

FIRST AMENDED AND RESTATED
PARKING AGREEMENT

This First Amended and Restated Parking Agreement (the "Parking Agreement") is entered into by and between the COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF OCEANSIDE (the "Commission") and DDR OCEANSIDE LLC, a Delaware limited liability company (the "Developer").

I. [§100] PURPOSE OF PARKING AGREEMENT

The Commission and DDR OliverMcMillan LP, a Delaware limited partnership, the Developer's predecessor-in-interest, have heretofore entered into that certain Disposition and Development Agreement dated July 2, 1998 (the "DDA"), to effectuate the Redevelopment Plan for the Downtown Redevelopment Project in the City of Oceanside (the "City"), by providing for the disposition of that certain real property illustrated and designated as "Parcel A" on the Map of Parcel A (which is attached hereto and unincorporated herein as Exhibit A), and the development and operation on Parcel A of a theater complex, restaurant/entertainment uses, food court establishments, and retail commercial activities. Pursuant to the DDA: (1) the Commission has conveyed title to Parcel A to the Developer (under its former name of DDR OliverMcMillan Oceanside LLC) by Grant Deed recorded concurrently with execution of the Parking Agreement; and (2) the Developer has constructed on Parcel A a first-class, 16-plex theater of approximately 68,000 square feet (approximately 2,907 seats), approximately 7,500 to 10,000 square feet of restaurant use, approximately 6,500 to 10,000 square feet of food court establishments, and approximately 3,900 square feet of retail commercial uses (along Coast Highway), collectively approximately 19,440 square feet of restaurant, food court and Coast Highway commercial uses.

The Commission is undertaking activities necessary and appropriate to redevelop the central part of downtown Oceanside around the Site. In connection with those activities the Commission, directly and/or in cooperation with the City, has undertaken to provide, or cause to be provided, various public parking facilities for the use of the general public, and employees, patrons, customers and invitees of the businesses, institutions and recreation facilities within and near the downtown area. The Commission and the Developer have determined that public parking facilities located within a certain perimeter around Parcel A, illustrated and designated as the "Parking Perimeter" on the Map of Parking Perimeter (which is attached hereto and incorporated herein as Exhibit B), will adequately serve the proposed uses on Parcel A.

The purpose of this Parking Agreement is to set forth the terms and conditions in accordance with which the Commission will provide, or cause to be provided, such public parking facilities.

II. [§200] PROVISION OF PARKING AREAS

The Commission agrees to provide, or cause to be provided, within the Parking Perimeter, public parking facilities containing parking spaces at least equal in number to: (1) one parking space per every four auditorium seats within theaters on Parcel A (up to 726 parking spaces); plus (2) 2.7 parking spaces per every 1,000 square feet of gross leasable area of restaurant/entertainment uses, food court establishments and retail commercial uses on Parcel A; but not exceeding a combined total of 779 parking spaces for (1) and (2). Two hundred seventy (270) of the parking spaces may be provided west of the railroad right-of-way within the Parking Perimeter, and the remainder shall be provided east of the railroad right-of-way. Notwithstanding the foregoing, the Commission shall also have the right to provide, from time-to-time, on a temporary basis (not exceeding the period, up to ninety (90) days, but not between the Friday before Memorial Day through Labor Day or between December 15 and January 5 of any year unless reasonably approved by the Developer, reasonably necessary to complete installation of the equivalent number of public parking facilities initially designated, or subsequently designated as replacement parking spaces, within the Parking Perimeter), as parking spaces meeting the requirements of this Section, up to 235 parking spaces open to the general public (excluding reserved parking spaces) within the Civic Center parking structure located south of Civic Center Drive and east of the Oceanside Public Library. The public parking facilities which the Commission provides, or causes to be provided, from time to time in the above amounts are referred to herein as the "Parking Areas".

The parking spaces which comprise the Parking Areas shall be designated in writing by the Commission upon the Commission obtaining and documenting the rights to provide, or cause to be provided, such parking spaces, and from time to time thereafter. Any such designation provided after the initial designation shall also designate the parking spaces being replaced, in which case the designated replaced parking spaces shall no longer be part of the Parking Areas. Without being a condition to the effectiveness of any such designation, the Developer agrees to provide estoppel certificates or similar documents as from time to time requested by the Commission to evidence that specified parking spaces are not a part of the Parking Areas. The designated replacement parking spaces shall be provided without delay within the Parking Perimeter, and equivalent to the number replaced, in which case the designated replacement parking spaces shall become part of the Parking Areas.

The Parking Areas shall be improved to customary City standards for public parking facilities (including without limitation, adequate security lighting), at the sole capital cost and expense of the Commission or others than the Developer. The Parking Areas may be surface parking lots and/or in a structure or structures at the election of the Commission. Any parking structure constructed as part of the Parking Areas may stand alone or be part of a development mixed with other uses.

In addition to the initial capital costs and expenses, the Commission, or others than the Developer, shall be responsible, at their respective cost and expense, for any capital replacement and/or restoration required within the Parking Areas due to damage or destruction.

In the event the Commission elects to reconfigure parking spaces in any part of the Parking Areas (including without limitation the construction or remodeling of a parking structure or structures therein), which the Commission may elect to do at any time and from time to time in its sole discretion, then any such reconfiguration shall be accomplished, and the capital costs and expenses thereof shall be borne, by the Commission, or others than the Developer.

During any such reconfiguration, but only for a period reasonably necessary to complete such reconfiguration and not exceeding in any event six (6) months, the Commission shall be excused from providing, or causing to be provided, the number of parking spaces made unavailable by such reconfiguration.

III. [§300] USE AND OPERATION OF PARKING AREAS

The Parking Areas shall be operated in accordance with customary City standards for public parking facilities, for the non-exclusive use of the general public, and employees, patrons, customers and invitees of the businesses, institutions and recreation facilities within and near the downtown area. The employees, patrons, customers and invitees of the Developer and its tenants with uses on Parcel A shall be provided access to the Parking Areas, or designated portions thereof sufficient to adequately serve the uses on Parcel A, during all periods when such uses on Parcel A are open for business.

If the operation of the Parking Areas, or any portion thereof, includes the imposition of any parking fee or charge for the use thereof, which imposition may only be made with the prior written consent of the Developer, any such parking fee or charge shall be consistent with the general policies and practices of the City at the time any such fee or charge is imposed, and shall not be discriminatory against the Developer and its tenants, or their

respective employees, patrons, customers and invitees of uses on Parcel A. The Developer agrees to cooperate reasonably with the Commission to institute such parking fees or charges (with validation procedures) as may be appropriate to manage the use of the Parking Areas for the purposes herein provided. Any and all receipts from such a parking fee or charge system shall be retained by the Commission (and/or City as applicable) as its property.

The Commission and the Developer by this Parking Agreement do not intend to create a possessory interest by the Developer in the Parking Areas, or any portion thereof, but only a covenant by the Commission to provide the Parking Areas for the general public, including the uses on Parcel A. Nevertheless, in accordance with California Revenue and Taxation Code Section 107.6(a), the Commission states that by entering into this Parking Agreement, a possessory interest subject to property taxes could be determined to be created. In such case, the Developer or other party in whom the possessory interest might be determined to be vested could be subject to the payment of property taxes levied on such interest.

IV. [§400] MAINTENANCE OF PARKING AREAS

The Commission, at its sole cost and expense (except as expressly provided in Article V. below), shall perform, or cause to be performed, all maintenance of the Parking Areas. The Commission shall keep the same in good condition and repair, well striped and without potholes, and clean and free of rubbish and other hazards to persons using the Parking Areas. Maintenance as used herein shall include (without limitation) the repair of improvements and landscaping on the Parking Areas, and the replacement thereof, due to ordinary wear and tear.

V. [§500] PARKING AREA MAINTENANCE EXPENSES

1. [§501] Payment Amount

The Developer shall use its diligent and good faith efforts to obtain in each lease (including each renewal or subsequent lease) for tenants occupying space within Parcel A, a payment toward the cost of Parking Area Maintenance Expenses (as defined in Section 502), provided, however, that any leases between the Developer and Regal Cinemas shall be excluded. Such payment may be based upon some amount per square foot of gross leasable area of the tenant, or other customary measure, except that the Developer shall not be required to negotiate such parking reimbursement to the extent that tenant forces such reimbursement to result in a reduction of rent from the Developer's pro forma levels or reduces the Developer's ability to recover legitimate common area maintenance charges otherwise payable by such tenant. The total amount of such payments, if any, received by the Developer each fiscal year

attributable to space within Parcel A is referred to herein as the "PAM Charge". The Developer shall attempt to require any such payments from tenants be collectable at times corresponding to its collection of common area maintenance charges attributable to the operation and maintenance on Parcel A. In any event, all such payments on account of the PAM Charge shall be paid by the Developer to the Commission within fifteen (15) days after the end of the month in which the Developer has collected them from the applicable tenants.

The Developer agrees to conduct itself in the attribution of receipts, payments and off-sets from and to tenants as provided for in its leases (as to "rent", "common area maintenance charge", "PAM Charge", "tenant improvement allowance", and other categories), and in the computation of the amounts referred to in this Section, in a reasonable manner that is consistent with the then current prevailing market conditions in the local area, so as not to cause a distortion of revenue to the detriment of the Commission in obtaining in its leases, and calculating for payment to the Commission, the amounts referred to in this Section.

The Commission shall have the right to inspect and/or audit the books and records of the Developer from time to time as reasonably necessary to monitor the determination of the PAM Charges for any fiscal year (but limited to the preceding two (2) fiscal years).

Any amount payable toward the PAM Charge which is not paid when due, shall earn interest at the Bank of America reference rate on the due date plus three percent (3%), or the maximum rate permitted by applicable law, whichever is lesser, from the date due until paid.

2. [§502] Definition of Maintenance Expenses

The term "Parking Area Maintenance Expenses" shall mean all sums reasonably incurred in connection with the operation and maintenance of the Parking Areas, including, but not limited to, the costs and expenses of:

(a) operation and maintenance of the utilities serving Parking Areas, including storm and sanitary facilities, water and sewer service, electrical, gas, steam, water, telephone systems, lighting system (including poles, bulbs, and fixtures) and other utility systems;

(b) trash and garbage removal, pest control, and cleaning, painting, and sweeping of the Parking Areas;

(c) operation and maintenance of all utility systems, emergency water and sprinkler, security, and life safety systems, pumping systems, and all other items, facilities, equipment and systems furnished by the Commission as part of the Parking Areas;

(d) operation and maintenance of decorative features, fencing and similar items located within the Parking Areas, slurry sealing or other maintenance of the parking surface, and planting, replanting and replacing of all flowers, shrubbery, plants, trees and other landscaping within the Parking Areas;

(e) maintenance and depreciation of all machinery and equipment used in the operation or maintenance of the Parking Areas including, but not limited to, all security vehicles and equipment serving the Parking Areas;

(f) the cost of providing security including security personnel and equipment for Parking Areas, including, without limitation, uniforms, transportation and surveillance equipment;

(g) the cost of insurance for Parking Areas;

(h) the Commission's supervisory charge for operating and maintaining the Parking Areas and management charge which together shall not exceed five percent (5%) of the other Parking Area Maintenance Expenses.

The Parking Area Maintenance Expenses shall not include:

(a) payments of principal, interest or other costs of money charges on any debt, or the amortization of any funds borrowed by the Commission;

(b) costs incurred in connection with the sale, financing, mortgaging, selling or change of ownership of the Parking Areas;

(c) any expense for which the Commission receives reimbursement from insurance, condemnation awards, or other sources;

(d) any capital expenditures for Parking Areas whether incurred in the original construction or in changes to the Parking Areas;

(e) depreciation (other than depreciation as above specified).

The Commission may cause any or all maintenance and/or operation services for the Parking Areas to be provided by an independent contractor or contractors or others.

VI. [§600] GENERAL PROVISIONS

A. [§601] Effective Date and Duration of Parking Agreement

This Parking Agreement shall be effective upon February 17, 1999. This Parking Agreement shall be for a term ending December 10, 2033, at which time this Parking Agreement shall automatically terminate; except that the provision of the Parking Areas, and each portion thereof, hereunder, shall continue only as long as such Parking Areas, and each portion thereof, is used by the Developer and its tenants on Parcel A, as measured by the number of theater seats and the number of square feet of gross leasable area of restaurant/entertainment uses, food court establishments and retail commercial uses that are actually open and being operated on Parcel A, and this Parking Agreement shall terminate with respect to the number of parking spaces over and above the number in use as measured by application of the ratios set forth in the first paragraph of Section 200 of this Parking Agreement to the uses that are actually open and being operated on Parcel A, where the non-use continues for any consecutive twelve (12) month period, unless notice has been given by the Developer to the Commission during such period of its intention to resume use within eighteen (18) months following the respective date upon which the applicable non-use commenced. The Commission shall designate the location of the parking spaces which are so removed from the Parking Areas.

B. [§602] Severability

If any clause, sentence, or other portion of the terms, conditions, covenants, and restrictions of this Parking Agreement becomes or is declared to be illegal, null, or void for any reason, or be held by any court of competent jurisdiction to be so, the remaining portions of this Parking Agreement shall remain in full force and effect.

C. [§603] Notices

All notices, statements, demands, approvals, or other communications to be given under or pursuant to this Parking Agreement shall be in writing, addressed to the parties at their respective addresses as provided below, and will be delivered in person, or by certified or registered mail, postage pre-paid, or by telegraph or cable, charges pre-paid. If mailed or telegraphed, the notice will be deemed to have been given twenty-four (24) hours after the date of mailing or the date of delivery to the telegraph

or cable company. The address of the parties to which such notices are to be sent, until further notice, are as follows:

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

Developer:
DDR Oceanside LLC
3300 Enterprise Parkway
Beachwood, Ohio 44122
Attention: Scott Wolstein and
General Counsel

D. [\$604] Non-Discrimination

By its signature on this Parking Agreement, each party covenants for itself, and its successors and assigns, and all persons claiming under and through them, that there shall be no discrimination or segregation of any person or group of persons on account of sex, marital status, race, color, creed, religion, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of any portion of the Parking Areas, nor shall any occupant of any portion of the Parking Areas, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendors in any portion of the Parking Areas.

E. [\$605] Assignment of Parking Agreement; Obligation of Successors

This Parking Agreement may only be assigned, and shall be assigned, to any grantee of the Developer's entire fee title interest in Parcel A and the improvements thereon. The Developer covenants that in each instance in which the Developer ever conveys Parcel A to a grantee who will become thereby a new party, the Developer in such instance shall require the prospective new party to agree not to use, occupy, or allow any lessees of such to use or occupy Parcel A in any manner which would constitute a violation or breach of any of the covenants or conditions in this Parking Agreement, and require the new party to assume and agree to perform each and all of the obligations of the Developer under this Parking Agreement, in each case by a written instrument satisfactory to the Commission. Notice of each such conveyance and agreement shall be given to the Commission at least ten (10) days before making, which notice is to be accompanied by a copy of the proposed conveyance

and agreement. On such assumption by a new party and notice of such, the Developer shall thereafter be released from any further obligation under this Parking Agreement.

F. [\$606] Agreement for Exclusive Benefit of Parties

The provisions of this Parking Agreement are for the exclusive benefit of the Commission and the Developer, and not for the benefit of any other person, nor shall this Parking Agreement be deemed to have conferred any rights, express or implied, upon any other person.

G. [\$607] Application of Terms to Tenancy Agreements

All lease agreements, tenancy agreements, license agreements or similar arrangements concerning all or part of Parcel A (each a "tenancy agreement") entered into by the Developer and any third party shall be subject to the provisions of this Parking Agreement. In case of a conflict in the provisions of this Parking Agreement and any such tenancy agreement, this Parking Agreement shall prevail and control. Each tenancy agreement shall contain a provision that it is subject in all respects to the terms and conditions of this Parking Agreement.

H. [\$608] Governing Laws

This Parking Agreement shall be construed, interpreted, governed and enforced in accordance with the laws of the State of California.

I. [\$609] No Partnership, Joint Venture or Principal-Agent Relationship

Nothing contained in this Parking Agreement shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of joint venture, or a partnership between or among any of the parties under this Parking Agreement.

J. [\$610] Successors

This Parking Agreement shall be binding upon and insure to the benefit of the parties hereto and the respective successors and assigns of the parties.

K. [\$611] Waivers and Amendments

All waivers of the provisions of this Parking Agreement must be in writing and signed by the appropriate authorities of the Commission or the Developer, and all amendments hereto must be in

writing and signed by the appropriate authorities of the Commission and the Developer.

IN WITNESS WHEREOF, the parties hereto have caused this Parking Agreement to be executed as of the day set forth opposite their signatures.

COMMUNITY DEVELOPMENT COMMISSION
OF THE CITY OF OCEANSIDE
(Commission)

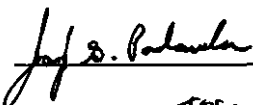
Date: 4/27/01

By: 
Steven R. Jepsen
Executive Director

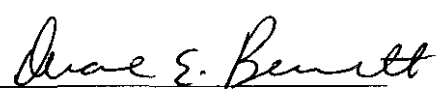
DDR OCEANSIDE LLC,
a Delaware limited liability company

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

Date: 3-23-01

By: 
Print Name: Joseph G. Padanilam
Title: Vice President

APPROVED AS TO FORM AND
LEGALITY:
DUANE E. BENNETT
Commission General Counsel

By: 

Date: 4-3-01

[Signature page continued from page 10]

APPROVED:

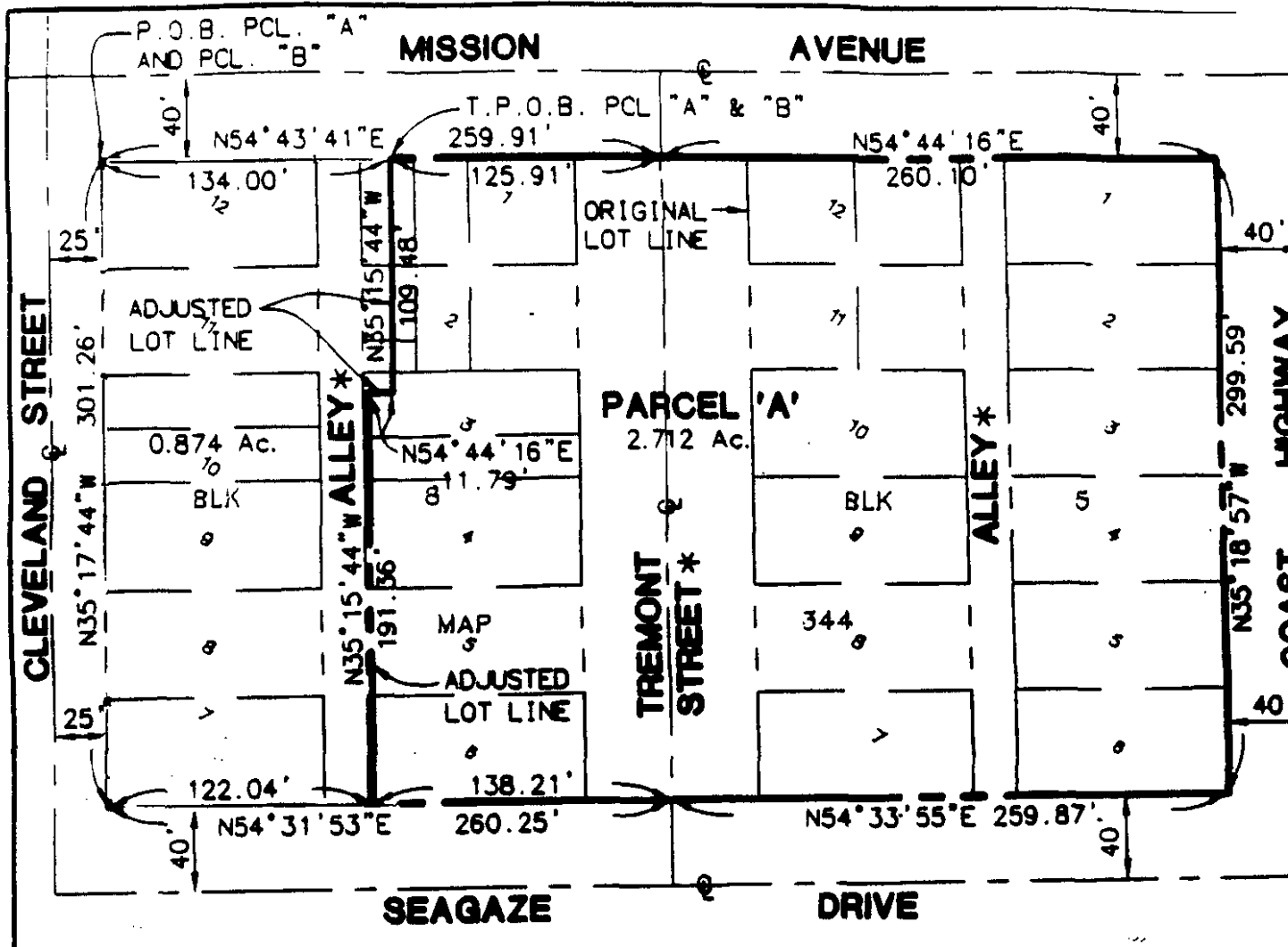
KANE, BALLMER & BERKMAN
Commission Special Counsel

By: Bruce D. Ballmer
Bruce D. Ballmer

Date: 3/20/01

Exhibit A

MAP OF PARCEL A



PARCEL A

MAP OF PARKING PERIMETER

