

**FIRST AMENDMENT TO THE
DEVELOPMENT AGREEMENT FOR TWO TOWN CENTER AND DOWNEY
SAVINGS DEVELOPMENT PROPERTIES**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (“Amendment”) is executed this 23rd day of June, 2021, by and between: (1) the City of Costa Mesa, a Municipal Corporation of the State of California (“City”), and The Irvine Company LLC, a California Limited Liability Company, (“Irvine Company” or “Owner”). The City and Irvine Company shall individually be referred to as “Party” and shall collectively be referred to as the “Parties.”

RECITALS

1. City, FSP Two Town Center, LLC, and Fifth Street Properties-DS, LLC, entered in to that certain Development Agreement for Two Town Center and Downey Savings Development Properties dated as of July 27, 2001 (“Development Agreement”) recorded on August 13, 2001 as Instrument No. 20010556976 of the Official Public Records of Orange County, California (the “Official Records”). The Development Agreement provides for construction of the Two Town Center and Downey Savings Project (“Project”), as defined in the Development Agreement. The Project is now known as Pacific Arts Plaza.
2. Irvine Company purchased the property on which the Project was constructed (“Property”) in December 2010 and the Development Agreement was assigned to Irvine Company. The Property is described in Exhibit A to the Development Agreement and is depicted in Exhibit B to the Development Agreement.
3. Unless otherwise amended, the Development Agreement will expire on August 15, 2021.
4. Since 2001, a portion of the Property has been developed. However, portions of the Property are developed to an extent that is less than permitted by the Property’s entitlements. The Parties wish to ensure that certain development regulations contained in the Development Agreement that are in effect through August 15, 2021, continue to govern on the Property. Therefore, the parties wish to extend the term of the Development Agreement by an additional two (2) years beyond the current date of expiration to August 15, 2023.
5. Section 2.1.1 to the Development Agreement sets forth certain public benefits to be provided by Irvine Company, and the City and Irvine Company desire to memorialize that many of the public benefits have been provided. The Parties desire to ensure the continuation of certain of these public benefits and to add certain additional requirements.

6. This Amendment is intended to be an amendment pursuant to California Government Code Section 65868. This Amendment has been considered and approved in the same manner as the Development Agreement with public hearings pursuant to California Government Code Section 65867.
7. The City Council has evaluated the potential environmental impacts of this Amendment and has determined that any potential impacts have been analyzed pursuant to the Final Program Environmental Impact Report No. 1047, prepared for City and certified by the City Council on February 5, 2001, in accordance with the California Environmental Quality Act (“CEQA”). There are no circumstances present that would require a new, subsequent or supplemental environmental impact report for this Amendment, under the provisions of CEQA.
8. On December 9, 2019, City’s Planning Commission held a public hearing on this Amendment, made findings and determinations with respect to this Amendment, and recommended to the City Council that the City Council approve this Amendment.
9. On June 1, 2021, the City Council held a public hearing on this Amendment and considered the Planning Commission’s recommendations and the testimony and information submitted by City staff, Irvine Company, and members of the public. On June 15, 2021, pursuant to Government Code section 65864 et seq. and the procedures set forth in City Council Resolution No. 88-53, the City adopted Ordinance No. 2021-10 finding this Amendment to be consistent with the City of Costa Mesa General Plan and the North Costa Mesa Specific Plan, and approving this Amendment.

AGREEMENT

NOW, THEREFORE, City and Irvine Company agree as follows:

1. Effective Date. This Amendment shall not become effective and no Party shall have any rights or obligations hereunder until the “Effective Date,” which for purposes of this Amendment shall mean the thirty-first (31st) day following the adoption of Ordinance No. 2021-10 by the City Council and signature by the City.
2. Duration of Agreement. The Development Agreement is hereby extended to be operative and continue until August 15, 2023.
3. Continuation of Parking Benefit. City and Owner agree that certain public benefit obligations set forth in Section 2.1.1 and Exhibit H to the Development Agreement have been satisfied in full. City and Owner further agree that Owner shall continue to provide the public benefit described in enumerated paragraph (3) to Section 2.1.1 to the Development Agreement, pursuant to which Owner is required to provide a fifty percent

(50%) discount on parking on the Property to residents of the City of Costa Mesa patronizing performing arts venues on the Property after regular business hours, until expiration of the Development Agreement, as amended herein.

4. Additional Consideration. In addition to those public benefits enumerated in Section 2.1.1 and Exhibit H to the Development Agreement, Irvine Company shall, upon the Effective Date of this Amendment, provide to City a \$25,000 Public Benefit Payment, to be dispensed at the discretion of the City Council.
5. Building Fees. City and Owner agree that should Owner choose to construct additional development on the Property prior to the expiration of the Development Agreement, as amended herein, such development shall be subject to City development fees at those rates in existence and normally applicable to building or construction applications or permits at the time that such applications or permits are processed by the City.
6. Original Agreement Amended and Conflicts. In the event of any conflict between the terms of this Amendment and the remainder of the Development Agreement, this Amendment shall control. Except as otherwise set forth herein to the contrary, all terms and provisions of the Development Agreement shall remain un-amended and continue in full force and effect. The term "Owner" as defined in the Agreement shall mean the Irvine Company LLC. This Amendment with the remainder of the Development Agreement shall be construed together and shall constitute one agreement.
7. Notice of Intention to Amend. In enacting this Amendment, the City has provided for public notice and hearing in the manner provided by California Government Code Section 65867.
8. Compliance with Government Code Section 65867.5. Government Code Section 65867.5 provides that a development agreement is a legislative act that shall be approved by ordinance and subject to referendum. A development agreement shall not be approved unless the City Council finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan. These requirements of Section 65867.5 have been satisfied by the City's finding that this Amendment is consistent with the City General Plan and the North Costa Mesa Specific Plan, and the City's approval of this Amendment by Ordinance No. 2021-10.
9. Section Headings. All section headings are inserted for convenience only and shall not affect construction or interpretation of this Agreement.
10. Authority to Execute. The persons executing this Amendment warrant and represent that they have the authority to execute this Amendment on behalf of the party for which they are executing this Amendment. They further warrant and represent that they have the

authority to bind their respective party to the performance of its obligations under this Amendment. The City Manager or his/her designee has the authority to implement the terms of this Amendment and execute any documents in furtherance of the terms of this Amendment and the Development Agreement so long as they have been reviewed and approved as to form by the City Attorney.

11. Counterparts. This Amendment may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which shall be deemed to constitute one instrument. It shall not be necessary that all signatories execute the same counterpart(s) of this Amendment for this Amendment to become effective.

[SIGNATURE PAGES FOLLOW]

**SIGNATURE PAGE TO
FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

Irvine Company

IRVINE COMPANY LLC



By: *ROGER DEWAMES*

Its: *SVP*



By: *HARPAL SADHAL*

Its: *SENIOR DIRECTOR, DEVELOPMENT*

“CITY”

CITY OF COSTA MESA

By 

John Stephens
Mayor

ATTEST:



Brenda Green
City Clerk



APPROVED AS TO FORM:



Kimberly Barlow
City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

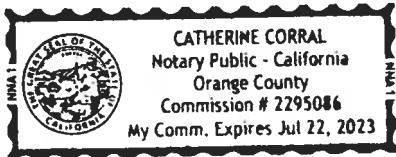
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of Orange }

On June 24, 2021 before me, Catherine Corral, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Roger De Wames and Harpal Sidhal
Name(s) of Signer(s)

who 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.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Catherine Corral
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: First Amendment to Development Agreement

Document Date: June 24, 2021 Number of Pages: 8

Signer(s) Other Than Named Above: City of Costa Mesa

Capacity(ies) Claimed by Signer(s)

Signer's Name: Roger De Wames

Corporate Officer - Title(s): SVP

Partner - Limited General

Individual Attorney in Fact

Trustee Guardian of Conservator

Other:

Signer is Representing: The Irvine Company LLC

Signer's Name: Harpal Sidhal

Corporate Officer - Title(s): Sr. Director, Development

Partner - Limited General

Individual Attorney in Fact

Trustee Guardian of Conservator

Other:

Signer is Representing: The Irvine Company LLC

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of Orange)

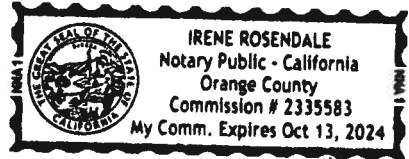
On July 2, 2021, before me, IRENE ROSENDALE, Notary Public, personally appeared John Bruce Stephens, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their 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.

I certify under PENALTY OF PERJURY under law of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature of Notary Public



MY COMMISSION EXPIRES: October 13, 2024

-----OPTIONAL-----

Document title: First Amendment to Development Agreement for Two Town Center and Downey Savings Development Properties – Between the City of Costa Mesa and The Irvine Company LLC

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