

SDG03MAL

TYPE OF RECORD: ACTIVE NON-PERMANENT

CATEGORY OF RECORD: **CONTRACT**

NAME OF CONTRACTOR: SDG MACERICH PROPERTIES, L.P.

SUBJECT/PROJECT: 2424 HIGHWAY 6 & 50 - LOT A AND LOT B  
OF MESA MALL'S SECOND MINOR SUBDIVISION

PURPOSE: AGREEMENT FOR INDEMNITY TO HOLD THE  
CITY HARMLESS AGAINST LIABILITIES ARISING BY ANY PARTIES TO  
THE "OPERATING AGREEMENT" AND REA

PARCEL#: 2945-043-06-003

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 2003

EXPIRATION DATE: AFTER DATE THAT THE OPERATING  
AGREEMENT AND REA ARE REMOVED AS ENCUMBERANCES AGAINST THE  
PROPERTY

DESTRUCTION DATE: 6 YEARS AFTER EXPIRATION

AGREEMENT FOR INDEMNITY

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This Agreement for Indemnity (this "Agreement") is made as of March 19, 2003, by and between SDG MACERICH PROPERTIES, L.P., a Delaware limited partnership ("SDGM"), whose address is 401 Wilshire Boulevard, Suite 700, Santa Monica, California 90401, and THE CITY OF GRAND JUNCTION, a municipality organized and existing under the laws of the State of Colorado ("City").

RECITALS

- A SDGM is the owner of certain property in the City of Grand Junction, Colorado commonly known as the Mesa Mall shopping center.
- B SDGM has agreed to dedicate to City for public right of way purposes a portion of the Mesa Mall, which portion is more specifically described on Exhibit A hereto (the "Property").
- C In connection therewith, SDGM has agreed to use its good faith efforts to remove the Operating Agreement and REA described and defined on Exhibit B hereto.
- D The parties now desire to complete the dedication of the Property before completing the removal of the Operating Agreement and REA as encumbrances against the Property.
- E City is willing to accept such dedication in advance of such removal, but does not want to incur liability under the Operating Agreement or REA. However, City is willing to proceed if SDGM agrees to indemnify City against such liability, and SDGM is willing to indemnify City against such liability.

NOW, THEREFORE, based upon the foregoing recitals, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

- 1. **Indemnity.** SDGM shall indemnify, defend, protect and hold harmless the City, its officials, agents and employees (collectively, the "Benefited Parties") against any liabilities, damages, losses, liens, costs, or expenses (including attorneys' fees and disbursements) arising out of claims, demands, proceedings, causes of action or suits by any of the parties to the Operating Agreement and REA.
- 2. **Term of Agreement.** This Agreement shall terminate, and SDGM shall have no obligations under this Agreement with respect to any matter arising after the date that the Operating Agreement and REA are removed as encumbrances against the Property.

3. Miscellaneous.

3.1 Notices. All claims, notices, consents, approvals, requests, waivers and other communications hereunder must be made in writing and delivered by personal service, with a written receipt, or telecopied (with confirmation by personal delivery or mail) or sent by registered or certified mail, in a sealed envelope, postage prepaid, return receipt requested and addressed as follows:

If to SDGM: SDG Macerich Properties, L.P.  
c/o The Macerich Company  
401 Wilshire Boulevard, Suite 700  
Santa Monica, California 90401  
Attn: James H. Kinney, Esq.  
Tel (805) 642-6843  
Fax (310) 395-3521

With a copy to: SDG Macerich Properties, L.P.  
c/o The Macerich Company  
401 Wilshire Boulevard, Suite 700  
Santa Monica, California 90401  
Attn: General Counsel  
Tel (310) 899-6314  
Fax (310) 394-7692

and to: O'Melveny & Myers LLP  
400 South Hope Street  
Los Angeles, California 90071-2899  
Attn: F. Thomas Muller, Esq.  
Tel (213) 430-6510  
Fax (213) 430-6407

If to City: City of Grand Junction  
250 North 5th Street  
Grand Junction, Colorado 81501-2668  
Attn:  
Tel  
Fax

With a copy to: City of Grand Junction  
250 North 5th Street  
Grand Junction, Colorado 81501-2668  
Attn: City Attorney  
Tel (970) 244-1501  
Fax (970) 244-1456

Any such notice personally served shall be deemed given when actually received by any officer, employee or agent of the recipient. Any such notice telecopied shall be deemed given when actually received by the recipient's telecopier. Any such notice by mail shall be deemed to have been received by the addressee seventy-two hours after postmarked by the United States Postal Service.

3.2 Attorneys' Fees. If any party institutes or threatens legal proceedings to determine or enforce its legal rights under this Agreement, the non-prevailing party shall pay to the prevailing party or parties its or their reasonable attorneys' fees (including fees and charges of legal assistants and other non-attorney personnel performing services under the supervision of an attorney), court costs, cost of investigation and other expenses incurred in connection therewith.

3.3 Assignment. City shall not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of SDGM. SDGM may assign this Agreement and delegate its duties hereunder in connection with a merger or corporate reorganization or by operation of law, or to any successor owner of Mesa Mall, if it notifies City of such assignment and delegation. Such assignment shall fully release SDGM from any obligation hereunder arising after the date of such assignment.

3.4 Complete Agreement. No communications between or among the parties hereto or their representatives, whether express or implied, occurring either before or after the execution of this Agreement, shall have any bearing or effect upon this Agreement, it being understood that this Agreement evidences the complete agreement among the parties hereto. This Agreement supersedes all prior offers, contracts, agreements and arrangements between the parties concerning the subject matter of this Agreement. This Agreement may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

3.5 Counterparts. This Agreement may be executed in counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

3.6 Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of such provision and this Agreement shall not be affected thereby, and each other term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

3.7 Interpretation. Headings are solely for the convenience of the parties and are not a part of this Agreement. The Recitals and Exhibits to this Agreement are incorporated as a part of this Agreement. Unless otherwise indicated, references in this Agreement to an Exhibit or Section refer to Exhibits to or Sections of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. The term "including" means "including without limitation". The term "City" means City and its permitted successors and assigns. This Agreement has been negotiated by

both parties and shall not be construed for or against either party. There are no third party beneficiaries of this Agreement.

3.8 Applicable Law. This Agreement and the transaction contemplated hereby shall be construed in accordance with and governed by the laws of the State of Colorado.

IN WITNESS WHEREOF, SDGM has executed this Agreement as of the date first set forth above.

**SDG MACERICH PROPERTIES, L.P.,**  
a Delaware limited partnership

By: Macerich Property EQGP Corp.,  
a Delaware corporation,  
Its general partner

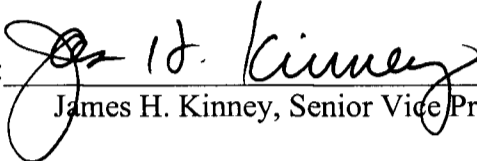
By:   
James H. Kinney, Senior Vice President

EXHIBIT A  
LEGAL DESCRIPTION

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A parcel for right-of-way purposes being a portion of Lot A of Mesa Mall's Second Minor Subdivision, according to the plat recorded at Reception No. 1717252 of the Mesa County records, situated in the SW 1/4 of Section 4, Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado, said parcel being more particularly described as follows:

Beginning at the corner common to said Lot A and Lot B of Mesa Mall's Second Minor Subdivision;

Thence along the North line of said Lot A, North 89°59'40" East, a distance of 75.18 feet

Thence along the Easterly line of said Lot A, South 00°00'20" East, a distance of 13.62 feet;

Thence South 45°03'01" West, a distance of 6.31 feet;

Thence South 89°59'40" West, a distance of 10.70 feet;

Thence North 00°06'20" East, a distance of 16.08 feet;

Thence South 89°59'40" West, a distance of 45.00 feet;

Thence South 00°06'20" West, a distance of 16.08 feet;

Thence South 89°59'40" West, a distance of 14.60 feet;

Thence North 44°56'59" West, a distance of 0.59 feet to the line common to said Lots A and B;

Thence North 00°00'20" West, a distance of 17.67 feet to the Point of Beginning.

Containing 0.014 Acres, more or less.

A parcel for right-of-way purposes being a portion of Lot B of Mesa Mall's Second Minor Subdivision, according to the plat recorded at Reception No. 1717252 of the Mesa County records, situated in the SW 1/4 of Section 4, Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado, being more particularly described as follows:

Beginning at a point on the North line of said Lot B, whence the Northwest corner of Lot B of Mesa Mall's Second Minor Subdivision bears North 89°53'40" West, a distance of 526.85 feet;

Thence South 89°53'40" East, a distance of 17.63 feet to the Northeast corner of said Lot B;

Thence along the East line of said Lot B, South 00°06'21" West, a distance of 17.67 feet;

Thence North 44°56'59" West, a distance of 24.96 feet to the Point of Beginning.

Containing 0.003 Acres, more or less.

## EXHIBIT B

DESCRIPTION OF OPERATING AGREEMENT AND REA

As used in this Agreement:

“Operating Agreement” shall mean that certain Operating Agreement dated as of January 31, 1980, which was filed for record March 5, 1980, and recorded that date in Mesa County, Colorado, in Book 1247, Page 110, as Reception No. 1217794, amended by First Amendment of Operating Agreement dated as of April 29, 1981, which was filed for record June 15, 1981, and recorded that date in Mesa County, Colorado, Book 1318, Page 580, as Reception No. 1260054, amended by Second Amendment of Operating Agreement dated as of the June 1, 1982, which was filed for record October 6, 1982, and recorded that date in Mesa County, Colorado, Book 1394, Page 237, as Reception No. 1304583, amended by Third Amendment of Operating Agreement, dated September 1, 1982, which was filed for record December 23, 1982, and recorded that date in Mesa County, Colorado, Book 1406, Page 723, as Reception No. 1311423, amended by Fourth Amendment of Operating Agreement dated as of February 1, 1984, which was filed for record September 5, 1984, and recorded that date in Mesa County, Colorado, Book 1508, Page 592, as Reception No. 1370853, amended by Fifth Amendment of Operating Agreement dated as of December 30, 1993, which was filed for record January 10, 1997, and recorded that date in Mesa County, Colorado, Book 2293, Page 603, as Reception No. 1784633.

“REA” shall mean that certain Reciprocal Easement and Operation Agreement, dated as of July 31, 1992, which recorded on July 30, 1992, in the Official Records of Mesa County, Colorado, in Book 1914, Page 685, as Reception Number 1609877.