

**AGREEMENT GOVERNING USE OF  
EDUCATION CONTRIBUTION**

This Agreement Governing Use of Education Contribution (this "Agreement") is made and entered into this 20<sup>th</sup> day of October, 2003, by and between the City of Costa Mesa, a municipal corporation (the "City") and the Costa Mesa High School Foundation, a California non-profit public benefit corporation (the "Foundation").

WHEREAS, the City, C.J. Segerstrom & Sons, a California general partnership, Segerstrom Properties LLC, a California limited liability company, and Henry T. Segerstrom Properties LLC, a California limited liability company, entered into a Development Agreement dated December 3, 2001 and recorded March 20, 2002 (the "Development Agreement") (C.J. Segerstrom & Sons, Segerstrom Properties LLC and Henry T. Segerstrom Properties LLC shall be collectively referred to as the "Segerstroms"); and

WHEREAS, in consideration for entering the Development Agreement, and as acknowledged in Section 2.1 of the Development Agreement, the City required the Segerstroms to provide the community benefits described in Exhibit F of the Development Agreement; and

WHEREAS, pursuant to Section C of Exhibit F to the Development Agreement ("Section C") the Segerstroms agreed to contribute \$2,000,000 for expanding educational advancement opportunities and facilities in Costa Mesa, California (the "Contribution"); and

WHEREAS, Section C specifies that \$1,000,000 of the Contribution (the "Initial Contribution") shall go towards Costa Mesa High School programs/facilities; and

WHEREAS, pursuant to Section C, the Contribution has been initially paid to the City and held in a separate account earmarked for expanding educational advancement opportunities and facilities in Costa Mesa; and

WHEREAS, pursuant to Section C, the Foundation was duly formed according to the laws of the State of California as a non-profit public benefit corporation to accept and manage the Initial Contribution earmarked for Costa Mesa High School; and

WHEREAS, the Foundation has adopted or will adopt its Bylaws (the "Bylaws"), attached hereto as Exhibit A; and

WHEREAS, the Bylaws contain provisions setting forth how the Initial Contribution may be expended and granting the City the authorization to enforce those provisions in a court of law; and

WHEREAS, Section C provides that the City enter into such agreements with the Foundation as may be necessary to ensure that the Foundation's share of the Contribution be used for the exclusive benefit of Costa Mesa students; and

WHEREAS, the City wishes the parties to enter into this Agreement to ensure that the Foundation will use its share of the Contribution in accordance with the restrictions contained in the Development Agreement and the Bylaws.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1. The Foundation covenants to the City that it shall use the Initial Contribution in accordance with the requirements of Section C. In the event a breach of this Agreement results from the use of any money from the Initial Contribution for any unauthorized purpose, the Foundation shall replace as much as possible such money with funds from other sources available to the Foundation.
2. The Foundation covenants to the City that it will comply with Sections 3.9(a), 5.5, 5.7, 5.8, 5.11 and 5.12 of the Bylaws. Any notice of a meeting at which the aforementioned sections of the Bylaws are to be amended, repealed or modified shall include notice of such proposed action. A copy of such notice must be furnished to the City Attorney at least seventy-two (72) hours before the start of such meeting at the following address: 77 Fair Drive, Costa Mesa, California 92626.
3. The Foundation shall not spend any portion of the Initial Contribution or any income earned on the Initial Contribution in excess of Five Thousand Dollars (\$5,000) without first obtaining a co-signature of the City's Finance Director on any checks or drafts drawing more than Five Thousand Dollars (\$5,000) from the Initial Contribution or any income earned on the Initial Contribution. Within sixty (60) days of the execution of this Agreement, the Foundation shall create and adopt an investment policy for all investments of the Initial Contribution or any income earned on the Initial Contribution. Such investment policy shall be subject to the reasonable approval of the City's Finance Director. The City and the Foundation agree and acknowledge that the role of the City's Finance Director with respect to co-signatures and approvals under this Section 3, is not discretionary in nature, but instead is simply an administrative safeguard. Accordingly, with respect to requests for co-signature and approvals of the City's Finance Director under this Section 3, the City shall cause its Finance Director to: (i) respond to all such requests within five (5) business days, and (ii) approve and/or co-sign all requests that do not violate Sections 1 and 2 of this Agreement.
4. In the event a breach of this Agreement results from the use of any portion of the Initial Contribution for any unauthorized purpose (*i.e.*, a purpose not authorized by Section C or the Bylaws), the City shall have the option, at its sole discretion, to demand from the Foundation the return of the then remaining portion of the Initial Contribution and any remaining funds representing income generated from the Initial Contribution for placement with another or new non-profit foundation formed pursuant to Section C. The

Foundation shall return the remaining funds within 30 days of the receipt of such demand. The City's rights pursuant to this Section 4 shall be in addition to its rights under any other provision of this Agreement, but shall be exercisable only upon a resolution adopted by two-thirds of the members of the City Council after a hearing as to which the Foundation receives written notice and an opportunity to address the City Council.

5. The City shall have the right to appoint a liaison to the Foundation (the "City Liaison"). The City Liaison shall not be a director, but shall be entitled to attend and participate in meetings of the Foundation's board of directors (the "Board") or any committee thereof and to advise the Board or any committee thereof as the Board deems appropriate from time to time; provided, that the Board may, in its sole discretion, exclude the City Liaison from meetings discussing litigation or fundraising matters.

6. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement are not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof.

7. Only a writing executed by the parties hereto may amend this Agreement.

8. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

9. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

10. The delay or failure of either party at any time to require performance or compliance by the other with any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

11. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect

the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance.

12. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so, the parties hereto are formally bound to the provisions of this Agreement.

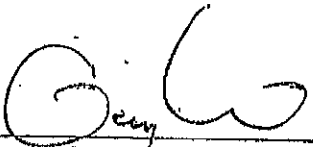
13. This Agreement shall be binding upon and inure solely to the benefit of each party hereto and their respective successors and assigns, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement

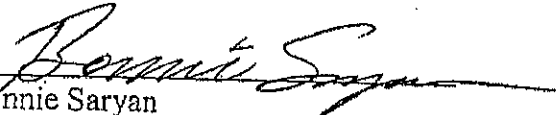
14. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and undertakings, both written and oral, between the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.


CITY OF COSTA MESA,  
a municipal corporation

COSTA MESA HIGH SCHOOL  
FOUNDATION,  
a California non-profit public  
benefit corporation

  
\_\_\_\_\_  
Mayor of the City of Costa Mesa

  
\_\_\_\_\_  
Bonnie Saryan  
President

ATTEST:

  
\_\_\_\_\_  
Deputy City Clerk and ex-officio Clerk  
of the City of Costa Mesa

APPROVED AS TO FORM AND CONTENT

*for*   
\_\_\_\_\_  
City Attorney

**BYLAWS**

**OF**

**COSTA MESA HIGH SCHOOL FOUNDATION,  
a California nonprofit public benefit corporation**

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BYLAWS  
OF  
COSTA MESA HIGH SCHOOL FOUNDATION,  
a California nonprofit public benefit corporation

ARTICLE I.  
OFFICES

Section 1.1 Principal Office. The corporation's principal office shall be fixed and located at such place as the Board of Directors (the "Board") shall determine. The Board is granted full power and authority to change said principal office from one location to another.

Section 1.2 Other Offices. Branch or subordinate offices may be established at any time by the Board at any place or places.

ARTICLE II.  
MEMBERSHIP

Section 2.1 Members. The corporation shall have no members. Any action which would otherwise require approval by a majority of all members or approval by the members shall require only approval of the Board. All rights which would otherwise vest in the members shall vest in the directors.

Section 2.2 Associates. Nothing in this Article II shall be construed as limiting the right of the corporation to refer to persons associated with it as "members" even though such persons are not members, and no such reference shall constitute anyone a member within the meaning of Section 5056 of the California Nonprofit Corporation Law (the "Law"). The corporation may confer by amendment of its Articles or of these Bylaws some or all of the rights of a member, as set forth in the Law, upon any person or persons who do not have the right to vote for the election of directors or on a disposition of substantially all of the assets of the corporation or on a merger or on a dissolution or on changes to the corporation's Articles of Incorporation (the "Articles") or Bylaws, but no such person shall be a member within the meaning of said Section 5056.

ARTICLE III.  
DIRECTORS

Section 3.1 Powers. Subject to the limitations of the Articles and these Bylaws, the activities and affairs of the corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board. The Board may delegate the management of the activities of the corporation to any person or persons, a management company or committees, however composed, *provided* that the activities and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board. Without prejudice to such general powers, but subject to the same limitations, it is hereby expressly declared that the Board shall have the following powers in addition to the other powers enumerated in these Bylaws:

(a) To select and remove all officers, agents and employees of the corporation, prescribe powers and duties for them as may not be inconsistent with law, the Articles or these Bylaws, fix their compensation and require from them such security, if any, for faithful service as the Board may deem appropriate.

(b) To conduct, manage and control the affairs and activities of the corporation, and to make such rules and regulations therefor not inconsistent with law, the Articles or these Bylaws, as they may deem appropriate.

(c) To adopt, make and use a corporate seal and to alter the form of such seal from time to time as they may deem appropriate.

Section 3.2 Number. The authorized number of directors shall be between five (5) and fifteen (15), the actual number to be established from time to time by the vote of two-thirds (2/3rds) of the directors then qualified to act. In the absence of any such resolution, the authorized number of directors shall be seven (7).

Section 3.3 Term. The initial directors of the corporation shall establish the term of service for which directors are elected; provided, however, until the initial directors have established such terms of service, the initial directors shall hold office for a term of three years.

Section 3.4 Selection. The initial directors of the corporation shall be those persons selected by the sole incorporator of the corporation. Thereafter, the directors of the corporation shall be selected as follows: at each meeting of the Board at which the terms of all directors are scheduled to expire, one director shall be designated by the acting President of the Parent Teacher Student Association (the "PTSA") of Costa Mesa High School ("CMHS") and the remaining directors shall be elected by a plurality of the directors in office immediately prior to this annual meeting. If these Bylaws are amended to create different classes of directors, then the right of the President of CMHS to designate one director shall continue, but such person may only designate one director for the entire board, and such designation may be made every other year in the case of two classes of directors and every third year in the case of three classes of directors.

Section 3.5 Qualification. The Board may, from time to time, establish additional guidelines as the Board shall deem appropriate in connection with consideration of prospective directors. The principal of CMHS shall not be a director, but shall be invited to participate in Board or committee meetings and to advise the Board and committees as the Board deems appropriate from time to time; *provided*, that the Board may, in its sole discretion, exclude the principal from meetings discussing litigation or fundraising matters.

Section 3.6 Interested Persons. In accordance with Section 5227 of the Law, not more than forty-nine percent (49%) of the persons serving on the Board at any time may be "interested persons." For purposes of this Section 3.6, an "interested person" is:

(a) Any person being compensated by the corporation for services rendered to it within the previous twelve months, whether as a full-time or part-time employee, independent contractor or otherwise; or

(b) Any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law or father-in-law of any such person.

Any violation of the provisions of this Section 3.6 shall not affect the validity or enforceability of any transaction entered into by the corporation.

Section 3.7 Vacancies. Subject to the provisions of Section 5226 of the Law, any director may resign effective upon giving written notice to the President, the Secretary or the Board, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be selected before such time, to take office when the resignation becomes effective.

Vacancies on the Board shall be filled in the same manner as the director whose office is vacant was selected, *provided* that any vacancy to be filled by election by directors may be filled by a majority of the remaining directors, although less than a quorum, or by a sole remaining director at any regular or special meeting of the Board. Each director so selected shall hold office until the expiration of the term of the replaced director and until a successor has been selected and qualified.

A vacancy on the Board shall be deemed to exist in case of the death, resignation or removal of any director or an increase in the authorized number of directors.

The Board may declare vacant the office of a director who has been declared of unsound mind by a final order of court, or convicted of a felony, or been found by a final order or judgment of any court to have breached any duty arising under Sections 5230 through 5239 of the Law.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of the director's term of office.

Section 3.8 Place of Meeting. Meetings of the Board shall be held at any place within or without the State of California which has been designated from time to time by the Board. In the absence of such designation, regular meetings shall be held at the principal office of the corporation.

Section 3.9 Open to the Public.

(a) All meetings of the Board (except those meetings held to discuss litigation and fundraising) shall be noticed and open to the public ("Public Meetings"). Notice of such Public Meetings shall include the time, location and agenda of the Public Meeting and shall be posted at least seventy-two (72) hours before the Public Meeting in a publicly accessible location at the City of Costa Mesa (the "City") City Hall, the City's internet website and CMHS. For purposes of this Section 3.9(a), "litigation" includes any pending, concluded, threatened or potential adjudicatory proceeding before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(b) Absent (1) a legal opinion issued from the Office of the Attorney General of the State of California or (2) a decision by a court of competent jurisdiction, which in

each case states that the meetings of the Board need not comply with California Government Code Sections 54950 et seq., (the "Brown Act"), the corporation shall use reasonable efforts to comply with the Brown Act, as if it were subject to the same.

Section 3.10 Annual Meetings. The Board shall hold an annual meeting for the purposes of organization, selection of directors and officers and the transaction of other business. Annual meetings of the Board shall be held on such dates and at such times as may be fixed by the Board.

Section 3.11 Regular Meetings. Regular meetings of the Board may be held on such dates and at such times as may be fixed by the Board.

Section 3.12 Special Meetings. Special meetings of the Board for any purpose or purposes may be called at any time by the President or any two directors.

Section 3.13 Notice. Annual and special meetings of the Board shall be held upon at least four (4) days notice by first-class mail or seventy-two (72) hours notice given personally or by telephone, telegraph, facsimile, e-mail, overnight courier or other similar means of communication.

Any such notice shall be addressed or delivered to each director at such director's address as it is shown upon the records of the corporation or as may have been given to the corporation by the director for purposes of notice or, if such address is not shown on such records or is not readily ascertainable, at the place where the meetings of the directors are regularly held.

Notice by mail shall be deemed to have been given at the time a written notice is deposited in the United States mails, postage prepaid. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice by electronic means, to the recipient. Oral notice shall be deemed to have been given at the time it is communicated, in person or by telephone or wireless, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the receiver.

Section 3.14 Quorum. A majority of directors then in office shall constitute a quorum of the Board for the transaction of business, except to adjourn as provided in Section 3.17. Each director shall be entitled to one vote. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board, unless a greater number be required by law or by the Articles, except as provided in the next sentence. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for such meeting.

Section 3.15 Participation in Meetings by Conference Telephone. Directors may participate in a meeting of the Board, or a committee meeting, through-use of a conference telephone or similar communications equipment, so long as all members participating in such meeting can hear one another.

Section 3.16 Waiver of Notice. Notice of a meeting need not be given to any director who signs a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 3.17 Adjournment. A majority of the directors present, whether or not a quorum is present, may adjourn any Board or committee meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place be fixed at the meeting adjourned, except as provided in the next sentence. If the meeting is adjourned for more than twenty-four (24) hours, reasonable notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

Section 3.18 Rights of Inspection. Every director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the corporation.

Section 3.19 Chairman & Conduct of Meetings.

(a) Chairman of Meetings. If the person serving as President is a director of the corporation, such person shall, when present, preside at all regular and special meetings of the Board, shall present at the annual meeting of the Board a report on the activities of the corporation during the preceding year, and shall generally perform all other duties incident to the office, required by the Bylaws or from time to time assigned to him or her by the Board. If (x) the President who is also a director of the corporation does not attend a meeting of the Board, or (y) the person serving as President is not a director of the corporation, at each meeting of the Board, the Board shall elect, from among those present, a chairman who shall preside at such meeting.

(b) Conduct of Meetings. The person presiding at a meeting of the Board, pursuant to Section 3.19(a), shall conduct each such meeting in a businesslike and fair manner, but, in the absence of any Board resolutions to the contrary, shall not be obligated to follow any technical, formal, or parliamentary rules or principles of procedure. Such person's rulings on procedural matters shall be conclusive and binding on the Board, unless at the time of a ruling a request for a vote is made by a majority of the directors present at the meeting, in which case the decision of a majority of such directors shall be conclusive and binding. Without limiting the generality of the foregoing, such person shall have all of the powers usually vested in the chairman of a meeting of directors.

Section 3.20 Executive Committee. The Board may, by resolution adopted by a majority of the number of directors then in office, establish an executive committee consisting of such number of directors as may be determined by the Board which, except when the Board is in session, and except as its powers may be otherwise limited by the Board, shall have and may exercise the powers of the Board in the management of the business and affairs of the

corporation and may authorize the seal of the corporation to be affixed to all papers which may require it.

The executive committee shall also have the power of general supervision, management and control of the business of the corporation and over its several officers.

Appointments to the executive committee shall be by a majority vote of the directors then in office. A majority of all the members of the executive committee may determine its rules of procedure unless the Board shall otherwise provide. The Board shall have the power to change the members of the executive committee at any time, either with or without cause and to fill vacancies; *provided* that all appointments to the executive committee shall be by a majority vote of the directors then in office.

#### Section 3.21 Nominating Committee.

The Board may, by resolution adopted by a majority of the number of directors then in office, establish a nominating committee consisting of such number of directors as may be determined by the Board. The nominating committee shall present candidates to the Board to be considered as directors of the corporation. Appointments to the nominating committee shall be by a majority vote of the directors then in office. A majority of all the members of the nominating committee may determine its rules of procedure unless the Board shall otherwise provide. The Board shall have the power to change the members of the nominating committee at any time, either with or without cause and to fill vacancies; *provided* that all appointments to the nominating committee shall be by a majority vote of the directors then in office.

Section 3.22 Standing or Special Committees. In the event that the Board determines that the management of the corporation would be benefited by the establishment of one or more standing or special committees in addition to the executive committee, the Board may from time to time establish one or more such committees.

The establishment of a standing or special committee shall be effected by a resolution of the Board approved by the vote of the majority of the directors then in office, which specifically sets forth the powers and duties delegated to such committee. Each such committee shall consist of two (2) or more directors and such other persons who are not members of the Board, as determined by the Board, and shall be presided over by a director selected by the Board. The Board may designate one or more persons as alternate members of any committee, and such alternates may replace any absent or disqualified member of the committee at any meeting of the committee.

The term "standing committee" or "special committee" shall mean any committee appointed by the Board which is authorized by specific delegation, without further Board action, to make and implement decisions on behalf of the Board, or to implement, with some degree of discretion, decisions of the Board pursuant to guidelines established by the Board. Notice of, and procedures for, meetings of standing or special committees shall be as prescribed by the chairman of each such standing or special committee, and meetings of standing or special committees may be called by the Board, the chairman of the standing or special committee, or two or more members of the standing or special committee.

Section 3.23 Limitations Upon Committees of the Board. No committee of the Board, including any executive committee, shall have any of the authority of the Board with respect to:

- (a) the filling of vacancies on the Board or on any committee of the Board;
- (b) the amendment or repeal of Bylaws or the adoption of new Bylaws;
- (c) the appointment of other committees of the Board or the members thereof;
- (d) the expenditure of corporate funds to support a nominee for director;
- (e) the expenditure of corporate funds in excess of the limitations provided for in Section 5.5;
- (f) the election, appointment or removal of any member of any committee or any director or officer of the corporation;
- (g) the amendment or restatement of the Articles;
- (h) the adoption of a plan of merger or plan of consolidation with another corporation;
- (i) the authorization to sell, lease, exchange or mortgage of all or substantially all of the property and assets of the corporation;
- (j) the authorization to voluntarily dissolve the corporation or to revoke proceedings therefor;
- (k) the adoption of a plan for the distribution of the assets of the corporation;
- (l) the amendment, alteration or repeal of any resolution of the Board; or
- (m) the approval of any self-dealing transaction, except that when it is not reasonably practicable to obtain approval of the Board prior to entering into such a transaction, a committee authorized by the Board may approve the transaction in a manner consistent with the standards set forth in Section 5233(d) of the Law subject to ratification by a majority of the directors then in office (without counting the vote of any interested director) at the next meeting of the Board.

Rules governing procedures for meetings of any committee of the Board shall be as established by the Board, or in the absence thereof, by the committee itself. If no rules are established, then the rules that govern the directors shall govern each committee. All committees are to report promptly to the Board and only take such action(s) as is specifically designated in the Bylaws or in the resolution chartering the committee. Members of a committee shall serve until the next annual meeting of the Board or until their successors are appointed.

Section 3.24 Advisory Commissions. The Board, the executive committee or the President may from time to time appoint such advisory commissions as deemed appropriate,

consisting of directors or persons who are not directors, but such advisory commissions shall not be deemed committees of the Board and shall not exercise any powers of the Board. Notice of, and procedures for, meetings of advisory commissions shall be as prescribed by the chairman of each such advisory commission, and meetings of advisory commissions may be called by the Board, the executive committee, the President or the chairman of the advisory commission.

Section 3.25 Fees and Compensation. Directors and members of committees or commissions shall not receive any compensation for their services; *provided, however*, that the corporation may reimburse any director or member for expenses that they reasonably incurred in their performance of their duties, as may be determined by the Board.

Notwithstanding the foregoing, this corporation shall not make any loan of money or property to, or guarantee the obligation of, any director or officer, unless approved by the Attorney General or otherwise permitted by the Law; *provided, however*, that the corporation may advance money to a director or officer of the corporation for expenses reasonably anticipated to be incurred in the performance of the duties of such officer or director, *provided* that in the absence of any such advance, such director or officer would be entitled to be reimbursed for such expenses by the corporation. Subject to the provisions of Section 3.6, nothing contained in this Section 3.25 shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee or otherwise, and receiving compensation therefor.

Section 3.26 Removal of Director for Cause. The Board may remove a director from office for cause. Cause shall mean any director who has been declared of unsound mind by a final order of court, or convicted of a felony, or been found by a final order or judgment of any court to have breached any duty under Article 3 of the Law, or for failure to attend at least fifty percent (50%) of the Board meetings held over the previous twelve (12) months, unless excused by the President.

#### ARTICLE IV. OFFICERS

Section 4.1 Officers. The officers of the corporation shall be a President, a Secretary and a Chief Financial Officer. The corporation may also have, at the discretion of the Board, one or more Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers, and such other officers as may be elected or appointed in accordance with the provisions of Section 4.3. Any number of offices may be held by the same person except that neither the Secretary nor the Chief Financial Officer may serve concurrently as the President.

Section 4.2 Election. The officers of the corporation, except such officers as may be elected or appointed in accordance with the provisions of Section 4.3 or Section 4.5, shall be chosen annually by, and shall serve at the pleasure of, the Board, and shall hold their respective offices until their resignation, removal or other disqualification from service, or until their respective successors shall be elected.

Section 4.3 Subordinate Officers. The Board may elect, and the President may appoint, such other officers as the business of the corporation may require, each of whom shall



hold office for such period, have such authority and perform such duties as are provided in these Bylaws or as the Board or the President may from time to time determine consistent with these Bylaws and any actions of the Board.

Section 4.4 Removal and Resignation. Any officer or agent may be removed by the Board, or a committee appointed by the Board for such purpose, with or without cause, whenever in its judgment the best interest of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not in itself create contract rights.

Any officer may resign at any time by giving written notice to the corporation, but without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.5 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these Bylaws for regular election or appointment to such office, *provided* that such vacancies shall be filled as they occur and not on an annual basis.

Section 4.6 President. The President is the general manager and chief executive officer of the corporation and has, subject to the control of the Board, general supervision, direction and control of the business and officers of the corporation. In accordance with Section 3.19, the President shall preside at meetings of the Board. The President has the general powers and duties of management usually vested in the office of president and general manager of a corporation and such other powers and duties as may be prescribed by the Board.

Section 4.7 Vice President. In the absence or disability of the President, the Vice President shall perform all the duties of the President and, when so acting, shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice President and any additional Vice Presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board.

Section 4.8 Secretary. The Secretary shall keep or cause to be kept, at the principal office or such other place as the Board may order, a book of minutes of all meetings of the Board and its committees, with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at Board and committee meetings, and the proceedings thereof. The Secretary shall keep, or cause to be kept, at the principal office in the State of California the original or a copy of the corporation's Articles and Bylaws, as amended to date.

The Secretary shall give, or cause to be given, notice of all meetings of the Board and any committees thereof required by law or by these Bylaws to be given, shall keep the seal of the corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board.

Section 4.9 Chief Financial Officer. The Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the corporation. The books of account shall at all times be open to inspection by any director.

The Chief Financial Officer shall deposit all moneys and other valuables in the name and to the credit of the corporation with such depositaries as may be designated by the Board. The Chief Financial Officer shall disburse the funds of the corporation as may be ordered by the Board, shall render to the President and the directors, whenever they request it, an account of all transactions as Chief Financial Officer and of the financial condition of the corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board.

#### ARTICLE V. OTHER PROVISIONS

Section 5.1 Endorsement of Documents; Contracts. Subject to the provisions of applicable law, any note, mortgage, evidence of indebtedness, contract, conveyance or other instrument in writing and any assignment or endorsement thereof executed or entered into between the corporation and any other person, when signed by the President or any Vice President on the one hand, and the Secretary, or the Chief Financial Officer on the other hand, of the corporation shall be valid and binding on the corporation in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the same. Any such instruments may be signed by any other person or persons and in such manner as from time to time shall be determined by the Board, and, unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or amount.

Section 5.2 Representation of Shares of Other Corporations. The President and any other officer or officers authorized by the Board or the President are each authorized to vote, represent and exercise on behalf of the corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of the corporation. The authority herein granted may be exercised either by such officer in person or by any other person authorized to do so by proxy or power of attorney duly executed by said officer.

Section 5.3 Construction and Definitions. Unless the context otherwise requires, the general provisions, rules of construction and definitions contained in the General Provisions of the California Nonprofit Corporation Law and in the California Nonprofit Public Benefit Corporation Law shall govern the construction of these Bylaws.

Section 5.4 Maintenance of Certain Records. The accounting books, records, minutes of proceedings of the Board and the executive committee of the Board shall be kept at such place or places designated by the Board, or, in the absence of such designation, at the principal business office of the corporation. The minutes shall be kept in written or typed form, and the accounting books and records shall be kept either in written or typed form, or in any other form capable of being converted into written, typed or printed form.

Section 5.5 Finances of the Corporation.

(a) Initial Contribution. The initial contribution of One Million Dollars (\$1,000,000) given to the corporation in connection with that certain Development Agreement between C.J. Segerstrom & Sons, et. al. and the City dated as of December 3, 2001 (the "Initial Contribution"), shall be invested to generate income for the corporation; *provided, however*, that the corporation may make such expenditures or distributions of the Initial Contribution, so as to comply with the applicable requirements of federal and California laws regarding "public foundations". Notwithstanding the foregoing, the corporation may spend up to Fifty Thousand Dollars (\$50,000) of the Initial Contribution in the first twelve months of its existence.

(b) Income. Subject to the applicable requirements of federal and California laws regarding "public foundations," the corporation shall conduct its financial activities in such a manner so that:

(i) in each fiscal year, at least eighty-five percent (85%) of the income earned on the Initial Contribution shall be used for directly expanding educational advancement opportunities and facilities for CMHS, and no more than fifteen percent (15%) of the corporation's distributions shall be used for administrative, personnel, fundraising or similar expenses of the corporation;

(ii) in each fiscal year, no more than twenty-five percent <sup>25</sup>~~(25%)~~ of the income earned on the Initial Contribution shall be used for activities or facilities involving non-revenue generating athletics, and no portion of the interest earned on the Initial Contribution shall be used for activities or facilities involving revenue generating athletics; and

(iii) any income earned on the Initial Contribution from the time it was deposited with the City until the corporation's receipt of the Initial Contribution, may be spent in accordance with Sections 5.5 (b)(i) and 5.5(b)(ii).

(c) Fundraising. The restrictions set forth in Sections 5.5(a) and 5.5(b) only apply to the Initial Contribution and the income earned on the Initial Contribution and are inapplicable to any other money or assets raised or procured through any fundraising efforts of the corporation.

Section 5.6 Authorization for Expenditures. The Board may by resolution or amendment of these Bylaws, from time to time, establish additional guidelines as the Board shall deem appropriate in connection with authorization requirements for expenditures or investments.

Section 5.7 Annual Report and Audit. The Board shall cause an annual report to be furnished to the directors and the City Attorney of the City (the "City Attorney") not later than one hundred twenty (120) days after the close of the corporation's fiscal year. The annual report shall be accompanied by an audit thereon of independent certified public accountants which shall be made available to the public. The annual report shall be in conformity with accounting principles generally accepted in the United States of America and contain in appropriate detail the following:

- (a) The assets, liabilities and net assets of the corporation as of the end of the fiscal year;
- (b) The principal changes in net assets during the fiscal year;
- (c) The revenue or receipts of the corporation, both unrestricted and restricted to particular purposes, for the fiscal year;
- (d) The expenses or disbursements of the corporation, for both general and restricted purposes, during the fiscal year; and
- (e) Any information required by Section 5.8 of these Bylaws.

Section 5.8 Annual Statement of Certain Transactions and Indemnifications.

(a) The corporation shall furnish annually to its directors and the City Attorney a statement of any "covered transaction" or indemnifications described below, if such covered transaction or indemnification took place. Such annual statement shall be affixed to and sent with the annual report described in Section 5.7 of these Bylaws. A "covered transaction" under this Section 5.8 is a transaction in which the corporation was a party, and in which any director or officer of the corporation, or its parent or subsidiary had a direct or indirect material financial interest (excluding a mere common directorship); and

(b) The statement required by this Section 5.8 shall describe briefly:

(i) Any covered transaction (including compensation of officers) during the previous fiscal year involving more than Five Thousand Dollars (\$5,000), or which was one of a number of covered transactions in which the same interested persons had a direct or indirect material financial interest and which transactions in the aggregate involve more than Five Thousand Dollars (\$5,000).

(ii) The names of the interested persons involved in such transactions, stating such person's relationship to the corporation, the nature of such person's interest in the transaction, and, where practicable, the amount of such interest; *provided* that in the case of a transaction with a partnership of which such person is a partner, only the interest of the partnership need be stated.

(iii) The amount and circumstances of any indemnifications or advances aggregating more than Five Thousand Dollars (\$5,000) paid during the fiscal year to any officer or director of the corporation.

Section 5.9 Indemnification. The corporation shall, to the maximum extent permitted by the Law, indemnify each of its directors and officers against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact any such person is or was a director or officer of the corporation and shall advance to such director or officer expenses incurred in defending any such proceeding to the maximum extent permitted by the Law. For purposes of this Section 5.9, a

"director" or "officer" of the corporation includes any person who is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation or other enterprise, or was a director or officer of a corporation which was a predecessor corporation of the corporation or of another corporation or other enterprise at the request of such predecessor corporation. The Board may, in its discretion, provide by resolution for such indemnification of, or advance of expenses to, other agents of the corporation, and likewise may refuse to provide for such indemnification or advance of expenses except to the extent such indemnification is mandatory under the Law. The corporation shall have the right to purchase and maintain insurance to the maximum extent permitted by the Law on behalf of its officers and directors against any liability asserted against or incurred by an officer or director in such capacity or arising out of the officer's or director's status as such. The corporation may also purchase liability and other insurance as the Board determines to be appropriate from time to time.

Section 5.10 No Private Inurement. The corporation is not organized for profit and is to be operated exclusively for one or more of the purposes as specified in Section 501(c)(3) of the Internal Revenue Code, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, and in the promotion of social welfare in accordance with the purposes stated in the Articles. The net earnings of the organization shall be devoted exclusively to charitable and educational purposes and shall not inure to the benefit of any private individual. No director or person from whom the organization may receive any property or funds shall receive or shall be entitled to receive any pecuniary profit from the operation thereof, and in no event shall any part of the funds or assets of the organization be paid as salary or compensation to, or distributed to, or inure to the benefit of any member of the Board; *provided, however*, that (a) reasonable compensation may be paid to any director while acting as an agent, contractor, or employee of the corporation for services rendered in effecting one or more of the purposes of the organization; and (b) any director may, from time to time, be reimbursed for his or her actual and reasonable expenses incurred in connection with the administration of the affairs of the organization.

Section 5.11 Enforcement by City Attorney. The corporation acknowledges that irreparable damage would occur in the event that certain provisions of these Bylaws were not performed in accordance with their specific terms. It is accordingly provided that the City Attorney shall be entitled to an injunction or injunctions to prevent noncompliance with Sections 3.9(a), 5.5, 5.7, 5.8, 5.11 and 5.12 of these Bylaws and to enforce specifically such terms and provisions in any court located in Orange County, California having jurisdiction. The prevailing party (whether it is the corporation or the City Attorney) in any such enforcement action shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in any such enforcement action.

Section 5.12 Amendments. These Bylaws may be amended, repealed or modified, and new Bylaws adopted, by the affirmative vote of a majority of the entire Board; *provided*, that the right of the President of the PTSA of CMHS to appoint one director pursuant to Section 3.4 may not be amended, repealed or modified without such person's written consent; *provided, further*, that Sections 3.9(a), 5.5, 5.7, 5.8, 5.11 and this 5.12 may not be amended, repealed or modified without the written consent of the City Attorney. Any notice of a meeting at which these Bylaws

are to be amended, repealed or modified shall include notice of such proposed action. A copy of such notice must also be furnished to the City Attorney at least seventy-two (72) hours before the start of such meeting.

## ARTICLE VI. CONFLICT OF INTEREST

Section 6.1 Conflict Defined. A conflict of interest may exist when the interests or activities of any director, officer or staff member may be seen as competing with the interests or activities of this corporation, or the director, officer or staff member derives a financial or other material gain as a result of a direct or indirect relationship.

Section 6.2 Disclosure Required. Any possible conflict of interest shall be disclosed to the Board by the person concerned, if that person is a director or the president of the corporation, or to the president, or to such person or persons as he or she may designate, if the person is a member of the staff.

Section 6.3 Abstinance From Vote. When any conflict of interest is relevant to a matter requiring action by the Board, the interested person shall call it to the attention of the Board or its appropriate committee and such person shall not vote on the matter; *provided, however,* any director disclosing a possible conflict of interest may be counted in determining the presence of a quorum at a meeting of the Board or a committee thereof.

Section 6.4 Absence From Discussion. Unless requested to remain present during the meeting, the person having the conflict shall retire from the room in which the Board or its committee is meeting and shall not participate in the final deliberation or decision regarding the matter under consideration. However, that person shall provide the Board or committee with any and all relevant information.

Section 6.5 Minutes. The minutes of the meeting of the Board or committee shall reflect that the conflict of interest was disclosed and that the interested person was not present during the final discussion or vote and did not vote. When there is doubt as to whether a conflict of interest exists, the matter shall be resolved by a vote of the Board or its committee, excluding the person concerning whose situation the doubt has arisen.

Section 6.6 Annual Review. A copy of Article VI of the Bylaws shall be furnished to each director, officer and senior staff member who is presently serving the corporation, or who may hereafter become associated with the corporation. This policy shall be reviewed annually for the information and guidance of directors, officers and staff members. Any new directors, officers or staff members shall be advised of this policy upon undertaking the duties of such office.

CERTIFICATE OF SECRETARY  
OF  
COSTA MESA HIGH SCHOOL FOUNDATION,  
a California nonprofit public benefit corporation

I, the undersigned, do hereby certify:

(1) That I am the duly elected and acting Secretary of Costa Mesa High School Foundation, a California nonprofit public benefit corporation; and

(2) That the foregoing Bylaws, comprising fourteen (14) pages, constitute the Bylaws of said corporation as duly adopted by the Board of Directors of said corporation as of September 25, 2003.

IN WITNESS WHEREOF, I have hereunto subscribed my name as of the \_\_\_\_\_ day of October, 2003.

\_\_\_\_\_  
James Ferryman