

STAFF REPORT

*SUCCESSOR AGENCY
CITY OF OCEANSIDE*

DATE: March 10, 2015

TO: The Oversight Board of the City of Oceanside Successor Agency

FROM: Economic Development

SUBJECT: **OCEAN PLACE CINEMAS PAYMENT AGREEMENT LIEN RELEASE,
NET OPERATING INCOME PAYMENT AMOUNT AND SALE BUYOUT
AMOUNT ANALYSIS**

SYNOPSIS

Adoption of a Resolution approving the Satisfaction, Termination and Release of Payment Agreement and Lien regarding the Ocean Place Cinemas Site.

BACKGROUND

In 1998 the Oceanside Community Development Commission ("CDC") entered into a Disposition and Development Agreement ("DDA") with DDR Oliver McMillian LP, to develop a 2.65 acre site into 19,629 square feet of retail/restaurant space and a 16-screen movie complex.

In 2003 DDR Oliver McMillian LP, dissolved their partnership and transferred ownership of Ocean Place Cinemas to DDR Oceanside LLC ("DDR").

Included in the 1998 DDA was a Payment Agreement with a term of 50 years, which is recorded as a lien on the property. The purpose of the Payment Agreement was to allow the CDC to recover all or part of its \$7 million investment in acquiring the property and preparing it for development. The Payment Agreement outlines a specific formula, based upon performance of the project, to determine how much, if anything, the CDC could collect annually from the developer. To date no funds have been collected from the developer, because the project has not generated net operating income sufficient to exceed the threshold NOI set forth in the Payment Agreement.

The Payment Agreement provides that upon sale of the project, the developer must buy out the CDC's "Net Income Participation Amounts," with the "Sale Buyout Amount" determined according to a formula based on three-year average net operating income from the project. The Payment Agreement also gives the developer the option, after ten years, to initiate a buyout according to the same formula. In early February 2015, DDR notified the City that the Ocean Place Cinema property was in escrow to be sold and requested release of the lien on the property before close of escrow.

The City hired Keyser Marston Associates ("KMA") to conduct an analysis of the Payment Agreement to determine the Sale Buyout Amount owed to the Successor

Agency ("Agency"). DDR has requested expedited review in order to close on the sale of the property by the end of March 2015.

ANALYSIS

The Payment Agreement, Section 219, "Sale of the Development," specifies a formula to determine if a Buyout amount is owed by DDR to the Agency upon a sale of the project.

As shown in the KMA Report (Attachment 3), the Agency is not entitled to financial participation in either the NOI Participation or the Buyout Provision.

KMA provided additional analysis by conducting a sensitivity test to calculate if a Buyout Payment would be owed by the developer if more aggressive rental rates and escalation factors were used over the 50-year period. This test looked at the current rental rates which average \$1.64 per square foot and escalated the amount to \$2.50 per square foot for Regal Cinemas and \$5.00 per square foot for all other tenants; then added a 3% per year escalation factor. Even with this aggressive approach KMA concluded under the sensitivity test that the Agency would not be entitled to a Buyout Payment.

FISCAL IMPACT

Funds are not due to the Oceanside Successor Agency as shown in the analysis conducted by Keyser Marston Associates.

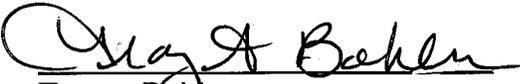
CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney, acting as counsel to the Successor Agency, and approved as to form.

RECOMMENDATION

Adoption of a Resolution approving the Satisfaction, Termination and Release of Payment Agreement and Lien regarding the Ocean Place Cinemas Site

PREPARED BY:


Tracey Bohlen
Economic Development Manager

SUBMITTED BY:


Michelle Skaggs Lawrence
Interim City Manager

REVIEWED BY:

Jane McPherson, Interim Financial Services Director



ATTACHMENTS

1. Portion of Ocean Place Cinemas DDA
2. DDR Buyout Request
3. KMA Payment Agreement Analysis
4. Resolution

DOC # 1999-0095214

FEB 17. 1999 11:11 AM

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Chicago Title 4550

Community Development Commission
of the City of Oceanside
300 North Coast Highway
Oceanside, CA 92054
Attention: Dana Whitson
Assistant City Manager

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 0.00



1999-0095214

SPACE ABOVE THIS LINE FOR RECORDER'S USE
DOCUMENT ENTITLED TO FREE RECORDING
PER GOVERNMENT CODE SECTION 6103

PAYMENT AGREEMENT

THIS PAYMENT AGREEMENT is entered into by and between the COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF OCEANSIDE, a public body corporate and politic (the "Commission"), and DDR OLIVERMcMILLAN OCEANSIDE LLC, a Delaware limited liability company (the "Developer").

The Commission and the Developer hereby agree as follows:

- I. [§ 100] PURPOSE OF PAYMENT AGREEMENT
- A. [§ 101] Recitals

This Payment Agreement is made with reference to the following facts:

1. The Developer is the owner of all that certain real property in the City of Oceanside, County of San Diego, State of California, described in Exhibit A attached hereto and made a part hereof. Such real property shall be referred to herein as the "Property."

2. The Property was conveyed by the Commission to the Developer in furtherance of the Redevelopment Plan for the Downtown Redevelopment Project, as amended (which was approved and adopted on November 19, 1975 by Ordinance No. 75-35 of the City Council of the City of Oceanside).

3. The Property was conveyed by the Commission to the Developer in accordance with the Disposition and Development Agreement entered into by and between the Commission and DDR OliverMcMillan LP, a Delaware limited partnership, the Developer's predecessor-in-interest, on July 2, 1998 (the "DDA").

FX
28P
1C
NF

4. The Property was conveyed by the Commission to the Developer at a purchase price established and agreed to in the DDA. Such purchase price consisted of the basic purchase price paid at the time of conveyance of the Property, and in addition certain continuing payments which are to survive the completion of the improvements on the Property and the expiration of the DDA. The purpose of this Payment Agreement is to set forth as a matter of record such additional consideration as provided for in the DDA.

5. The Commission incurred substantial public expenses for property acquisition, relocation, demolition, clearance, public improvements and financing costs in connection with the assembly and preparation for development of the land comprising the Property.

6. In addition, the Commission is engaged in activities to renew and revitalize downtown Oceanside in a manner which is intended to further enhance the Property as part of an urban community.

7. In order to permit the Commission to recover all or part of the expenses incurred which will not otherwise be recovered by the Commission, to ensure that the subsidy provided to the Developer pursuant to the DDA is appropriate, and to participate in the values created in the Property, as additional consideration for its development opportunity under the DDA, and in consideration for the undertaking of the Commission pursuant to the Redevelopment Plan and the DDA, the Developer has heretofore agreed with the Commission (on behalf of itself and any successors in interest to the Property) to make certain payments to the Commission as herein provided.

II. [§ 200] PARTICIPATION IN NET OPERATING INCOME

A. [§ 201] Definitions

For purposes of this Payment Agreement, the following terms shall have the following respective meanings:

1. [§ 202] Actual Costs

The term "Actual Costs" means the costs of development and construction of the Development enumerated on Exhibit B to this Payment Agreement.

2. [§ 203] Actual Net Operating Income

The term "Actual Net Operating Income" means an amount determined for the applicable Fiscal Year equal to the excess of Gross Operating Income over Permitted Expenses.

3. [§ 204] Additional Costs

The term "Additional Costs" means costs incurred by the Developer after the Commencement Date that are substantially similar in nature and purpose (but as to subsequent development or refurbishment/redesign) to the Actual Costs. The designation of Additional Costs by Developer shall be subject to the approval of the Commission, which shall not be unreasonably withheld.

4. [§ 205] Affiliate

The term "Affiliate" shall mean (i) any person or entity holding a ten percent (10%) or greater beneficial interest, direct or indirect, in the Developer; (ii) any corporation, partnership or other entity in which the Developer has a ten percent (10%) or greater beneficial interest, direct or indirect; (iii) any person or entity having a ten percent (10%) or greater beneficial interest, direct or indirect, in any of the entities specified in clause (ii) above; (iv) any person or entity which the Developer or any of the above persons or entities serves as an officer, director, general partner, limited partner, employee, agent or trustee or in any other fiduciary capacity; and (v) any person or entity which serves as an officer, director, general partner, limited partner, employee, agent or fiduciary of the Developer or any of the persons or entities specified in (i) through (iv) above.

5. [§ 206] Breakpoint Net Operating Income

The term "Breakpoint Net Operating Income" means fifteen percent (15%) of the Developer's Actual Costs determined as of the Commencement Date. The Breakpoint Net Operating Income shall be subject to change each Fiscal Year, as follows:

- a. commencing with the first day of the second full Fiscal Year after the Commencement Date, an increase equal to the greater of (1) three percent (3%) of the previous year's Breakpoint Net Operating Income, or (2) the percentage increase in the Consumer Price Index for the applicable Fiscal Year over the preceding Fiscal Year; and
- b. an increase equal to fifteen percent (15%) of Additional Costs incurred by the Developer during the preceding Fiscal Year.

6. [§ 207] Commencement Date

The term "Commencement Date" means the date of issuance of a Certificate of Completion for the entire Development on the Property by the Commission.

7. [§ 208] Consumer Price Index

The term "Consumer Price Index" means the Consumer Price Index (All Urban Consumers) for the San Diego area published by the United States Department of Labor, Bureau of Labor Statistics, for the last month of the applicable Fiscal Year. In the event that the Consumer Price Index is no longer published, then any index published by the United States Department of Labor, Bureau of Labor Statistics, that is designated as a successor to the Consumer Price Index shall be used. In the event that no other index is so designated, the Commission and the Developer shall agree on a substitute index.

8. [§ 209] Development

The term "Development" means the entertainment, restaurant and retail development constructed by Developer on the Property pursuant to the DDA.

9. [§ 210] Expiration Date

The term "Expiration Date" means that certain date which is fifty (50) years after the Commencement Date. The Commission and the Developer shall determine and agree to the Expiration Date as soon as possible after the Commencement Date and shall promptly execute and record a supplement to this Payment Agreement specifying that date. Such supplement shall be in form and substance acceptable to the Commission and the Developer and shall contain the following language: "Pursuant to Section ___ of that certain Payment Agreement by and between the Commission and the Developer dated _____ and recorded _____, the Commencement Date is hereby specified to be _____, and the Expiration Date is hereby specified to be _____." The blanks in the foregoing sentence shall be appropriately completed in the supplement.

10. [§ 211] Fiscal Year

The term "Fiscal Year" means the twelve- (12) month period from January 1 through December 31. If the Commencement Date shall be on a date other than January 1, the first partial Fiscal Year shall be the period of time from the Commencement Date through the next succeeding December 31. The last Fiscal Year shall be the period between January 1 of the calendar year in which the Expiration Date occurs through the date of the Expiration Date.

11. [§ 212] Gross Operating Income

The term "Gross Operating Income" means all rent and other revenue of any kind or nature received by or on behalf of the Developer associated with the operation of the Development, including, but not limited to:

- a. rents (including minimum rent, percentage rent and overage rent) and other payments (including, but not limited to, early termination payments to the extent not relating to recovery of tenant improvements) and payments related to reimbursement of real property taxes, personal property taxes and utility payments), received from Occupants of the Development;
- b. payments received for parking and storage;
- c. all amounts received from facilities, including, but not limited to, recreational facilities, health facilities, special activities, furniture rentals and vending machines;
- d. all amounts received for utility payments or pass-throughs, including, but not limited to, electric, water, natural gas, telephone and cable television;
- e. proceeds of business interruption insurance and similar insurance payable as a result of loss of revenues;
- f. that portion of any settlement or award recovered by the Developer constituting (1) amounts recovered for the failure of a tenant, subtenant or licensee to make any required payment in connection with the Development, and (2) amounts recovered for the failure to receive payments in respect of facilities, including, but not limited to, recreational facilities, health facilities, special activities, furniture rentals and vending machines;
- g. interest and other investment income earned on funds received in connection with the operation of the Development while such funds remain on deposit in an operating account pending use for Permitted Expenses.

Gross Operating Income shall exclude the following:

- (1) security deposits, cleaning deposits, prepaid rent and interest on such deposits and rent, but only to

the extent that such deposits, rent and interest thereon are held for the benefit of Occupants of the Development, unless and until retained by the Developer to cover rent or other amounts due or to become due to the Developer from Occupants;

- (2) insurance proceeds (other than business interruption insurance proceeds), or any portion of any settlement or award recovered by the Developer for loss or damage to the Development;
- (3) that portion of any settlement or award recovered by the Developer in excess of (1) amounts recovered for the failure of a tenant, subtenant or licensee to make any required payment in connection with the Development, and (2) amounts recovered for the failure to receive payments in respect of facilities, including, but not limited to, recreational facilities, health facilities, special activities, furniture rentals and vending machines;
- (4) sale proceeds from any sale or other transfer of the Development;
- (5) proceeds from the financing or refinancing of the Development;
- (6) revenue received by Occupants which is not payable to the Developer;
- (7) amounts that are repaid to the Developer by the Commission as the result of an overpayment of any amount by the Developer to the Commission.

12. [§ 213] Occupant

The term "Occupant" means any tenant, subtenant, licensee, concessionaire, vendor, or equipment lessor who has been authorized by the Developer to use, occupy or do business in or on any portion of the Property or the Development.

13. [§ 214] Permitted Expenses

The term "Permitted Expenses" shall mean actual, out-of-pocket costs, fees and expenses directly attributable to the operation, management, leasing, repair and renovation of the Property and the Development, but excluding expenditures included in Additional Costs. Subject to the foregoing definition of Permitted Expenses and the limitations and exclusions set forth below, Permitted Expenses shall include but not be limited to:

- a. payments for utilities such as electric, water, natural gas, sewer, telephone, trash collection, cable television;
- b. costs of leasing and marketing, including, without limitation, leasing commissions, marketing materials, marketing fees and advertising;
- c. direct costs of repairs, replacements, and maintenance, including supplies and equipment;
- d. insurance costs for all insurance carried by Lessee (including, without limitation, fire and casualty, flood, earthquake, liability, workers' compensation and rental loss) with respect to the Property, the Development and personal property thereon, provided that if such insurance is provided under a policy which also covers real or personal property other than the Property, the Development and personal property thereon, the cost of such insurance shall be equitably prorated;
- e. fees for legal, environmental inspection, accounting, architectural and other professional services (but excluding fees incurred in connection with any dispute under this Payment Agreement or the DDA, or in connection with a sale or other transfer of, or obtaining or refinancing any loan secured by, the Property and/or the Development);
- f. real estate taxes, assessments, and personal property taxes, in lieu taxes and utility taxes levied against or in connection with the operation of the Property, the Development and personal property thereon;
- g. direct costs for on-site personnel, to the extent that such personnel are employed for the operation of the Property and the Development;
- h. costs and fees paid to providers of facilities or equipment used in or on the Property and the Development;
- i. tenant inducement expenses;
- j. license and permit fees;
- k. costs incurred to contest laws or taxes, but only to the extent such contests provide a financial benefit to the Development;

1. insurance deductibles payable in connection with reconstruction after damage or destruction to the Property or the Development (except to the extent that such amounts are designated by Developer as Additional Costs).

The term "Permitted Expenses" shall exclude the following:

- (1) "Debt Service," which is hereby defined to mean all payments of principal and interest, including any form of participation interest, made by the Developer in accordance with and as required by the terms of any loan secured by the Property and/or the Development, all prepayments of principal or interest, monthly or other payments on account of premium and/or servicing fees, credit enhancement fees, on-going issuer fees, trustee fees, mortgage insurance premiums and similar costs and fees included within, or payable along with, the regular debt service payments.
- (2) "Loan Costs" which is hereby defined to mean all amounts that are paid by the Developer in order to finance or refinance any loan secured by the Property and/or the Development, including costs and requirements such as those which are conditions precedent to the closing of the mortgage loan, monetary reserves, any prepayments of principal or other charges, participation interest, late charges, default interest differential, administrative fees, or any other payments of any type whatsoever made to or for the benefit of the lender in connection with the loan (and also including commissions paid to brokers for services performed on behalf of the Developer in obtaining any loan and payments to third parties, such as appraisers, for services required in order to meet the requirements of a lender or the requirements of a lender's loan commitment). Loan Costs shall include, without limitation, "points", commissions, origination fees, legal fees, lender administration and processing fees, cash-flow verification costs, up-front letter of credit/guarantee fees, all reserves required at the closing of the loan (including interest) and impound accounts;
- (3) local, state and federal income, corporate franchise or excise taxes, except business and similar taxes that are directly attributable to the operation, management, leasing and repair of the Property and the Development;

- (4) depreciation, cost recovery and other non-cash items;
- (5) any fees, charges, penalties or interest which are assessed against the Developer as a result of its failure to timely comply with any law, regulation or contract obligation, including without limitation any delinquent taxes, assessments or other impositions;
- (6) deposits into any reserve fund (other than required deposits into a replacement reserve as provided in this Section 214, until such funds are disbursed from such reserve fund for payment of a Permitted Expense;
- (7) amounts paid to an Affiliate of the Developer, unless the product or service for which the expense was incurred (or a comparable substitute) was at a commercially reasonable rate.

B. [§ 215] Payment to the Commission of Net Operating Income Participation Amount

1. [§ 216] Amount of Payments

The Developer hereby agrees to pay to the Commission each Fiscal Year an amount equal to twenty-five percent (25%) of the amount, if any, by which the Actual Net Operating Income received for each such Fiscal Year exceeds the Breakpoint Net Operating Income for such Fiscal Year, minus the cumulative amount by which Actual Net Operating Income received in previous Fiscal Years was less than Breakpoint Net Operating Income for such previous Fiscal Years, but only to the extent such cumulative deficiencies have not been off-set by cumulative surpluses of Actual Net Operating Income over Breakpoint Net Operating Income during such previous Fiscal Years. Such amount to be paid to the Commission is hereinafter referred to as the "Net Operating Income Participation Amount."

2. [§ 217] Time of Payments

The first payment of the Net Operating Income Participation Amount, if any, shall be made on or before April 30 of the Fiscal Year following the calendar year of the Commencement Date. Such first payment shall be based on the amount, if any, by which the Actual Net Operating Income allocable to the period from the Commencement Date to the end of the first partial Fiscal Year, exceeds the portion of the Breakpoint Net Operating Income proportional to the number of days in the year falling between the Commencement Date and December 31 of the first partial Fiscal Year.

Thereafter, each year on or before April 30, the Developer shall pay to the Commission the Net Operating Income Participation Amount for the immediately preceding Fiscal Year. Such payments shall continue until April 30 of the calendar year following the Expiration Date. For the last Fiscal Year, the Net Operating Income Participation Amount shall be based on the amount, if any, by which the Actual Net Operating Income allocable to the period from January 1 to the Expiration Date exceeds the portion of the Breakpoint Net Operating Income proportional to the number of day from January 1 to the Expiration Date.

3. [§ 218] Sample Calculation of Net Operating Income Participation Amount and Sale Buyout Amount

A sample calculation of the Net Operating Income Participation Amount (and the Sale Buyout Amount referred to in Section 219 below), is included as Exhibit C attached hereto and incorporated herein by this reference.

C. [§ 219] Sale of the Development

Upon a Sale of the Development (as hereinafter defined), the Commission's Net Operating Income Participation Amounts shall be bought out by the Developer. The amount due to the Commission upon a Sale of the Development in respect of the Commission's Net Operating Income Participation Amounts (the "Sale Buyout Amount") shall be calculated based on the following formula:

Sale Buyout Amount = 3-Year Average Actual NOI - 3-Year Average Breakpoint NOI ÷ 10% x 25% x a fraction the numerator of which is the number of Fiscal Years remaining until the Expiration Date and the denominator of which is fifty (50), minus the cumulative amount by which Actual Net Operating Income received in previous Fiscal Years was less than Breakpoint Net Operating Income for such previous Fiscal Years, but only to the extent such cumulative deficiencies have not been off-set by cumulative surpluses of Actual Net Operating Income over Breakpoint Net Operating Income during such previous Fiscal Years.

For purposes of the above formula:

- (1) "3-Year Average Actual NOI" means the average of the Actual Net Operating Income of the Development for the three full Fiscal Years preceding the Fiscal Year in which the Sale of the Development is consummated, but if three full Fiscal Years have not yet occurred, the Actual Net Operating Income of the Development for the twelve (12) months preceding the Sale of the Development.

- (2) "3-Year Average Breakpoint NOI" means the average of the Breakpoint Net Operating Income applicable to the three full Fiscal Years preceding the Fiscal Year in which the Sale of the Development is consummated, but if three full Fiscal Years have not yet occurred, the Breakpoint Net Operating Income of the Development for the twelve (12) months preceding the Sale of the Development.

For purposes of this Section 219, "Sale of the Development" means any sale or other transfer of the Development to a person or entity other than the Developer that is not (1) an Affiliate of the Developer, (2) an entity resulting from a merger between the Developer and another entity, (3) a public transaction involving the Developer (e.g., the transformation of the Developer from a privately-held entity to a publicly-held entity, or an "up REIT" or "down REIT" transaction), or (4) a sale of all or substantially all of the properties and assets of the Developer.

D. [§ 220] Buyout of Net Operating Income Participation Amounts

At any time after the tenth (10th) full Fiscal Year after the Commencement Date, the Developer may elect by written notice (the "Buyout Notice") to the Commission to initiate a buyout of the Commission's Net Operating Income Participation Amounts under this Payment Agreement. If the Buyout Notice is given on or before March 31, the amount due to the Commission to buy out the Commission's Net Operating Income Participation Amounts (the "Optional Buyout Amount") shall be calculated pursuant to Section 219 of this Payment Agreement as if a Sale of the Development had occurred on the last day of the Fiscal Year immediately preceding the Fiscal Year in which the Buyout Notice is given and the Optional Buyout Amount shall be paid on April 30 of the Fiscal Year in which the Buyout Notice is given. If the Buyout Notice is given after March 31, the Optional Buyout Amount shall be calculated pursuant to Section 219 of this Payment Agreement as if a Sale of the Development had occurred on the last day of the Fiscal Year in which the Buyout Notice is given and the Optional Buyout Amount shall be paid on or before April 30 of the Fiscal Year following the Fiscal Year in which the Buyout Notice is given.

E. [§ 221] Annual Statements; Audit

Within one hundred twenty (120) days after the end of each Fiscal Year, or partial Fiscal Year, the Developer shall provide the Commission with a statement with respect to the Net Operating Income Participation Amount, signed by a responsible officer of the Developer itemizing for the preceding Fiscal Year:

1. Actual Costs.

2. Gross Operating Income.
3. Permitted Expenses.
4. Actual Net Operating Income.
5. Breakpoint Net Operating Income.
6. The amount, if any, the Developer determines is owed to the Commission as Net Operating Income Participation Amount for the preceding Fiscal Year.
7. Such other information reasonably requested by the Commission as is relevant to the determination of Net Operating Income Participation Amount for the preceding Fiscal Year.

Such information as the Developer deems confidential to its operation shall be kept confidential by the Commission, provided, however, that the Commission may make public disclosure of a summary of such information using gross amounts summarizing operations of the Development and not disclosing the amount of rental or other charges paid by individual Occupants. To the extent that any such information deemed confidential by the Developer cannot lawfully be maintained by the Commission in confidence, then such information shall be made available on a confidential basis to the Commission through inspection of the books, records, accounts and audits of the Developer by representatives or agents of the Commission.

Upon ten (10) days' prior written notice and during normal business hours, the Commission shall have the right from time to time during each Fiscal Year to inspect, examine and/or audit the Developer's books and records relevant and pertaining to the calculation and determination of the amounts referred to in this Payment Agreement, but only as to the two (2) full Fiscal Years immediately preceding any such inspection or audit.

F. [§ 222] Time and Manner of Payment; Collection

The Developer shall pay the amount of Net Operating Income Participation Amount for each Fiscal Year or partial Fiscal Year on or before the respective dates provided herein for each such payment, in lawful money of the United States at the Commission's office at the address set forth in Section 706 of this Payment Agreement. Each payment due the Commission hereunder shall be due without any right of offset or retention for any reason whatsoever.

Each such amount, if not paid, shall become delinquent on the specified due date. There shall accrue with each such delinquent amount interest at the then current reference rate of Bank of

America (or any successor financial institution) plus three percent (3%), or the maximum rate permitted by applicable law, whichever is lesser, on such delinquent sums, calculated from the date of delinquency (or from ten (10) days after written demand for payment from the Commission, as to any shortfall discovered in an inspection or audit as permitted by Section 221), to and including the date full payment is received by the Commission. All such delinquencies may be enforced and/or collected by an action at law against the Developer and/or any other person or entity personally obligated to pay the same, or in any other manner provided in this Payment Agreement.

Each amount due, together with interest thereon, collection costs and reasonable attorney fees, shall be a separate, distinct and personal debt and obligation of the Developer, and shall bind its heirs, legatees, devisees, administrators, executors, successors and assigns; provided however, that upon a transfer of the Property at any time after issuance by the Commission of a Certificate of Completion for the development on the Property under the DDA, the Developer shall be released from its obligations and liabilities under this Agreement accruing after such transfer.

Each remedy provided for in this Payment Agreement is separate, distinct and non-exclusive. Failure to exercise a particular remedy shall not be construed as a waiver thereof. Failure or delay to enforce any provision hereof (including collection of any particular payment due) shall not constitute a waiver of the right to enforce said provision (or collect such payment) or any other provision (or payment) hereof.

III. [§ 300] ADJUSTMENT TO COMMISSION WRITE-DOWN

A. [§ 301] Definitions

For purposes of this Payment Agreement, the following terms shall have the following respective meanings:

1. [§ 302] Actual Rent

The term "Actual Rent" means the rent to be paid by the tenant of the Restaurant pursuant to a written lease executed by the Developer and the tenant to whom the Restaurant is leased at the inception of the lease. For purposes of this Payment Agreement, Actual Rent shall include minimum or base rent only, but shall not include payments made by the tenant (to the Developer or to others on behalf of the Developer) for percentage or overage rent, taxes, and assessments, common area maintenance charges, tenant improvements, equipment rental, late fees or interest.

2. [§ 303] Actual Tenant Improvements

The term "Actual Tenant Improvements" means the amount to be expended by the Developer on tenant improvements in excess of "vanilla shell" for the Restaurant pursuant to a written lease executed by the Developer and the tenant to whom the Restaurant is leased.

3. [§ 304] Base Restaurant Pro Forma

The term "Base Restaurant Pro Forma" means the financial pro forma for the Restaurant attached hereto as Exhibit D and incorporated herein by this reference.

4. [§ 305] Pro Forma Rent

The term "Pro Forma Rent" means the amount shown in the Base Restaurant Pro Forma as the amount of rent projected to be generated from the Restaurant.

5. [§ 306] Pro Forma Tenant Improvements

The term "Pro Forma Tenant Improvements" means the amount shown in the Base Restaurant Pro Forma as the amount to be expended by the Developer for tenant improvements in excess of "vanilla shell" in the Restaurant.

6. [§ 307] Restaurant

The term "Restaurant" means approximately 7,500 to 10,000 square feet of rentable area within the Development located near the corner of Coast Highway and Mission Street, as shown in the site plan attached hereto as Exhibit E and incorporated herein by this reference.

B. [§ 308] Calculation of Amount of Adjustment to Commission Write-Down

The adjustment to the amount of Commission write-down shall be determined as follows:

a. [§ 309] Adjustment Based on Actual Rent

If the Actual Rent exceeds the Pro Forma Rent, then the Commission write-down shall be reduced by an amount calculated using the following formula:

$$\text{Actual Rent} - \text{Pro Forma Rent} \div 12.5\% \times 67\%$$

If the Actual Rent is less than the Pro Forma Rent, then the Commission write-down shall be increased by an amount calculated using the following formula:

$$\text{Pro Forma Rent} - \text{Actual Rent} + 12.5\% \times 67\%$$

The adjustment provided for in this Section 309 shall be referred to herein as the "Rent Adjustment."

b. [§ 310] Adjustment Based on Actual Tenant Improvements

If the Actual Tenant Improvements are less than the Pro Forma Tenant Improvements, then the Commission write-down shall be reduced by an amount calculated using the following formula:

$$\text{Pro Forma Tenant Improvements} - \text{Actual Tenant Improvements} \times 67\%$$

If the Actual Tenant Improvements exceed the Pro Forma Tenant Improvements, then the Commission write-down shall be increased by an amount calculated using the following formula:

$$\text{Actual Tenant Improvements} - \text{Pro Forma Tenant Improvements} \times 67\%$$

The adjustment provided for in this Section 310 shall be referred to herein as the "Tenant Improvements Adjustment."

c. [§ 311] Cap on Adjustment to Commission Write-Down

Notwithstanding any other provision of this Payment Agreement or the DDA, the increase, if any, in the Commission write-down to be paid to the Developer under this Article III., shall in no event exceed \$100,000.

C. [§ 312] Payment of Adjustment to Commission Write-Down

1. [§ 313] Time and Manner of Payment

Not later than thirty (30) days following the later to occur of: (i) the execution of a lease by the Developer and a tenant for the Restaurant, or (ii) the transfer of title to Parcel A from the Commission to the Developer, the Developer shall calculate the Rent Adjustment and the Tenant Improvements Adjustment, (and adjusting as well for any extra-ordinary payments, receipts or off-sets provided for in the Restaurant lease which were not contemplated (or contemplated in the amounts) by the Developer's proforma upon which this formula is based, and which permit the skewing of the amounts of Actual Rent and/or Actual Tenant Improvements which the

lease contains, so as to achieve the intent of the parties hereunder); determine the net change to be made in the Commission write-down as a result of those adjustments (the "Net Change in Write-Down"); and give written notice to the Commission of the amount of the Net Change in Write-Down. Such written notice shall include the calculations showing how the Developer arrived at the amount of Net Change in Write-Down.

If the Net Change in Write-Down is a decrease, the Developer shall include with the notice a check payable to the Commission in the amount of the Net Change in Write-Down. If the Net Change in Write-Down is an increase, the Commission shall pay the amount of the Net Change in Write-Down within thirty (30) days following receipt of the notice of the Net Change in Write-Down.

The amount of the Net Change in Write-Down shall be paid in lawful money of the United States at the address of the Commission or the Developer, as the case may be, set forth in Section 706 of this Payment Agreement. Payment of the Net Change in Write-Down shall be due without any right of offset or retention for any reason whatsoever.

In the event that the amount of Net Change in Write-Down is not paid when due, such amount shall accrue interest at the then current reference rate of Bank of America (or any successor financial institution) plus three percent (3%), or the maximum rate permitted by applicable law, whichever is lesser, on such delinquent sums, calculated from the date of delinquency to and including the date full payment is received by the party entitled to payment. Any such delinquency may be enforced and/or collected by an action at law against the Developer or the Commission, as the case may be, and/or any other person or entity personally obligated to pay the same, or in any other manner provided in this Payment Agreement. If the party entitled to receive the amount of Net Change in Write-Down shall commence proceedings to collect the same, the amount of collection costs and reasonably attorney fees shall be added to the amount of Net Change in Write-Down and shall become part of the amount due.

Each remedy provided for in this Payment Agreement is separate, distinct and non-exclusive. Failure to exercise a particular remedy shall not be construed as a waiver thereof. Failure or delay to enforce any provision hereof (including collection of any particular payment due) shall not constitute a waiver of the right to enforce said provision (or collect such payment) or any other provision (or payment) hereof.

2. [§ 314] Sample Calculation of Adjustment to
Commission Write-Down

A sample calculation of the amount of adjustment to the Commission write-down is included as Exhibit F attached hereto and incorporated herein by this reference.

IV. [§ 400] REASONABLE OPERATION

The Developer agrees to conduct itself in the development and operation of the Development and in the computation of the amounts referred to in this Payment Agreement in a reasonable manner that is consistent with other developments by the Developer so as not to cause a distortion of revenue to the detriment of the Commission in the calculation of the amounts referred to in this Payment Agreement.

In furtherance of this provision, but not by way of limitation, the term "Developer" as used in this Payment Agreement includes any lessee, sublessee or other transferee from the Developer to operate and/or maintain the Development or any portion thereof, or for financing purposes, if such transaction has the effect of evading the Developer's obligations hereunder.

V. [§ 500] BINDING ON SUCCESSORS; REMEDIES

All covenants, agreements and conditions contained in this Payment Agreement shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by, the Commission and its successors and assigns, against the Developer, its successors and assigns to, or of, the Property, or a portion thereof, or any interest therein.

In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that the Commission shall be deemed a beneficiary of the covenants provided for in this Payment Agreement both for and in its own right and also for the purposes of protecting the interests of the community. All covenants without regard to technical classification or designation shall be binding for the benefit of the Commission, and such covenants shall run in favor of the Commission for the entire period during which such covenant shall be in force and effect, without regard to whether the Commission is or remains an owner of any land or interest therein to which such covenants relate. The Commission shall have the right, in the event of any breach of any such covenant, agreement or condition, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of covenant, agreement or condition.

In case of a default in payment of any part of the amounts owed under this Payment Agreement, the Commission shall have the privilege of separating its cause of action to permit the institution of a separate suit for any parts of such amounts which are unable to be determined at the time suit is first brought, and neither the institution of such first suit nor the entry of judgment therein shall bar the Commission from bringing a subsequent suit against the Developer for the amounts not capable of being determined at the time of the initial action, at such time as such amounts may be determined.

VI. [§ 600] SECURITY

The obligations of the Developer under this Payment Agreement shall be secured by a recordable instrument entitled INSTRUMENT AFFECTING AND IMPOSING A LIEN ON REAL PROPERTY, executed by the Developer and the Commission and recorded concurrently with this Payment Agreement, subject and subordinate to recorded mortgages or deeds of trust on the Property as provided in such Instrument.

The Developer's liability under this Payment Agreement shall be limited to the assets related to the Property owned by the Developer (including but not limited to the Improvements, all personal property thereon or therein and the rents, issues and profits thereof). Other than such assets related to the Property, the Developer and the members, shareholders and/or partners comprising the Developer and anyone claiming by, through or under such member shareholders and/or partners, and their respective assets shall be free from all claims and liability whatsoever for any failure, breach or default hereunder by the Developer.

VII. [§ 700] GENERAL PROVISIONS

A. [§ 701] Irrevocability; Term of Payment Agreement

This Payment Agreement shall be irrevocable by the Developer, its successors and assigns to the Property, or any portion thereof. The provisions of this Payment Agreement shall continue in effect until the Expiration Date (as referred to in Section 210). Upon the expiration of this Payment Agreement, the Developer and the Commission (or its successor) shall promptly, upon written request from the Developer, execute and record a written notice memorializing the termination of the Payment Agreement.

B. [§ 702] Amendment of Payment Agreement

Only the Commission, its successors and assigns, and the Developer, and the successors and assigns of the Developer in and to the fee title to the Property, shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants or conditions contained in this Payment Agreement,

or to subject the Property to additional covenants or conditions, without the consent of any tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust or any other person or entity having an interest less than a fee in the Property.

C. [§ 703] Validity; Severability

The Developer, its successors and assigns, shall not contest, directly or indirectly, the validity of payments to the Commission hereunder.

D. [§ 704] Applicable Law

This Payment Agreement shall be governed by and construed according to the laws of the State of California.

E. [§ 705] Number, Gender and Headings

As used in this Payment Agreement, the singular shall include the plural, and the masculine shall include the feminine and the neuter, unless the context requires the contrary. All headings are not a part hereof and shall not affect the interpretation of any provision.

F. [§ 706] Notices

Any formal notices, demands or communications given pursuant to this Payment Agreement shall be deemed sufficiently given when delivered personally to the Commission or the Developer, or any duly authorized officer of the Commission or the Developer respectively, or upon deposit in the United States mail, postage prepaid, certified mail and return receipt requested, addressed respectively to:

Community Development Commission
of the City of Oceanside
300 North Coast Highway
Oceanside, CA 92054
Attention: Executive Director

DDR OliverMcMillan Oceanside LLC
4350 Executive Drive
Suite 300
San Diego, CA 92121
Attention: Gerald I. Solomon

Such notices, demands or communications may be sent in the same manner to such other addresses as either party may from time to time designate in a notice given pursuant to this Section.

IN WITNESS WHEREOF, the Commission and the Developer have caused this Payment Agreement to be executed on their behalf by their respective officers hereunto duly authorized, this 16th day of February 1999.

COMMUNITY DEVELOPMENT COMMISSION
OF THE CITY OF OCEANSIDE

By: Thomas J. Wilson
Thomas J. Wilson
Executive Director

DDR OLIVERMcMILLAN OCEANSIDE LLC,
a Delaware limited liability company

By: DDR OliverMcMillan LP,
a Delaware limited partnership
Its Sole Member

By: DDR OliverMcMillan Inc.,
a Delaware corporation
Its General Partner

By: [Signature]

Print Name: James L. McMillan

Title: President

By: _____

Print Name: _____

Title: _____

4570

[Signature page continued from page 20]

APPROVED AS TO FORM AND LEGALITY:
DUANE E. BENNETT

Commission General Counsel

By: Duane E. Bennett

Dated: 2-16-99

APPROVED:
KANE, BALLMER & BERKMAN
Commission Special Counsel

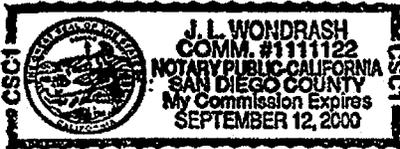
By: Bruce D. Ballmer
Bruce D. Ballmer

Dated: 2/16/99

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On February 16, 1999, before me, the undersigned, personally appeared Thomas J. Wilson and James L. McMillan, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



J. L. Wondrash
Notary Public

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On _____, before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

EXHIBIT A

4572

THOSE PORTIONS OF BLOCKS 5 AND 8 TOGETHER WITH THE ALLEYS IN SAID BLOCKS AND TREMONT STREET LYING BETWEEN SAID BLOCKS OF OCEANSIDE TOWNSITE, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 344, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY JULY 1, 1885, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST WESTERLY CORNER OF SAID BLOCK 8; THENCE NORTH $54^{\circ}43'41''$ EAST 134.00 FEET ALONG THE NORTHERLY LINE OF SAID BLOCK 8 TO THE TRUE POINT OF BEGINNING; THENCE SOUTH $35^{\circ}15'44''$ EAST 109.48 FEET; THENCE SOUTH $54^{\circ}44'16''$ WEST 11.79 FEET; THENCE SOUTH $35^{\circ}15'44''$ EAST 191.36 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID BLOCK 8; THENCE NORTH $54^{\circ}31'53''$ EAST 138.21 FEET ALONG SAID SOUTHERLY LINE TO THE CENTERLINE OF TREMONT STREET; THENCE NORTH $54^{\circ}33'35''$ EAST 259.87 FEET ALONG THE SOUTHERLY LINE OF SAID BLOCK 5 TO THE MOST EASTERLY CORNER OF SAID BLOCK 5; THENCE NORTH $35^{\circ}18'57''$ WEST 299.59 FEET ALONG THE EASTERLY LINE OF SAID BLOCK 5 TO THE MOST NORTHERLY CORNER OF SAID BLOCK 5; THENCE SOUTH $54^{\circ}44'16''$ WEST 260.10 FEET ALONG THE NORTHERLY LINE OF SAID BLOCK 5 TO THE CENTERLINE OF TREMONT STREET; THENCE SOUTH $54^{\circ}43'41''$ WEST 125.91 FEET ALONG THE NORTHERLY LINE OF SAID BLOCK 8 TO THE TRUE POINT OF BEGINNING.

EXHIBIT B

4573

ACTUAL COSTS

Actual Costs include the following actual, reasonable expenditures (including market rates when other than an arms-length, non-affiliate transaction is involved) paid by the Developer to develop the applicable Parcel:

Direct Costs

Site Work
Building Shell
Tenant Improvement Allowances

Indirect Costs

Municipal Fees
Appraisal Fees
Architecture and Engineering
Development Fee (not to exceed 5.0% of Direct Costs)
Insurance
Leasing Commissions (imputed fees for in-house cost not to exceed rates to outside brokers)
Public Relations/Marketing
Postage/Messenger Service
Travel/Lodging
Accounting
Legal
Property Taxes During Construction
Soils and Structural Testing
Surveys
Signing and Graphics Consultants
Environmental and Other Consultants

Financing

Fees/Points
Construction Interest
Carry to Lease-up

Actual Costs exclude: (1) any non-cash items in the project budget (such as, without limitation, contingencies which are not actually expended); (2) expenditures which are reimbursed to the Developer by third parties (such as, without limitation, by tenant contributions to the Developer to pay for costs); and (3) overhead expenses for central office functions of the Developer, other than as included as part of the Development Fee above.

EXHIBIT C

SAMPLE CALCULATION OF NET OPERATING INCOME PARTICIPATION AND SALE PROCEEDS

Fiscal Year of Calculation	1	2	3	4	5	6	7
Net Operating Income Participation							
Actual Costs as of Commencement Date	\$ 14,000,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Additional Costs	\$ -	\$ -	\$ -	\$ -	\$ 200,000	\$ -	\$ -
Gross Operating Income	\$ 2,150,000	\$ 2,240,000	\$ 2,330,000	\$ 2,450,000	\$ 2,500,000	\$ 2,600,000	\$ 2,700,000
Permitted Expenses	\$ 80,000	\$ 100,000	\$ 105,000	\$ 108,000	\$ 110,000	\$ 115,000	\$ 118,000
Actual Net Operating Income	\$ 2,070,000	\$ 2,140,000	\$ 2,225,000	\$ 2,342,000	\$ 2,390,000	\$ 2,485,000	\$ 2,582,000
Breakpoint Net Operating Income 1)	\$ 2,100,000	\$ 2,163,000	\$ 2,227,890	\$ 2,294,727	\$ 2,393,569	\$ 2,465,376	\$ 2,539,337
Excess, Actual Over Breakpoint	\$ (30,000)	\$ (23,000)	\$ (2,890)	\$ 47,273	\$ (3,569)	\$ 19,624	\$ 42,663
Cumulative Excess, Actual Over Breakpoint	\$ (30,000)	\$ (53,000)	\$ (55,890)	\$ (8,617)	\$ (12,185)	\$ 7,439	\$ -
Net Operating Income Participation Amount	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,860	\$ 10,666

Safe Buyout Participation							
Three Year Avg. Actual NOI 2)	\$ -	\$ 2,070,000	\$ 2,140,000	\$ 2,145,000	\$ 2,235,667	\$ 2,319,000	\$ 2,405,667
minus Three Year Avg. Breakpoint NOI 3)	\$ -	\$ 2,100,000	\$ 2,163,000	\$ 2,163,630	\$ 2,228,539	\$ 2,305,395	\$ 2,384,557
Excess, Actual Over Breakpoint	\$ -	\$ (30,000)	\$ (23,000)	\$ (18,630)	\$ 7,128	\$ 13,605	\$ 21,110
CAP Rate	10%	10%	10%	10%	10%	10%	10%
Buyout Value	\$ -	\$ -	\$ -	\$ -	\$ 71,278	\$ 136,049	\$ 211,097
Gross Commission Participation (25%)	\$ -	\$ -	\$ -	\$ -	\$ 17,819	\$ 34,012	\$ 52,774
Share of Gross due Commission Given Term Remaining	100%	98%	96%	94%	92%	90%	88%
Remaining Commission Participation	\$ -	\$ -	\$ -	\$ -	\$ 16,394	\$ 30,611	\$ 46,441
minus 25% of any Negative Cum. Excess NOI Over Breakpoint	\$ -	\$ -	\$ -	\$ -	\$ 13,348	\$ 30,611	\$ 46,441

- 1) 15% of Actual and Additional Costs Escalated at 3.0% Annually.
- 2) If the Property is sold during the first three fiscal years, Actual NOI for the prior 12 months shall be used.
- 3) If the Property is sold during the first three fiscal years, Breakpoint NOI for the prior 12 months shall be used.

4574

EXHIBIT D

BASE RESTAURANT PRO FORMA

Base Rent Per Year \$ 30 Per Square Foot
Tenant Improvement Allowance \$100 Per Square Foot

The above Base Rent per Year is applied to the actual gross leasable area of the Restaurant to obtain Pro Forma Rent.

The above Tenant Improvement Allowance is applied to the actual gross leasable area of the Restaurant to obtain Pro Forma Tenant Improvements.

OCEANPLACE CINEMAS - OCEANSIDE, CA
CONCEPTUAL LEASE PLAN

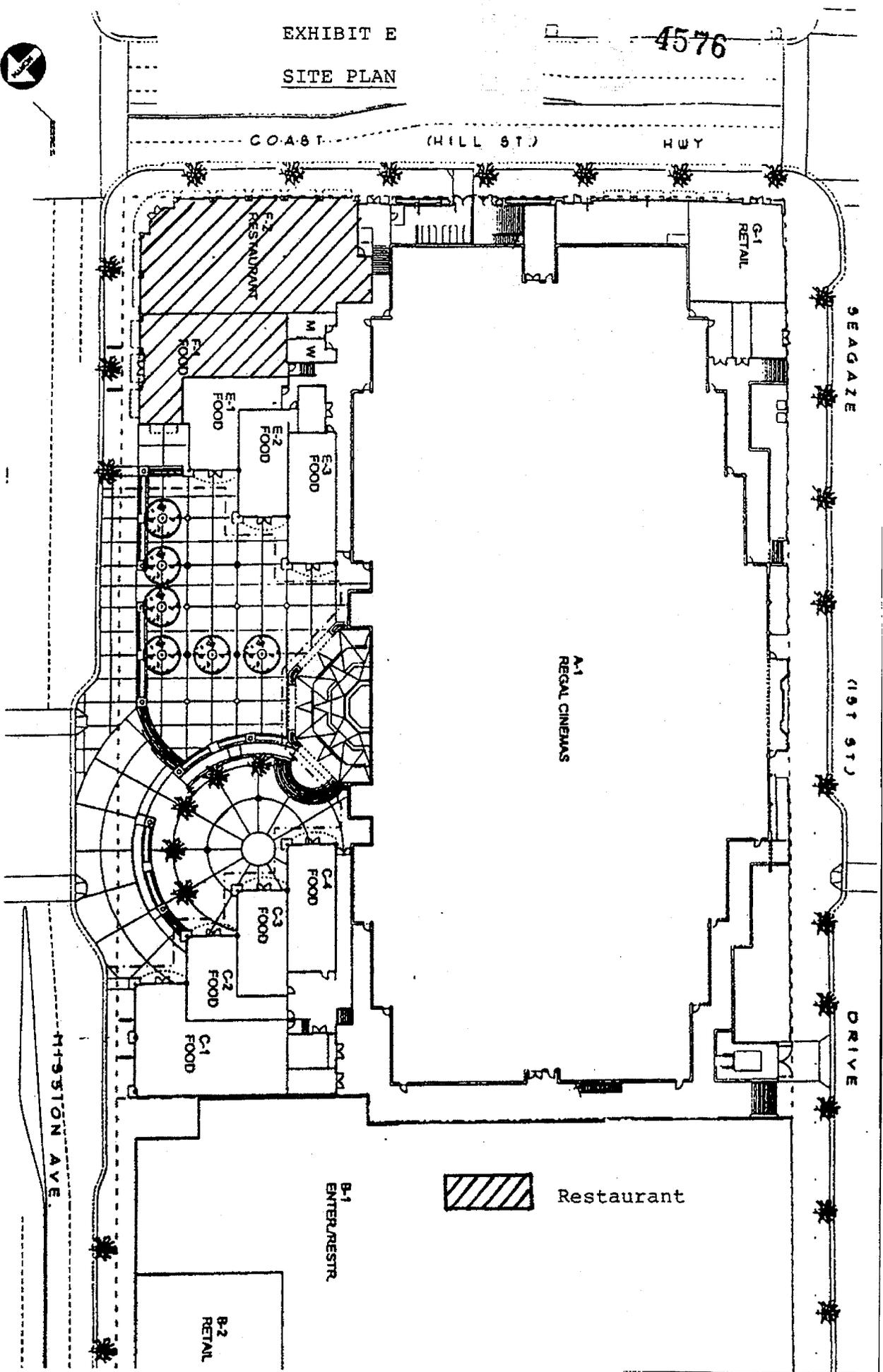


EXHIBIT F

SAMPLE CALCULATION OF ADJUSTMENT TO COMMISSION WRITE-DOWN

Assumption: Restaurant gross leasable area equals 8,000 square feet

Pro Forma Rent: \$30/square foot, equals \$240,000

Pro Forma Tenant Improvements: \$100/square foot, equals \$800,000

Example 1:

Actual Rent: \$34/square foot, equals \$272,000.

Actual Rent exceeds Pro Forma Rent by \$32,000.

\$32,000 divided by .125 equals \$256,000.

Two-thirds times \$256,000 equals \$170,667, which is the amount by which the Commission Write-Down is adjusted downwards.

Actual Tenant Improvements: \$80/square foot, equals \$640,000

Actual Tenant Improvements is \$160,000 less than Pro Forma Tenant Improvements.

Two-thirds times \$160,000 equals \$106,667, which is the amount by which the Commission Write-Down is adjusted downwards.

As a result of adjustments noted above, the Commission Write-Down is reduced by a total of \$277,334

Example 2:

Actual Rent: \$28/square foot, equals \$224,000.

Pro Forma Rent exceeds Actual Rent by \$16,000.

\$16,000 divided by .125 equals \$128,000.

Two-thirds times \$128,000 equals \$85,333, which is the amount by which the Commission Write-Down is adjusted upwards.

Actual Tenant Improvements: \$120/square foot, equals \$960,000.

Actual Tenant Improvements is \$160,000 more than Pro Forma Tenant Improvements.

Two-thirds times \$160,000 equals \$106,667, which is the amount by which the Commission Write-Down is adjusted upwards.

The sum of the adjustments noted above is \$192,000.

Due to payment limitation, the Commission's Write-Down is increased by \$100,000.

018171

DOC # 2001-0853314

NOV 21, 2001 3:44 PM

Recording Requested by:
COMMUNITY DEVELOPMENT COMMISSION
OF THE CITY OF OCEANSIDE

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 0.00

When Recorded Return to:
Community Development Commission
of the City of Oceanside
300 North Coast Highway
Oceanside, CA 92054
Attention: City Clerk



EG
6P
CON
MF
CON

SPACE ABOVE THIS LINE
FOR RECORDING USE

Document No. 01-D207-3

FIRST SUPPLEMENT TO PAYMENT AGREEMENT 4/18/01 (19)
[City Original]

This First Supplement to Payment Agreement (the "First Supplement") is entered into by and between the COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF OCEANSIDE, a public body corporate and politic (the "Commission"), and DDR OCEANSIDE LLC, a Delaware limited liability company (the "Developer").

The Commission and the Developer hereby agree as follows:

I. [§ 100] PURPOSE OF FIRST SUPPLEMENT

This First Supplement is made with reference to the following facts:

1. There is located within the Downtown Redevelopment Project, which was approved and adopted on November 19, 1975 by Ordinance No. 75-35 of the City Council of the City of Oceanside, all that certain real property in the City of San Diego, County of San Diego, State of California, described in Exhibit A, "Legal Description of the Property," attached hereto and made a part hereof. Such real property shall be referred to herein as the "Property."

2. The Property was conveyed by the Commission to the Developer (under its former name of DDR OliverMcMillan Oceanside LLC) by Grant Deed recorded February 17, 1999 in Official Records of San Diego County, California, Document No. 1999-0095212 (the "Grant Deed").

018172

3. As part of the consideration for conveyance of the Property, the Developer agreed on behalf of itself and its successors in interest to the Property to make payments to the Commission as set forth in that certain Payment Agreement recorded February 17, 1999 in Official Records of San Diego County, California, Document No. 1999-0095214 (the "Payment Agreement").

4. The Commission and the Developer now desire to supplement the Payment Agreement to specify certain dates and an amount which are defined therein and have now been determined.

II. [§ 200] EXPIRATION AND COMMENCEMENT DATES

Pursuant to Section 210 of the Payment Agreement, the Commencement Date is hereby specified to be July 30, 2001, and the Expiration Date is hereby specified to be July 30, 2051.

III. [§ 300] DETERMINATION OF ACTUAL COSTS

The amount of the Developer's "Actual Costs" as defined in Section 202 of the Payment Agreement, determined as of the Commencement Date, is hereby agreed to equal Ten Million Seven Hundred Sixty Four Thousand Three Hundred Sixty One Dollars (\$10,764,361).

IV. [§ 400] EFFECT OF FIRST SUPPLEMENT

The Payment Agreement shall remain in full force and effect, with only such changes as are expressly set forth in this First Supplement.

V. [§ 500] DATE OF FIRST SUPPLEMENT

The date of this First Supplement shall be the date when the First Supplement shall have been executed by the Commission.

//
//
//

018173

IN WITNESS WHEREOF, the Commission and the Developer have signed this First Supplement as of the dates set opposite their signatures.

COMMUNITY DEVELOPMENT COMMISSION
OF THE CITY OF OCEANSIDE
(Commission)

Dated: 4/27/01

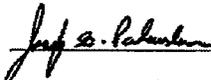
By: 

Steven R. Gepsen
Executive Director

DDR OCEANSIDE LLC,
a Delaware limited liability company
(Developer)

By: Developers Diversified Realty
Corporation,
an Ohio corporation
Its Sole Member

Dated: 3-23-01

By: 

Print Name: Joseph G. Padenlam
Title: Vice President

018174

[Signature page continued from page 3]

APPROVED AS TO FORM AND LEGALITY:

DUANE E. BENNETT
Commission General Counsel

By: Duane E. Bennett Dated: 4-3-01

APPROVED;
KANE, BALLMER & BERKMAN
Commission Special Counsel

By: Bruce D. Ballmer Dated: 3/20/01

oc\oliver.nc\term-agt\pymtagt2.at2

Page 4 of 4

018175

State of California.

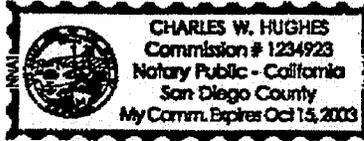
County of SAN Diego

On 5/2/01, before me, Charles W. Hughes, Notary Public, personally appeared Steve Jensen, 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.

Charles W. Hughes
Notary's Signature

(SEAL)



^{Ohio}
State of California

County of Cuyahoga

On March 23, 2001, before me, a notary public, personally appeared Joseph J. Padanilam, 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.

Jennifer R. Lawry
Notary's Signature

(SEAL)

JENNIFER R. LAWRY, Attorney
Notary Public, State of Ohio
My commission has no expiration date.
Section 147.03 R.C.

018176

Document No. 01-D207-3
4/18/01 (19)

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

THOSE PORTIONS OF BLOCKS 5 AND 8 TOGETHER WITH THE ALLEYS IN SAID BLOCKS AND TREMONT STREET LYING BETWEEN SAID BLOCKS OF OCEANSIDE TOWNSITE, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 344, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY JULY 1, 1885, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST WESTERLY CORNER OF SAID BLOCK 8; THENCE NORTH $54^{\circ}43'41''$ EAST 134.00 FEET ALONG THE NORTHERLY LINE OF SAID BLOCK 8 TO THE TRUE POINT OF BEGINNING; THENCE SOUTH $35^{\circ}15'44''$ EAST 109.48 FEET; THENCE SOUTH $54^{\circ}44'16''$ WEST 11.79 FEET; THENCE SOUTH $35^{\circ}15'44''$ EAST 191.36 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID BLOCK 8; THENCE NORTH $54^{\circ}31'53''$ EAST 138.21 FEET ALONG SAID SOUTHERLY LINE TO THE CENTERLINE OF TREMONT STREET; THENCE NORTH $54^{\circ}33'35''$ EAST 259.87 FEET ALONG THE SOUTHERLY LINE OF SAID BLOCK 5 TO THE MOST EASTERLY CORNER OF SAID BLOCK 5; THENCE NORTH $35^{\circ}18'57''$ WEST 299.59 FEET ALONG THE EASTERLY LINE OF SAID BLOCK 5 TO THE MOST NORTHERLY CORNER OF SAID BLOCK 5; THENCE SOUTH $54^{\circ}44'16''$ WEST 260.10 FEET ALONG THE NORTHERLY LINE OF SAID BLOCK 5 TO THE CENTERLINE OF TREMONT STREET; THENCE SOUTH $54^{\circ}43'41''$ WEST 125.91 FEET ALONG THE NORTHERLY LINE OF SAID BLOCK 8 TO THE TRUE POINT OF BEGINNING.

4598

DOC # 1999-0095216

FEB 17. 1999 11:11 AM

RECORDING REQUESTED BY: *Chicago Title*
~~COMMUNITY DEVELOPMENT COMMISSION~~
~~OF THE CITY OF OCEANSIDE~~

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 0.00

WHEN RECORDED MAIL TO:

Community Development Commission
of the City of Oceanside
300 North Coast Highway
Oceanside, California 92054
Attention: Dana Whitson
Assistant City Manager



SPACE ABOVE THIS LINE FOR RECORDER'S USE
DOCUMENT ENTITLED TO FREE RECORDING
PER GOVERNMENT CODE SECTION 6103

**SUBORDINATED
INSTRUMENT AFFECTING AND
IMPOSING A LIEN ON REAL PROPERTY**

NOTICE: THIS INSTRUMENT AFFECTING AND IMPOSING A LIEN ON REAL PROPERTY CONTAINS A SUBORDINATION CLAUSE WHICH MAY RESULT IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS INSTRUMENT made this 16th day of February, 1999, by DDR OLIVERMcMILLAN OCEANSIDE LLC, a Delaware limited liability company (hereinafter referred to as the "Developer") is made with reference to the following facts:

A. The Developer is the owner of all that certain real property in the City of Oceanside, County of San Diego, State of California, described in Exhibit A attached hereto and made a part hereof. Such real property shall be referred to herein as the "Property."

B. The Property was conveyed by the Commission to the Developer in furtherance of the Redevelopment Plan for the Downtown Redevelopment Project, as amended (which was approved and adopted on November 19, 1975 by Ordinance No. 75-35 of the City Council of the City of Oceanside).

C. The Property was conveyed by the Commission to the Developer in accordance with the Disposition and Development Agreement entered into by and between the Commission and DDR OliverMcMillan LP, a Delaware limited partnership, the Developer's predecessor-in-interest, on July 2, 1998 (the "DDA").

*F8
HP
1002
NF*

D. The Commission incurred substantial public expenses for property acquisition, relocation, demolition, clearance, public improvements and financing costs in connection with the assembly and preparation for development of the land comprising the Property.

E. In addition, the Commission is engaged in activities to renew and revitalize downtown Oceanside in a manner which is intended to further enhance the Property as part of an urban community.

F. In order to permit the Commission to recover all or part of the expenses incurred which will not otherwise be recovered by the Commission, to ensure that the Commission write-down provided to the Developer pursuant to the DDA is appropriate, and to participate in the values created in the Property, as additional consideration for its development opportunity under the DDA, and in consideration for the undertaking of the Commission pursuant to the Redevelopment Plan and the DDA, the Developer has heretofore agreed with the Commission (on behalf of itself and any successors in interest to the Property) to make certain payments to the Commission as herein provided in that certain Payment Agreement between the Commission and the Developer executed and recorded concurrently with this Instrument.

NOW, THEREFORE, in consideration of the foregoing, the Developer hereby declares that the Property, including all improvements thereon, shall be held, sold and conveyed subject to the following covenants and conditions which shall run with the Property and be binding on all parties having any right, title or interest in the Property, their respective heirs, legatees, devisees, administrators, executors, successors and assigns, and shall inure to the benefit of the Commission, its successors and assigns.

III. IMPOSITION OF LIEN

3.1 Creation of Lien

The Developer hereby mortgages the Property to the Commission with power of sale for the purpose of securing the Developer's obligation to make the payments specified under the Payment Agreement.

Each payment required to be made by the Developer under the Payment Agreement, together with interest thereon, late charges, collection costs, and reasonable attorney fees, shall be a charge on the Property and shall be a continuing lien upon the Property.

The lien created hereby shall be prior and superior to any and all liens, except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) any mortgage or deed of trust referred to in Section 3.6 of this Instrument.

The lien created hereby may be foreclosed in the manner provided by law for the foreclosure of a mortgage under power of sale or by an appropriate action in court.

3.2 Power of Sale

In the event that the Developer fails to make any payment secured hereby, the Commission may declare a default hereunder and cause a written notice of default and election to sell the Property (hereinafter referred to as "Notice of Default") to be prepared and have the Notice of Default filed for record in the office of the County Recorder of San Diego County. A Notice of Default shall not be recorded until the Developer has been given a written notice of delinquency and has not cured said delinquency within fifteen (15) days of the giving of said notice. A Notice of Default shall state the amount of such delinquent sums and other authorized charges and interest (including the cost of recording such notice), a sufficient description of the Property, and the name of the record owner thereof. The Notice of Default (and any notice of satisfaction and release as referred to below) shall be signed on behalf of the Commission by the Chairman or Executive Director or any duly authorized officer. A Notice of Default executed and acknowledged by the Commission stating the indebtedness secured by a lien on the Property shall be conclusive upon the Commission and the Developer as to the amount of such indebtedness on the date of the Notice of Default in favor of all persons who rely thereon in good faith.

Upon payment to the Commission of such delinquent sums and charges in connection therewith, or other satisfaction thereof, the Commission shall cause to be recorded in the office of the County Recorder of San Diego County a further notice stating the satisfaction and release of such delinquent sums and charges. The Commission may demand and receive the cost of recordation of such release before recording same. Any purchaser or encumbrancer acting in good faith and for value, may rely upon such notice of satisfaction and release as conclusive proof of the full satisfaction of the sums stated in the Notice of Default pertaining thereto.

After three (3) months shall have elapsed from the recordation of any Notice of Default, and after a notice of sale has been given to the extent required by the then applicable law, the Commission, without legal action or demand on the Developer, may sell the Property at such time and place fixed in said notice of sale or at

the time and place to which the sale is postponed as hereinafter provided without additional notice at public auction to the highest bidder for cash in lawful money of the United States at the time of sale or upon such other terms as the Commission may consider advisable and as permitted by law. The Commission may postpone the sale of the Property by public announcement thereof at the time and place of sale and from time to time thereafter by public announcement at the time and place of the preceding postponement. The Commission in conducting or postponing said sale may act through the agents, officers or employees of the Commission or any other person designated by the Commission whether or not such party shall be a licensed auctioneer. The Commission, or any other person designated by it in writing, shall be deemed to be acting as the agent of the lienor and shall be entitled to actual expenses and such fees as may be allowed by law or as may be prevailing at the time the sale is conducted. The Commission shall deliver to the buyer or buyers at such sale its deed or deeds conveying the Property, but without any covenant or warranty expressed or implied. The recitals in such deed or deeds of any matters of fact shall be conclusive proof of the truthfulness thereof against the buyer, its successors and assigns, and all other persons. Any person may purchase at such sale.

3.3 Application of Proceeds

The Commission shall apply the proceeds of such sale in the following manner and order:

(a) Expenses of such sale and all costs, fees, charges and expenses of the Commission, including costs of evidence of title and reasonable attorney fees;

(b) Subject to any rights of superior lien holders pursuant to Section 3.6 of this Instrument, all sums secured hereby; and

(c) The remainder, if any, to the person or persons legally entitled thereto.

3.4 Foreclosure by Court Action

In addition, the Commission may foreclose the lien created hereby by court action in the manner provided by the laws then applicable to this Instrument, in which case the Developer agrees to pay all costs and expenses thereof, including reasonable attorneys' fees as the court may determine.

3.5 Notice of Default to Developer

The Developer hereby requests that copies of the Notice of Default and any notice of sale hereunder be mailed to it at the address set forth in Section 4.8 of this Instrument.

3.6 Subordination of Lien

The lien created by this Instrument with respect to the Property shall be subordinate and inferior to the lien of any recorded mortgage or deed of trust made in good faith and for value securing a loan, the proceeds of which are used to purchase and/or improve the Property or to refinance a loan used for such purposes. The Commission agrees, concurrently with the closing of any such mortgage or deed of trust and receipt of the following items, and provided there is no default hereunder or under the Payment Agreement, to execute, acknowledge and deliver to the Developer an instrument in recordable form confirming such subordination (in form reasonably acceptable to such lender):

(a) A true and correct copy of the executed mortgage or deed of trust and note secured thereby and all other instruments evidencing or securing the indebtedness evidenced by said note.

(b) A copy of the executed construction loan or building loan agreement or other agreement pertaining to the disbursement of funds (which must provide that the funds disbursed thereunder will be used to improve and benefit the Property or to refinance a construction loan), or other evidence that the proceeds of such loan will be used to purchase, improve or benefit the Property.

(c) A copy of a Request for Notice of Default pursuant to Section 2924(b) of the California Civil Code prepared for execution and acknowledgment by the Commission which when recorded at the expense of the Developer will entitle the Commission to the notices prescribed by Section 2924(b) of the California Civil Code.

The first such recordable instrument requested by the Developer shall be executed by the Commission free of charge upon the satisfaction of the above conditions; provided, however, thereafter the Commission may at its option require a payment by the Developer of One Hundred Dollars (\$100.00) as a condition to the execution of any such subsequent recordable instrument.

The transfer of the Property as the result of the exercise of a power of sale or a judicial foreclosure or a deed in lieu of foreclosure involving a default under any such superior mortgage or deed of trust shall extinguish the lien of this Instrument and related charges which were due and payable prior to such transfer of the Property. The transferee by any such sale, judicial foreclosure or deed in lieu of foreclosure, shall not be required

to pay any amount due pursuant to the Payment Agreement in connection with such transfer.

No amendment of this Instrument shall affect the rights of the holder of any superior mortgage or deed of trust recorded prior to the recordation of such amendment, unless the holder of such superior mortgage or deed of trust expressly consents and subordinates to such amendment in writing and records an instrument acknowledging such consent and subordination.

IV. GENERAL PROVISIONS

4.1 Commission As Beneficiary

All covenants and conditions contained in this Instrument shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by the Commission, its successors and assigns, against the Developer and its respective heirs, legatees, devisees, administrators, executors, successors and assigns.

In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that the Commission shall be deemed a beneficiary of the covenants provided for in this Instrument, both for and in its own right and also for the purposes of protecting the interests of the community. All covenants without regard to technical classification or designation shall be binding for the benefit of the Commission, and such covenants shall run in favor of the Commission for the entire period during which such covenants shall be in force and effect, without regard to whether the Commission is or remains an owner of any land or interest therein to which such covenants relate. The Commission shall have the right, in the event of any breach of any such covenant or condition, to exercise all the rights and remedies, and to maintain any action at law or suit in equity or other proper proceedings to enforce the curing of such breach of covenant or condition.

4.2 Irrevocability; Term of Instrument

This Instrument and the lien created hereby shall be irrevocable by the Developer, its successors and assigns to the Property or any portion thereof. The provisions of this Instrument shall continue in effect until the Expiration Date as defined in the Payment Agreement executed and recorded concurrently herewith, unless earlier released and reconveyed as provided in the Payment Agreement.

4.3 Amendment of Instrument

Only the Commission, its successors and assigns, and the Developer, and the heirs, legatees, devisees, administrators, executors, successors and assigns of the Developer in and to the fee title to the Property shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants or conditions contained in this Instrument, or to subject the Property to additional covenants or conditions, without the consent of any tenant, lessee, easement holder, licensee, or any other person or entity having an interest less than a fee in the Property, except the holder of a superior mortgage or deed of trust as provided in the last paragraph of Section 3.6 of this Instrument, and except any tenant or lessee who has a recorded memorandum of lease predating the proposed amendment.

4.4 Severability; Sole Recourse

The provisions of this Instrument shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision.

In the event this Instrument shall be declared invalid, illegal or unenforceable, the sole recourse shall be to have the lien hereof released as an encumbrance to the Property. Without limiting the generality of the foregoing, the Developer, its successors and assigns to the Property or any portion thereof, specifically waive any right to obtain from the Commission any damages in connection with the imposition or enforcement of this Instrument. Furthermore, the Commission, and the Developer's successors and assigns, specifically waive any right to obtain from the Developer any damages in connection with the imposition or enforcement of this Instrument and specifically waive the right to collect any amount due pursuant to the Payment Agreement.

4.5 Interpretation

The provisions of this Instrument shall be liberally construed and interpreted to effectuate its purposes. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

4.6 Applicable Law

This Instrument and the lien created hereby shall be governed by and construed according to the laws of the State of California.

4.7 Number, Gender and Headings

As used in this Instrument, the singular shall include the plural and the masculine shall include the feminine and the neuter, unless the context requires the contrary. All headings are not a part hereof, and shall not affect the interpretation of any provision.

4.8 Notices

Any formal notices, demands or communications given pursuant to this Instrument shall be deemed sufficiently given when delivered personally to the Commission or the Developer, or any duly authorized officer of the Commission or the Developer respectively, or upon deposit in the United States mail, postage prepaid, certified mail and return receipt requested, addressed respectively to:

Community Development Commission
of the City of Oceanside
300 North Coast Highway
Oceanside, CA 92054
Attention: Executive Director

DDR OliverMcMillan Oceanside LLC
4350 Executive Drive
Suite 300
San Diego, CA 92121
Attention: Gerald I. Solomon

Such notices, demands or communications may be sent in the same manner to such other addresses as either party may from time to time designate in a notice given pursuant to this Section.

IN WITNESS WHEREOF, the undersigned has executed this Instrument this 16th day of February, 1999.

DDR OLIVERMcMILLAN OCEANSIDE LLC,
a Delaware limited liability company

By: DDR OliverMcMillan LP,
a Delaware limited partnership
Its Sole Member

By: DDR OliverMcMillan Inc.,
a Delaware corporation
Its General Partner

By: 

Print Name: James L. McMillan

Title: president

By: _____

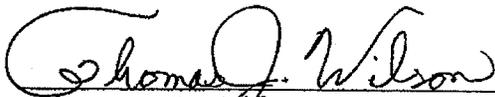
Print Name: _____

Title: _____

The Commission hereby approves, accepts and agrees to this Instrument, subject to all of the matters hereinabove set forth.

NOTICE: THIS INSTRUMENT AFFECTING AND IMPOSING A LIEN ON REAL PROPERTY CONTAINS A SUBORDINATION CLAUSE WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY INSTRUMENT TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

COMMUNITY DEVELOPMENT COMMISSION
OF THE CITY OF OCEANSIDE

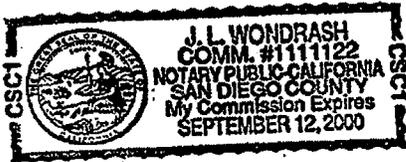
By: 

Thomas J. Wilson
Executive Director

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On Feb. 16, 1999 _____, before me, the undersigned, personally appeared James L. McMillan and Thomas J. Wilson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



J. L. Wondrash
Notary Public

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On _____, before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

EXHIBIT A

4608

THOSE PORTIONS OF BLOCKS 5 AND 8 TOGETHER WITH THE ALLEYS IN SAID BLOCKS AND TREMONT STREET LYING BETWEEN SAID BLOCKS OF OCEANSIDE TOWNSITE, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 344, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY JULY 1, 1885, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST WESTERLY CORNER OF SAID BLOCK 8; THENCE NORTH $54^{\circ}43'41''$ EAST 134.00 FEET ALONG THE NORTHERLY LINE OF SAID BLOCK 8 TO THE TRUE POINT OF BEGINNING; THENCE SOUTH $35^{\circ}15'44''$ EAST 109.48 FEET; THENCE SOUTH $54^{\circ}44'16''$ WEST 11.79 FEET; THENCE SOUTH $35^{\circ}15'44''$ EAST 191.36 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID BLOCK 8; THENCE NORTH $54^{\circ}31'53''$ EAST 138.21 FEET ALONG SAID SOUTHERLY LINE TO THE CENTERLINE OF TREMONT STREET; THENCE NORTH $54^{\circ}33'35''$ EAST 259.87 FEET ALONG THE SOUTHERLY LINE OF SAID BLOCK 5 TO THE MOST EASTERLY CORNER OF SAID BLOCK 5; THENCE NORTH $35^{\circ}18'57''$ WEST 299.59 FEET ALONG THE EASTERLY LINE OF SAID BLOCK 5 TO THE MOST NORTHERLY CORNER OF SAID BLOCK 5; THENCE SOUTH $54^{\circ}44'16''$ WEST 260.10 FEET ALONG THE NORTHERLY LINE OF SAID BLOCK 5 TO THE CENTERLINE OF TREMONT STREET; THENCE SOUTH $54^{\circ}43'41''$ WEST 125.91 FEET ALONG THE NORTHERLY LINE OF SAID BLOCK 8 TO THE TRUE POINT OF BEGINNING.

February 3, 2015

VIA EMAIL

City of Oceanside, California
Community Development Commission
300 North Coast Highway
Oceanside, CA 92054
Attention: Barbara Hamilton, Assistant City Attorney

**Re: Potential Sale of Ocean Place Cinemas, Oceanside, California – BUYOUT
NOTICE**

Dear Ms. Hamilton:

Please note that we represent DDR Oceanside LLC (“**DDR**”), the owner of Ocean Place Cinemas located at 401–409 Mission Avenue, Oceanside, California, 92054 (the “**Property**”), which Property is subject to the following:

1. Payment Agreement dated February 16, 1999 by and between the Community Development Commission of the City of Oceanside (together with any successor agency and/or the City of Oceanside, being defined herein as the “**City**”) and DDR OliverMcMillan Oceanside LLC (predecessor-in-interest to DDR) and recorded February 17, 1999 as Document No. 1999-0095214 in the official records of San Diego County, California (the “**Payment Agreement**”), as supplemented by that certain First Supplement to Payment Agreement last dated April 27, 2001, by and between the City and DDR, and recorded November 21, 2001 as Document No. 2001-0853314 in the official records of San Diego County, California (the “**First Supplement**”); and
2. Subordinated Instrument Affecting and Imposing a Lien on Real Property dated February 16, 1999 by and between the City and DDR OliverMcMillan Oceanside LLC and recorded February 17, 1999 as Document No. 1999-0095216 in the official records of San Diego County, California (the “**Lien**”).

This letter is being sent to provide notice of a potential sale of the Property by DDR that is scheduled to close as early as February 23, 2015, and to advise the City as to certain matters relating to the Property and the potential sale of the Property.

Payment Agreement and Buyout Notice

Per Section 219 of the Payment Agreement, upon the sale of the Property, the City's Net Operating Income Participation Amounts shall be bought out by DDR. Section 219 of the Payment Agreement lays out the methodology for calculating that amount. However, because the 3 Year Average Actual NOI for the Property is well below the 3 Year Average Breakpoint NOI, there is no buyout payment due and owing from DDR and no amounts are payable to the City. Attached as **Exhibit A** to this letter is the most annual statement provided by DDR to the City which reflects no current amounts being owed to the City and which further shows that no payments are required in connection with the buyout of the City's Net Operating Income Participation Amounts. Accordingly, no payment is required to be made by DDR to the City in connection with the sale of the Property.

Furthermore, regardless of whether the currently contemplated sale of the Property is consummated and completed, this letter shall also serve as notice that DDR nevertheless is buying out the Net Operating Income Participation Amounts in accordance with Section 220 of the Payment Agreement. Again, since the 3 Year Average Actual NOI for the Property is well below the 3 Year Average Breakpoint NOI (as shown in the annual statement and related spreadsheets recently provided by DDR to the City and attached hereto as **Exhibit A**), there is no buyout payment due and owing from DDR and no amounts are payable to the City. Accordingly, no payment is required to be made by DDR to the City in connection with DDR buying out the Net Operating Income Participation Amounts in accordance with Section 220 of the Payment Agreement.

Given DDR is now buying out the City's Net Operating Income Participation Amounts as provided for herein, DDR requests that the City execute and deliver to DDR for recording a satisfaction, termination and release of the Payment Agreement, the First Supplement, and the Lien securing the same (the "**Termination**"). For your convenience, attached hereto as **Exhibit B** is a proposed form of such Termination for the City to execute and deliver to DDR.

If you could please ensure the Termination is executed and delivered promptly, and in all events by no later than February 18, 2015, it would be appreciated. Given DDR's buyout of the City's Net Operating Income Participation Amounts as provided for herein, DDR and the Property will no longer have any further obligations or liability with respect to the Payment Agreement, the First Supplement, and the Lien.

Parking Agreement

At closing of the sale of the Property, please also be advised that DDR intends to assign its interest in that certain Parking Agreement dated February 16, 1999 by and between the City and DDR OliverMcMillan Oceanside LLC (the "**Parking Agreement**") to the proposed buyer. In connection with Section 605 of the Parking Agreement, the proposed form of Assignment and Assumption Agreement with respect to the Parking Agreement will be separately provided to the City prior to the consummation of the sale.

February 3, 2015
Page 3

If you have any questions with respect to this matter and the delivery of the requested Termination, please do not hesitate to contact me or you can also contact Noam Magence, Legal Counsel for DDR, at (216) 755-5583, or nmagence@ddr.com.

Very truly yours,

BENESCH, FRIEDLANDER,
COPLAN & ARONOFF LLP

Lee Korland

Attachments

cc: Noam Magence (via email)

EXHIBIT A

**ANNUAL STATEMENT REFLECTING CALCULATION OF NET OPERATING
INCOME PARTICIPATION AMOUNTS UNDER THE PAYMENT AGREEMENT**

[see attached]



January 30, 2015

US PS, Certified Return Receipt

Oceanside Community Development
Commission
300 North Coast Highway
Oceanside, CA 92054
Attention: Douglas E. Eddow

Re: Payment Agreement ("Agreement") dated February 16, 1999 between the Community Development Commission of the City of Oceanside ("Commission") and DDR Oceanside, LLC, as successor in interest to DDR OliverMcMillan Oceanside LLC ("Developer")

Dear Mr. Eddow:

Section II.E (§221) of the Agreement requires Developer to provide Commission with a statement of the Net Operating Income Participation Amount, signed by a responsible officer of the Developer, and itemizing a number of items for the preceding Fiscal Years 2013 and 2014. We are providing the statements for 2013 and 2014 with this letter. By our calculations, no Net Operating Income Participation Amount was due for the respective preceding Fiscal Years.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "M. Metz", written over a horizontal line.

Michael A. Metz
Director & Regional Controller

January /15

Encl.

ThinkRetail. CreateValue.

ddr
listed NYSE*

3300 Enterprise Parkway • Beachwood • Ohio • 44122
p. 216.755.5500 • f. 216.755.1500 • www.ddr.com



**Officer's Certificate
Ocean Place Cinema – Oceanside, CA
For the Fiscal Year Ended December 31, 2014**

I, Christa Vésy, Executive Vice President and Chief Accounting Officer, certify to the best of my knowledge, (a) the financial statements and accounting records are true and accurate, and (b) I am not aware of any accounts, transactions, or material agreements not fairly described and properly recorded in the enclosed financial statements.

A handwritten signature in black ink, appearing to read "Christa Vésy", is written over a solid horizontal line.

Christa Vesy, Executive Vice President and Chief Accounting Officer

Ocean Place Cinema - Oceanside, CA
 Participation in Net Operating Income Section 2 of
 Payment Agreement recorded February 17, 1999

	For the Year Ended December 31,													
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
NOI Participation	10,642,708	537,613	2,582,700	81,640	43,057	254,284	36,300	282,248	-	56,600	20,000	-	-	15,000
Additional Costs (See Attachment A)	-	-	-	1,516,317	1,446,717	1,666,827	1,697,628	1,776,141	-	1,784,961	1,759,934	1,763,142	1,761,289	1,813,046
Gross Operating Income (See Attachment B)	1,506,149	1,137,136	1,217,452	497,328	643,440	598,703	544,182	490,283	-	606,676	518,686	494,771	523,608	541,296
Permitted Expenses (See Attachment B)	528,628	484,219	643,238	616,451	803,377	888,034	1,063,847	1,285,878	-	1,297,685	1,240,248	1,268,371	1,237,488	1,271,810
Actual NOI (See Attachment B)	981,523	642,917	574,216	2,285,202	2,308,717	2,416,121	2,494,049	2,695,844	-	2,776,721	2,695,062	2,651,035	3,039,868	3,133,003
Breakpoint NOI (Per Agreement)	1,589,406	1,724,940	2,161,063	2,285,202	2,308,717	2,416,121	2,494,049	2,695,844	-	2,776,721	2,695,062	2,651,035	3,039,868	3,133,003
Excess(Shortfall)	-	(1,082,023)	(1,586,847)	(1,416,761)	(1,503,440)	(1,416,067)	(1,440,405)	(1,403,696)	-	(1,520,636)	(1,554,834)	(1,682,064)	(1,802,080)	(1,841,183)
Cumulative Excess	-	(1,082,023)	(2,668,900)	(4,085,661)	(5,589,091)	(7,007,178)	(8,447,586)	(9,851,274)	-	(11,372,010)	(12,926,844)	(14,608,908)	(16,430,988)	(18,372,171)
NOI Participation Amount	-	-	-	4,085,661	5,589,091	7,007,178	8,447,586	9,851,274	-	11,372,010	12,926,844	14,608,908	16,430,988	18,372,171
Sale Buyout Participation	-	-	-	-	-	-	-	-	-	-	-	-	-	-
3 Year Average Actual NOI	-	681,523	642,917	732,865	678,528	732,648	673,821	1,071,571	-	1,167,319	1,295,388	1,291,337	1,265,501	1,248,702
minus 3 Year Avg. Breakpoint NOI	-	1,696,406	1,724,940	1,827,480	2,040,412	2,235,004	2,360,013	2,607,158	-	2,696,297	2,693,158	2,777,782	2,864,946	2,951,894
Excess(Shortfall)	-	(914,883)	(1,082,023)	(1,094,615)	(1,361,884)	(1,502,356)	(1,686,192)	(1,535,587)	-	(1,529,000)	(1,400,770)	(1,516,445)	(1,600,445)	(1,703,192)
Cap Rate (Per Agreement)	10%	10%	10%	10%	10%	10%	10%	10%	-	10%	10%	10%	10%	10%
Buyout Value	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Gross Commission Participation (25%)	-	-	-	94%	92%	90%	88%	84%	-	82%	80%	78%	76%	74%
Share of Gross due Commission Given Term Remaining	100%	96%	96%	94%	92%	90%	88%	84%	-	82%	80%	78%	76%	74%
Remaining Commission Participation	-	-	-	-	-	-	-	-	-	-	-	-	-	-
minus 25% of any Negative Cum. Excess NOI over Breakpoint	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Years Remaining	50	49	48	47	46	45	44	43	42	41	40	39	38	37

Oceanside Place Cinemas
Oceanside, CA
Statement of Actual Costs

YR	Description	Amount	Annual Additions	Cumulative Balance
2000	Buy-out / unwind JV with DDR Oliver McMillan	10,642,708		
2002	Dogout building transfer from CIP	537,613	537,613	11,180,319
2003	Castigliones building transfer from CIP	292,314		
	C125/Police building transfer from CIP	449,431		
	Retail C140 building transfer from CIP	600,620		
	C130 Restraunt building transfer from CIP	981,544		
	C100 building transfer from CIP	238,791	2,562,700	13,743,019
2004	Police Station TI	61,840	61,840	13,804,859
2005	Harris Jewelery TI	40,000		
	Additional building costs	3,057	43,057	13,847,916
2006	MaNali TI	109,772		
	Closet TI	144,512	254,284	14,102,200
2007	Quizno's TI	36,300	36,300	14,138,500
2008	UMI Japanese Restaurant TI	12,290		
	Breakwater Brewing Company TI	269,958	282,248	14,420,748
2009	none	-	-	14,420,748
2010	Capitalized Major Expense	56,600	56,600	14,477,348
2011	Closet TI	20,000	20,000	14,497,348
2012	none	-	-	14,497,348
2013	none	-	-	14,497,348
2014	Maui Wowi Hawaiian Coffees TI	15,000	15,000	14,512,348

Queen Place Cinemas
 Occa, VA, CA
 Statement of NOI by Fiscal Year

	For the Year Ended December 31,													
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
INCOME														
Base Rent	1,009,414	1,032,899	1,037,094	1,064,964	1,091,700	1,205,148	1,255,189	1,304,474	1,349,695	1,410,365	1,428,299	1,446,947	1,460,710	1,487,737
Straight Line Rent, Net	-	-	-	-	110,556	32,805	25,100	34,818	32,351	(29,954)	(26,857)	(31,853)	(40,726)	(48,336)
Overage Rent	-	-	-	-	-	31,825	34,316	55,059	61,491	44,736	24,963	-	4,055	1,590
Tenant Recoveries	415,415	246,211	209,500	225,238	233,212	273,850	287,943	314,676	319,199	325,264	315,659	322,796	325,177	339,675
Prior Year Tenant Recovery, Net	-	(158,320)	(40,879)	(2,581)	813	1,271	(6,081)	915	(4,350)	2,115	4,033	14,787	2,120	4,737
Leasing and Other Fees	-	-	-	-	-	-	-	-	-	-	203	683	339	365
Rent Misc (Temp Tenant Ancillary)	3,320	14,263	(2,059)	8,432	6,065	896	598	11,598	10,140	11,400	11,640	10,432	12,542	18,000
Other Income	-	2,002	12,988	213	8,271	15,880	788	1,614	7,416	614	1,825	50	(2,908)	328
TOTAL INCOME	1,506,149	1,197,136	1,217,452	1,316,317	1,448,717	1,568,827	1,597,829	1,723,158	1,776,141	1,784,661	1,769,834	1,783,142	1,761,289	1,813,046
EXPENSE														
CAM-Reimbursable Expenses	257,559	254,955	294,594	269,804	251,073	235,467	222,367	226,226	224,517	229,184	217,018	228,564	224,595	220,755
Insurance Property	2,482	28,184	55,800	37,585	31,898	53,741	66,025	45,735	46,061	45,818	42,895	47,347	54,289	57,061
Rent Escrow Taxes	138,421	122,730	129,047	128,067	131,922	138,722	139,318	144,966	148,980	149,368	149,313	151,815	154,824	156,505
Mgmt Fee-ODFC	54,471	43,439	52,810	50,022	53,281	61,068	64,338	72,869	70,857	72,385	72,444	74,114	73,813	73,524
Non-CAM Property Expenses	9,225	4,023	2,144	7,387	2,741	2,910	122	1,121	-	-	598	3,990	2,950	1,301
Professional Fees	4,312	14,651	51,190	6,321	48,542	29,476	1,783	41,098	5,747	180	7,853	2,520	5,539	1,258
Bad Debt Expense	60,431	15,236	61,192	(1,500)	123,872	49,379	46,219	28,709	(3,909)	9,750	29,775	(11,379)	8,019	30,831
Administrative Expense	14	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL EXPENSE	526,826	484,219	643,237	487,866	643,440	566,793	544,182	560,727	490,263	506,676	519,086	494,771	523,803	541,836
NET OPERATING INCOME	981,523	642,917	574,215	818,451	805,277	998,034	1,053,647	1,162,431	1,285,878	1,257,985	1,240,748	1,288,371	1,237,486	1,271,810

EXHIBIT B

FORM OF TERMINATION

PREPARED BY AND
WHEN RECORDED RETURN TO:

(space above for recorder's use)

**SATISFACTION, TERMINATION AND RELEASE OF
PAYMENT AGREEMENT AND LIEN**

THIS SATISFACTION, TERMINATION AND RELEASE OF PAYMENT AGREEMENT AND LIEN (this "*Termination*") is executed and delivered as of the ___ day of _____, 2015 by the **CITY OF OCEANSIDE, CALIFORNIA**, a California municipal corporation ("*City*") (as successor-in-interest to the Community Development Commission of the City of Oceanside).

RECITALS:

1. The City (as successor-in-interest to the Community Development Commission of the City of Oceanside) and DDR OliverMcMillan Oceanside LLC (predecessor-in-interest to DDR Oceanside LLC ("*DDR*")) entered into that certain Payment Agreement dated February 16, 1999 and recorded February 17, 1999 as Document No. 1999-0095214 in the official records of San Diego County, California (the "*Agreement*"), as supplemented by that certain First Supplement to Payment Agreement last dated April 27, 2001 and recorded November 21, 2001 as Document No. 2001-0853314 in the official records of San Diego County, California (the "*First Supplement*"); and together with the Agreement, the "*Payment Agreement*").

2. The Payment Agreement is secured by that certain Subordinated Instrument Affecting and Imposing a Lien on Real Property dated February 16, 1999 and recorded February 17, 1999 as Document No. 1999-0095216 in the official records of San Diego County, California (the "*Lien*").

3. Pursuant to Section 219 and Section 220 of the Payment Agreement, DDR has given notice of and exercised its Buyout Notice under the Payment Agreement, and DDR has

complied with any and all payment obligations thereunder and has fully satisfied DDR's obligations in connection therewith.

4. The City now hereby desires and intends to terminate and release the Payment Agreement and the Lien.

NOW, THEREFORE, the City hereby acknowledges and agrees as follows:

- A. The foregoing recitals are hereby incorporated herein by reference.
- B. The City is the successor-in-interest to the Community Development Commission of the City of Oceanside and is lawfully entitled and has full power and authority to execute and deliver this Termination.
- C. The City hereby terminates the Payment Agreement and the Lien in their entirety as of the date hereof and the same are hereby satisfied, terminated and released of record and of no further force or effect. DDR and the Property (as defined in the Lien) are hereby fully released from all obligations and liabilities under the Payment Agreement and the Lien.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, this Termination has been executed and delivered as of the day and year first above written.

CITY OF OCEANSIDE, CALIFORNIA,
a California municipal corporation

By: _____
Name: _____
Title: _____

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 _____

On _____ before me, _____ (here insert name and title of officer), personally appeared _____, 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

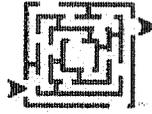
WITNESS my hand and official seal.

Signature _____

(Seal)

APPROVED AS TO FORM AND LEGALITY:

By: _____
_____, City Attorney, City of Oceanside, CA



KEYSER MARSTON ASSOCIATES
ADVISORS IN PUBLIC/PRIVATE REAL ESTATE DEVELOPMENT

MEMORANDUM

ADVISORS IN:
REAL ESTATE
AFFORDABLE HOUSING
ECONOMIC DEVELOPMENT

SAN FRANCISCO
A. JERRY KEYSER
TIMOTHY C. KELLY
KATE EARLE FUNK
DEBBIE M. KERN
REED T. KAWAHARA
DAVID DOEZEMA

LOS ANGELES
KATHLEEN H. HEAD
JAMES A. RABE
GREGORY D. SOO-HOO
KEVIN E. ENGSTROM
JULIE L. ROMÉY

SAN DIEGO
PAUL C. MARRA

To: Tracey Bohlen, Economic Development Manager
City of Oceanside

From: KEYSER MARSTON ASSOCIATES, INC.

Date: March 4, 2015

Subject: Ocean Place Cinemas
Review of Developer Obligations – Net Operating Income Participation
and Buyout Provision

I. Objective

Per your request, Keyser Marston Associates, Inc. (KMA) has reviewed the provisions in the Disposition and Development Agreement (DDA) between the Community Development Commission of the City of Oceanside (Commission) and Developers Diversified Realty (DDR) as they relate to the annual performance-based participation payments to the Successor Agency of the City of Oceanside (Agency) as Successor to the Commission and the buyout of the Agency's right to Net Operating Income (NOI) Participation upon sale of the project.

II. Background

This section summarizes the salient aspects of the DDA between the Commission and DDR (Developer).

- The Commission entered in a DDA with DDR Oliver McMillan LP in June 1998 for the development of Ocean Place Cinemas (Project).
- The Project features a 16-screen movie theatre and 19,629 SF of retail/restaurant space.
- DDR Oliver McMillan dissolved their partnership following execution of the DDA and the Project was allocated to DDR (Developer).

- The DDA provides that the Agency is entitled to receive 25% of NOI from the Project over an established breakpoint for 50 years following the opening of the Project (i.e., 2001-2050).
- If the Developer sells the Project, the Developer is required to buy out the Agency’s right to NOI Participation, calculated as 25% of the difference between the capitalized value of the three-year average actual NOI and the three-year average breakpoint NOI, multiplied by a fraction of the number of years remaining until expiration of the DDA.
- In calculating both the NOI Participation Amount and the Buyout Provision Amount, the Developer can deduct any cumulative amount by which NOI received in previous years was less than the established breakpoint.

III. Key Findings

NOI Participation Amount

- Since the Project’s opening in 2001, the Project has not performed at a level where the Agency would be entitled to financial participation in NOI.
- For illustration purposes, based on 2014 figures, calculation of the NOI Participation Amount is estimated as follows:

NOI Participation Amount, 2014		
a) Actual NOI:	Gross Operating Income <u>(Less) Permitted Expenses</u> Actual NOI	\$1,813,000 <u>(\$541,000)</u> \$1,272,000
b) Breakpoint NOI:	Developers Actual Costs <u>x 15%</u> Breakpoint NOI	\$20,887,000 <u>x 15%</u> \$3,133,000
c) NOI Participation Amount:	Actual NOI <u>(Less) Breakpoint NOI</u> NOI Participation <u>(Less) Cumulative Excess (1)</u> Net NOI Participation <u>x 25%</u> NOI Participation Amount	\$1,272,000 <u>(\$3,133,000)</u> (\$1,861,193) <u>(\$19,815,000)</u> \$0 <u>x 25%</u> \$0
(1) Cumulative amount by which Actual NOI received in previous years was less than the Breakpoint NOI.		

- Although the figures shown above are for Year 2014, the KMA analysis estimated the NOI Participation Amount entitled by the Agency for each year since the opening of the Project (2001-2014). For each year, KMA found that the Agency was not entitled to receive participation payments.

NOI Participation Buyout Provision

- Given the Project’s historic performance (2001-2014) and its projected performance over the remaining term of the DDA (2015-2050), KMA finds that the Agency is not entitled to receive a Buyout Payment.
- For illustration purposes, calculation of the Buyout Provision using Year 2014 figures is estimated as follows:

Buyout Provision Amount, 2014		
a) Participation Surplus/(Deficit)	Three Year Average Actual NOI Three Year Average Breakpoint NOI Surplus/(Deficit)	\$1,249,000 (\$2,952,000) (\$1,791,000)
b) Buyout Value	Surplus/(Deficit) ÷ <u>10.0% Capitalization Rate</u> Buyout Value	(\$1,791,000) ÷ <u>10.0%</u> \$0
c) Gross Commission Participation	Buyout Value x <u>25%</u> Gross Agency Participation	\$0 x <u>25.0%</u> \$0
d) Buyout Amount Due Given Term Remaining	Gross Agency Participation Share of Gross Due Agency (1) Remaining Agency Participation	\$0 x <u>72.0%</u> \$0
e) Buyout of NOI Participation Amount	Remaining Agency Participation (Less) Negative Cumulative Excess (2) x <u>25%</u> Cumulative Excess over Breakpoint Buyout Amount of NOI	\$0 (\$19,815,000) x <u>25.0%</u> (\$4,954,000) \$0
(1) Fraction of the number of years remaining until expiration of the DDA (i.e., 36 years remaining ÷ 50 years = 72.0%).		
(2) Cumulative amount by which Actual NOI received in previous years was less than the Breakpoint NOI.		

- Although the figures shown above are for Year 2014, the KMA analysis estimated the Buyout Provision Amount based on calculating the Net Present Value of the Buyout Amount of NOI entitled to the Agency during the entire term of the Payment Agreement (2001-2050). The KMA projection utilized income and expense factors reflective of typical annual CPI adjustments. For each year, KMA found that the Agency was not entitled to receive a Buyout Payment.

In calculating the Buyout Amount, the KMA analysis used the following key assumptions:

Key Assumptions – Buyout Amount, KMA	
Rental Income – 2001-2014	Actual
Rental Income - 2015 - 2050 During Tenant Lease Term After Tenant Lease Term Expires	Per existing leases 3.0% annual escalation of previous year's rent
Other Income 2001-2014 2015-2050	Actual 3.0% annual escalation
Permitted Expenses 2001-2014 2015-2050	Actual 3.0% annual escalation

NOI Participation Buyout Provision – Sensitivity Test

- KMA also performed a sensitivity test to calculate the Buyout Payment based on more optimistic increases in rental income. KMA assumed aggressive rental rates and escalation factors following the end of each existing tenant's lease term. Despite projecting increased operating income over the next 36 years, KMA finds that the Agency would not be due any compensation from the Buyout Provision in the DDA.

As shown below, the following key assumptions were used in the KMA sensitivity test:

Key Assumptions – Buyout Amount, KMA Sensitivity Test	
Rental Income – 2001-2014	Actual
Rental Income - 2015 - 2050 During Tenant Lease Term After Tenant Lease Term Expires	Per existing leases Monthly rent increased to: <ul style="list-style-type: none"> • Cinema @ \$2.50/SF * • Non-Cinema Tenants @ \$5.00/SF * • 5.0% annual escalation after lease expires
Other Income 2001-2014 2015-2050	Actual 3.0% annual escalation
Permitted Expenses 2001-2014 2015-2050	Actual 3.0% annual escalation
* Reflects rent in 2015 dollars. Monthly rent escalated at 3.0%/year until lease term expires.	

IV. Methodology

This section briefly reviews the analysis prepared by KMA to determine whether the Commission is entitled to participate in payments from the two provisions. The KMA analyses are presented in detail in Appendices A and B.

Appendix A: KMA Review of Developer Estimates of NOI Participation and Buyout Provision

- *Table A-1 - Net Operating Income Participation Amount, Developer Submittal, 2001-2014* – KMA prepared a financial model based on the Developer’s submittal of costs, operating income, and operating expenses, to assure consistency with the DDA provisions, and to verify the accuracy of the Developer’s Participation Amount conclusions. As shown, the Developer estimates that the Agency was not entitled to receive NOI participation payments during any of the 14 years of operations.
- *Table A-2 – NOI Participation Buyout Provision, Developer Submittal, 2001-2014* - KMA reviewed the Developer’s estimates of operating income, and operating expenses, to assure consistency with the DDA provisions, and to verify the accuracy of the Developer’s Buyout Provision Amount conclusions. Based on the performance of the Project over the past 14 years, the Developer estimates that the Buyout value is \$0; therefore the Agency participation in the Buyout Provision is \$0.

Appendix B: KMA Calculation of NOI Participation and Buyout Provision

- *Table B-1 - Net Operating Income Participation Amount, KMA Estimate, 2001-2014* - Based on the information provided above, KMA prepared an independent calculation of the participation provision between 2001 and 2014. As shown, KMA finds that the Project has performed below the Breakpoint NOI for each year since operations began, therefore, the Agency is not due a NOI Participation Payment.
- *Table B-2 – NOI Participation Buyout Provision, KMA Estimate, 2001-2050* - KMA prepared a multi-year analysis estimating the Buyout Amount entitled to the Agency based on the project's historic performance (2001-2014), as well as its projected performance over the next 36 years (2015-2050). As shown, KMA finds that the Agency is not due any compensation from the Buyout Provision in the DDA.

V. Limiting Conditions

1. KMA has made extensive efforts to confirm the accuracy and timeliness of the information contained in this analysis. Such information was compiled from a variety of sources deemed to be reliable including state and local government, planning agencies, and other third parties. Although KMA believes all information in this analysis is correct, it does not guarantee the accuracy of such and assumes no responsibility for inaccuracies in the information provided by third parties.
2. The analysis, opinions, recommendations, and conclusions of this study are KMA's informed judgment based on market and economic conditions as of the date of this report. Due to the volatility of market conditions and complex dynamics influencing the economic conditions of the building and development industry, conclusions and recommended actions contained herein should not be relied upon as sole input for final business decisions regarding current and future development and planning.
3. The analysis assumes that neither the local nor national economy will experience a major recession. If an unforeseen change occurs in the economy, the conclusions contained herein may no longer be valid.
4. Any estimates of income and/or expense projections are based on the best available project-specific data as well as the experiences of similar projects. They are not intended to be projections of the future for the specific project. No warranty or representation is made that any of the estimates or projections will actually materialize.

attachments

Appendix A

Developer

**Calculation of NOI Participation
2001-2014**

**Calculation of Buyout Provision
2001-2014**

Ocean Place Cinema

TABLE A-1
NET OPERATING INCOME PARTICIPATION AMOUNT - DEVELOPER SUBMITTAL, 2001-2014
OCEAN PLACE CINEMA
CITY OF OCEANSIDE

	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Year:	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
				KMA Analysis - 2008							Developer Actual			
I. Developer Costs														
A. Actual Costs	\$10,642,706	\$537,613	\$2,562,700	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
B. Additional Costs	\$0	\$0	\$0	\$61,840	\$43,057	\$254,284	\$36,300	\$282,248	\$0	\$56,600	\$20,000	\$0	\$0	\$15,000
C. Total Developer Costs	\$10,642,706	\$537,613	\$2,562,700	\$61,840	\$43,057	\$254,284	\$36,300	\$282,248	\$0	\$56,600	\$20,000	\$0	\$0	\$15,000
II. Net Operating Income (NOI)														
A. Gross Operating Income	\$1,508,149	\$1,137,136	\$1,217,452	\$1,316,317	\$1,448,717	\$1,566,827	\$1,597,829	\$1,723,158	\$1,776,141	\$1,764,561	\$1,759,934	\$1,763,142	\$1,761,289	\$1,813,046
Income per SF/Month @ 79,804 SF	\$1.57	\$1.19	\$1.27	\$1.37	\$1.51	\$1.64	\$1.67	\$1.80	\$1.85	\$1.84	\$1.84	\$1.84	\$1.84	\$1.89
B. (Less) Permitted Expenses	(\$576,626)	(\$494,219)	(\$643,236)	(\$497,866)	(\$643,440)	(\$568,793)	(\$544,182)	(\$560,727)	(\$490,263)	(\$506,670)	(\$519,686)	(\$494,771)	(\$523,803)	(\$541,236)
% of Operating Income	34.9%	43.5%	52.8%	37.8%	44.4%	36.3%	34.1%	32.5%	27.6%	28.7%	29.5%	28.1%	29.7%	29.9%
C. Actual Net Operating Income	\$981,523	\$642,917	\$574,216	\$818,451	\$805,277	\$998,034	\$1,053,647	\$1,162,431	\$1,285,878	\$1,257,885	\$1,240,248	\$1,268,371	\$1,237,486	\$1,271,810
Annual Change		-34.5%	-10.7%	42.5%	-1.6%	23.9%	5.6%	10.3%	10.6%	-2.3%	-1.4%	2.3%	-2.4%	2.8%
D. Breakpoint NOI @ 15% of Developer Actual Costs	\$1,596,406	\$80,642	\$384,405	\$9,276	\$6,459	\$38,143	\$5,445	\$42,337	\$0	\$8,490	\$5,000	\$0	\$0	\$2,250
Breakpoint Escalation @ 3% of Total Breakpoint NOI	\$0	\$1,644,298	\$1,776,688	\$2,225,926	\$2,302,258	\$2,377,978	\$2,488,604	\$2,568,871	\$2,689,544	\$2,770,231	\$2,862,082	\$2,951,035	\$3,039,566	\$3,130,753
Total Breakpoint NOI	\$1,596,406	\$1,724,940	\$2,161,093	\$2,235,202	\$2,308,717	\$2,416,121	\$2,494,049	\$2,611,208	\$2,689,544	\$2,778,721	\$2,865,082	\$2,951,035	\$3,039,566	\$3,133,003
E. Amount of Actual NOI in Excess of Breakeven		(\$1,082,023)	(\$1,586,877)	(\$1,416,751)	(\$1,503,440)	(\$1,418,087)	(\$1,440,402)	(\$1,448,777)	(\$1,403,666)	(\$1,520,836)	(\$1,624,834)	(\$1,682,664)	(\$1,802,080)	(\$1,861,193)
F. Cumulative Excess		(\$1,082,023)	(\$2,668,900)	(\$4,085,651)	(\$5,589,091)	(\$7,007,178)	(\$8,447,580)	(\$9,896,357)	(\$11,300,023)	(\$12,820,859)	(\$14,445,693)	(\$16,128,357)	(\$17,930,437)	(\$19,791,629)
III. NOI Participation Amount														
25% of NOI over Breakeven NOI	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Source: Developer Diversified Realty
Prepared by: Keyser Marston Associates, Inc.
Filename: \Oceanside Cinema Participation Analysis_v33\470151.rtg

TABLE A-2

NOI PARTICIPATION BUYOUT PROVISION - DEVELOPER SUBMITTAL, 2001-2014
 OCEAN PLACE CINEMA
 CITY OF OCEANSIDE

	KWA Analysis - 2008																
	Year:	2001	2002	2003	2004	2005	2005	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
I. Gross Agency Participation																	
A. 3 Year Average Actual NOI	\$0	\$981,523	\$642,917	\$732,885	\$678,528	\$732,648	\$873,921	\$952,319	\$1,071,371	\$1,167,318	\$1,235,398	\$1,261,337	\$1,255,501	\$1,248,702			
B. (Less) 3 Year Average, Breakpoint NOI	\$0	(\$1,586,406)	(\$1,724,940)	(\$1,827,480)	(\$2,040,412)	(\$2,235,004)	(\$2,220,013)	(\$2,406,235)	(\$2,507,126)	(\$2,598,267)	(\$2,693,458)	(\$2,777,824)	(\$2,863,946)	(\$2,951,894)			
C. Surplus/(Deficit)	\$0	(\$614,883)	(\$1,082,023)	(\$1,094,595)	(\$1,361,884)	(\$1,502,356)	(\$1,446,092)	(\$1,453,916)	(\$1,435,755)	(\$1,430,949)	(\$1,457,760)	(\$1,516,445)	(\$1,609,445)	(\$1,703,192)			
D. Cap Rate (Per Agreement)	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%
E. Buyout Value	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
F. Gross Agency Participation @ 25%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
II. Buyout Amount of NOI Participation																	
A. Amount Due Agency Given Term Remaining	49	48	47	46	45	44	43	42	41	40	39	38	37	36			
Number of Years Remaining	98%	96%	94%	92%	90%	88%	86%	84%	82%	80%	78%	76%	74%	72%			
Share of Gross Due Agency	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0			
B. Remaining Agency Participation																	
C. Negative Cumulative Excess (1)	(\$1,082,023)	(\$2,668,900)	(\$4,085,651)	(\$5,589,091)	(\$7,007,178)	(\$8,447,580)	(\$9,896,357)	(\$11,300,023)	(\$12,820,859)	(\$14,445,693)	(\$16,128,857)	(\$17,930,437)	(\$19,791,629)				
D. (Less) Negative Cumulative Excess NOI over Breakpoint @ 25%	(\$270,506)	(\$667,225)	(\$1,021,413)	(\$1,397,273)	(\$1,751,794)	(\$2,111,895)	(\$2,474,089)	(\$2,825,006)	(\$3,205,215)	(\$3,614,423)	(\$4,032,089)	(\$4,482,609)	(\$4,947,907)				
III. Buyout Amount of NOI Participation	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Source: Developers Diversified Realty

(1) Cumulative amount by which Actual NOI was less than Breakpoint NOI in previous year, (only if deficiencies not offset by surplus NOI).

Prepared by: Keyser Marston Associates, Inc.
 Filename: i:\Oceanside Cinema Participation Analysis_v3-3-14\2015-1ag

Appendix B

KMA

**Calculation of NOI Participation
2001-2014**

**Calculation of Buyout Provision
2015-2050**

Ocean Place Cinema

TABLE B-1
NET OPERATING INCOME PARTICIPATION AMOUNT- KMA, 2001-2014
OCEAN PLACE CINEMA
CITY OF OCEANSIDE

Year:	KMA													
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
I. Developer Costs														
A. Actual Costs	\$10,642,706 (1)	\$537,613	\$2,562,700	\$1,084,864	\$1,091,700	\$1,205,148	\$1,255,169	\$1,304,474	\$1,349,895	\$1,420,385	\$1,428,268	\$1,446,347	\$1,460,710	\$1,497,727
B. Additional Costs	\$0	\$0	\$0	\$0	\$0	\$32,905	\$25,100	\$34,818	\$32,351	(\$29,954)	(\$26,657)	(\$31,953)	(\$40,726)	(\$48,336)
C. Total Developer Costs	\$10,642,706	\$537,613	\$2,562,700	\$1,084,864	\$1,091,700	\$1,205,148	\$1,255,169	\$1,304,474	\$1,349,895	\$1,420,385	\$1,428,268	\$1,446,347	\$1,460,710	\$1,497,727
II. Net Operating Income (NOI)														
A. Gross Operating Income														
Base Rent	\$1,089,414	\$1,032,899	\$1,037,094	\$1,084,864	\$1,091,700	\$1,205,148	\$1,255,169	\$1,304,474	\$1,349,895	\$1,420,385	\$1,428,268	\$1,446,347	\$1,460,710	\$1,497,727
Straight Line Rent, Net	\$0	\$0	\$0	\$0	\$0	\$32,905	\$25,100	\$34,818	\$32,351	(\$29,954)	(\$26,657)	(\$31,953)	(\$40,726)	(\$48,336)
Percentage Rent	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Overage Rent	\$0	\$0	\$0	\$0	\$0	\$31,926	\$34,318	\$55,059	\$61,491	\$44,736	\$43,963	\$0	\$4,035	\$1,520
Tenant Recoveries	\$415,416	\$246,211	\$209,500	\$225,338	\$233,212	\$278,860	\$317,943	\$314,678	\$319,198	\$325,264	\$310,659	\$322,796	\$325,177	\$338,675
Prior Year Tenant Recovery, Net	\$0	(\$158,329)	(\$40,079)	(\$2,531)	\$813	\$1,271	(\$6,081)	\$818	(\$4,350)	\$2,115	(\$4,093)	\$14,787	\$2,120	\$4,737
Leasing and Other Fees	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$203	\$683	\$339	\$395
Miscellaneous Rent (Temp Tenant Ancillary)	\$3,320	\$4,353	(\$2,059)	\$8,432	\$6,065	\$836	\$595	\$11,598	\$10,140	\$11,400	\$11,640	\$10,432	\$12,542	\$18,000
Other Income	\$2,002	\$2,002	\$12,996	\$6,371	\$6,371	\$15,880	\$786	\$1,614	\$7,416	\$614	\$1,825	\$50	\$2,908	\$228
Total Operating Income	\$1,508,150	\$1,137,136	\$1,217,452	\$1,316,316	\$1,448,717	\$1,566,826	\$1,597,830	\$1,723,159	\$1,776,141	\$1,764,560	\$1,759,934	\$1,763,142	\$1,761,289	\$1,813,046
Income per SF/Month @ 79,804 SF	\$1.87	\$1.42	\$1.52	\$1.64	\$1.81	\$1.95	\$2.00	\$2.16	\$2.25	\$2.21	\$2.15	\$2.17	\$2.16	\$2.27
B. (Less) Permitted Expenses														
CAM-Reimbursable Expenses	(\$257,269)	(\$254,955)	(\$294,594)	(\$269,804)	(\$251,073)	(\$235,467)	(\$222,367)	(\$226,226)	(\$224,517)	(\$229,184)	(\$217,018)	(\$226,564)	(\$224,595)	(\$220,755)
Insurance Property	(\$2,482)	(\$39,184)	(\$55,800)	(\$37,885)	(\$31,898)	(\$33,741)	(\$66,025)	(\$45,738)	(\$46,061)	(\$45,818)	(\$42,695)	(\$47,347)	(\$54,269)	(\$57,061)
Real Estate Taxes	(\$138,421)	(\$122,730)	(\$125,547)	(\$128,067)	(\$131,922)	(\$136,722)	(\$139,318)	(\$145,968)	(\$146,990)	(\$149,358)	(\$149,313)	(\$151,615)	(\$154,624)	(\$156,505)
Mgmt Fee - DDRC	(\$54,637)	(\$2,363)	(\$51,752)	(\$54,665)	(\$60,416)	(\$63,541)	(\$65,799)	(\$72,869)	(\$70,857)	(\$72,385)	(\$74,444)	(\$74,114)	(\$73,813)	(\$75,524)
Non-CAM Property Expenses	(\$9,226)	(\$4,023)	(\$2,144)	(\$7,367)	(\$2,910)	(\$2,910)	(\$1,122)	(\$1,121)	\$0	\$0	(\$588)	(\$3,990)	(\$2,950)	(\$1,301)
Professional Fees	(\$4,312)	(\$14,651)	(\$51,190)	(\$6,521)	(\$48,542)	(\$29,476)	(\$17,931)	(\$41,099)	(\$5,747)	(\$1,800)	(\$7,853)	(\$2,520)	(\$5,559)	(\$1,259)
Bad Debt Expense	(\$60,431)	(\$15,236)	(\$61,152)	\$1,500	(\$123,872)	(\$49,379)	(\$48,219)	(\$28,709)	\$3,909	(\$9,775)	(\$29,775)	\$11,379	(\$8,013)	(\$30,831)
Administrative Expense	(\$14)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Expenses	(\$526,792)	(\$503,142)	(\$642,179)	(\$502,506)	(\$650,464)	(\$571,236)	(\$545,603)	(\$560,727)	(\$490,263)	(\$506,675)	(\$519,686)	(\$494,771)	(\$523,803)	(\$541,366)
% of Operating Income	34.9%	44.2%	52.7%	38.2%	44.9%	36.5%	34.1%	32.5%	27.6%	28.7%	29.5%	28.1%	29.7%	29.9%
C. Actual Net Operating Income	\$981,358	\$633,994	\$575,273	\$813,807	\$798,253	\$995,590	\$1,052,227	\$1,162,432	\$1,285,878	\$1,257,885	\$1,240,248	\$1,268,371	\$1,237,486	\$1,271,810
Annual Change		-35.4%	-9.3%	41.5%	-1.9%	24.7%	5.7%	10.5%	10.6%	-2.2%	-1.4%	2.3%	-2.4%	2.8%
D. Breakpoint NOI @														
Breakpoint Escalation @	\$1,596,406	\$80,642	\$384,405	\$9,276	\$6,459	\$38,143	\$5,445	\$42,337	\$0	\$8,490	\$3,000	\$0	\$0	\$2,250
3% of Total Breakpoint NOI	\$0	\$1,604,298	\$1,776,688	\$2,225,926	\$2,802,258	\$2,377,978	\$2,686,604	\$2,568,871	\$2,689,544	\$2,770,231	\$2,862,082	\$2,951,035	\$3,039,566	\$3,130,253
Total Breakpoint NOI	\$1,596,406	\$1,774,940	\$2,161,093	\$2,235,202	\$2,808,717	\$2,416,121	\$2,494,049	\$2,611,208	\$2,689,544	\$2,778,721	\$2,865,082	\$2,951,035	\$3,039,566	\$3,133,003
E. Amount of Actual NOI in Excess of Breakpoint		(\$1,090,946)	(\$1,585,820)	(\$1,421,395)	(\$1,510,464)	(\$1,420,530)	(\$1,441,822)	(\$1,448,776)	(\$1,403,666)	(\$1,520,836)	(\$1,624,834)	(\$1,692,664)	(\$1,802,080)	(\$1,861,193)
F. Cumulative Excess		(\$1,090,946)	(\$2,676,766)	(\$4,098,160)	(\$5,608,624)	(\$7,029,155)	(\$8,470,977)	(\$9,919,753)	(\$11,323,419)	(\$12,844,255)	(\$14,469,089)	(\$16,151,753)	(\$17,953,833)	(\$19,815,025)
III. NOI Participation Amount														
25% of NOI over Breakpoint NOI	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Source: Developers Diversified Realty
(1) Represents the total of: Net Oceanside Property Value (\$6,790,317), and Capital Expenditures for Project Completion (\$3,852,388).

I. Net Operating Income	Year:	1	2	3	4	5	6	7	8	9	10	11	12	13	14
		2001	2002	2003	2004	2005	2006	2007	KMA 2008	2009	2010	2011	2012	2013	2014
A. Rental Income	3.0% (1)	\$1,089,414	\$1,032,899	\$1,037,094	\$1,084,864	\$1,202,256	\$1,289,979	\$1,314,587	\$1,394,351	\$1,443,737	\$1,425,167	\$1,426,574	\$1,414,394	\$1,424,019	\$1,450,911
Income per SF/Month @	79,804 SF	\$1.14	\$1.08	\$1.08	\$1.13	\$1.26	\$1.33	\$1.37	\$1.46	\$1.51	\$1.49	\$1.49	\$1.48	\$1.49	\$1.52
Other Income	3.0% (2)	\$418,736	\$104,237	\$180,358	\$231,452	\$246,461	\$286,447	\$283,243	\$328,898	\$332,404	\$339,393	\$333,600	\$348,748	\$337,270	\$362,135
Total Operating Income		\$1,508,150	\$1,137,136	\$1,217,452	\$1,316,316	\$1,448,717	\$1,566,226	\$1,597,830	\$1,723,159	\$1,776,141	\$1,764,560	\$1,759,934	\$1,763,142	\$1,761,289	\$1,813,046
B. (Less) Permitted Expenses	3.0% (2)	(\$526,792)	(\$503,142)	(\$642,129)	(\$502,509)	(\$650,466)	(\$571,236)	(\$545,603)	(\$560,727)	(\$490,263)	(\$506,675)	(\$519,686)	(\$494,771)	(\$523,803)	(\$541,236)
C. Net Operating Income		\$981,358	\$633,994	\$575,273	\$813,807	\$798,253	\$995,990	\$1,052,227	\$1,162,432	\$1,285,878	\$1,257,885	\$1,240,248	\$1,268,371	\$1,237,486	\$1,271,810
II. Gross Agency Participation															
A. 3 Year Average Actual NOI		\$0	\$981,358	\$633,994	\$730,209	\$674,358	\$729,111	\$869,217	\$948,690	\$1,070,083	\$1,166,846	\$1,235,398	\$1,261,337	\$1,255,501	\$1,248,702
B. (Less) 3 Year Average, Breakpoint NOI		\$0	(\$1,596,406)	(\$1,724,940)	(\$1,827,480)	(\$2,040,412)	(\$2,235,004)	(\$2,320,013)	(\$2,406,296)	(\$2,507,126)	(\$2,598,267)	(\$2,693,158)	(\$2,777,782)	(\$2,864,946)	(\$2,951,894)
C. Surplus/(Deficit)		\$0	(\$615,048)	(\$1,090,946)	(\$1,430,883)	(\$1,560,844)	(\$1,579,606)	(\$1,546,904)	(\$1,545,359)	(\$1,541,125)	(\$1,522,699)	(\$1,543,322)	(\$1,603,745)	(\$1,695,533)	(\$1,790,864)
D. Cap Rate (Per Agreement)	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%
E. Buyout Value		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
F. Gross Agency Participation @	25%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
III. Buyout Amount of NOI Participation															
A. Share of Gross due Agency Given Term Remaining															
Number of Years Remaining		49	48	47	46	45	44	43	42	41	40	39	38	37	36
Share of Gross Due Agency		98%	96%	94%	92%	90%	88%	86%	84%	82%	80%	78%	76%	74%	72%
B. Remaining Agency Participation		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
C. Negative Cumulative Excess (a)			(\$1,090,946)	(\$2,676,766)	(\$4,098,160)	(\$5,608,624)	(\$7,029,155)	(\$8,470,977)	(\$9,919,753)	(\$11,323,419)	(\$12,844,255)	(\$14,469,089)	(\$16,151,753)	(\$17,953,833)	(\$19,815,025)
D. (Less) Negative Cumulative Excess NOI over Breakpo 25%			(\$272,736)	(\$669,191)	(\$1,024,540)	(\$1,402,156)	(\$1,757,289)	(\$2,117,744)	(\$2,479,938)	(\$2,830,855)	(\$3,211,064)	(\$3,617,272)	(\$4,037,938)	(\$4,488,458)	(\$4,959,756)
IV. Buyout Amount of NOI Participation		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
V. Net Present Value (2015) @ 10.0%		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

(1) Escalation factor after tenant lease expires.
 (2) Escalation factor beginning in year 2015.
 (3) Cumulative amount by which Actual NOI was less than Breakpoint NOI in previous years (only if deficiencies not offset by surplus NOI).
 Source: Developers Diversified Realty
 Prepared by: Keyser Marston Associates, Inc.
 Filename: i:\Oceanside Cinema Participation Analysis_03/14/2015.xls

TABLE B-2

NOI PARTICIPATION BUYOUT PROVISION - KWMA, 2001-2050
OCEAN PLACE CINEMA
CITY OF OCEANSIDE

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
KWMA												
I. Net Operating Income												
A. Rental Income	\$1,566,805	\$1,579,666	\$1,597,108	\$1,616,054	\$1,631,547	\$1,709,813	\$1,692,425	\$1,749,195	\$1,770,545	\$1,792,574	\$1,875,836	\$1,899,617
Income per SF/Month @	\$1.64	\$1.65	\$1.67	\$1.69	\$1.70	\$1.79	\$1.77	\$1.83	\$1.85	\$1.87	\$1.96	\$1.98
79,804 SF												
Other Income	\$372,999	\$384,189	\$395,715	\$407,586	\$419,814	\$432,408	\$445,380	\$458,742	\$472,504	\$486,679	\$501,280	\$516,318
Total Operating Income	\$1,939,804	\$1,963,855	\$1,992,823	\$2,023,641	\$2,051,360	\$2,142,222	\$2,137,805	\$2,207,936	\$2,243,049	\$2,279,253	\$2,377,116	\$2,415,935
B. (Less) Permitted Expenses	(\$557,473)	(\$574,197)	(\$591,423)	(\$609,166)	(\$627,441)	(\$646,264)	(\$665,652)	(\$685,622)	(\$706,190)	(\$727,376)	(\$749,197)	(\$771,673)
C. Net Operating Income	\$1,382,331	\$1,389,657	\$1,401,399	\$1,414,475	\$1,423,920	\$1,495,957	\$1,472,153	\$1,522,315	\$1,536,858	\$1,551,877	\$1,627,919	\$1,644,262
II. Gross Agency Participation												
A. 3 Year Average Actual NOI	\$1,259,222	\$1,297,209	\$1,347,933	\$1,391,129	\$1,401,844	\$1,413,264	\$1,444,784	\$1,464,010	\$1,496,809	\$1,510,442	\$1,537,017	\$1,572,218
B. (Less) 3 Year Average, Breakpoint NOI	(\$3,041,201)	(\$3,133,187)	(\$3,227,933)	(\$3,324,771)	(\$3,424,514)	(\$3,527,249)	(\$3,633,067)	(\$3,742,059)	(\$3,854,320)	(\$3,969,950)	(\$4,089,049)	(\$4,211,720)
C. Surplus/(Deficit)	(\$1,873,780)	(\$1,929,784)	(\$1,975,870)	(\$2,032,388)	(\$2,124,378)	(\$2,218,744)	(\$2,296,185)	(\$2,389,188)	(\$2,471,985)	(\$2,577,416)	(\$2,673,477)	(\$2,764,591)
D. Cap Rate (Per Agreement)	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%
E. Buyout Value	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
F. Gross Agency Participation @ 25%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
III. Buyout Amount of NOI Participation												
A. Share of Gross due Agency Given Term Remaining												
Number of Years Remaining	35	34	33	32	31	30	29	28	27	26	25	24
Share of Gross Due Agency	70%	68%	66%	64%	62%	60%	58%	56%	54%	52%	50%	48%
B. Remaining Agency Participation	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
C. Negative Cumulative Excess (B)	(\$21,659,687)	(\$23,599,832)	(\$25,615,950)	(\$27,727,697)	(\$29,935,787)	(\$32,180,798)	(\$34,561,843)	(\$37,008,322)	(\$39,559,322)	(\$42,217,939)	(\$44,926,828)	(\$47,749,479)
D. (Less) Negative Cumulative Excess NOI over Breakpo 25%	(\$5,414,922)	(\$5,898,458)	(\$6,403,987)	(\$6,931,924)	(\$7,483,947)	(\$8,045,200)	(\$8,640,461)	(\$9,252,081)	(\$9,889,830)	(\$10,554,485)	(\$11,231,707)	(\$11,937,370)
IV. Buyout Amount of NOI Participation	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
V. Net Present Value (2015) @ 10.0%	\$0											

(1) Escalation factor after tenant lease expires.
(2) Escalation factor beginning in year 2015.
(3) Cumulative amount by which Actual NOI was less than Breakpoint NOI in previous years (only if deficiencies not offset by surplus NOI).

TABLE B-2
 NOI PARTICIPATION BUYOUT PROVISION - KMA, 2001-2050
 OCEAN PLACE CINEMA
 CITY OF OCEANSIDE

	KMA											
	27	28	29	30	31	32	33	34	35	36	37	38
Year:	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038
I. Net Operating Income												
A. Rental Income	\$1,924,111	\$1,949,340	\$1,975,526	\$2,062,266	\$2,089,834	\$2,118,229	\$2,147,476	\$2,211,901	\$2,278,258	\$2,346,606	\$2,417,004	\$2,489,514
Income per SF/Month @	79.804	80.00	80.20	81.5	82.28	82.21	82.24	82.31	82.38	82.45	82.52	82.60
Other Income	\$531,807	\$547,762	\$564,195	\$581,120	\$598,554	\$616,511	\$635,006	\$654,056	\$673,678	\$693,888	\$714,705	\$736,146
Total Operating Income	\$2,455,919	\$2,497,102	\$2,539,721	\$2,643,386	\$2,688,388	\$2,734,740	\$2,782,482	\$2,865,957	\$2,951,936	\$3,040,494	\$3,131,708	\$3,225,660
B. (Less) Permitted Expenses	(\$294,823)	(\$318,668)	(\$343,228)	(\$368,525)	(\$394,581)	(\$421,418)	(\$449,061)	(\$477,532)	(\$506,858)	(\$537,064)	(\$568,176)	(\$599,221)
C. Net Operating Income	\$1,661,095	\$1,678,434	\$1,696,492	\$1,774,861	\$1,793,807	\$1,813,322	\$1,833,422	\$1,888,424	\$1,945,077	\$2,003,430	\$2,063,532	\$2,125,438
II. Gross Agency Participation												
A. 3 Year Average Actual NOI	\$1,608,019	\$1,644,425	\$1,661,264	\$1,678,607	\$1,716,529	\$1,754,987	\$1,793,997	\$1,813,517	\$1,845,056	\$1,888,974	\$1,945,644	\$2,004,013
B. (Less) 3 Year Average, Breakpoint NOI	(\$4,338,072)	(\$4,468,214)	(\$4,602,260)	(\$4,740,328)	(\$4,882,538)	(\$5,029,014)	(\$5,179,884)	(\$5,335,281)	(\$5,495,339)	(\$5,660,200)	(\$5,830,005)	(\$6,004,906)
C. Surplus/(Deficit)	(\$2,858,894)	(\$2,956,495)	(\$3,077,684)	(\$3,202,509)	(\$3,311,021)	(\$3,423,389)	(\$3,559,731)	(\$3,680,222)	(\$3,813,495)	(\$3,939,333)	(\$4,057,513)	(\$4,179,239)
D. Cap Rate (Per Agreement)	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%
E. Buyout Value	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
F. Gross Agency Participation @	25%											
III. Buyout Amount of NOI Participation												
A. Share of Gross due Agency Given Term Remaining												
Number of Years Remaining	23	22	21	20	19	18	17	16	15	14	13	12
Share of Gross due Agency	46%	44%	42%	40%	38%	36%	34%	32%	30%	28%	26%	24%
B. Remaining Agency Participation	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
C. Negative Cumulative Excess (a)	(\$50,689,304)	(\$53,749,818)	(\$56,934,642)	(\$60,187,331)	(\$63,571,899)	(\$67,092,305)	(\$70,752,622)	(\$74,522,749)	(\$78,405,980)	(\$82,405,708)	(\$86,525,427)	(\$90,768,738)
D. (Less) Negative Cumulative Excess NOI over Breakpo 25%	(\$12,672,326)	(\$13,487,455)	(\$14,233,661)	(\$15,046,833)	(\$15,892,975)	(\$16,773,076)	(\$17,688,156)	(\$18,630,687)	(\$19,601,495)	(\$20,601,427)	(\$21,631,357)	(\$22,692,185)
IV. Buyout Amount of NOI Participation	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
V. Net Present Value (2015) @ 10.0%	\$0											

(1) Escalation factor after tenant lease expires.
 (2) Escalation factor beginning in year 2015.
 (3) Cumulative amount by which Actual NOI was less than Breakpoint NOI in previous years (only if deficiencies not offset by surplus NOI).
 Source: Developers Diversified Realty
 Prepared by: Keiser Marston Associates, Inc.
 Filename: i:\OceanSide Cinema Participation Analysis_10/31/2015.lns

TABLE B-2

NOI PARTICIPATION BUYOUT PROVISION - KMA, 2001-2050
 OCEAN PLACE CINEMA
 CITY OF OCEANSIDE

	39	40	41	42	43	44	45	46	47	48	49	50
KMA												
I. Net Operating Income												
A. Rental income	\$2,564,199	\$2,641,125	\$2,720,359	\$2,801,970	\$2,886,029	\$2,972,610	\$3,061,788	\$3,153,642	\$3,248,251	\$3,345,698	\$3,446,069	\$3,549,451
Income per SF/Month @	\$2.68	\$2.76	\$2.84	\$2.93	\$3.01	\$3.10	\$3.20	\$3.29	\$3.39	\$3.49	\$3.60	\$3.71
Other Income	\$758,230	\$780,977	\$804,406	\$828,539	\$853,395	\$878,997	\$905,367	\$932,528	\$960,503	\$989,319	\$1,018,998	\$1,049,568
Total Operating Income	\$3,322,430	\$3,422,102	\$3,524,765	\$3,630,508	\$3,739,424	\$3,851,606	\$3,967,155	\$4,086,169	\$4,208,754	\$4,335,017	\$4,465,067	\$4,599,019
B. (Less) Permitted Expenses	(\$1,133,228)	(\$1,167,225)	(\$1,202,242)	(\$1,238,309)	(\$1,275,458)	(\$1,313,722)	(\$1,353,133)	(\$1,393,727)	(\$1,435,539)	(\$1,478,605)	(\$1,522,964)	(\$1,568,653)
C. Net Operating Income	\$2,189,202	\$2,254,878	\$2,322,524	\$2,392,200	\$2,463,966	\$2,537,885	\$2,614,021	\$2,692,442	\$2,773,215	\$2,856,411	\$2,942,104	\$3,030,367
II. Gross Agency Participation												
A. 3 Year Average Actual NOI	\$2,064,133	\$2,126,057	\$2,189,839	\$2,255,534	\$2,323,200	\$2,392,896	\$2,464,683	\$2,538,624	\$2,614,782	\$2,693,226	\$2,774,023	\$2,857,243
B. (Less) 3 Year Average, Breakpoint NOI	(\$6,185,053)	(\$6,370,604)	(\$6,561,723)	(\$6,758,574)	(\$6,961,331)	(\$7,170,171)	(\$7,385,277)	(\$7,606,835)	(\$7,835,040)	(\$8,070,091)	(\$8,312,194)	(\$8,561,560)
C. Surplus/(Deficit)	(\$4,304,616)	(\$4,433,754)	(\$4,566,767)	(\$4,703,770)	(\$4,844,883)	(\$4,990,230)	(\$5,139,937)	(\$5,294,135)	(\$5,452,959)	(\$5,616,548)	(\$5,785,044)	(\$5,958,595)
D. Cap Rate (Per Agreement)	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%
E. Buyout Value	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
F. Gross Agency Participation @ 25%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
III. Buyout Amount of NOI Participation												
A. Share of Gross due Agency Given Term Remaining												
Number of Years Remaining	11	10	9	8	7	6	5	4	3	2	1	0
Share of Gross Due Agency	22%	20%	18%	16%	14%	12%	10%	8%	6%	4%	2%	0%
B. Remaining Agency Participation	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
C. Negative Cumulative Excess (9)	(\$95,139,348)	(\$99,641,077)	(\$104,277,858)	(\$109,053,742)	(\$113,972,902)	(\$119,039,638)	(\$124,258,375)	(\$129,639,675)	(\$135,170,233)	(\$140,872,888)	(\$146,746,623)	(\$152,796,570)
D. (Less) Negative Cumulative Excess NOI over Breakpoo 25%	(\$23,784,837)	(\$24,910,269)	(\$26,069,464)	(\$27,263,435)	(\$28,493,226)	(\$29,759,909)	(\$31,064,594)	(\$32,408,419)	(\$33,792,558)	(\$35,218,222)	(\$36,686,656)	(\$38,199,143)
IV. Buyout Amount of NOI Participation	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
V. Net Present Value [2015] @ 10.0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

(1) Escalation factor after tenant lease expires.
 (2) Escalation factor beginning in year 2015.
 (3) Cumulative amount by which Actual NOI was less than Breakpoint NOI in previous years (only if deficiencies not offset by surplus NOI).

WORKSHEET A
 RENTAL INCOME, 2015-2050
 OCEAN PLACE CINEMA
 CITY OF OCEANSIDE

Escalation Factor Following end of Lease Term	3.0%																																					
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032		
Regal Cinemas	60,175 SF	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	\$962,800	
Rent per SF/Month	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33	\$1.33		
Umi Japanese Restaurant	1,229 SF	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	\$48,472	
Rent per SF/Month	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	\$3.29	
Attardo's Mexican Food	1,065 SF	\$37,062	\$38,174	\$39,319	\$40,499	\$41,714	\$42,962	\$44,251	\$45,582	\$46,945	\$48,342	\$49,812	\$51,307	\$52,846	\$54,431	\$56,064	\$57,746	\$59,479	\$61,263	\$63,100	\$65,000	\$66,964	\$68,994	\$71,091	\$73,256	\$75,491	\$77,797	\$80,176	\$82,629	\$85,158	\$87,764	\$90,348	\$93,012	\$95,757	\$98,584	\$101,494	\$104,488	
Rent per SF/Month	\$2.90	\$2.99	\$3.08	\$3.17	\$3.26	\$3.36	\$3.46	\$3.57	\$3.67	\$3.78	\$3.90	\$4.01	\$4.14	\$4.28	\$4.42	\$4.57	\$4.73	\$4.89	\$5.06	\$5.23	\$5.41	\$5.59	\$5.78	\$5.98	\$6.18	\$6.39	\$6.60	\$6.82	\$7.05	\$7.28	\$7.52	\$7.76	\$8.01	\$8.26	\$8.52	\$8.78		
Santino's Pizzeria	1,485 SF	\$49,985	\$51,485	\$53,029	\$54,620	\$56,259	\$57,947	\$59,685	\$61,475	\$63,320	\$65,221	\$67,176	\$69,186	\$71,251	\$73,372	\$75,549	\$77,783	\$80,074	\$82,422	\$84,828	\$87,292	\$89,814	\$92,394	\$95,033	\$97,731	\$100,489	\$103,307	\$106,185	\$109,123	\$112,121	\$115,180	\$118,299	\$121,478	\$124,717	\$128,016	\$131,375	\$134,794	
Rent per SF/Month	\$2.81	\$2.89	\$2.98	\$3.07	\$3.16	\$3.25	\$3.35	\$3.45	\$3.55	\$3.66	\$3.77	\$3.88	\$3.98	\$4.10	\$4.22	\$4.35	\$4.48	\$4.61	\$4.75	\$4.89	\$5.04	\$5.19	\$5.35	\$5.51	\$5.67	\$5.84	\$6.01	\$6.19	\$6.37	\$6.56	\$6.75	\$6.95	\$7.15	\$7.36	\$7.57	\$7.78		
Sunglass Corner	575 SF	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	\$24,725	
Rent per SF/Month	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	\$3.58	
Asylum Board Shop	1,368 SF	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	\$42,408	
Rent per SF/Month	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	\$2.58	
Harris Jewelry	1,213 SF	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	\$48,520	
Rent per SF/Month	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	\$2.33	
Cold Stone Creamery	1,055 SF	\$39,760	\$39,773	\$39,816	\$39,890	\$39,997	\$40,137	\$40,311	\$40,520	\$40,766	\$41,049	\$41,371	\$41,732	\$42,134	\$42,578	\$43,064	\$43,593	\$44,166	\$44,784	\$45,447	\$46,156	\$46,912	\$47,716	\$48,568	\$49,469	\$50,419	\$51,419	\$52,469	\$53,569	\$54,719	\$55,919	\$57,169	\$58,469	\$59,819	\$61,219	\$62,669	\$64,169	\$65,719
Rent per SF/Month	\$2.67	\$2.75	\$2.83	\$2.91	\$3.00	\$3.09	\$3.18	\$3.28	\$3.38	\$3.48	\$3.58	\$3.69	\$3.80	\$3.92	\$4.03	\$4.15	\$4.28	\$4.41	\$4.55	\$4.69	\$4.84	\$4.99	\$5.15	\$5.31	\$5.48	\$5.65	\$5.83	\$6.01	\$6.20	\$6.39	\$6.59	\$6.79	\$7.00	\$7.21	\$7.43	\$7.65		
Maui Wowee Hawaiian	1,210 SF	\$36,300	\$37,026	\$37,767	\$38,522	\$39,292	\$40,075	\$40,874	\$41,697	\$42,532	\$43,379	\$44,240	\$45,116	\$46,008	\$46,916	\$47,840	\$48,780	\$49,736	\$50,709	\$51,699	\$52,706	\$53,730	\$54,770	\$55,826	\$56,899	\$57,989	\$59,096	\$60,220	\$61,361	\$62,518	\$63,691	\$64,880	\$66,085	\$67,306	\$68,543	\$69,796	\$71,065	
Rent per SF/Month	\$2.50	\$2.55	\$2.60	\$2.65	\$2.71	\$2.76	\$2.84	\$2.91	\$2.98	\$3.05	\$3.12	\$3.20	\$3.28	\$3.36	\$3.45	\$3.54	\$3.63	\$3.73	\$3.83	\$3.93	\$4.04	\$4.15	\$4.26	\$4.37	\$4.49	\$4.61	\$4.73	\$4.86	\$4.99	\$5.13	\$5.27	\$5.41	\$5.56	\$5.71	\$5.86	\$6.02		
Oceanside Police Department	370 SF	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Closet	6,899 SF	\$203,520	\$209,661	\$215,950	\$222,429	\$229,102	\$235,975	\$243,054	\$250,346	\$257,856	\$265,592	\$273,560	\$281,766	\$290,219	\$298,926	\$307,894	\$317,131	\$326,644	\$336,444	\$346,533	\$356,912	\$367,581	\$378,540	\$389,790	\$401,331	\$413,164	\$425,290	\$437,709	\$450,422	\$463,430	\$476,734	\$490,334	\$504,230	\$518,422	\$532,911	\$547,698	\$562,784	\$578,170
Rent per SF/Month	\$2.46	\$2.53	\$2.61	\$2.69	\$2.77	\$2.85	\$2.94	\$3.02	\$3.11	\$3.21	\$3.30	\$3.40	\$3.51	\$3.61	\$3.72	\$3.83	\$3.95	\$4.06	\$4.18	\$4.30	\$4.43	\$4.56	\$4.69	\$4.83	\$4.97	\$5.11	\$5.25	\$5.40	\$5.55	\$5.70	\$5.86	\$6.02	\$6.18	\$6.35	\$6.52	\$6.69	\$6.87	
Breakwater Brewing Company	3,160 SF	\$79,253	\$81,623	\$84,056	\$86,584	\$89,175	\$91,861	\$94,610	\$97,454	\$100,362	\$103,393	\$106,497	\$109,692	\$112,983	\$116,372	\$119,863	\$123,459	\$127,163	\$130,978	\$134,806	\$138,750	\$142,810	\$146,987	\$151,282	\$155,696	\$160,229	\$164,882	\$169,655	\$174,548	\$179,561	\$184,694	\$189,957	\$195,350	\$200,873	\$206,526	\$212,309	\$218,222	
Rent per SF/Month	\$2.09	\$2.15	\$2.22	\$2.28	\$2.35	\$2.42	\$2.50	\$2.57	\$2.65	\$2.73	\$2.81	\$2.89	\$2.98	\$3.07	\$3.16	\$3.26	\$3.36	\$3.46	\$3.56	\$3.67	\$3.78	\$3.89	\$4.00	\$4.12	\$4.24	\$4.37	\$4.50	\$4.63	\$4.77	\$4.91	\$5.06	\$5.21	\$5.36	\$5.52	\$5.67	\$5.83		
Total Gross Scheduled Income	79,804 SF	\$1,566,805	\$1,579,666	\$1,597,108	\$1,616,054	\$1,633,547	\$1,709,813	\$1,692,425	\$1,749,195	\$1,770,545	\$1,792,574	\$1,875,836	\$1,899,617	\$1,924,111	\$1,949,340	\$1,975,326	\$2,062,266	\$2,089,834	\$2,118,229	\$2,147,461	\$2,177,539	\$2,208,472	\$2,240,269	\$2,272,930	\$2,306,464	\$2,340,881	\$2,376,191	\$2,412,404	\$2,449,531	\$2,487,582	\$2,526,557	\$2,566,465	\$2,607,306	\$2,649,080	\$2,691,797	\$2,735,457	\$2,780,060	
Rent per SF/Month	\$1.64	\$1.65	\$1.67	\$1.69	\$1.70	\$1.79	\$1.77	\$1.83	\$1.85	\$1.87	\$1.87	\$1.96	\$1.98	\$2.01	\$2.06	\$2.15	\$2.18	\$2.21	\$2.24	\$2.27	\$2.30	\$2.33	\$2.36	\$2.39	\$2.42	\$2.46	\$2.50	\$2.54	\$2.58	\$2.63	\$2.68	\$2.73	\$2.78	\$2.83	\$2.88	\$2.93		

Reflects year lease term ends.
 Source: Developers Diversified Realty

WORKSHEET A

RENTAL INCOME, 2015-2050
OCEAN PLACE CINEMA
CITY OF OCEANSIDE

Escalation Factor Following end of Lease Term		33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50
		2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050
60,175	SF	\$1,143,325	\$1,177,625	\$1,212,953	\$1,249,342	\$1,286,822	\$1,325,427	\$1,365,190	\$1,406,146	\$1,448,330	\$1,491,780	\$1,536,533	\$1,582,629	\$1,630,108	\$1,679,011	\$1,729,382	\$1,781,263	\$1,834,701	\$1,889,742
	Rent per SF/Month	\$1.58	\$1.63	\$1.68	\$1.73	\$1.78	\$1.84	\$1.89	\$1.95	\$2.01	\$2.07	\$2.13	\$2.19	\$2.26	\$2.33	\$2.39	\$2.47	\$2.54	\$2.62
1,229	SF	\$77,783	\$80,116	\$82,520	\$84,995	\$87,545	\$90,172	\$92,877	\$95,663	\$98,533	\$101,489	\$104,534	\$107,670	\$110,900	\$114,227	\$117,654	\$121,183	\$124,819	\$128,563
	Rent per SF/Month	\$5.27	\$5.43	\$5.60	\$5.76	\$5.94	\$6.11	\$6.30	\$6.49	\$6.68	\$6.88	\$7.09	\$7.30	\$7.52	\$7.75	\$7.98	\$8.22	\$8.46	\$8.72
1,065	SF	\$63,101	\$64,994	\$66,944	\$68,952	\$71,021	\$73,151	\$75,346	\$77,606	\$79,934	\$82,332	\$84,802	\$87,347	\$89,967	\$92,666	\$95,446	\$98,309	\$101,259	\$104,296
	Rent per SF/Month	\$4.94	\$5.09	\$5.24	\$5.40	\$5.56	\$5.72	\$5.89	\$6.07	\$6.25	\$6.44	\$6.64	\$6.83	\$7.04	\$7.25	\$7.47	\$7.69	\$7.92	\$8.16
1,485	SF	\$85,096	\$87,649	\$90,279	\$92,987	\$95,777	\$98,650	\$101,610	\$104,658	\$107,798	\$111,031	\$114,362	\$117,793	\$121,327	\$124,967	\$128,716	\$132,577	\$136,555	\$140,651
	Rent per SF/Month	\$4.78	\$4.92	\$5.07	\$5.22	\$5.37	\$5.54	\$5.70	\$5.87	\$6.05	\$6.23	\$6.42	\$6.61	\$6.81	\$7.01	\$7.22	\$7.44	\$7.66	\$7.89
575	SF	\$39,138	\$40,312	\$41,522	\$42,767	\$44,050	\$45,372	\$46,733	\$48,135	\$49,579	\$51,067	\$52,599	\$54,177	\$55,802	\$57,476	\$59,200	\$60,976	\$62,805	\$64,680
	Rent per SF/Month	\$5.67	\$5.84	\$6.02	\$6.20	\$6.38	\$6.58	\$6.77	\$6.98	\$7.19	\$7.40	\$7.62	\$7.85	\$8.09	\$8.33	\$8.58	\$8.84	\$9.10	\$9.38
1,368	SF	\$68,284	\$70,333	\$72,443	\$74,616	\$76,855	\$79,160	\$81,535	\$83,981	\$86,501	\$89,096	\$91,768	\$94,522	\$97,357	\$100,278	\$103,286	\$106,385	\$109,576	\$112,864
	Rent per SF/Month	\$4.16	\$4.28	\$4.41	\$4.55	\$4.68	\$4.82	\$4.97	\$5.12	\$5.27	\$5.43	\$5.59	\$5.76	\$5.93	\$6.11	\$6.29	\$6.48	\$6.67	\$6.88
1,213	SF	\$75,231	\$77,488	\$79,813	\$82,207	\$84,673	\$87,213	\$89,830	\$92,525	\$95,300	\$98,159	\$101,104	\$104,137	\$107,262	\$110,479	\$113,794	\$117,208	\$120,724	\$124,345
	Rent per SF/Month	\$5.17	\$5.32	\$5.48	\$5.65	\$5.82	\$5.99	\$6.17	\$6.36	\$6.55	\$6.74	\$6.95	\$7.15	\$7.37	\$7.59	\$7.82	\$8.05	\$8.29	\$8.54
1,055	SF	\$57,474	\$59,198	\$60,974	\$62,803	\$64,688	\$66,628	\$68,627	\$70,686	\$72,806	\$74,991	\$77,240	\$79,558	\$81,944	\$84,403	\$86,935	\$89,543	\$92,229	\$94,996
	Rent per SF/Month	\$4.54	\$4.68	\$4.82	\$4.96	\$5.11	\$5.26	\$5.42	\$5.58	\$5.75	\$5.92	\$6.10	\$6.28	\$6.47	\$6.67	\$6.87	\$7.07	\$7.29	\$7.50
1,210	SF	\$56,599	\$58,297	\$60,046	\$61,847	\$63,703	\$65,614	\$67,582	\$69,610	\$71,698	\$73,849	\$76,064	\$78,346	\$80,697	\$83,118	\$85,611	\$88,180	\$90,825	\$93,550
	Rent per SF/Month	\$3.90	\$4.01	\$4.14	\$4.26	\$4.39	\$4.52	\$4.65	\$4.79	\$4.94	\$5.09	\$5.24	\$5.40	\$5.56	\$5.72	\$5.90	\$6.07	\$6.26	\$6.44
Oceanside Police Department	370	SF	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Closest	6,899	SF	\$346,537	\$356,933	\$367,641	\$378,670	\$390,031	\$401,731	\$413,783	\$426,197	\$439,983	\$454,152	\$468,717	\$494,688	\$494,079	\$508,901	\$524,168	\$539,893	\$556,090
	Rent per SF/Month	\$4.19	\$4.31	\$4.44	\$4.57	\$4.71	\$4.85	\$5.00	\$5.15	\$5.30	\$5.46	\$5.63	\$5.79	\$5.97	\$6.15	\$6.33	\$6.52	\$6.72	\$6.92
Breakwater Brewing Company	3,160	SF	\$134,907	\$138,955	\$143,123	\$147,417	\$151,839	\$156,395	\$161,086	\$165,919	\$170,897	\$181,304	\$186,743	\$192,346	\$198,116	\$204,059	\$210,181	\$216,487	\$222,981
	Rent per SF/Month	\$3.56	\$3.66	\$3.77	\$3.89	\$4.00	\$4.12	\$4.25	\$4.38	\$4.51	\$4.64	\$4.78	\$4.92	\$5.07	\$5.22	\$5.38	\$5.54	\$5.71	\$5.88
Total Gross Scheduled Income	79,804	SF	\$2,147,476	\$2,211,901	\$2,278,258	\$2,346,606	\$2,417,004	\$2,489,514	\$2,564,199	\$2,641,125	\$2,720,359	\$2,801,970	\$2,872,610	\$3,061,788	\$3,153,642	\$3,248,251	\$3,345,698	\$3,446,069	\$3,549,451
	Rent per SF/Month	\$2.24	\$2.31	\$2.38	\$2.45	\$2.52	\$2.60	\$2.68	\$2.76	\$2.84	\$2.93	\$3.01	\$3.10	\$3.20	\$3.29	\$3.39	\$3.49	\$3.60	\$3.71

Reflects year lease term ends.

Source: Developers Diversified Realty

Prepared by: Keyser Marston Associates, Inc.

Filename I: Oceanside Cinema Participation Analysis_V8.3/4/2015.rpt

RESOLUTION NO. _____

RESOLUTION OF THE OVERSIGHT BOARD FOR THE
SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
OF THE CITY OF OCEANSIDE CALIFORNIA APPROVING
THE SATISFACTION, TERMINATION AND RELEASE OF
PAYMENT AGREEMENT AND LIEN REGARDING THE
OCEAN PLACE CINEMAS SITE

WHEREAS, in 1998, the Community Development Commission of the City of Oceanside ("CDC") entered into a Disposition and Development Agreement ("DDA") with DDR OliverMcMillan Oceanside LP ("Developer") to convey and develop a 2.65-acre site ("Property") for use as retail/restaurant space and movie theater complex; and

WHEREAS, pursuant to the DDA, DDR OliverMcMillan Oceanside LLC (successor-in-interest to Developer) and the CDC entered into a Payment Agreement dated February 16, 1999 to permit the CDC to recover, as additional consideration for the conveyance of the Property, all or part of the CDC's expenses incurred to acquire and prepare the Property for development; and

WHEREAS, on February 17, 1999 the Payment Agreement describing the Property was recorded with the San Diego County Recorder's Office, along with a Subordinated Instrument Affecting and Imposing a Lien on Real Property, securing the Developer's obligations under the Payment Agreement; and

WHEREAS, the CDC and DDR Oceanside LLC ("DDR") (as successor-in-interest to DDR OliverMcMillan Oceanside LLC) executed a First Supplement to Payment Agreement, which was recorded with the San Diego County Recorder's Office on November 21, 2001; and

WHEREAS, DDR has provided notice to the Successor Agency City of Oceanside (successor-in-interest to the CDC as to the Payment Agreement) of a potential sale of the Property and of DDR's intention to buy out the Net Operating Income Participation Amounts pursuant to Section 219 and 220 of the Payment Agreement; and

1 WHEREAS, the Oversight Board finds that the amount required for DDR to buy out the
2 Net Operating Income Participation Amounts under the formula set forth in the Payment
3 Agreement is zero dollars (\$0); and

4 WHEREAS, the Oversight Board finds that DDR's obligations under the Payment
5 Agreement have been fully satisfied.

6 NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD FOR THE
7 SUCCESSOR AGENCY OF THE CITY OF OCEANSIDE AS FOLLOWS:

8 SECTION 1. The recitals set forth above are true and correct and incorporated herein.

9 SECTION 2. The Oversight Board authorizes the execution, delivery and recordation of
10 the Satisfaction, Termination and Release of Payment Agreement and Lien attached hereto as
11 Exhibit A.

12 PASSED AND ADOPTED by the Oversight Board to the Successor Agency of the City
13 of Oceanside, California this 10th Day of March, 2015, by the following vote:

14
15 AYES:

16 NAYES:

17 ABSENT:

18 ABSTAIN:

19
20 _____
CHAIRPERSON

21
22 ATTEST:

23
24 _____
SECRETARY

PREPARED BY AND
WHEN RECORDED RETURN TO:

(space above for recorder's use)

**SATISFACTION, TERMINATION AND RELEASE OF
PAYMENT AGREEMENT AND LIEN**

THIS SATISFACTION, TERMINATION AND RELEASE OF PAYMENT AGREEMENT AND LIEN (this "*Termination*") is executed and delivered as of the ___ day of _____, 2015 by the Successor Agency of the former Oceanside Redevelopment Agency ("Successor Agency").

RECITALS:

1. The Successor Agency (as successor-in-interest to the Community Development Commission of the City of Oceanside) and DDR OliverMcMillan Oceanside LLC (predecessor-in-interest to DDR Oceanside LLC ("*DDR*")) entered into that certain Payment Agreement dated February 16, 1999 and recorded February 17, 1999 as Document No. 1999-0095214 in the official records of San Diego County, California (the "*Agreement*"), as supplemented by that certain First Supplement to Payment Agreement last dated April 27, 2001 and recorded November 21, 2001 as Document No. 2001-0853314 in the official records of San Diego County, California (the "*First Supplement*"; and together with the Agreement, the "*Payment Agreement*").

2. The Payment Agreement is secured by that certain Subordinated Instrument Affecting and Imposing a Lien on Real Property dated February 16, 1999 and recorded February 17, 1999 as Document No. 1999-0095216 in the official records of San Diego County, California (the "*Lien*").

3. Pursuant to Section 219 and Section 220 of the Payment Agreement, DDR has given notice of and exercised its Buyout Notice under the Payment Agreement, and DDR has complied with any and all payment obligations thereunder and has fully satisfied DDR's obligations in connection therewith.

4. The Successor Agency now hereby desires and intends to terminate and release the Payment Agreement and the Lien.

NOW, THEREFORE, the Successor Agency hereby acknowledges and agrees as follows:

- A. The foregoing recitals are hereby incorporated herein by reference.
- B. The Successor Agency is the successor-in-interest to the Community Development Commission of the City of Oceanside with respect to the Payment Agreement and is lawfully entitled and has full power and authority to execute and deliver this Termination.
- C. The Successor Agency hereby terminates the Payment Agreement and the Lien in their entirety as of the date hereof and the same are hereby satisfied, terminated and released of record and of no further force or effect. DDR and the Property (as defined in the Lien) are hereby fully released from all obligations and liabilities under the Payment Agreement and the Lien.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, this Termination has been executed and delivered as of the day and year first above written.

SUCCESSOR AGENCY
CITY OF OCEANSIDE, CALIFORNIA

By: _____
Name: _____
Title: _____

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 _____

On _____ before me, _____ (here insert name and title of officer), personally appeared _____, 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 _____

(Seal)

APPROVED AS TO FORM:

By: _____
City Attorney, City of Oceanside, CA