sufficient parking for patrons of the cultural arts facilities in the Town Center while taking into consideration the reasonable needs of others entitled to park in the structures. Beginning 90 days after the Effective Date and continuing until the TAD Plan is adopted, 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 venues at the following parking structures: (i) the existing parking structure located at the southwest corner of Sunflower Avenue and Avenue of the Arts, which structure is connected by a walkway to the Orange County Performing Arts Center and (ii) the proposed parking structure for the office building (Building A) to be constructed at the southeast corner of Bristol Street and Sunflower Avenue. The TAD Plan will include language continuing a parking fee discount for Costa Mesa residents but the final terms may be modified from the above based on mutual agreements of the Parties. Reference to the TAD Plan in this Agreement shall mean the plan adopted by the City Council, unless the context clearly indicates otherwise. Subject to the provisions of Exhibit F, Paragraph VI.D, all references to compliance with the TAD Plan shall mean compliance from and after the date the TAD Plan is adopted by the City.

(e) 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."

(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 STC 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 and building permits and entitlements subject to approval or issuance by CITY in connection with development of the STC Project, including, but not limited to:

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

(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 date the ordinance approving this Agreement becomes effective. Subject to the provisions of the California Elections Code relating to referendum petitions, said ordinance will become effective 12:01 a.m. on the thirty-first (31st) day following its adoption by the CITY Council.

(k) The term "Existing Development Approvals" means all STC Project Development Approvals approved or issued prior to the Effective Date. Existing Development Approvals include the Development Approvals listed on Exhibit "C" and incorporated herein by reference.

(l) The term "Existing Land Use Regulations" means all Land Use Regulations in effect on the Effective Date of 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 required dedications or reservations for public improvements, including but not limited to streets, parks, schools, flood control channels.

(n) The term "Future Development Approvals" means Development Approvals required or requested subsequent to the Effective Date in connection with the development of the Property in accordance with the Existing Land Use Regulations and some of which are listed in

Exhibit "E" attached hereto and incorporated herein by this reference, including any amendments or modifications thereto.

(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; parking requirements; and the design, improvement and construction standards and specifications applicable to the development of the Property.

(p) The term "Master Project" means development of the SCA Project, the TTC Project and the STC Project.

(q) 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.

(r) The term "OWNER" shall collectively mean South Coast Plaza, a California general partnership, and their successors and assigns as referred to in Section 3.12 of this Agreement.

(s) 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.

(t) The term "Property" means the real property located at the (1) southeast corner of the intersection of Bristol Street and Sunflower Avenue on which OWNER intends to construct a new 339,025 square foot office building and related parking structure, which in conjunction with 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) northeast corner of the intersection of Bristol Street and Anton Boulevard on which OWNER plans to construct a 186 room hotel (186,000 square feet), which property is more particularly described on Exhibit "A" and shown on Exhibit "B" to this Agreement.

(u) The term "SCA Project" means development of the Segerstrom Center for the Arts property by the Orange County Performing Arts Center, a non-profit corporation, pursuant to the Master Project approvals. The SCA Project 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 development of the Property pursuant to the Existing Land Use Regulations, the Existing Development Approvals, the TAD Plan, the Future Development Approvals, and the terms of this Agreement. The STC Project includes construction located at the (1) southeast corner of the intersection of Bristol Street and Sunflower Avenue on which OWNER intends to construct a new 339,025 square foot office building and related parking structure, which in conjunction with 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) northeast corner of the intersection of Bristol Street and Anton Boulevard on which OWNER plans to construct a 186 room hotel (186,000 square feet), all of which property is more particularly described on Exhibit "A" and shown on Exhibit "B" to this Agreement.

(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 "TTC Project" means development of the Two Town Center property by FSP Two Town Center, LLC and Fifth Street Properties-DS, LLC pursuant to the Master Project approvals. The TTC Project includes demolition of certain retail and entertainment structures, construction of replacement restaurant and retail buildings and construction of an additional 400,000 square feet of office buildings plus related parking structures.

(y) 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.

(z) 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.

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

(bb) 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" - Map showing Property and its location.

Exhibit "C" - Existing Development Approvals.

Exhibit "D" - Existing Land Use Regulations.

Exhibit "E" - Future Development Approvals

Exhibit "F" - Project Benefits

Exhibit "G" - FAR and Trip Budgets

Exhibit "H" - Schedule of Traffic 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 STC Project in accordance with the Existing Land Use Regulations, the Existing Development Approvals, its obligations regarding the TAD Plan and the Future Development Approvals to be obtained pursuant hereto. Not by way of limitation of the foregoing, OWNER shall comply with all conditions imposed by CITY on the Existing Development Approvals, all applicable requirements of the TAD Plan 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 STC 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.

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 continue to receive numerous public benefits. These benefits, which include land and financial donations for cultural arts facilities, the creation and support of the TAD Plan, shared parking arrangements, creation of a permanent open space easement and improved sight lines, are described in detail in attached Exhibit "F".

2.1.2 Traffic Mitigation (4 Intersections)

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 "H" 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 intersection, of the total cost for such mitigation when CITY causes the mitigation to be done.

2.1.3 Fire Protection Facilities.

The STC 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 occupancy permit for new development.

2.1.4 Financing of TAD Plan Improvements.

OWNER shall work diligently 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.

2.1.5 Judicial Decisions.

Notwithstanding any other provisions 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 STC Project in accordance with the express provisions of this Agreement, the Existing Land Use Regulations, the Existing Development Approvals, 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 the SCA Project, TTC Project or any project other than the STC 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 STC 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 CITY's Consideration and Approval of Requested Changes in the STC 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 density, intensity or uses in the STC Project without fully complying with procedures in the Land Use Regulations and the 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 STC 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 STC Project proposed by OWNER is approved by the CITY, the references in this Agreement to the STC Project or applicable portion thereof shall be deemed to refer to the STC Project as so changed.

2.2.3 Timing of Development.

The Parties acknowledge that the most efficient and economic development of the STC 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 an STC 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 STC Project, shall apply to or govern the development of the STC 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.

2.2.4 Reservations and Dedication of Lands For Public Purposes.

In recognition of the significant contributions and dedications by OWNER, 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 STC Project, except (i) as expressly provided for in the Existing Development Approvals, (ii) as expressly set forth in the provisions of this Agreement, (iii) as authorized pursuant to the TAD Plan, or (iv) as authorized by Existing

Land Use Regulations in conjunction with the processing of Future Development Approvals. The provisions of this Section 2.2.4 are not intended to preclude the CITY's ability to require 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 STC Project or the Property, in connection with Future Development Approvals as presently authorized by the Existing Land Use Regulations.

2.2.5 Development Exactions.

Except as otherwise expressly set forth in this Agreement and Exhibit "C", CITY shall not impose Development Exactions in conjunction with OWNER's development of the Property or the STC 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 STC 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), (ii) any Development Exaction imposed pursuant to the TAD Plan, or (iii) 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.

2.2.6 FAR and Trip Budget Determined on Project Basis.

The STC Project is a development proposal within the Balance of Town Center. The Balance of 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 Balance of Town Center as a whole, rather than on a parcel by parcel basis. The TTC, SCA and the STC Projects, although part of the same CEQA process, shall be considered as three separate projects for purposes of determining FAR and trip budget. The FAR and trip budget for the TTC Project, the SCA Project and the Balance of Town Center, as well as the overall FAR and trip budget for the entire Town Center area shall be as provided in attached Exhibit "G".

2.2.7 Future Environmental Review.

The potential environmental impacts of the STC Project were analyzed in the Program EIR. Future Development Approvals will be reviewed in light of the Program EIR 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.

2.2.8 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 STC 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 STC 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.

2.2.9 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 may request or be required to obtain in order to complete the development of the STC Project. All subsequent consideration by CITY of OWNER's applications for Future Development Approvals for the STC 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.

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.

2.2.10 Traffic Impact Fee.

From the Effective Date through the term of this Agreement, the CITY traffic impact fee for the STC 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 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 that time in the absence of this Agreement.

2.3 Reservations 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 STC Project (collectively, the "Reservations of Authority"):

2.3.1 Theater and Arts District Plan.

The TAD Plan which will apply to development in the Town Center and create a common theme to promote and accentuate the area as a world-class cultural arts center for the City of Costa Mesa and Orange County community.

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 shall apply to the Property and the STC 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 STC 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 STC 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 any combination thereof.

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 STC 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 Section 2.3 which are in conflict with the STC 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.

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 Non-Defaulting 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 within twenty-four (24) months, as long as the Defaulting Party does each of the following: (i) notifies the Non-Defaulting 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 Non-Defaulting Party in writing of the Defaulting Party's reasonable, proposed course of action, acceptable to the Non-Defaulting Party, to cure the default; (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 Non-Defaulting Party, at its option, may institute legal action to cure, correct, or remedy such default, to enjoin any threatened or attempted violation, 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 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 nontransferred, 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 all portions of the Property and OWNER of said Property to enforce or terminate this Agreement with respect to any default which existed 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; 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. Notwithstanding any other provision of this Agreement, this Section 3.7 shall become effective and binding upon execution of this Agreement by both Parties.

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 STC 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 who acquires or accepts title or a portion thereof as described in Section 3.8.2 shall have no right to develop the STC 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.

With a copy to:

Pillsbury Madison & Sutro LLP
650 Town Center Drive
7th Floor
Costa Mesa, CA 92626
Attn: William R. Devine, 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 for preparation and review of such documents including attorney fees incurred by CITY in such review and preparation.

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 STC 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 STC 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 STC Project as a Private Undertaking.

It is understood and agreed by and between the parties hereto that the development of the STC 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.

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.

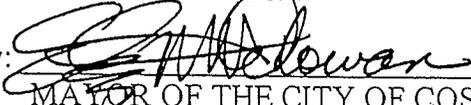
This Agreement (including the Exhibits hereto) constitutes the entire understanding and agreement of the Parties and supersedes all previous negotiations, discussions and agreement between the Parties with respect to all or part of the subject matter hereof. No parol evidence shall be permitted to contradict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

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:

Mary T. Eccles - Deputy
CITY CLERK, CITY OF COSTA MESA

APPROVED AS TO FORM:

[Signature]
CITY ATTORNEY, CITY OF COSTA MESA

03-22-01

SOUTH COAST PLAZA, a California general partnership

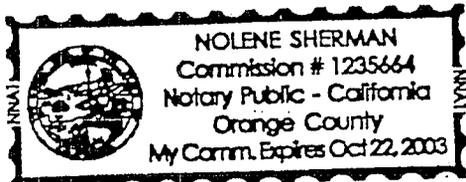
By: [Signature]
Its: Managing Partner

By: _____
Its: _____

STATE OF CALIFORNIA)
)
COUNTY OF) SS.

On MAR 27, 2001, before me, NOLENE SHERMAN
personally appeared HENRY T. STEPHENSON
personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the
person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that
~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~
signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s)
acted, executed the instrument.

Witness my hand and official seal.



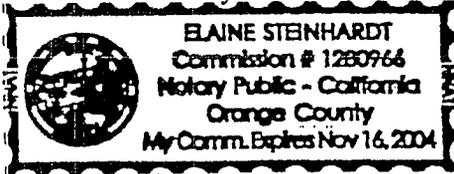
[SEAL]

Nolen Sherman
Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF) SS.

On APRIL 13 2001, before me, ELAINE STEINHARDT, NOTARY PUBLIC
personally appeared ELIZABETH ANN COWAN AND 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.



[SEAL]

Elaine Steinhardt
Notary Public

EXHIBIT "A"

APN	DESCRIPTION
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Parcels underlying new office tower at corner of Bristol and Sunflower.

All that land situated in the State of California, County of Orange, City of Costa Mesa, described as follows:

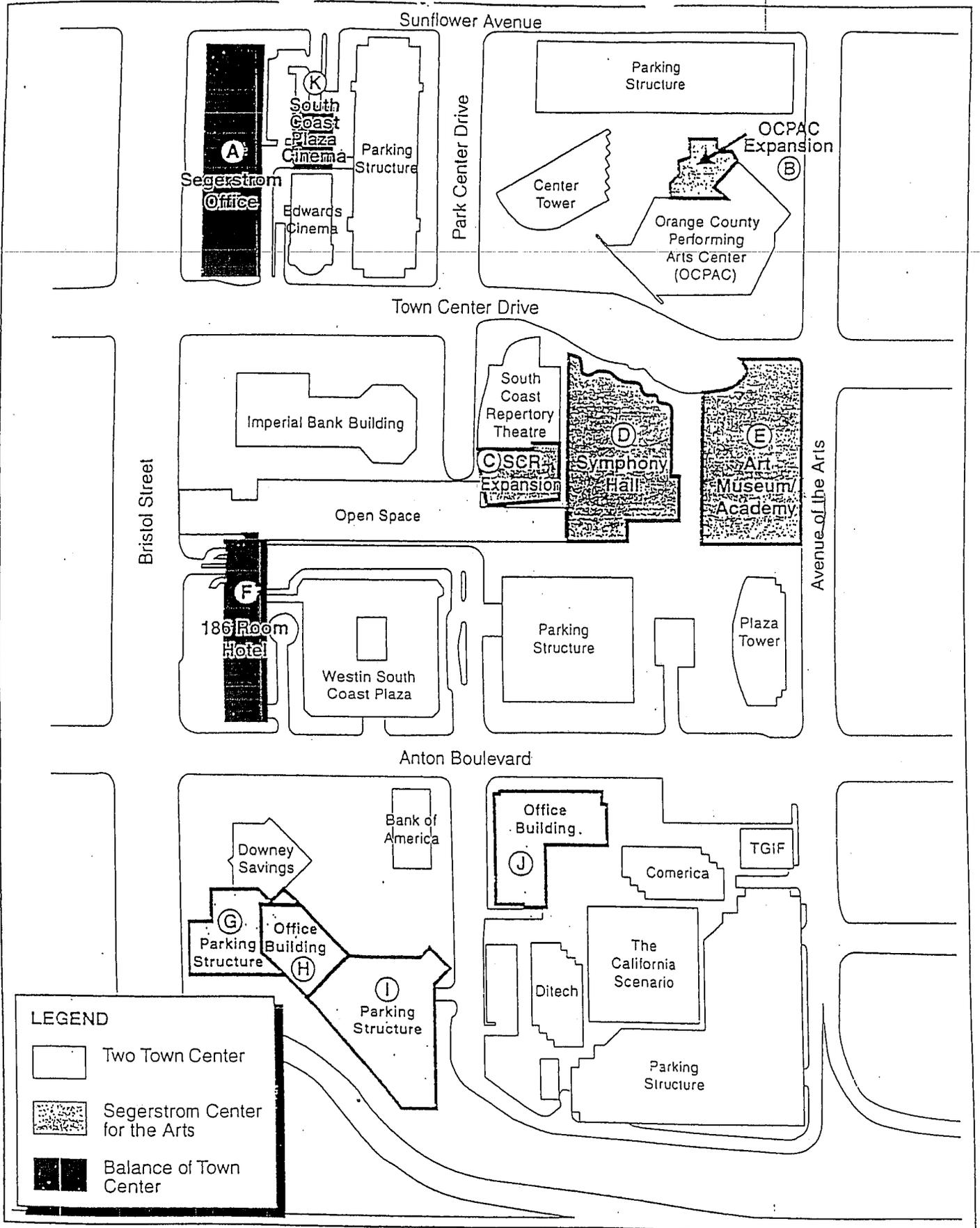
410-051-46	Parcel 5 of parcel map S-78-10, as shown on a map filed in Book 115, page 37 of parcel maps, in the office of the County Recorder of Orange County, California
410-051-45	Parcel 3 of parcel map S-78-10, as shown on a map filed in Book 115, page 37 of parcel maps, in the office of the County Recorder of Orange County, California
410-051-19	Parcel 4 of parcel map S-78-10, as shown on a map filed in Book 115, page 37 of parcel maps, in the office of the County Recorder of Orange County, California
410-051-48	Parcel 6 of parcel map S-78-10, as shown on a map filed in Book 115, page 37 of parcel maps, in the office of the County Recorder of Orange County, California
410-051-47	Parcel 3 of parcel map S-78-10, as shown on a map filed in Book 115, page 37 of parcel maps, in the office of the County Recorder of Orange County, California

Parcels underlying new hotel at corner of Bristol and Anton

All that land situated in the State of California, County of Orange, City of Costa Mesa, described as follows:

410-051-38	Parcel 1 of parcel map 81-379, as shown on a map filed in Book 164, page 10 of parcel maps, in the office of the County Recorder of Orange County, California; Parcel 2 as shown on a map filed in Book 12, page 18 of parcel maps, in the office of the County Recorder of Orange County, California
410-051-40	Parcel 1 as shown on a map filed in Book 12, page 18 of parcel maps, in the office of the County Recorder of Orange County, California
410-051-42	Parcel 1 of parcel map S-20-67, as shown on a map filed in Book 11, page 32 of parcel maps, in the office of the County Recorder of Orange County, California
410-051-27	Parcel 2 of parcel map S-20-67, as shown on a map filed in Book 11, page 32 of parcel maps, in the office of the County Recorder of Orange County, California.

DEFINITION OF THE PROPERTIES



LEGEND

- Two Town Center
- Segerstrom Center for the Arts
- Balance of Town Center

EXHIBIT "C"

LIST OF EXISTING DEVELOPMENT APPROVALS

1. Mitigation Monitoring Program for Final Program EIR #1047 by City of Costa Mesa.

2. General Plan Amendment GP-00-02
3. North Costa Mesa Specific Plan Amendment SP-00-01
4. Preliminary Master Plan Amendment PA-00-38
5. Development Agreement DA-00-02

EXHIBIT "D"

EXISTING LAND USE REGULATIONS

1. CITY of Costa Mesa General Plan
2. North Costa Mesa Specific Plan
3. ~~Title 13 of the Costa Mesa Municipal Code (Planning, Zoning and Development Codes)~~
4. All other ordinances, resolutions, regulations, and official policies governing land use development and building construction.
5. 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.
6. 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) and/or hotel 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. Possible Condition Use Permits and/or variances that might be sought.
6. Building, grading, demolition and occupancy permits and all other ancillary permits required by other uniform codes.
7. Any necessary City approvals that might be required by the TAD Plan to be adopted.
8. Possible vacation of public right-of-way and/or abandonment of all or portions of Town Center Drive and/or Park Center Drive.

EXHIBIT "F"

PUBLIC BENEFITS

I. CULTURAL BENEFITS

Direct cultural benefits to the City of Costa Mesa of this project stem from two recent gifts: the grant of a six-acre vacant parcel in Town Center from OWNER to Orange County Performing Arts Center ("OCPAC") and the personal commitment of Henry Segerstrom to contribute \$40 million to the design and construction of a new symphony hall on that land.

These two gifts by themselves will permit the following cultural benefits to be achieved:

- ♦ Expansion of South Coast Repertory Theatre ("SCR")
- ♦ Construction of 2500-seat Symphony Hall
- ♦ Creation of a third arts-related venue at some time in the future, with the site improved as a public park until that construction will occur
- ♦ Creation of exterior plazas, promenades and assembly areas associated with both SCR and the new Symphony Hall.
- ♦ New venues will create in Costa Mesa a performing arts complex that rivals the centers in New York, Washington, Los Angeles and Denver in importance and quality.
- ♦ Upon completion of the new Symphony Hall, two of the ten best orchestral performance spaces in the world will exist in Costa Mesa.

II. OPEN SPACE

OWNER, in cooperation with OCPAC and CITY, will amend the existing Open Space easement(s) in a way that increases the total area within the Open Space easement(s) by more than a quarter of an acre, extends the Open Space easement(s) all the way from Bristol St. to Avenue of the Arts, all as identified on Attachment 1 hereto, and makes the easement(s) permanent rather than temporary. The amendment(s) shall be in a form approved by the City Attorney and approved and executed by the necessary parties and recorded with the Orange County Recorder prior to the issuance of any building permit for the South Coast Repertory Theatre. CITY shall use reasonable efforts to execute and record the amendment(s) within sixty (60) days following CITY's receipt of an amendment(s) acceptable to the City Attorney. As a condition subsequent to this Development Agreement, OWNER shall, within six (6) months of the Effective Date, obtain an agreement(s) by any lender(s) for subordination of any existing loans affecting the Open Space easement(s) to such amended Open Space easement(s).

III. PARKING AGREEMENTS

OWNER commits to work diligently with the other ownership entities within Town Center to secure a shared parking arrangement in a form approved by the CITY Attorney, which approval will not be unreasonably withheld, that provides for the long-term parking needs of the current and proposed Town Center performing arts venues. Such arrangements shall assure that sufficient parking is available for patrons at the performing arts venues and that parking fees do not exceed the market rate for the area to be set forth in the TAD Plan and will be compatible with the parking regulations adopted as part of the TAD Plan.

Prior to issuance of a certificate of occupancy for the Project's office building at the southeast corner of Bristol and Sunflower streets, OWNER shall submit to CITY and obtain CITY's approval of a plan for use of the building's parking structure by patrons of the arts venues in the Theater and Arts District. The parking plan should be compatible with the parking regulations adopted as part of the TAD Plan. The plan might include, among other matters, conducting regular parking counts at the One Town Center, Plaza Tower and Center Tower parking facilities during performances at the arts venues and if the parking counts show that more than 80% of the parking spaces within the three parking facilities are being regularly used during any 90 day monitoring period, OWNER would make available its new facility to meet the parking needs of the performing arts venues. Parking fees at such new facility shall not exceed the market rate for the area to be set forth in the TAD Plan. Beginning 90 days after the Effective Date and continuing until the TAD Plan is adopted, 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 venues at the following parking structures: (i) the existing parking structure located at the southwest corner of Sunflower Avenue and Avenue of the Arts, which structure is connected by a walkway to the Orange County Performing Arts Center and (ii) the proposed parking structure for the office building (Building A) to be constructed at the southeast corner of Bristol Street and Sunflower Avenue. The TAD Plan will include language continuing a parking fee discount for Costa Mesa residents but the final terms may be modified from the above based on mutual agreements of the Parties.

IV. AESTHETIC IMPROVEMENTS TO THE SOUTHEAST CORNER OF THE BRISTOL/SUNFLOWER INTERSECTION

Construction of the proposed office building at the SE corner of Sunflower and Bristol will provide public benefits that are both aesthetic and functional.

- ◆ Removal of three nondescript and undistinguished buildings (Wells, Sumitomo, Edwards II) and their associated hardscape and parking areas

- ◆ Replacement of those buildings with a single structure of architectural distinction that

does away with vehicular access to the site from Bristol, improving traffic flow and removing unattractive pavement and hardscape;

substitutes pedestrian-friendly plaza treatments and landscaping for blacktop and hardscape;

removes an unattractive on-street theater billboard;

opens up sight lines into the area from Bristol;

increases opportunities for pedestrians to enter Town Center from the Sunflower/Bristol corner;

reverses the unsightly structural massing on the site now (high building on corner, low buildings mid-block) with mass placement that puts the lower elements at the intersection of Bristol and Sunflower and the higher elements away from the corner;

lightens the sense of mass on the site by relying on transparent glass surface design for the proposed building rather than opaque stone or plaster;

further the general urban planning policy of "place-making," the creation in urban environments of pedestrian-oriented spaces that invite the assembly of individuals in comfortable and accommodating locations.

achieves these improvements of design and esthetics with no increase in the total footprint area of structures on the site.

Existing footprint area of Wells, Sumitomo, Edwards II: 34,000 s.f.

Proposed footprint (per Helmut Jahn) 33,750 s.f.

The new office project also increases the parking available in Town Center for arts patrons; this parking will be administered under the shared parking arrangements proposed in section III above.

V. VACATION OF TOWN CENTER DRIVE AND A PORTION OF PARK CENTER DRIVE

OWNER commits to work diligently with the other ownership entities within Town Center to secure a reciprocal easement agreement ("REA"), or such other similar arrangement, in a form approved by the City Attorney, which approval will not be unreasonably withheld, that relieves the CITY of responsibility for the maintenance and upkeep of Town Center Drive and Park Center Drive north of Town Center Drive and

thereby allows the CITY to vacate those rights of way; provided, however, that CITY retains the discretion whether to vacate such rights of way. Parties to any agreement would assume responsibility for such maintenance and upkeep.

VI. THEATER AND ARTS DISTRICT

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, 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 establish a rigid and inflexible set of pre-approved designs, but to create 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 TTC 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 the 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.

C. 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 Project's office building and hotel with (ii) construction of the buildings which comprise the TTC 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 the present value of \$1,000,000.00 (calculated at a 7% rate of investment return commencing as of the Effective Date and continuing through the date of payment by OWNER). 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. 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. 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.

D. If OWNER constructs some of the STC Pro Plan, OWNER shall make all reasonable efforts to improvements within the publicly owned areas (New private areas ("Outdoor Improvements") to the inclusion within the TAD Plan at the time OWNER Public Improvements and Outdoor Improvements. Improvements and Outdoor Improvements are in such provisions being recommended for inclusion in the commences installation of New Public Improvement OWNER shall not be required to make any later mo Improvements and Outdoor Improvements. If howe substantial conformance with the said provisions bei once the TAD Plan has been adopted, OWNER shal New Public Improvements and Outdoor Improve the TAD Plan.

E. Failure of OWNER to comply with the provisions of this section VI 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.

VII. ECONOMIC BENEFITS

The proposed luxury hotel will produce annual general fund revenues to the CITY of \$1,000,000. (The number is based on the following postulates: 186 rooms; average room rate of \$350 per night; occupancy rate of 70 percent; transient occupancy tax of 6 percent.)

At buildout, the proposed improvements in Town Center north of Anton will bring additional property tax revenues of several hundred thousand dollars per year to the CITY.

EXHIBIT "G"

LOCATION	FAR	TRIP BUDGET	
		A.M.	P.M.
Two Town Center	1.55	2133	2150
OCPAC/SCA	1.67	246	984
Balance of Town Center	1.98	2764	3453
TOTAL	1.77	5143	6587

EXHIBIT "H"

SCHEDULE OF TRAFFIC IMPROVEMENTS

Intersection	Recommended Improvement
Bristol & Sunflower	Convert 3 rd northbound through lane to a shared through/right-turn lane.
Fairview & South Coast	Convert 2 nd 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.