

Council Meeting of
October 17, 2006

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: City Manager – Estoppel Certificate and Agreement for City-owned property located at 2837 Pacific Coast Highway

RECOMMENDATION

The City Manager recommends that the City Council authorize the Mayor to execute and the City Clerk to attest to a Lender's Estoppel Agreement for the property located at 2837 Pacific Coast Highway, known as the Town and Country Shopping Center.

FUNDING

None required for this action.

BACKGROUND/ANALYSIS

The subject property is on City-owned land and is leased to Town and Country Investors, LLC. The Master Tenant is in the process of re-financing the Leasehold and the Lender has requested an Estoppel Certificate and Agreement prior to lending.

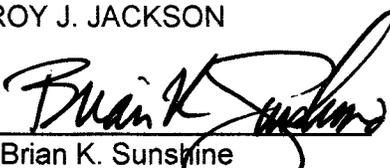
The Estoppel Certificate is a statement by the City that the Lease is in full force and effect and that there is no material defaults against the Lease. The Certificate also verifies that certain salient points of the Lease are valid.

The Lease is currently in full force and effect, there are no material defaults and the rent is current.

It is recommended that the Certificate be approved.

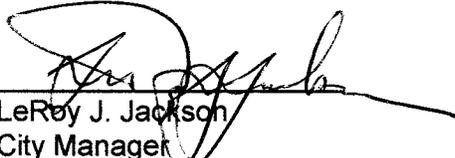
Respectfully submitted,

LeROY J. JACKSON

By: 

Brian K. Sunshine
Assistant to the City Manager

CONCUR:


LeRoy J. Jackson
City Manager

Attachment:
Estoppel Certificate and Agreement

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

FIRST BANK OF BEVERLY HILLS

23901 Calabasas Road, Suite 1050

Calabasas, California 91302

Attention: Closing Department

Assessor's Parcel No.: 8940-314-034

**GROUND LESSOR'S CONSENT,
ESTOPPEL CERTIFICATE AND AGREEMENT**

The undersigned, THE CITY OF TORRANCE, a municipal corporation ("Ground Lessor"), as lessor under that certain Ground Lease (the "Ground Lease") dated January 1, 1981 (the "Original Ground Lease"), and amended by: (i) that certain First Amendment to Lease dated January 1, 1982, (ii) that certain Second Amendment to Lease dated November 3, 1982, (iii) that certain Third Amendment to Lease dated November 1, 1988, (iv) that certain Fourth Amendment to lease dated October 5, 1999, and (v) that certain Fifth Amendment to Lease dated as of April 18, 2006, held by Town and Country Investors, LLC, a California limited liability company (collectively "Ground Lessee"), as successor-in-interest to the original lessee, on the other hand, covering that certain premises located in the County of Los Angeles, State of California, commonly known as 2801 - 2869 Pacific Coast Highway, Torrance, California (the "Leased Property"), and legally described in Exhibit "A" hereto, hereby certify to and agree with FIRST BANK OF BEVERLY HILLS ("Lender") and Ground Lessee as follows:

1. Ground Lessor hereby certifies to Lender and Ground Lessee and represents, warrants, covenants and agrees as follows:

(a) Ground Lessee is obtaining an extension of credit from Lender in the principal sum of \$4,000,000.00 ("Loan"). Ground Lessee desires to secure the Loan, in part, by (i) Ground Lessee's interest in the Leased Property pursuant to the Ground Lease, and (ii) Lender is relying upon this Ground Lessor's Consent, Estoppel Certificate and Agreement ("Agreement") in securing the Loan with Ground Lessee's interests in the Leased Property.

(b) Ground Lessor is the current ground lessor under the Ground Lease, and Ground Lessee is the current ground lessee under the Ground Lease. Ground Lessor has not assigned or conveyed or agreed to assign or to convey Ground Lessor's interest under the Ground Lease in whole or in part, except in connection with the Loan.

(c) The Ground Lease is in full force and effect, and there have been no amendments, modifications, changes or additions since its execution, except the following:

- (i) First Amendment to Lease dated January 1, 1982,
- (ii) Second Amendment to Lease dated November 3, 1982,
- (iii) Third Amendment to Lease dated November 1, 1988,
- (iv) Fourth Amendment to lease dated October 5, 1999,

- (v) Fifth Amendment to Lease dated as of April 18, 2006 between Ground Lessor and Town & Country Investors, LLC;
- (d) The Ground Lease (which includes the documents referenced in paragraph 1(c)) constitutes the full and entire understanding and agreement between Ground Lessor and Ground Lessee pertaining to the Ground Lease and the Leased Property.
- (e) Ground Lessee has accepted the Leased Property.
- (f) The next monthly rent payment by Ground Lessee is due on November 1, 2006, and Ground Lessee has made all rent payments required to be made under the Ground Lease. The amount of the current rent payment is \$8,333.33 monthly, subject to any increase of rent payment as set forth in the Ground Lease.
- (g) No rent has been paid by Ground Lessee more than thirty (30) days before its due date (except for any security deposit).
- (h) To the best of its knowledge, Ground Lessor is not in breach or default of any of the terms, conditions or provisions of the Ground Lease.
- (i) The Ground Lease is in full force and effect, and to the best of Ground Lessor's knowledge, Ground Lessee is not, in any respect, in default under the terms and provisions of the Ground Lease. Further, to the best of Ground Lessor's knowledge, Ground Lessor knows of no event which would constitute a default under the terms of the Ground Lease by either Ground Lessee or Ground Lessor.
- (j) The Ground Lease was originally for a term of fifty (50) years, commencing January 1, 1981, and the expiration has been extended to October 31, 2059.
- (k) Ground Lessor has not currently encumbered its fee interest in the Leased Premises to any lender or financial institution, whether by way of mortgage, deed of trust or other security instruments.
- (l) Ground Lessor hereby consents to the extension of credit by Lender to Ground Lessee and the encumbrance of Ground Lessee's interest in the Ground Lease pursuant to a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing by Ground Lessee in favor of Lender ("Deed of Trust").
- (m) Ground Lessor has been further advised by Ground Lessee that Lender has required, in order to induce Lender to make the Loan, among other matters, the delivery of the following statements, agreements, and representations by Ground Lessor to Lender:
 - (i) Intentionally deleted.
 - (ii) Ground Lessor shall deliver to Lender a copy of any notice relating to a default by Ground Lessee under the Ground Lease at the time it gives such notice to Ground Lessee. All such notices shall be given to Lender in accordance with the Ground Lease, at FIRST BANK OF BEVERLY HILLS, 23901 Calabasas Road, Suite 1050, Calabasas, California 91302, Attention: Note Department, or to such other address as Lender may hereinafter designate in writing and delivered in the manner provided for notice to be given under the Ground Lease.
 - (iii) Ground Lessor further acknowledges that upon the making of the Loan, Lender shall be a "Leasehold Mortgagee" (as defined in the Ground Lease). Accordingly, Lender shall be a direct beneficiary of all of the rights and privileges of

a Leasehold Mortgagee under the Ground Lease and Ground Lessor shall owe directly to Lender all of the duties that the Ground Lessor owes to a Leasehold Mortgagee under the Ground Lease.

2. Ground Lessor and Ground Lessee hereby agree with and for the benefit of Lender that:
 - (a) Intentionally deleted.
 - (b) Any and all eminent domain or condemnation awards or damages recoverable by the Ground Lessee shall first be applied in payment of the then outstanding balance, if any, of the Loan and the balance of such awards and damages, if any, shall be paid to Ground Lessor and Ground Lessee, as their interest may appear.
 - (c) Ground Lessor hereby waives the right to obtain, for any liability of Ground Lessee that arises, accrues, or is the subject of legal action while the Deed of Trust is in existence a lien on any equipment or furnishings of Lessee that may constitute a part of the improvements on the Leased Property.
 - (d) Unless this Agreement contradicts a term or provision of the Ground Lease, it is the parties' intent that this Agreement and the Ground Lease be construed as though no conflict exists between their terms. In the event of a conflict between the terms of the Ground Lease and this Agreement as it relates to Lender, the terms of this Agreement shall control.
3. This Agreement may be executed in two or more counterparts, which, when taken together, shall constitute one and the same original.

[Signature Page to follow]

Dated: October 17, 2006

“Ground Lessor”

THE CITY OF TORRANCE
a municipal corporation

By: _____
Name: _____
Authorized Representative

Attest:

By: _____
Name: _____

Approved as to form:

By: _____
Name: _____

“Ground Lessee”/”Borrower”

Town & Country Investors, LLC,
an California limited liability company

By: Scott Douglas
Its: Managing Member

By: Alan Wu
Its: Managing Member

“Lender”

First Bank of Beverly Hills

By: Cherry Mijares
Its: Assistant Vice President

[ALL SIGNATURES MUST BE ACKNOWLEDGED]

STATE OF _____)
) ss
COUNTY OF _____)

On _____, 2006, before me, _____, a Notary Public in and for said County and State, personally appeared _____, 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.

Notary Public

STATE OF _____)

COUNTY OF _____) ss
_____)

On _____, 2006, before me, _____, a Notary Public in and for said County and State, personally appeared _____, 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.

Notary Public

STATE OF _____)
) ss
COUNTY OF _____)

On _____, 2006, before me, _____, a Notary Public in and for said County and State, personally appeared _____, 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.

Notary Public

STATE OF _____)

COUNTY OF _____) ss
)

On _____, 2006, before me, _____, a Notary Public in and for said County and State, personally appeared _____, 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.

Notary Public

EXHIBIT "A"
LEGAL DESCRIPTION

THE REAL PROPERTY REFERRED TO HEREIN IS ALL THAT CERTAIN REAL PROPERTY LOCATED IN THE CITY OF TORRANCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

THAT PORTION OF LOT 1 IN TRACT NO. 9765, IN THE CITY OF TORRANCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 170, PAGES 10 TO 12 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTERLINES OF PACIFIC COAST HIGHWAY AND ROLLING HILLS ROAD (FORMERLY ROSECROFT AVENUE) AS SAME IS SHOWN ON MAP OF TRACT NO. 18416 FILED IN BOOK 457, PAGES 36, 37 AND 38 IN THE OFFICE OF THE COUNTY RECORDER; THENCE AT RIGHT ANGLES TO SAID CENTERLINE OF SAID PACIFIC COAST HIGHWAY, NORTH 40° 59' 30" EAST, 50.00 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID PACIFIC COAST HIGHWAY; THENCE NORTH 49° 00' 30" WEST, 32.92 FEET ALONG SAID NORTHEASTERLY LINE TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE 344.08 FEET TO A POINT OF TANGENCY WITH A CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 13,956.20 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0° 27' 19", AN ARC DISTANCE OF 110.90 FEET TO A POINT ON SAID CURVE, A RADIAL LINE THROUGH SAID POINT BEARS SOUTH 41° 26' 49" WEST; THENCE NORTH 41° 26' 49" EAST, 297.00 FEET ALONG SAID RADIAL LINE TO A POINT ON A CIRCULAR CURVE CONCENTRIC WITH SAID NORTHEASTERLY CURVED LINE OF PACIFIC COAST HIGHWAY AND HAVING A RADIUS OF 13,659.20 FEET; THENCE SOUTHEASTERLY ALONG SAID CONCENTRIC CURVE THROUGH A CENTRAL ANGLE OF 0° 27' 19", AN ARC DISTANCE OF 108.54 FEET TO A POINT OF TANGENCY WITH A LINE BEARING NORTH 49° 00' 30" WEST; THENCE SOUTH 49° 00' 30" EAST, 344.08 FEET TO A POINT OF TANGENCY WITH A CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 25.00 FEET; THENCE SOUTHEASTERLY, SOUTHERLY AND SOUTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 90° 00' 00", AN ARC DISTANCE OF 39.27 FEET TO A POINT OF TANGENCY WITH A LINE BEARING NORTH 40° 59' 30" EAST; THENCE SOUTH 40° 59' 30" WEST 247.00 FEET TO A POINT OF TANGENCY WITH A CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 25.00 FEET; THENCE SOUTHWESTERLY, WESTERLY AND NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 90° 00' 00", AN ARC DISTANCE OF 39.27 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT ALL MINERALS AND ALL PETROLEUM IN SAID LAND, TOGETHER WITH THE EXCLUSIVE RIGHT AT ANY AND ALL TIMES TO ENTER UPON SAID LANDS AND PROSPECT FOR, MINE FOR, AND REMOVE SUCH MINERALS OR PETROLEUM, WITH ALL NECESSARY AND CONVENIENT MEANS OF WORKING AND TRANSPORTING MATERIALS AND SUPPLIES; AND THE EXCLUSIVE RIGHT AT ANY TIME TO DRILL FROM ADJACENT PREMISES INTO AND THROUGH THE SUBSURFACE OF SAID LAND, IN ORDER TO RECOVER, REMOVE, AND TRANSPORT THEREFROM ANY MINERALS BY THE UNITED STATES OF AMERICA, IN DEED RECORDED MAY 13, 1948 AS INSTRUMENT NO. 2108 IN BOOK 27145, PAGE 362, OFFICIAL RECORDS.

BY DEED DATED MAY 5, 1961, EXECUTED BY THE UNITED STATES OF AMERICA, AND RECORDED MAY 31, 1961 AS INSTRUMENT NO. 2843 IN BOOK D-1237, PAGE 838, OFFICIAL RECORDS, ALL RIGHT, TITLE, AND INTEREST OF THE GRANTOR IN AND TO ALL MINERALS AND PETROLEUM, IN, OR UNDER THE LAND TO A DEPTH OF 500 FEET BELOW THE SURFACE THEREOF, TOGETHER WITH THE RIGHT TO ENTER UPON SAID PROPERTY TO PROSPECT FOR, MINE FOR, OR REMOVE SUCH MINERALS AND PETROLEUM, AND TOGETHER WITH THE RIGHT TO DRILL FROM LANDS ON THE TORRANCE MINUTES AIRPORT, OR FROM ADJACENT PREMISES, INTO AND THROUGH THE SUBSURFACE TO A DEPTH OF 500 FEET BELOW THE SURFACE TO A DEPTH OF 500 FEET BELOW THE SURFACE OF SAID LAND, WAS QUITCLAIMED TO THE RECORD OWNER.

PROPERTY COMMONLY KNOWN AS: 2801 - 2869 Pacific Coast Highway, Torrance, California

Parcel No.: 8940-314-034