

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 533-5800

DATE: January 18, 2019
TO: Council President Pro Tem, Barbara Bry
FROM: City Attorney
SUBJECT: Leasing of the North Chapel and the NTC Foundation

INTRODUCTION

You asked various questions regarding the leasing of the North Chapel located in the Naval Training Center (NTC) Historic District, the historic protections for the property, and permissible uses of the property.¹ You also asked questions concerning the NTC Foundation and the effective date of Measure J. Measure J, which City voters passed in November 2018, amended San Diego City Charter (Charter) section 225 concerning the disclosure of certain information by entities doing business with the City. This Office's responses are below:

QUESTIONS PRESENTED AND RESPONSES

1. Does the City of San Diego have the authority to compel the McMillin Company to keep the North Chapel open to the public and to the two current congregations who hold services there beyond December 31, 2018?

No. The ground lease for the North Chapel property² does not require the tenant³ to keep the property open for any particular purpose, and the tenant may close the property to all uses. If the tenant continues to use the property, the ground lease limits use of the property to "retail, restaurant, office, commercial, recreational, arts and cultural, light industrial, special educational and other uses permitted by and consistent with the Naval Training Center Precise Plan and

¹ At this time, this Office is not aware of any applications that have been submitted to the City of San Diego (City) for development impacting the North Chapel.

² The City owns the fee estate to the North Chapel property, as successor to the former Redevelopment Agency of the City of San Diego (Former RDA), subject to a 66-year ground lease entered into by the Former RDA that commenced August 1, 2004, and ends December 31, 2070.

³ McMillin-NTC, LLC, a Delaware limited liability company (McMillin), was the previous ground lease tenant, but recently assigned its interest in the ground lease to Seligman Liberty Station, LLC, Seligman Liberty Station I LLC, Seligman Liberty Station II LLC, Seligman Liberty Station III LLC, Seligman Liberty Station IV LLC and Seligman Liberty Station V LLC, as tenants-in-common (an ownership structure where each entity holds a specified undivided interest in the leasehold estate), as permitted under the assignment provision of its ground lease with the City (Section 2.14.a.). The City consented to this assignment on November 15, 2018. The City was required to provide reasonable consent considering the proposed assignee's financial capability, relevant experience, and reputation, all of which were evaluated by City staff prior to the City consenting to the assignment. (Section 2.14.a.)

Local Coastal Program as certified by the California Coastal Commission on September 11, 2001, as same may be amended in the future, and other additional uses as may be reasonably related thereto, and for no other purposes.”

Also, no law or regulation authorizes or permits the City to require the tenant to keep the North Chapel open to the public or the two current congregations that hold services there. In addition, well-established constitutional principles regarding the separation of church and state prohibit the City from requiring religious use of the property.⁴

2. Do the Guidelines for the Treatment of Historic Properties of the Naval Training Center, San Diego serve as a binding document on how the North Chapel can be utilized, developed, and/or altered?

Yes. Compliance with the Naval Training Center San Diego Guidelines for the Treatment of Historic Properties (NTC Guidelines) is a condition of the permits issued for the redevelopment of the NTC and is a mitigation measure to reduce impacts due to the redevelopment. The NTC Guidelines were created during the Master Planned Development Process for the redevelopment of the NTC. The Master Planned Development Permit and Coastal Development Permit (MPDP/CDP Permit No. 99-1076), issued in 2000 for the redevelopment of NTC, requires that “[a]ll currently proposed and future work within the NTC Historic District, shall be consistent with the *Naval Training Center San Diego Guidelines for the Treatment of Historic Properties* and the *U.S. Secretary of the Interior’s Standards and Criteria for the Treatment of Historic Properties*.” See Permit Condition No. 26. In addition, findings for approval of MPDP/CDP Permit No. 99-1076 reference compliance with the NTC Guidelines.

Lastly, the adopted Mitigated Negative Declaration (MND) and Mitigation, Monitoring, and Reporting Program (MMRP) associated with the redevelopment include a Historical Resource mitigation measure that requires the developer to provide evidence to the satisfaction of the City Manager that the preservation, rehabilitation, restoration, reconstruction, or new construction is consistent with the NTC Guidelines before issuing a building or grading permit affecting a historic building or landscape elements. Since North Chapel is a designated historical resource in the NTC Historic District, any proposed development on the North Chapel must be consistent with the NTC Guidelines.

⁴ See Cal. Const., art. XVI, § 5; Cal. Const., art. I, § 4; and U.S. Const. amends. I, XVI. See also *Barnes-Wallace v. City of San Diego*, 704 F.3d 1067 (9th Cir. 2012); *Davies v. Los Angeles County Board of Supervisors*, 177 F. Supp. 3d 1194 (C.D. Cal. 2016).

3. Does the North Chapel being listed on the National Register of Historic Places under the Naval Training Station protect the North Chapel's interior features (including but not limited to the pews, pulpit, organ grill, etc.) from being removed or altered?

Yes, unless a deviation is approved through issuance of a Site Development Permit (SDP). The North Chapel is listed on the National Register and the City's Register (HRB Site #425). Since it is listed on the National Register, it is automatically listed on the California Register. According to the National Register Bulletin on How to Apply the National Register Criteria for Evaluation, "[b]uildings eligible for the National Register must include all of their basic structural elements." While interiors are not eligible independent of the rest of the building, "the whole building must be considered, and its significant features must be identified."

As to the interiors of the North Chapel, the National Register Nomination for the NTC Historic District states the following:

It should be noted that the North chapel is probably the least altered of any of the buildings in the proposed historic district. All the wood furniture, including the pews, pulpit, choir screen altars, organ grill, and balcony railing, were designed with the church building, as were the stained glass windows, the brick paving at the entry and decorative tile floors inside the entry. The building has provided a significant community function and is a notable visual landmark. Moreover, the style, craftsmanship and details of the building are noteworthy and warrant architectural merit.

Accordingly, the wood furniture, including the pews, pulpit, choir screen altars, organ grill, and balcony railing, would most likely be considered part of the historic designation.

All proposed development that may impact a designated historical resource in the NTC Historic District is required, under the MPDP/CDP Permit No. 99-1076, the MND, and MMRP, to be consistent with the NTC Guidelines and the U.S. Secretary of the Interior's Standards and Criteria for the Treatment of Historic Properties (Secretary of Interior's Standards). In addition, the San Diego Municipal Code requires compliance with the Secretary of Interior's Standards, unless a deviation is approved through issuance of a SDP.

If development is proposed that is inconsistent with the NTC Guidelines and the Secretary of Interior's Standards, an amendment to MPDP/CDP Permit No. 99-1076 may be required along with the approval of an SDP. The MPDP/CDP Permit No. 99-1076 amendment and SDP are Process Four decisions made by the Planning Commission and may be appealed to the City Council.

4. Can McMillin (or another leasing agent) modify the North Chapel to be used as a restaurant or retail space?

The developer may modify the North Chapel if the development is consistent with the NTC Guidelines and Secretary of Interior's Standards, including historic protection of the interior. If the proposed development is not consistent with the NTC Guidelines and Secretary of Interior's Standards, the development would most likely require an amendment to MPDP/CDP Permit No. 99-1076 and approval of an SDP. In addition, environmental analysis would need to occur under the California Environmental Quality Act.

5. Is the NTC Foundation subject to the Brown Act and the California Public Records Act thus requiring the Foundation to post its agendas and minutes, and allowing its tenants and the public to attend their Board meetings?

This Office will provide guidance on this issue under separate cover.

6. What specific monitoring has been done to ensure that NTC is complying with the agreement signed with the City of San Diego?

This agreement is administered by the Economic Development Department. Questions about compliance can be addressed to that department.

7. How many limited partnerships and LLCs are taking advantage of the historic tax credit program administered by the U.S. National Park Service at Liberty Station?

The historic tax credit program is administered by the National Park Service of the U.S. Department of Interior and the Internal Revenue Service of the U.S. Department of Treasury, in partnership with the state historic preservation offices located in each state. Questions about tax credits can be addressed to those agencies.

8. Once Measure J has been chaptered by the California Secretary of State, what are the disclosed names and identities of all natural persons of the limited partnerships and LLCs?

Measure J was passed by City voters in November 2018 to clarify the types of contracts for which disclosure is required under Charter section 225 and the threshold ownership interest for disclosure, among other things. Measure J is not retroactive and only applies to contracts and transactions entered into, amended, or assigned after the date it is chaptered.⁵

⁵ Measure J was chaptered by the Secretary of State on December 24, 2018. Measure J clarified that everyone entering into certain contracts with the City must "first disclose to the City *the names and identities of all natural persons* who will receive more than 10% of the contracted amount or who own more than 10% of the entity contracting with the City."

The Seligman entity assignments fall under the version of Charter section 225 in effect on November 15, 2018, and its implementing ordinance.⁶ Thus, the Seligman entities were required to provide the City with the name, identity, and precise nature of the interests of all “persons,” as defined in the applicable version of Charter section 225, who were directly or indirectly involved in the assignments.⁷

We assume this question refers to the Seligman entities that were assigned certain Liberty Station leasehold interests on November 15, 2018, by certain McMillin-controlled entities. Economic Development staff administers these leases and can provide specific information regarding the names and identities of persons disclosed to the City relating to these assignments.

9. With their oversight of public property, is McMillin subject to public records requests?

No. McMillin, as a ground lease tenant of the City, does not oversee public property. The relationship between the City and each of its private Liberty Station tenants is defined by the terms of ground leases entered into between the Former RDA and McMillin,⁸ to which the City succeeded as landlord, following dissolution of the Former RDA. The private Liberty Station tenants are not acting as agents of the City or performing any governmental functions.

Only records related “to the conduct of the public’s business” and “prepared, owned, used or retained by” a *local agency* are subject to disclosure under the California Public Records Act.⁹ To the extent that the City retains any written information provided by its private tenants and the information relates to the conduct of the public’s business, that information may be disclosable in response to a request to the City for disclosure under the California Public Records Act (CPRA), subject to applicable statutory exemptions from disclosure.¹⁰ Accordingly, the lease documents between the City and its Liberty Station tenants would be public records subject to disclosure because such documents were prepared, used by, and retained by the City. The City’s private Liberty Station tenants, however, remain private entities. This Office is not aware of any factual circumstances that would require the City’s private tenants to divulge private entity records to requestors under the CPRA in response to a request for disclosure sent directly to the tenant.

⁶ San Diego Municipal Code (SDMC) § 21.0103.

⁷ San Diego Charter § 225; SDMC § 21.0103(c).

⁸ McMillin was the original tenant under all of the Liberty Station ground leases with the Former RDA and later assigned its interests in certain ground leases to other private parties.

⁹ *Regents of the University of California v. Superior Court*, 222 Cal. App. 4th 383, 399 (2013).

¹⁰ Cal. Gov’t Code §§ 6250-6276.48.

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CONCLUSION

In sum, the North Chapel is a historic property. Any proposed development at North Chapel must be consistent with the NTC Guidelines and Secretary of Interior's Standards. An amendment to MPDP/CDP Permit No. 99-1076 and approval of an SDP would most likely be required, if development is proposed that is inconsistent with the NTC Guidelines and the Secretary of Interior's Standards, including historic protection of the interior. The MPDP/CDP Permit No. 99-1076 amendment and SDP are Process Four decisions made by the Planning Commission, which may be appealed to the City Council.

MARA W. ELLIOTT, CITY ATTORNEY

By 
Corrine L. Neuffer
Deputy City Attorney

CLN:als
MS-2019-2
Doc. No.: 1897171_2
Attachments: Naval Training Center Ground Lease
First Amendment to Ground Lease
Second Amendment to Ground Lease
cc: Honorable Mayor, Kevin L. Faulconer
Honorable City Councilmembers

ATTACHMENTS

NAVAL TRAINING CENTER

GROUND LEASE
[UNIT 5 LOT 23]

by and between

REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO,

and

McMILLIN-NTC, LLC,
a Delaware limited liability company

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EXHIBITS

EXHIBIT A -	LEGAL DESCRIPTION
EXHIBIT B -	SITE MAP
EXHIBIT C -	MEMORANDUM OF LEASE
EXHIBIT D -	FORM OF TENANT'S NONDISTURBANCE AND ATTORNMENT AGREEMENT
EXHIBIT E -	FORM OF LENDER'S NONDISTURBANCE AND LEASE RECOGNITION AGREEMENT

GROUND LEASE

This GROUND LEASE (the "Lease") is dated as of August 1, 2004, between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO ("Landlord") and McMILLIN-NTC, LLC, a Delaware limited liability company ("Tenant"), who agree as follows:

ARTICLE 1 FUNDAMENTAL INFORMATION

1.1 Landlord: THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body, corporate and politic.

1.2 Tenant: McMILLIN-NTC, LLC, a Delaware limited liability company.

1.3 Commencement Date: The Commencement Date shall be the date set forth in the introductory paragraph, above.

1.4 The Premises: The property leased hereunder (the "Property") is that real property described as the "Lease Parcel" in the Legal Description attached hereto as Exhibit "A" and incorporated herein by this reference.

1.5 Term: The Lease term (the "Term") shall commence on the Commencement Date, and shall continue for sixty-six (66) Lease Years thereafter (as defined below), or on the date resulting from an earlier termination as hereinafter set forth. For purposes of this Lease, a "Lease Year" shall mean the partial calendar year commencing the first day of the month following the Commencement Date, and each full calendar year thereafter, including the full calendar year in which the 66th anniversary of the Commencement Date occurs.

1.6 Landlord's address for notices: 600 "B" Street, Suite 400, San Diego, California 92101, Attention: NTC Project Manager.

1.7 Tenant's address for notices: 2727 Hoover Avenue, National City, California 91950.

1.8 Tenant's rent: As described in Sections 2.5 and 2.6., below.

1.9 The specified use of the Property: For the Term of this Lease, the Property may only be used for plazas, courtyards, promenades, parking areas (structured or surface), open areas, active pedestrian areas, sidewalks, pathways, walkways and driveways and other pedestrian and vehicular circulation elements and related or incidental commercial uses thereof, all consistent with the NTC Precise Plan and Local Coastal Program as certified by the California Coastal Commission on September 11, 2001, as may be amended in the future, and other additional uses as may be reasonably related thereto, and for no other purposes.

1.10 Relation to the DDA. Reference is hereby made to that certain Disposition and Development Agreement dated June 26, 2000, as amended by that certain First Implementation Agreement dated as of May 9, 2002, that certain Second Implementation Agreement dated as of May 21, 2002 and that certain Third Implementation Agreement dated as of July 15, 2003 (collectively, the "DDA"), by and between Landlord ("Agency" therein) and Tenant ("Master Developer" therein). It is contemplated that upon the satisfaction of Phase Four Conditions Precedent (as defined in the DDA), Tenant will assign Tenant's rights and obligations under the DDA as to the Property, and will sublease the Property or assign its rights under this Lease, to an assignee ("Assignee"), in accordance with and subject to the terms and conditions of the DDA. Until Tenant or such Assignee is entitled to the execution and recordation of the Agency Certificate of Completion for the Property as provided in Section 6.15 of the DDA, a default under the DDA by Tenant shall constitute a breach of the terms of this Lease, as specifically provided in Section 2.24 below; provided, however, that following the satisfaction of all Phase Four Conditions Precedent related to the Property, the default under the DDA must specifically relate to the Property. It is the intention of the parties that (a) prior to the recordation of the Agency Certificate of Completion for the Property, a breach or default under the DDA shall constitute a default under this Lease (provided, however, that following the satisfaction of all Phase Four Conditions Precedent related to the Property, the breach or default under the DDA must relate specifically to the Property in order for the same to constitute a default under this Lease and Landlord may not terminate this Lease as the result of a Default under the DDA unless such Default relates specifically to the Property), and any notice provided pursuant to the DDA shall satisfy any notice requirement under this Lease, and (b) after the Agency Certificate of Completion for the Property is recorded, Landlord's rights and obligations with respect to the Property shall be as set forth in this Lease and any other recorded document, and the DDA shall no longer be applicable to the Property.

1.11 Definitions. For purposes of this Lease, the following capitalized terms shall have the respective definitions set forth in the corresponding section of this Lease:

"Additional Rent" shall have the meaning set forth in Section 2.6.

"Affiliate" shall have the meaning set forth in Section 2.14.c.

"Agency Certificate of Completion" shall have the meaning set forth in Section 1.10.

"Assignee" shall have the meaning set forth in Section 1.10.

"City" shall have the meaning set forth in Section 2.3.a.

"Consumer Price Index" shall have the meaning set forth in Section 2.11.d.

"DDA" shall have the meaning set forth in Section 1.10.

"Force Majeure Delay" shall have the meaning set forth in Section 2.31.e.(ii).

"Hazardous Materials" shall have the meaning set forth in Section 2.27.

"Improvements" shall mean and include the Horizontal Improvements and Vertical Improvements, as defined in the DDA.

"Lease Parcel" shall have the meaning set forth in Section 1.4.

"Lease Year" shall have the meaning set forth in Section 1.5.

"Leasehold Mortgage" and "Leasehold Mortgagee" shall have the meanings set forth in Section 2.30.a.(ii).

"Maintenance Costs" shall have the meaning set forth in Section 2.12.a.

"Permitted Alterations" shall have the meaning set forth in Section 2.11.a.

"Permitted Leasehold Mortgage" and "Permitted Leasehold Mortgagee" shall have the meanings set forth in Section 2.30.a.(iii).

"Permitted Transfer" shall have the meaning set forth in Section 2.14.c.(iii).

"Property" shall have the meaning set forth in Section 1.4.

"Qualified Lender" shall have the meaning set forth in Section 2.30.b.

"Term" shall have the meaning set forth in Section 1.5.

"Transfer" shall have the meaning set forth in Section 2.14.c.

ARTICLE 2 LEASE TERMS AND PROVISIONS

2.1 PURPOSE OF LEASE

Landlord has agreed to lease the Property to Tenant in accordance with this Lease, and Tenant will construct, manage and operate the Improvements for the uses permitted by this Lease.

2.2 AGREEMENT TO LEASE

a. Landlord hereby leases the Property to Tenant, and Tenant hereby leases the Property from Landlord, subject to the provisions and conditions herein set forth, for an amount of rental as described in Sections 2.5 and 2.6 hereof; together with all right, title and interest, if any, of Landlord, to the land lying in the streets and roads adjoining the Property, to the center line thereof, and in and to any and all easements and rights of way appurtenant to the Property, subject nevertheless to all public easements and rights of use of such streets, rights of way and easements; together with all awards, rents, issues and profits of whatsoever nature of or with respect to any of the Property and the Improvements, except as expressly reserved to Landlord herein.

b. Except as expressly provided to the contrary in this Lease, reference to the Property is to the land described as the "Lease Parcel" in the attached Exhibit "A" and any and all buildings, structures or other improvements either now or hereafter located on such land. The parties agree that during the Term of this Lease, all buildings, structures and other improvements located on the Property shall be owned in fee by Tenant (and to the

extent necessary, Landlord hereby grants such fee to Tenant), but shall automatically vest in Landlord upon the expiration or earlier termination of this Lease.

2.3 ACCEPTANCE OF PROPERTY

a. Landlord makes no representations, express or implied, with respect to the legality, fitness, or desirability of the Property for Tenant's intended use or for any other uses. Tenant shall conduct its own investigation to its satisfaction with respect to zoning, local codes and regulations, and other matters affecting Tenant's ability to use and improve the Property for Tenant's intended use. It shall be Tenant's responsibility, at no cost to Landlord, to ensure that zoning of the Property, and all applicable City land use requirements are, as of the date of execution hereof, such as to permit development of the Property and construction of improvements thereon in accordance with the provisions of this Lease and the use, operation and maintenance of such improvements as provided in this Lease. Nothing contained herein shall be deemed to entitle Tenant to any City of San Diego (the "City") permit or other City approval necessary for the development of the Property, or waive any applicable City requirements relating thereto. This Lease does not (1) grant any land use entitlement to Tenant, (2) supersede, nullify or amend any condition which may be imposed by the City in connection with any approval of the development, (3) guarantee to Tenant or any other party any profits from the development of the Property, or (4) amend any City laws, codes or rules. This is not a Development Agreement as provided in Government Code Section 65864.

b. The Property shall be leased in an "as is" condition, with no warranty or liability, express or implied, on the part of Landlord as to the condition of any buildings on the Property, the soil (or water), its geology, the existence of known or unknown faults or any other conditions relating to the Property. It shall be the sole responsibility of Tenant, at Tenant's expense, to investigate and determine the condition of any building, soil (and water) relating to the Property and the suitability of the Property for the uses contemplated by this Lease. If the condition of the Property, or any part thereof, is not in all respects entirely suitable for the use of the Property contemplated by this Lease, then it is the sole responsibility and obligation of Tenant to take such action as may be necessary to place the Property and the soil (and water) condition thereof in all respects in a condition that is suitable for such use.

2.4 TERM

a. Term. The Term of this Lease shall commence on the Commencement Date and shall continue for sixty-six (66) Lease Years, as set forth in Section 1.5, above unless terminated sooner pursuant to the provisions and conditions hereof. Upon the termination or expiration of this Lease, Tenant shall immediately surrender possession of the Property to Landlord and shall not allow delay in said transfer of possession for any reason.

b. Termination. Subject to the notice and cure provisions of Section 2.24, below, this Lease shall terminate after the Commencement Date, but prior to the end of the Term, in the event of any of the following:

(i) Landlord may terminate this Lease by giving written notice of termination to Tenant, in the event of any uncured failure of a condition set forth in the DDA as a Phase Four Condition Precedent applicable to the Property, except to the extent such condition is in the control of Landlord or the City of San Diego.

(ii) Prior to the issuance of the Agency Certificate of Completion for the Property pursuant to the DDA, Landlord may terminate this Lease by giving written notice of termination to Tenant, in the event of any Default under this Lease (as provided in Section 2.24 hereof) or the DDA that is not cured within the applicable cure period. Provided, however, that following the satisfaction of all Phase Four Conditions Precedent applicable to the Property, Landlord may not terminate this Lease as the result of a Default under the DDA unless such Default relates specifically to the Property.

(iii) Following the issuance of the Agency Certificate of Completion for the Property pursuant to the DDA, Landlord may terminate this Lease by giving written notice of termination to Tenant, in the event of any Default under this Lease (as provided in Section 2.24 hereof) that is not cured within the applicable cure period.

c. Surrender. Subject to the damage and reconstruction provisions of Section 2.23, Tenant shall upon the expiration or sooner termination of this Lease surrender the Property to Landlord in good and clean condition, ordinary wear and tear excepted, including any buildings, structures, improvements or additions then located on the Property which are, during the Term of this Lease, owned in fee by Tenant.

2.5 BASIC RENT.

The Basic Rent shall be the sum of One Dollar (\$1.00) per year, payable annually in advance.

2.6 ADDITIONAL RENT

In addition to any Basic Rent that is due pursuant to this Lease, Tenant shall pay to Landlord, as additional consideration for the lease of the Property, any sums described in this Lease as "Additional Rent."

2.7 RENT GENERALLY

a. All Rent (both Basic and Additional) shall be paid absolutely net to Landlord, so that this Lease shall yield to Landlord the full amount of the Rent throughout the Term of this Lease. This Lease is and shall be a "Pure Net" or "Triple Net" lease, as such terms are commonly used in the real estate industry, it being intended that Tenant shall pay all costs, expenses and charges arising out of the use, occupancy and operation of the Property.

b. All payments of Rent and of other sums to be paid by Tenant to Landlord pursuant to this Lease shall be paid in lawful money of the United States of America, at Landlord's address set forth above, or at such other place within the United States or to such other person, firms or corporations as Landlord from time to time may designate in writing. Except as otherwise expressly provided by the terms of this Lease, Landlord and Tenant agree that all sums payable hereunder to or on behalf of Landlord shall be paid without notice or demand.

c. Should Tenant fail, for whatever reason, to make any rental payment required hereunder, then Tenant shall pay an Additional Rent equal to 4% per annum on the amount due, until paid; provided, however, that nothing in this subdivision c. shall be deemed to limit any of Landlord's other rights or remedies under this Lease or otherwise available at law or in equity.

2.8 TENANT WORK

Tenant shall, at its own cost and expense, undertake and complete or cause the completion of the initial construction and/or rehabilitation of the Improvements on the Property, as provided in the DDA. In the conduct of such work, Tenant shall comply with any and all rules, regulations, or requirements contained in the DDA. The parties to this Lease contemplate that Tenant shall be

responsible for and shall undertake and complete all Horizontal Improvements relating to the Property subject to the provisions of the DDA, and, subject to the satisfaction of all Phase Four Conditions Precedent for the Property, Tenant shall cause to be undertaken and completed all Vertical Improvements on the Property. This Section 2.8 shall terminate upon execution and recordation of a Agency Certificate of Completion for the Property by Landlord pursuant to the DDA.

2.9 USE

a. Tenant shall use the Property only for the specified uses set forth in Section 1.9., above, and other additional uses as may be reasonably related thereto, and shall not use or permit the Property to be used for any other purposes. Tenant shall not cause, maintain, or permit any nuisance or waste in, on, or about the Property, normal wear and tear excepted.

b. Tenant covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall Tenant itself or any person claiming under or through it 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 vendees of the Property.

c. Tenant shall refrain from restricting the rental, sale or lease of the Property on the basis of race, color, creed, religion, sex, sexual orientation, marital status, ancestry or national origin of any person. All deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, 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 vendees in the land herein conveyed. The foregoing covenants shall run with the land."

2. In leases: "The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall lessee itself, or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased."

3. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of sex, sexual orientation, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee itself or any person claiming under or through it, 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 vendees of the land."

d. On fifteen (15) business days' prior notice, but no more than once in any 12 month period, Tenant shall make available in the City of San Diego full and accurate books and accounts, records, cash receipts and other pertinent data reasonably satisfactory to Landlord relating to its operation of the Property. Such books of account, records, cash receipts and other pertinent data shall be kept by Tenant for a five- (5) year period after the applicable Lease Year. Landlord shall be entitled during such period to inspect, examine and to copy at Landlord's expense, Tenant's books of account, records, cash receipts and other pertinent data relating to the Property as necessary or appropriate

for the purpose of this Lease. Tenant shall cooperate fully with Landlord during any such inspection.

2.10 COMPLIANCE WITH LAW

a. Tenant shall not use the Property or permit anything to be done in or about the Property which will in any way conflict with any applicable law, statute, ordinance, or governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated. Tenant shall, at its sole cost and expense, promptly comply with all applicable laws, statutes, ordinances, and governmental rules, regulations or requirements now in force or which may hereafter be enacted or promulgated, and any applicable requirements of any board of fire insurance underwriters or other similar bodies now or hereafter constituted, relating to the condition, use, or occupancy of the Property. Tenant shall have the right, by appropriate proceedings, to protest or contest in good faith the application to Tenant and/or the Property of any law, statute, ordinance, or governmental rule, regulation or requirement or the validity of any such law, statute, ordinance, or governmental rule, regulation or requirement; provided, Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all costs, expenses, claims, demands, damages, actions, causes of action, or liabilities of any kind which may arise at any time in connection with any such proceedings, protest or contest.

b. The judgment of any court of competent jurisdiction after all applicable appeals have been exhausted or appeal periods have expired or the admission of Tenant in any action against Tenant, whether Landlord be a party thereof or not, that Tenant has violated any law, statute, ordinance, or governmental rule, regulation, or requirement, shall be conclusive of that fact as between Landlord and Tenant.

2.11 ALTERATIONS AND ADDITIONS

a. Except for Permitted Alterations (as hereinafter defined), Tenant shall not make or suffer to be made any alterations, additions, or improvements to or on the Property or any building or structure thereon or any part thereof without the prior written consent of Landlord, which consent will not be unreasonably withheld, conditioned or delayed. Any request for consent shall be accompanied by plans and specifications for the proposed work in reasonable detail (including component materials and finish items) to enable Landlord to consider whether or not to grant approval. Landlord may condition its approval in any way reasonably deemed necessary by Landlord to protect its interest in

the Property. The term "Permitted Alterations" shall mean, and Tenant shall not be required to obtain the consent of Landlord for, either of the following, to the extent they comply with all applicable City procedures and requirements: (i) any alterations, additions, improvements, exterior painting or landscaping (provided such alterations, additions, improvements, exterior painting or landscaping do not require a Coastal Development Permit and cost less than 15% of the after-rehabilitation value of the Property; or (ii) any tenant improvements within tenant or subtenant spaces or signs for any tenants or subtenants.

b. All alterations, additions, or improvements by Tenant shall be made without cost or expense to Landlord, by responsible and licensed contractors. All improvements and equipment shall be designed, built, and installed in accordance with all applicable building codes and regulations, and Tenant shall obtain all necessary building permits.

c. Tenant shall give notice to Landlord within a reasonable time prior to commencement of any work, to enable Landlord, if required, to review the plans and specifications and to enable Landlord to post notices of non-responsibility or take other actions deemed necessary by Landlord.

d. For all alterations costing in excess of \$200,000, as increased annually to reflect increases, if any, in the Consumer Price Index measured from the second anniversary of the Commencement Date, Tenant shall obtain and keep in effect "Builder's All Risk Insurance" during the period of construction and installation of any improvements being made by Tenant, including completed operations coverage, with coverage in the amount of at least \$2,000,000, increased every fifth anniversary of the Commencement Date by the percentage increase, if any, in the Consumer Price Index from the Commencement Date of this Lease to the anniversary thereof most recently preceding the start of such construction, naming Landlord as an additional insured. Tenant shall deliver to Landlord a Certificate of Insurance evidencing such insurance coverage prior to commencement of the alterations. As used in this Lease, the "Consumer Price Index" shall mean the Consumer Price Index - all Urban Consumers, San Diego, published by the Bureau of Labor Statistics, or such comparable index as may be acceptable to Landlord.

e. Tenant shall keep the Property free and clear of any and all liens and encumbrances which may arise at any time in connection with any improvement work by Tenant or its agents and contractors. Any mechanic's liens that have been recorded or stop notices that have been delivered shall be paid, settled or otherwise extinguished, discharged, released, waived or bonded around within ten (10) days after notice thereof to Tenant. In addition, Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all costs, expenses, claims, demands, damages, actions, causes of action, or liabilities of any kind which may arise at any time in connection with any improvement work by Tenant or its agents and contractors, including without limitation the design and installation of equipment and the renovation of the Property, except to the extent such costs, expenses, claims, demands, damages, actions, causes of action, or liabilities relate to the design of offsite improvements provided by Landlord or the negligence or willful misconduct of Landlord, its agents, representatives, employees or contractors.

f. Nothing contained herein shall prohibit Tenant from disputing the correctness or validity of any mechanics lien upon the Property or any Improvement thereon, provided Tenant records in the office of the county recorder either before or after the commencement of an action to enforce such claim or lien, a lien release bond pursuant to Civil Code Section 3143.

g. Notwithstanding any provision of this Section 2.11, construction or rehabilitation of the initial Improvements shall be governed by the applicable provisions of the DDA.

2.12 MAINTENANCE AND REPAIRS

a. Tenant shall maintain the Property in the same aesthetic and sound condition (or better) as the condition of the Property at the time Agency issues a Agency Certificate of Completion for the Property pursuant to the DDA, reasonable wear and tear excepted. The parties acknowledge that over the course of the Term of this Lease, various Improvements on the Property are likely to become obsolete and will need to be demolished, removed, disposed of and/or replaced, and agree that the standard of "reasonable" wear and tear as set forth in the first sentence of this paragraph a. includes and incorporates this understanding. Subject to the foregoing, this standard for the quality of maintenance of the Property shall be met whether or not a specific item of maintenance is listed below. However, representative items of maintenance shall include frequent and regular inspection for graffiti or damage or deterioration or failure, and immediate repainting or repair or replacement of all surfaces, fencing,

walls, equipment, etc., as necessary; emptying of trash receptacles and removal of litter; sweeping of public sidewalks adjacent to the Improvements, on-site walks and paved areas and washing-down as necessary to maintain clean surfaces; maintenance of all landscaping in a healthy and attractive condition, including trimming, fertilizing and replacing vegetation as necessary; cleaning windows on a regular basis; painting the buildings on a regular program and prior to the deterioration of the painted surfaces; conducting a roof inspection on a regular basis and maintaining the roof in a leak-free and weather-tight condition; maintaining security devices in good working order. In the event Tenant fails to maintain the Property in accordance with the standard for the quality of maintenance, Landlord or its designee shall have the right but not the obligation to enter the Property upon reasonable notice to Tenant, correct any violation, and hold Tenant responsible for the cost thereof ("Maintenance Cost"). Tenant shall, upon demand, pay all Maintenance Cost, with interest, as Additional Rent.

b. Tenant shall, at Tenant's sole cost and expense, (i) keep and maintain any buildings on the Property in good condition and repair, ordinary wear and tear excepted; and (ii) undertake such maintenance of the Property from time to time as may be reasonable and customary under the circumstances or as required by paragraph a. of this Section 2.12.

c. Landlord shall not under any circumstances be obligated to undertake any maintenance, repair, or replacement of any portions of the Property. Tenant understands that Landlord is not obligated to maintain the structural portions of any building or structure, including the roof, exterior walls, and foundations of said building or structure; Landlord shall not be liable for any failure to make any such repairs or to perform any maintenance, whether by reason of any injury to or interference with Tenant's business or otherwise. Tenant waives any obligations which Landlord may have with respect to the tenantability of the Property and the right to make repairs at Landlord's expense under any law, statute, or ordinance now or hereafter in effect, including without limitation the provisions of California Civil Code sections 1941 and 1942.

2.13 TAXES

a. Payment by Tenant. Tenant shall promptly pay, at least five (5) days prior to delinquency, all real estate and real property taxes, or possessory interest tax, assessed against the Property, including such added assessment or omitted assessment which may be levied against the Property from time to time by the

applicable governmental taxing authority for periods commencing upon the Commencement Date, and any increase in the assessment from time to time based on improvements to the Property. Notwithstanding the foregoing, any assessment or impositions for capital or public improvements which may be payable by law at the option of the taxpayer in installments may be so paid by Tenant in installments, together with any required interest. Tenant shall furnish in writing to Landlord before the applicable delinquency date for the tax evidence of payment of all taxes and assessments required to be paid by Tenant during the Term hereof. If Landlord does not receive reasonable evidence of payment prior to the tax delinquency date, Landlord may, at its option, pay the tax for Tenant. In such case, Tenant shall reimburse Landlord immediately upon demand, plus interest at the rate of ten percent (10%) per annum, as Additional Rent. If Tenant shall be obligated to pay any taxes, assessments, and charges hereunder during a partial year, the amount of any such taxes, assessments, and charges shall be prorated according to the length of time Tenant's obligation shall be in effect during the relevant tax period.

b. Contest. Tenant shall have the right, by appropriate proceedings, to protest or contest in good faith any assessment or re-assessment of taxes, any special assessment, or the validity of any taxes or of any change in assessment or tax rate; provided, however, prior to any such challenge Tenant must either: (i) pay the taxes alleged to be due in their entirety and seek a refund from the appropriate authority; (ii) post a bond in an amount sufficient to insure full payment of the taxes; or (iii) provide such other security or take such other actions as may reasonably be required by Landlord's Executive Director or designee to insure full payment of the taxes. In any event, upon a final determination with respect to such contest or protest, Tenant shall promptly pay all sums found to be due with respect thereto. In any such protest or contest, Tenant may act in its own name; and at the request of Tenant, Landlord shall cooperate with Tenant in any way Tenant may reasonably require in connection with such contest or protest, including signing such documents as Tenant shall reasonably request, provided that such contest or protest shall be at Tenant's sole expense, and in the event any penalties, interest, or late charges become payable with respect to the taxes as a result of such contest or protest, Tenant shall pay the same. In the event Tenant obtains a refund as the result of Tenant's protest or contest and subject to Tenant's obligation to pay Landlord's costs (if any) associated therewith, Tenant shall be entitled to such refund to the extent it relates to the Property during the Term of this Lease.

c. Personal Property Taxes. Tenant shall pay any and all personal property taxes assessed against equipment, trade fixtures, inventory, or other personal property located in, on, or about the Property. Tenant shall indemnify, defend, and hold Landlord and the Property harmless from and against any such personal property taxes.

d. Future Taxes. If at any time during the Lease Term under the laws of the United States, or any state, county, or city, or any political subdivision thereof in which the Property is situated, a tax or excise on rent or any other tax however described is levied or assessed by any such political body against Landlord on account of fee ownership of the Property, such tax or excise shall be considered "taxes" for the purposes of this Section 2.13 and shall be paid by Tenant in the manner provided above, excluding, however, from such tax or excise to be paid by Tenant any amount assessed against Landlord as state or federal income tax, gift tax, excise tax or inheritance tax.

2.13.1 NOTICE OF POSSESSORY INTEREST; PAYMENT OF TAXES AND ASSESSMENTS ON VALUE OF ENTIRE PROPERTY

a. In accordance with California Revenue and Taxation Code Section 107.6(a), Landlord states that by entering into this Lease, a possessory interest subject to property taxes may be created. Tenant or other party in whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest.

b. Without limiting the foregoing, in the event the Property and/or the Improvements, or any possessory interest therein, should at any time be subject to ad valorem taxes or assessments levied, assessed or imposed on such property, Tenant shall pay taxes and assessments upon the assessed value of the entire property, and not merely upon the assessed value of its leasehold interest.

2.14 ASSIGNMENT AND SUBLETTING

a. Landlord Consent Required. Except for Permitted Transfers, Tenant shall not, under any circumstances, without the express prior written approval of Landlord, Transfer the Property or any portion thereof, or attempt to Transfer all or any portion of its interest in this Lease. Provided Landlord has issued the Agency Certificate of Completion for the Property pursuant to the DDA, Landlord shall not unreasonably withhold, condition or delay its consent to any Transfer and shall give written notice of any

disapproval, with reasonably specific reasons for such disapproval. Tenant shall submit to Landlord a reasonably current financial statement of the proposed transferee, a description of such proposed assignee's experience in operating similar properties and shall disclose to Landlord the proposed terms of such Transfer or Assignment. Landlord shall have the right to disapprove any Transfer on the basis of the relevant experience, financial capability and reputation of the proposed assignee or transferee. Any attempted Transfer of the Property, this Lease, or any portion or interest therein which is not authorized by this Lease or expressly approved in writing by Landlord shall be void and of no force or effect and, at the option of Landlord, shall terminate this Lease.

b. Operation of Law. Neither this Lease nor any interest therein shall be assignable by operation of law (including, without limitation, the transfer of this Lease by testacy or intestacy). Any involuntary assignment shall constitute a default by Tenant, and Landlord shall have the right to elect to terminate this Lease immediately and take immediate possession of the Property. In such event, this Lease shall not be treated as an asset of Tenant. The following is a non-exclusive list of acts which shall be considered an involuntary assignment:

(i) If Tenant is or becomes bankrupt or insolvent or if any involuntary proceeding is brought against Tenant (unless, in the case of a petition filed against Tenant, the same is dismissed within ninety (90) days), or Tenant makes an assignment for the benefit of creditors, or institutes a proceeding under or otherwise seeks the protection of Federal or State bankruptcy or insolvency laws, including but not limited to the filing of a petition for voluntary bankruptcy or instituting a proceeding for reorganization or arrangement;

(ii) If a writ of attachment or execution is levied on this Lease, where such writ is not discharged within ninety (90) days; or

(iii) If, in any proceeding or action in which Tenant is a party, a receiver is appointed with authority to take possession of the Property, where possession is not restored to Tenant within ninety (90) days.

c. Definition of Transfer. (i) As used herein, the term "Transfer" means the sale, transfer or conveyance of Tenant's leasehold interests in the Property, the Improvements thereon, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, or any agreement to do so; the execution of any installment land sale contract or similar instrument affecting all or a portion of the Property or Improvements; or the sublease of all or substantially all of the Property or Improvements (other than for occupancy).

(ii) "Transfer" shall also include the transfer, assignment, hypothecation or conveyance of legal or beneficial ownership of any interest in Tenant, or any conversion of Tenant to an entity form other than that of Tenant at the time of execution of this Lease, except that a cumulative change in ownership interest of any entity of less than fifty percent (50%) shall not be deemed a "Transfer" for purposes of this Lease. This definition shall not be construed to include commercial subleases or the rental of hotel rooms.

(iii) "Permitted Transfer" means any of the following: (a) any Permitted Leasehold Mortgage as provided in Section 2.30 hereof; (b) an assignment of this Lease and all of Tenant's leasehold interests in the Property to an Affiliate, as defined below; (c) the inclusion of equity participation in Tenant by transfer of limited liability shares, partnership interests or stock or addition of additional members, partners or shareholders to Tenant or similar mechanism; (d) the transfer of any ownership interests in Tenant from one principal to another principal; and (e) the leasing or subleasing for occupancy of all or any part of the Property. Any transfer described in clauses (a) through (c) of this subdivision (iii) shall be subject to the reasonable approval of Landlord's Executive Director or designee, which approval shall be promptly granted upon submission of such information as may reasonably be required to determine that the proposed transfer falls within one of the categories described in clauses (a) through (c). Any transfer described in clause (d) or (e) of this subdivision (iii) shall not require Landlord approval. For purposes of this Lease, "Affiliate" shall mean any partnership in which Tenant is a general partner and directly maintains managerial control, or another limited liability company, partnership or corporation under common control with Tenant or any other entity controlled by the party controlling Tenant.

d. No Unreasonable Withholding of Consent. Provided Landlord has issued the Agency Certificate of Completion for the Property pursuant to the DDA, Landlord shall not unreasonably withhold, condition or delay its approval of any matter for which

its approval is required hereunder. Any disapproval shall be in writing and contain Landlord's reasons for disapproval.

e. Nondisturbance and Lease Recognition Agreements. Within fifteen (15) business days after request, Landlord shall execute a Tenant's Nondisturbance and Lease Recognition Agreement, substantially in the form of the instrument attached to this Lease as Exhibit "D", for the benefit of any tenant or subtenant, and a Lender's Nondisturbance and Attornment, Agreement substantially in the form of the instrument attached to this Lease as Exhibit "E", for the benefit of any Permitted Leasehold Mortgagee.

2.15 HOLD HARMLESS

a. Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all costs, claims, demands, actions, causes of action, liability, loss, or damage, including attorneys' fees and costs (collectively referred to as "Claims" and, Claims that are made by third parties, collectively referred to as "Third Party Claims") whether for injury to or death or persons or damage to real or personal property or otherwise, arising out of or in connection with Tenant's use or occupancy of the Property, any activity, work, or other thing done, permitted, or suffered by Tenant in or about the Property, or arising from any reason or cause whatsoever in connection with the use or occupancy of the Property by any party during the Term of this Lease. The provisions of the preceding sentence shall not apply with respect to any negligent or intentional acts or omissions of Landlord, the City and their respective agents, servants, contractors and employees (collectively, "Landlord Parties"). Tenant shall further indemnify, defend, and hold Landlord harmless from and against any and all Third Party Claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease or arising from any act or negligence of Tenant or any officer, agent, employee, guest, or invitee of Tenant. In any case, action, or proceeding brought against Landlord or involving Landlord by reason of any such Claim, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon, or about the Property from any cause other than the negligent or intentional acts or omissions of Landlord Parties, and Tenant hereby waives all claims in respect thereof against Landlord. Tenant's obligation to indemnify under this paragraph shall include attorneys' fees, investigation costs, and other reasonable costs, expenses, and liabilities incurred by Landlord. If the ability of Tenant to use the Property is interrupted for any reason, Landlord shall not be

liable to Tenant for any loss or damages occasioned by such loss of use unless caused by the negligent or intentional acts or omissions of Landlord Parties.

b. Landlord or its agents shall not be liable for loss or damage to any property by theft or otherwise, nor for any injury to or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, or rain which may leak from any part of the Property or from the pipes, appliances, or plumbing works therein or from the roof, street, or subsurface or from any other place resulting from dampness or any other cause whatsoever, unless caused by or due to the negligent or intentional acts or omissions of Landlord Parties. Tenant shall give prompt notice to Landlord in case of fire or accidents in the Property or of defects therein or in the fixtures or equipment.

c. Landlord shall indemnify, protect, defend and hold harmless Tenant and its assignees, and their respective officers, employees, contractors and agents, with counsel reasonably acceptable to the indemnified party, from and against any and all loss, liability, damage, claim, cost and expense (including reasonable attorneys' fees, court and litigation costs and fees of expert witnesses) resulting or arising from or in any way connected with any negligence or intentional misconduct of Landlord, the City or their respective officers, employees, contractors or agents which relate to the maintenance, management or operation of the Property during the period commencing upon the effective date of the master lease between the United States Government and the City of San Diego for the Property, and ending upon the commencement of the Term of this Lease or upon assignment of the management of the Property to Tenant prior to conveyance, whichever occurs first, provided Landlord shall not be responsible for (and such indemnity shall not apply to) the negligence or willful misconduct of Tenant, any assignee or their respective officers, employees, contractors or agents.

2.16 OWNERSHIP OF PROPERTY DURING TERM AND UPON EXPIRATION OR TERMINATION OF LEASE

a. During the Term of this Lease, all buildings, structures, fixtures, additions and improvements located on the Property shall be owned in fee by Tenant, and Landlord hereby quitclaims its right, title and interest in and to such items to Tenant.

b. Upon the expiration or termination of this Lease, all buildings, structures, fixtures, additions, equipment, improvements, any subtenant security deposits then held by Tenant (upon delivery of which, Landlord shall assume all obligations to subtenants with respect thereto), and any other real property whatsoever located on the Property shall become part of the realty, become the property of Landlord, and shall be surrendered with the Property, but not including personal property or property that is donated to Tenant, which is removed from the Property by Tenant.

c. Upon termination of this Lease, whether by expiration of the Term or otherwise, the Improvements on the Property, and any personal property not removed by Tenant after fifteen (15) days' notice by Landlord, shall, without compensation to Tenant, become Landlord's property, free and clear of all claims to or against them by Tenant or any third person, firm or entity.

d. Notwithstanding any provision of this Lease to the contrary, upon termination of the Lease, Tenant shall have (i) no obligation to remove any Improvements from the Property, and (ii) no right to remove any Improvements from the Property without Landlord's consent.

2.17 LIENS

Except for Permitted Leasehold Mortgages, Tenant shall not create or permit any lien or encumbrance, including but not limited to a mechanics' lien, to be attached to or affect the Property by reason of any act or omission of Tenant. Tenant shall indemnify and hold harmless Landlord and the Property against any such lien, encumbrance, or claim of lien or encumbrance, and against any costs in connection therewith, including attorneys' fees. In the event any such lien or encumbrance is attached to, or any claim of lien or encumbrance is made against, the Property by reason of any act or omission of Tenant, Tenant shall, within twenty (20) days after notice thereof to Tenant, cause the lien to be released or post with Landlord a cash bond in an amount reasonably satisfactory to Landlord, including costs and interest, or provide such other security or take such other actions as may reasonably be required by Landlord's Executive Director or designee to insure the timely release of such lien; provided, however, that if Tenant fails to do so, then Landlord may, in its sole discretion, either (i) pay and discharge the lien or encumbrance, whereupon Tenant shall immediately reimburse Landlord, as Additional Rent, for all costs and expenses which Landlord may incur in discharging such lien, encumbrance, or claim of lien or encumbrance, plus reasonable attorneys' fees, payable to Landlord upon demand, or (ii) Landlord may exercise such other remedies as may be available to it by

reason of Tenant's failure to comply with its obligations under this Lease.

2.18 SUBROGATION

Neither Landlord nor Tenant shall be liable to the other or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure, or other tangible property, or any resulting loss of income, or losses under worker's compensation laws and benefits (even though such loss or damage might have been occasioned by the negligence of such party, its agents, or employees), to the extent any such loss or damage is covered by insurance proceeds received by the Party suffering the loss or damage. The foregoing waiver of the right to subrogation shall not apply to the extent insurance coverage for such loss or damage is not commercially available to Landlord or Tenant under such Party's insurance policies. Landlord and Tenant hereby mutually release each other from liability and waive all right to recover against each other or against officers, employees, agents or representatives of each other for any loss or damage to any person or property caused by or resulting from risks to the extent of proceeds paid against under any insurance policies carried by the parties; provided, however, this paragraph shall be inapplicable if it would have the effect, but only to the extent that it would have the effect, of invalidating any insurance coverage of Landlord or Tenant. The parties shall, to the extent available, cause each insurance policy obtained here under to provide a waiver of subrogation.

2.19 TENANT'S INSURANCE

a. Throughout the Term of this Lease, Tenant shall maintain, at its own cost and expense, and furnish or cause to be furnished to Landlord evidence of the following policies of insurance, naming Tenant as insured and, except for automobile insurance and Workers' Compensation insurance, the Landlord and the City as additional insureds.

(1) Fire Policies: Tenant shall maintain or cause to be maintained a policy or policies of insurance against loss or damage to the Property and the Improvements thereon and all property of an insurable nature located upon the Property, resulting from fire, lightning, vandalism, malicious mischief, riot and civil commotion, and such other perils ordinarily included in special causes of loss property coverage form policies. Such insurance shall be maintained in an amount not less than one hundred percent (100%) of the full insurable value of the Improvements on a Parcel, as defined in this Section 2.19 below, in

paragraph c. The proceeds of any such policy or policies of insurance shall be held and utilized in accordance with the provisions of Section 2.23 of this Lease.

(2) Liability Insurance: Tenant shall maintain or cause to be maintained public liability insurance, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever on or about the Property and the business of the Tenant on the Property, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Tenant or its sublessees, or any person acting for Tenant, or under its respective control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person occurring on or about the Property, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of Tenant or its tenants, or any person acting for Tenant, or under its control or direction. Such property damage and personal injury insurance shall also provide for and protect Landlord against incurring any legal cost in defending claims for alleged loss. Such personal injury and property damage insurance shall be maintained in full force and effect during the Term in the following amounts: commercial general liability in a general aggregate amount of not less than Two Million Dollars (\$2,000,000), and not less than \$2,000,000 General Aggregate, \$2,000,000 Products and Completed Operations Aggregate, and \$2,000,000 Each Occurrence, which minimum amounts shall be increased every five years after the execution of this Agreement by an additional One Million Dollars (\$1,000,000), so that the minimum amounts of commercial general liability insurance and other insurance at the end of the fifth year after execution of this Agreement shall be not less than Three Million Dollars (\$3,000,000), and, at the end of the tenth year, Four Million Dollars (\$4,000,000). Tenant shall deliver to Landlord a Certificate of Insurance evidencing such insurance coverage prior to commencement of the alterations. Tenant agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Tenant may be held responsible for the indemnification of Landlord or the payment of damages to persons or property resulting from Tenant's activities, activities of its tenants or the activities of any other person or persons for which Tenant is otherwise responsible.

(3) Automobile Insurance: Tenant shall maintain or cause to be maintained automobile insurance, maintained in full force and effect during the Term of this Lease in an amount of not

less than One Million Dollars (\$1,000,000) per accident (subject to adjustment as provided in paragraph (2), above).

(4) Workers' Compensation Insurance: Tenant shall maintain or cause to be maintained workers' compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by Tenant in connection with the Property and shall cover liability within statutory limits for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Property or the operation thereof by Tenant. Notwithstanding the foregoing, Tenant may, in compliance with the laws of the State of California and in lieu of maintaining such insurance, self-insure for workers' compensation in which event Lessee shall deliver to Landlord evidence that such self-insurance has been approved by the appropriate State authorities.

b. All policies or certificates of insurance shall provide that such policies shall not be canceled, reduced in coverage or limited in any manner without at least thirty (30) days prior written notice to Landlord. All fire and liability insurance policies (not automobile and Workers' Compensation) policies may name the Landlord, City and Tenant as insureds, additional insureds, and/or loss payable parties as their interests may appear.

c. The term "full insurable value" as used in this Section 2.19 shall mean the cost (excluding the cost of excavation, foundation and footings below the lowest floor and without deduction for depreciation) of providing similar Improvements of equal size and providing the same habitability as the Improvements immediately before such casualty or other loss, but using readily-available contemporary components, including the cost of construction, architectural and engineering fees, and inspection and supervision. To ascertain the amount of coverage required, Tenant shall cause the full insurable value to be determined from time to time by appraisal by the insurer, by agreement between Tenant and Landlord or by an appraiser mutually acceptable to Landlord and Tenant, not less often than once every three years.

d. All insurance provided under this Section 2.19 shall be for the benefit of Tenant, Landlord and City. Tenant agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. Tenant agrees to submit binders or certificates evidencing such insurance to Landlord prior to the execution of this Lease. Within thirty (30) days, if practicable, but in any event prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof, shall be submitted to Landlord. All insurance herein provided for under this Section 2.19 shall be provided by insurers licensed to do business in the State of California and rated A-VII or better.

e. If Tenant fails or refuses to procure or maintain insurance as required by this Lease, Landlord shall have the right, at Landlord's election, and upon ten (10) days prior notice to Tenant, to procure and maintain such insurance. The premiums paid by Landlord shall be treated as a loan, due from Tenant, to be paid on the first day of the month following the date on which the premiums were paid. Landlord shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

2.20 UTILITIES

Tenant shall make all arrangements for and pay for all services and utilities to the Property; Landlord shall not be responsible or liable to Tenant for interruption or stoppages of utilities or other services to the Property except to the extent caused by the negligence or willful misconduct of Landlord.

2.21 HOLDING OVER

In the event Tenant fails to vacate the Property and fulfill all of its obligations hereunder at the end of the Term, Tenant shall be liable for all damages incurred by Landlord by reason of the inability to deliver possession of the Property or any portion thereof to any other person.

2.22 ENTRY BY LANDLORD

Landlord reserves and shall at any and all times have the right, but not the obligation, to enter the Property, for the following purposes: (a) to respond to any emergency situation; (b) to inspect the Property, provided such inspections shall take place during normal business hours and upon not less than 5 calendar days' notice, except for inspections deemed necessary by Landlord

to respond to any emergency situation, which inspections may occur at any time, and for which no advance notice shall be required; (c) to show said Property to prospective purchasers and tenants, provided such showings shall occur only during the last six months of the Term hereof; (d) to post notices of non-responsibility; and (e) to make repairs to the Property, without any obligation to do so, subject to notice to Tenant, and a reasonable opportunity to cure, as provided in Section 2.24.e. hereof, except for repairs deemed necessary by Landlord to respond to any emergency situation, for which no notice or opportunity to cure shall be required. Provided, however, that Landlord shall take all reasonable steps to ensure that the business of Tenant and its subtenants shall not be interfered with unreasonably. Landlord agrees to indemnify, defend and hold Tenant harmless for any and all claims, liability and damages arising out of any activity by Landlord on the Property pursuant to this Section 2.22, except to the extent caused by the negligence or willful misconduct of Tenant. Except to the extent such claim is based on the negligence or willful misconduct of Landlord in conducting its activities pursuant to this Section 2.22, Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Property, and any other loss which may occur, but only to the extent and as the result of Landlord's entry onto the Property and performance of Landlord's activities pursuant to this Section 2.22. Landlord shall have the right to use any and all means which Landlord may deem proper to open doors in an emergency in order to obtain entry to the Property, without liability to Tenant except for any failure to exercise due care for Tenant's property. Any entry to the Property obtained by Landlord by any means for the purposes specified above shall not under any circumstances be construed or deemed to be forcible or unlawful entry into, or a detainer of, the Property or an eviction of Tenant from the Property or any portion thereof.

2.23 DAMAGE, RECONSTRUCTION

a. Covered by Insurance. In the event the Property is damaged by fire or other perils covered by extended coverage insurance, Tenant shall have the right to use all available insurance proceeds to repair or rebuild the Improvements. If the estimated cost of repairs is not in excess of available insurance proceeds (including rent loss insurance proceeds, if any), then Tenant shall forthwith repair the same (using the insurance proceeds to pay the cost of such repair) and this Lease shall remain in full force and effect.

b. Not Covered by Insurance. (i) In the event the Property is damaged as a result of any cause other than the perils covered by fire and extended coverage insurance, or the estimated cost of repairs (including lost rent) is in excess of available insurance proceeds (including rent loss insurance proceeds), then Tenant shall notify Landlord in writing of the amount by which the estimated cost of repairs exceeds such proceeds (the "Shortfall"), and Tenant shall have the right, within ninety (90) days after receipt of such notice, to elect to provide the Shortfall and proceed with such repairs (using the insurance proceeds and such other funds as Tenant may provide to pay the Shortfall), in which case this Lease shall continue in full force and effect.

(ii) If Tenant fails to notify Landlord within such ninety (90) day period that it will provide the Shortfall and conduct the repairs, then Landlord shall have the option, within thirty days from the end of the ninety (90) day period described in clause (i), either to (A) provide the Shortfall at Landlord's sole expense and direct Tenant to repair or restore such damage (using the insurance proceeds and such additional funds as Landlord may provide to pay the Shortfall), with this Lease continuing in full force and effect, or (B) give notice to Tenant terminating this Lease as of the date specified in such notice, which date shall be no less than thirty (30) and no more than sixty (60) days after the giving of such notice of termination. In the event of giving such notice of termination, this Lease shall expire and all interest of Tenant in the Property shall terminate on the date so specified in such notice.

c. Special Termination Rights. Notwithstanding anything to the contrary contained in this Section, Tenant shall have no obligation whatsoever to repair, reconstruct, or restore the Property, and Landlord shall have no right to instruct Tenant to do so, in either of the following circumstances: (i) the damage occurs during the last three (3) years of the Term of this Lease, or (ii) the damage cannot reasonably be expected to be repaired within one (1) year. In that event, Tenant may at its option terminate this Lease upon (30) days written notice to Landlord that Tenant elects not to repair, reconstruct, or restore the Property.

d. Excess Insurance Proceeds. If completion of required repair, reconstruction or restoration of the Property does not utilize all insurance proceeds, then Tenant may retain such unused proceeds. If, for any reason, Tenant does not repair, reconstruct or restore the Property, the insurance proceeds shall belong to Landlord as its property.

e. Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Property, Tenant's personal property, or any inconvenience or annoyance occasioned by such damage, repair, reconstruction, or restoration. Tenant waives the provisions of California Civil Code sections 1932(2) and 1933(4) with respect to any destruction of the Property.

2.24 DEFAULT

a. Subject to the notice and cure provisions of Section 2.24.d. and 2.24.e., the occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

(i) The failure by Tenant to pay Rent or observe or perform any other covenants, conditions, or provisions of this Lease or the Agreement Affecting Real Property to be observed or performed by Tenant; or

(ii) Until Tenant has satisfied all Phase Four Conditions Precedent (as defined in the DDA) applicable to the Property (after which this subparagraph (ii) shall no longer be applicable), (A) any default or breach of a material obligation required to be performed by Master Developer pursuant to the DDA, except a default or breach described in subparagraph (iii), which is not cured within the applicable cure period, or (B) any uncured failure of a condition set forth in the DDA as a Phase Three Condition Precedent or Phase Four Condition Precedent except to the extent such condition is either not within the control of Tenant as described in paragraph f. of Section 9.1 of the DDA, or is within the control of Landlord or City; or

(iii) Until Tenant is entitled to recordation of the Certificate of Completion for the Property (after which this subparagraph (iii) shall no longer be applicable), any default or breach of a material obligation required to be performed by Tenant pursuant to the DDA, but only to the extent it relates to the development of the Property pursuant to the DDA, which is not cured within the applicable cure period;

(iv) Any default or breach by Tenant pursuant to any Permitted Leasehold Mortgage or related document which is not cured within the applicable cure period, provided if there is a good faith dispute as to whether or not such a default exists, there shall be no default hereunder until such dispute is resolved and the expiration of the applicable cure period, provided further that in such event the notice and cure provisions of Section 2.24.d. and 2.24.e. shall not apply; or

(v) Any Transfer that is not approved by Landlord when and as required by this Lease; or

(vi) The abandonment of the Property by Tenant; or

(vii) The making by Tenant of any general assignment for the benefit of creditors; or the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt, or a petition or reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within one hundred fifty (150) days); or the appointment of a trustee or a receiver to take possession of substantially all of Tenant's assets located at the Property or of Tenant's interest in this Lease, where possession is not restored to Tenant within one hundred fifty (150) days; or the attachment, execution, or other judicial seizure of substantially all of Tenant's assets located at the Property or of Tenant's interest in this Lease, where such seizure is not discharged within one hundred fifty (150) days.

b. Subject to Force Majeure delay, failure or delay by Tenant to perform any term or provision of this Lease constitutes a default under this Lease. Tenant must immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence, and during any period of curing shall not be in default, so long as it endeavors to complete such cure, correction or remedy with reasonable diligence, and provided such cure, correction or remedy is completed within the applicable time period set forth herein after receipt of written notice (or such additional time as may be deemed by Landlord to be reasonably necessary to correct the default).

c. Landlord shall give written notice of default to Tenant, specifying the default complained of by Landlord. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Lease, any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

d. If a monetary event of default occurs, prior to exercising any remedies hereunder, Landlord shall give Tenant written notice of such default. Tenant shall have a period of seven (7) calendar days after such notice is received or deemed received within which to cure the default prior to exercise of remedies by Landlord. Notwithstanding the foregoing, if any payment is not received by Landlord within seven (7) calendar days following the due date thereof, then in addition to the remedies conferred upon Landlord pursuant to this Lease, a late charge of ten percent (10%) of the amount due and unpaid will be added to the delinquent amount to compensate Landlord for the expense of handling the delinquency, computed from the date on which the amount was due and payable until paid. Without prejudice to the rights of Landlord hereunder, Tenant shall indemnify Landlord against, and shall pay Landlord on demand, any expense or loss which it may sustain or incur as a direct result of the failure by Tenant to pay when due any installment of Rent or other amounts payable to Landlord under this Lease, to the extent that any such expense or loss is not recovered pursuant to such foregoing provisions. A certificate of Landlord setting forth the basis for the determination of the amounts necessary to indemnify Landlord in respect of such expenses or direct loss, submitted to Tenant by Landlord shall be conclusive and binding for all purposes.

e. If a non-monetary event of default occurs, prior to exercising any remedies hereunder, Landlord shall give Tenant notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, Tenant shall have such period to effect a cure prior to exercise of remedies by Landlord. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Tenant (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then Tenant shall have such additional time as is reasonably necessary to cure the

default prior to exercise of any remedies by Landlord. In no event shall Landlord be precluded from exercising remedies if the security of its fee interest in the Lease Parcel becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within one hundred eighty (180) days after the first notice of default is given.

f. Any notice of default that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission, provided if such facsimile is received on a nonbusiness day or after 5:00 p.m. on a business day, receipt shall be deemed to have occurred on the next business day; any notice of default that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt by Tenant; and any notice of default that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

g. If any default or breach is not cured by Tenant within the respective period of time provided in paragraphs d. and e. of this Section 2.24, and if such default or breach is not cured by a Leasehold Mortgagee within the time provided in Section 2.30 hereof, then Landlord shall be entitled to exercise any and all rights or remedies which may be available at law or in equity, including terminating this Lease. Any and all rights or remedies available to Landlord shall be cumulative, and not alternative. Provided, however, Landlord shall not be required to deliver written notice to Tenant as a condition to Tenant's obligations to pay any rent hereunder, or as a condition to Tenant's obligations under any Leasehold Mortgage or related documents, so long as Landlord provides written notice to Tenant before exercising its remedies or terminating this Lease, as described in this subdivision h., above.

h. In any case where, after notice of default is given to Tenant pursuant to this Section 2.24 and any Permitted Leasehold Mortgagee pursuant to Section 2.30, and prior to Tenant's leasehold interest having become vested in the Permitted Leasehold Mortgagee, neither Tenant nor the Permitted Leasehold Mortgagee has cured such default within the respective times provided for such cure in this Lease, then Landlord shall have the following rights and remedies:

(i) Landlord shall have the right to seek money damages against Tenant;

(ii) Landlord shall have the right to seek injunctive relief and/or specific performance of any obligation of Tenant hereunder;

(iii) Landlord shall have the right to cure the default, in which case, Tenant shall reimburse all costs and expenses incurred by Landlord in connection therewith, immediately upon demand, plus interest at the rate of ten percent (10%) per annum.

(iv) Landlord shall have the right to terminate this Lease.

2.24A RIGHT OF REVERTER

a. Subject to the notice and cure provisions of Section 2.24.d. and 2.24.e., until Tenant is entitled to recordation of the Agency Certificate of Completion for the Property (after which this Section 2.24A shall no longer be applicable), Landlord shall have the additional right, at its option, to terminate the DDA and this Lease, and to reenter and take possession of the Property (or any portion thereof) with all improvements thereon, and to terminate and revert in Landlord the leasehold estate theretofore conveyed to Tenant, as provided in California Health and Safety Code Section 33437, in the event of an uncured default described in this Section 2.24A, below:

(i) Tenant or Assignee fails to commence construction of any Improvements as required by the DDA for a period of ninety (90) days after written notice from Landlord, which shall be subject to Force Majeure Delay; or

(ii) Tenant or Assignee abandons or substantially suspends construction of any Improvements for a period of ninety (90) days after written notice from Landlord, which shall be subject to Force Majeure delay; or

(iii) Tenant or Assignee assigns or attempts to assign the DDA, or any rights therein, or transfer, or suffer any involuntary transfer of the Property or such party's interest in the Property, or any part thereof, in violation of the DDA or this Deed, and such breach is not cured within thirty (30) days after the date of written notice thereof; or

(iv) Tenant or Assignee otherwise materially breaches the DDA, and such breach is not cured within the time provided in Section 9.1 of the DDA.

b. Prior to Satisfaction of Phase Four Conditions.

Except as provided in paragraph bb., below, of this Section 2.24A, prior to the satisfaction of all Phase Four Conditions Precedent applicable to the Property, the Landlord's right of reverter established in this Section 2.24A shall be senior in priority to any lien, including Permitted Leasehold Mortgages, such that if Landlord exercises its right of reverter, all such liens and leasehold mortgages will be extinguished and the Landlord will be revested of title to the Property free and clear of all such liens and leasehold mortgages.

bb. Community Facilities District

(i) Notwithstanding any provision contained in this Lease or any other document, but subject to the provisions of paragraph (ii), below, Landlord shall subordinate its right of reverter established in this Section 2.24A to the special tax lien imposed on any portion of the Property in connection with the formation by the City of San Diego of a Community Facilities District, whether such formation occurs prior to or after satisfaction of the Phase Four Conditions Precedent, so that in the event Landlord exercises such right of reverter, Landlord would take the affected property subject to such special tax lien.

(ii) Landlord's obligation to subordinate its right of reverter to the special tax lien imposed on any portion of the Property in connection with the formation of a Community Facilities District prior to the satisfaction of Phase Four Conditions Precedent shall be subject to Master Developer's delivery to the Landlord, not later than the issuance of any bonds secured by such special tax lien, of an unconditional irrevocable letter of credit (the "LOC") meeting the requirements set forth in Exhibit "A" to the First Implementation Agreement to the DDA.

c. Conditions of Subordination to Senior Obligations.

Subject to this paragraph c., following satisfaction in full of all Phase Four Conditions Precedent applicable to the Property, the Landlord shall subordinate its right of reverter to the lien of any

Community Financing District or other financing bonds issued with respect to the Property and the lien of any Permitted Leasehold Mortgagee (collectively, a "Senior Obligation"). The Landlord's agreement to subordinate its right of reverter to Senior Obligations is subject to the holder of any Senior Obligation to which the Landlord's right of reverter is to be subordinated, shall agree, in writing, to provide to the Landlord the following rights:

(i) Upon the occurrence of an event of default under any of the Senior Obligation documents, the holder of the Senior Obligation shall promptly notify Landlord of the occurrence of such event of default, which notification shall be provided to Landlord contemporaneously with the delivery to Tenant or Assignee of any notice of default under any of the Senior Obligation documents;

(ii) The Landlord shall have the right, during the cure periods which apply to the Tenant or Assignee pursuant to the Senior Obligation documents and any cure period which may apply to the Landlord under applicable law, to cure Tenant or Assignee's default relative to the Senior Obligation; and

(iii) After a default on any of the Senior Obligation documents but prior to a foreclosure sale or deed in lieu assignment of the leasehold interest in the Property, the Landlord shall have the right to take title to the Property and cure the default relative to the Senior Obligation documents, without the holder of the Senior Obligation exercising any right it might otherwise have to accelerate the Senior Obligation by reason of such title transfer, so long as Landlord promptly cures any such default upon taking title to the Property.

d. Following Satisfaction of Phase Four Conditions Precedent. Upon and after the satisfaction of all Phase Four Conditions Precedent for the Property, such right to reenter, repossess, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit, and Landlord's rights shall be subject and subordinate to any rights or interests provided in the DDA for the protection of any Mortgagee of a Permitted Leasehold Mortgage Loan. To carry out this paragraph d, subject to the conditions set forth in paragraph c. of this Section 2.24A, the Landlord shall execute such reasonable subordination

agreements as may be requested by Tenant or the maker of any Permitted Leasehold Mortgage Loan.

e. Disposition of Property Following Reversion. If such reversion occurs following the satisfaction of all Phase Four Conditions Precedent for the Property and subordination of the Landlord's Right of Reverter to the lien of a Permitted Leasehold Mortgage Loan, upon the reversion in Landlord of the leasehold estate theretofore conveyed to Tenant as provided in this Section 2.24A, Landlord shall, pursuant to its responsibilities under state law, use its best efforts to lease the Property, or any part thereof, as soon and in such manner as Landlord shall find feasible and consistent with the objectives of the Community Redevelopment Law, the Reuse Plan and the Redevelopment Plan to a qualified and responsible party or parties (as determined by Landlord), who will assume the obligation of making or completing the improvements, or such other improvements in their stead, as shall be satisfactory to Landlord and in accordance with the uses specified for the Property, or any part thereof, in the Redevelopment Plan. Upon such conveyance of the Property, or any part thereof, the proceeds thereof, if any, shall be applied:

(i) First (but only if such reversion occurs following the satisfaction of all Phase Four Conditions Precedent and subordination of the Landlord's Right of Reverter to the lien of any Permitted Leasehold Mortgage Loan), repayment in full of the outstanding balance of any Permitted Leasehold Mortgage Loan;

(ii) next, to reimburse Landlord on its own behalf or on behalf of the City of San Diego of all costs and expenses incurred by Landlord, including salaries of personnel engaged in such action, in connection with the recapture, management and leasing of the Property, or any part thereof (but less any income derived by Landlord from the leasing of the Property, or any part thereof, in connection with such management); all taxes, assessments and water and sewer charges with respect to the Property or any part thereof (or, in the event the Property, or any part thereof, is exempt from taxation or assessment or such charges during the period of ownership, then such taxes, assessments or charges, as would have been payable if the Property, or part thereof, were not so exempt); any payments made or necessary to be made to discharge or prevent from attaching or being

made any subsequent encumbrances or liens due to obligations, defaults or acts of Tenant, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the agreed improvements or any part thereof on the Property, or any part thereof; and any amounts otherwise owing to the Landlord by Tenant and its successor or transferee; and

(iii) Third, to reimburse Tenant, its successor or transferee, up to the amount equal to: the sum of the consideration paid to the Landlord for the lease of the Property (or allocable to the part thereof) and the costs incurred for the development of the Property, or any part thereof, or for the construction of the agreed improvements thereon, less (subject to the satisfaction of all Phase Four Conditions Precedent) the Permitted Mortgage Loan.

(iv) Any balance remaining after such reimbursements shall be retained by Landlord as its property.

f. Rules of Interpretation. To the extent that the right established in this Section 2.24A involves a forfeiture, it must be strictly interpreted against Landlord, the party for whose benefit it is created. The rights established in this Section 2.24A are to be interpreted in light of the fact that Landlord will convey the leasehold interest in the Property to Tenant for development and not for speculation.

g. Statutory Basis for Right of Reverter. The parties acknowledge that Landlord's right of reverter pursuant to this Section 2.24A is authorized by and is in furtherance of California Health and Safety Code Section 33437.

h. Expiration of Right of Reverter. The rights established in this Section 2.24A shall not apply to the Property after the recordation of the Agency Certificate of Completion with respect to the Property.

2.25 EMINENT DOMAIN

a. If the Property or any portion thereof is taken under the power of eminent domain, or sold by Landlord under the threat of the exercise of such power, this Lease shall terminate as to the part so taken as of the date that the condemning authority takes possession of the Property. If a portion of the Property is

taken or sold under such threat such that the commercial use of the Property is no longer reasonably viable, either Landlord or Tenant may terminate this Lease as of the date that the condemning authority takes possession by delivery of written notice of such election within twenty (20) days after such party has been notified of the taking or, in the absence thereof, within twenty (20) days after the condemning authority shall have taken possession.

b. If this Lease is not terminated by Landlord or Tenant, it shall remain in full force and effect as to the portion of the Property remaining. In such event, Tenant shall, at Tenant's own expense, restore the Property to a complete unit of like quality and character, except as to size, as existed prior to the date on which the condemning authority took possession.

c. Except as provided in paragraph d., below, all awards for the taking of any part of the Property or proceeds from the sale made under the threat of the exercise of the power of eminent domain shall be paid directly to Tenant; provided, however, that Landlord shall be entitled to any award which is specifically made for the value of the fee as encumbered by this Lease (including any residual value after the Term).

d. During the last twenty (20) years of the Term, all awards for the taking of any part of the Property or proceeds from the sale made under the threat of the exercise of the power of eminent domain shall be paid directly to Landlord (except as provided in paragraph e., below), whether made as compensation for diminution of value of the leasehold estate, for the taking of the fee, or as severance damages; provided, however, that Tenant shall be entitled to any award which is specifically made for the value of the leasehold estate created by this Lease, Tenant's interest in the Improvements and any loss of or damage to Tenant's trade fixtures and removable personal property.

e. Notwithstanding any provision of this Section 2.25, in the event Landlord exercises its power of eminent domain with respect to the Property or any portion thereof or interest therein, Tenant shall be entitled to such awards as may be authorized by applicable law, including bonus value, if any, without regard to this Section 2.25.

2.26 ESTOPPEL OFFSET STATEMENT

a. Tenant shall, at any time and from time to time upon not less than twenty (20) days' prior written notice from Landlord, execute, acknowledge, and deliver to Landlord a statement in writing certifying that this Lease is unmodified and in full force

and effect (or, if modified, is in full force and effect, and stating the modifications) and acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder (or specifying such defaults if any are claimed) and such other matters as may be reasonable and customary or as needed to clarify any provision of this Lease. Tenant's failure to deliver such statement to Landlord within twenty (20) days after receipt of Landlord's notice shall be conclusively deemed to be Tenant's acknowledgment that this Lease is unmodified except as reflected in recorded instruments and that, to Tenant's knowledge, there are no uncured defaults on the part of Landlord hereunder.

b. Landlord shall, at any time and from time to time upon not less than twenty (20) days' prior written notice from Tenant, execute, acknowledge, and deliver to Tenant a statement in writing certifying that this Lease is unmodified and in full force and effect (or, if modified, is in full force and effect, and stating the modifications) and acknowledging that there are not, to Landlord's knowledge, any uncured defaults on the part of Tenant hereunder (or specifying such defaults if any are claimed), the last date Landlord received rent under this Lease, the date such rent was due and the amount thereof, acknowledging that the recipient will rely on the certificate, and such other matters as may be reasonable and customary or as needed to clarify any provision of this Lease. Landlord's failure to deliver such statement to Tenant within twenty (20) days after receipt of Tenant's notice shall be conclusively deemed to be Landlord's acknowledgment that this Lease is unmodified except as reflected in recorded instruments and that, to Landlord's knowledge, there are no uncured defaults on the part of Tenant hereunder.

2.27 HAZARDOUS MATERIALS

a. For purposes of this Lease, the term "Hazardous Materials" shall mean and include the following:

- (1) a "Hazardous Substance", "Hazardous Material", "Hazardous Waste", or "Toxic Substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101, et seq., or the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.;

- (2) an "Extremely Hazardous Waste", a "Hazardous Waste", or a "Restricted Hazardous Waste", under §§ 25115, 25117 or 25122.7 of the California Health and Safety Code, or is listed or identified pursuant to §§ 25140 or 44321 of the California Health and Safety Code;
- (3) a "Hazardous Material", "Hazardous Substance", "Hazardous Waste", "Toxic Air Contaminant", or "Medical Waste" under §§ 25281, 25316, 25501, 25501.1, 117690 or 39655 of the California Health and Safety Code;
- (4) "Oil" or a "Hazardous Substance" listed or identified pursuant to § 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321, as well as any other hydrocarbonic substance or by-product;
- (5) listed or defined as a "Hazardous Waste", "Extremely Hazardous Waste", or an "Acutely Hazardous Waste" pursuant to Chapter 11 of Title 22 of the California Code of Regulations;
- (6) listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to § 25249.9(a) of the California Health and Safety Code;
- (7) a material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, damages or threatens to damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or public agency requires in order for the property to be put to any lawful purpose;
- (8) any material whose presence would require remediation pursuant to the guidelines set forth in the State of California Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank;

- (9) pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.;
- (10) asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.;
- (11) any radioactive material including, without limitation, any "source material", "special nuclear material", "by-product material", "low-level wastes", "high-level radioactive waste", "spent nuclear fuel" or "transuranic waste", and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. §§ 2011 et seq., the Nuclear Waste Policy Act, 42 U.S.C. §§ 10101 et seq., or pursuant to the California Radiation Control Law, California Health and Safety Code §§ 114960 et seq.;
- (12) regulated under the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq., or the California Occupational Safety and Health Act, California Labor Code §§ 6300 et seq.; and/or
- (13) regulated under the Clean Air Act, 42 U.S.C. §§ 7401 et seq. or pursuant to Division 26 of the California Health and Safety Code.

b. The term "Pre-existing Site Conditions" shall mean the existence, release, presence or disposal on, in, under, about or adjacent to the Property, of any Hazardous Materials which occurred before the delivery of possession of the Property to Tenant.

c. Tenant shall not, except in compliance with law:

- (1) Make, or permit to be made, any use of the Property, or any portion thereof, which emits, or permits the emission of dust, sweepings, dirt, cinders, fumes, or odors into the atmosphere, the ground, or any body of water, whether natural or artificial, in violation of applicable law; or

- (2) Discharge, leak, or emit, or permit to be discharged, leaked, or emitted, any liquid, solid, or gaseous matter, or any combination thereof, into the atmosphere, the ground, or any body of water, in violation of applicable law.
- (3) Use, store or dispose of any Hazardous Materials on the Property.

d. Tenant shall not keep any trash, garbage, waste, or other refuse on the Property except in sanitary containers and shall regularly and frequently remove the same from the Property. Tenant shall keep all incinerators, containers, and other equipment used for the storage or disposal of such matter in a clean and sanitary condition. Tenant shall surrender the Property at the expiration or termination of this Lease free of any Hazardous Materials or contamination caused by Tenant's activities, and free and clear of all judgements, liens, or encumbrances caused by Tenant's activities and shall, at its own cost and expense, repair all damage and clean up or perform any remedial action necessary relating to any Hazardous Materials or contamination caused by Tenant's activities. Tenant shall, at its sole cost and expense remediate in accordance with law and/or remove any alterations or improvements that may be contaminated or may contain Hazardous Materials caused by Tenant's activities.

e. Tenant shall indemnify, defend, and hold harmless Landlord, the City of San Diego and their respective officers, employees, contractors and agents (collectively referred to as the "Indemnified Parties"), with counsel reasonably acceptable to Agency, from and against any and all loss, liability, damage, claim, cost and expense (including reasonable attorneys' fees, court and litigation costs and fees of expert witnesses) resulting or arising from or in any way connected with the following: the existence, release, presence or disposal on, in, under, about or adjacent to the Property, at any time after the delivery of possession and conveyance of the Property to Tenant, of any Hazardous Materials, except to the extent of (and in no event shall Tenant be responsible for) any loss, liability, damage, claim, cost or expense caused by: (1) Pre-existing Conditions; and (2) the negligence or willful misconduct of any Indemnified Party or any Assignee or any tenant or subtenant of the City of San Diego prior to the effective date of this Lease or the assignment of the management of the Property to Tenant prior to the effective date of this Lease, whichever occurs first.

f. Notwithstanding the expiration or termination of this Lease, Tenant's obligations and liabilities under this Section shall continue so long as Landlord continues to own the Property or any portion thereof or otherwise remains responsible for any Hazardous Materials on the Property; provided, however, that nothing contained in this provision is intended to or shall have the effect of relieving any party of liability under any applicable statutory or common law.

2.28 TENANT'S SIGNAGE

Tenant shall have the right to place signs on the Property in accordance with applicable City requirements.

2.29 MEMORANDUM OF LEASE

Concurrently with the execution of this Ground Lease, Landlord and Tenant shall execute in recordable form a Memorandum of Lease, substantially in the form attached hereto as Exhibit "C" which is incorporated herein by this reference, which either party is authorized to record.

2.30 MORTGAGEE PROTECTION PROVISIONS

a. DEFINITIONS.

(i) For purposes of this Lease, the term "mortgage" shall include whatever security instruments are used in the locale of the Property, such as, without limitation, deeds of trust security deeds, and conditional deeds. The term "mortgage" shall also include any instruments required in connection with a sale-leaseback transaction. The term "mortgagee" shall include the holder of the secured position under each of the foregoing types of instruments, including but not limited to the beneficiary under a deed of trust, the secured party under a security agreement and the lessor in a sale-leaseback transaction.

(ii) For purposes of this Lease, the term "Leasehold Mortgage" means a conveyance of a security interest in this Lease and all of Tenant's interests in the Property (collectively referred to as "Tenant's Leasehold Interests") to a lender (a "Leasehold Mortgagee") to secure any loan (which shall include, among other things, bond financing) to finance any construction, improvement or alteration of the Property, or, to secure any refinancing of any such loan (or bond financing).

(iii) For purposes of this Lease, the terms "Permitted Leasehold Mortgage" and "Permitted Leasehold Mortgagee"

shall mean, respectively, a Leasehold Mortgage and a Leasehold Mortgagee satisfying all of the conditions set forth in paragraph b. of this Section 2.30.

b. RIGHT TO ENCUMBER. At any time and from time to time during the Term, Tenant shall have the right to enter into a Leasehold Mortgage upon and subject to each and all of the following terms and conditions, subject to the reasonable consent of Landlord, which Landlord shall grant provided the proposed Leasehold Mortgage satisfies all of the following conditions:

(i) The Leasehold Mortgage shall contain an aggregate principal amount which, when combined with the principal balance of all other Permitted Leasehold Mortgages then outstanding, shall not exceed eighty percent (80%) of the fair market value of Tenant's interests in this Lease. The fair market value of Tenant's interests in this Lease shall be determined by an appraisal conducted on behalf of the Leasehold Mortgagee by a disinterested real estate appraiser having the qualifications for appraisers required by the Leasehold Mortgagee's underwriting criteria.

(ii) The Leasehold Mortgage shall cover all of Tenant's interest in the Lease, the Property, the Improvements and, without the prior express consent of Landlord, which Landlord shall not unreasonably withhold, condition or delay, shall cover no interest in any other real property.

(iii) The Leasehold Mortgage shall be without subordination of the fee simple title of the Property. The term of any Leasehold Mortgage shall expire prior to the expiration of the term of this Lease. Provided, however, that in the event of the formation of a Community Facilities District on any part of the Property prior to the conveyance of a leasehold interest in such Parcel pursuant to the DDA, the following shall apply: the notice of the special tax lien shall create a lien on the interest described in the "Rate and Method" which the parties understand will be the fee simple title of the Property at the time of formation of such District and, concurrently with the Landlord's conveyance of the leasehold interest to Master Developer (as defined in the DDA), the leasehold interest only.

(iv) No such Leasehold Mortgage shall be binding upon Landlord in the enforcement of its rights and remedies herein, unless and until Tenant delivers or causes to be delivered to Landlord a certified copy of the fully executed original Leasehold Mortgage bearing the date and recording information and a certified copy of the original note secured by the Leasehold Mortgage,

together with written notice of the address of the Leasehold Mortgagee to which notices may be sent; and in the event of an assignment of such Leasehold Mortgage, such assignment shall not be binding upon Landlord unless and until a certified copy thereof, bearing the date and recording information together with written notice of the address of the assignee thereof to which notices may be sent, have been delivered to Landlord.

(v) No Leasehold Mortgage permitted by this Lease shall cover more than one indebtedness; that is, there shall be no cross-collateralization permitted.

(vi) A Leasehold Mortgage is to be originated only by a Qualified Lender. For the purposes hereof, the term "Qualified Lender" shall consist of:

(aa) the mortgagee of any purchase money financing of a Permitted Transfer or other Transfer approved by Landlord; or

(bb) any one or a combination of the following lending institutions authorized under applicable California law to make mortgage loans and not under any order or judgment of any court or administrative agency restricting or impairing its operation as a lender, and having a net worth in the amount of not less than Twenty-Five Million Dollars (\$25,000,000), increased by the percentage increase, if any, in the Consumer Price Index from the Commencement Date of this Lease to the date of anniversary thereof most recently preceding the date of calculation, and is regularly engaged in business in the State of California: a commercial or savings bank; a trust company; an insurance company; a savings and loan association; a building and loan association;

(cc) any company engaged in the ordinary course of business as a lender with a net worth of not less than Twenty-Five Million Dollars (\$25,000,000), increased by the percentage increase, if any, in the Consumer Price Index from the Commencement Date of this Lease to the date of anniversary thereof most recently preceding the date of calculation, which is duly licensed or registered (if legally required) with any regulatory agency having jurisdiction over its operation, and is not under any order or judgment of any court or administrative agency restricting or impairing its operation as a lender, including, without limitation, the following: a real estate investment trust; a pension, retirement or welfare fund; an endowment fund or foundation authorized to make loans in the State of California; or

(dd) any other person or company approved by the Landlord's Executive Director or designee, which approval may be granted or withheld in his or her sole discretion.

Landlord acknowledges that the identity and nature of lending institutions changes over time, and agrees that Landlord's approval of any proposed mortgage lender that is not a "Qualified Lender" as defined in this paragraph (6) shall not be unreasonably withheld, conditioned or delayed.

(vii) All rights acquired by the Leasehold Mortgagee under the Leasehold Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Landlord hereunder. Landlord shall not be deemed to waive any covenants, conditions and restrictions contained in this Lease by reason of Tenant's grant of a Leasehold Mortgage.

(viii) No extension, modification, change or amendment to a Leasehold Mortgage shall be effective, or binding upon Landlord, unless and until approved by Landlord, which approval shall be granted so long as such extension, modification, change or amendment satisfies the applicable requirements of paragraphs (i) through (vii), above.

c. LANDLORD'S RIGHT TO CURE DEFAULTS. In the event of a default or breach by Tenant of any Permitted Leasehold Mortgage, Landlord shall have the right to cure the default provided such cure is completed at least five (5) business days before the date of foreclosure. In such event, Landlord shall be entitled to reimbursement by Tenant of all costs and expenses incurred by Landlord in curing the default, with interest at the highest rate permitted by law, as Additional Rent (collectively, "Landlord's Cure Payments"), provided in the event of a subsequent foreclosure of a Permitted Leasehold Mortgage, the party acquiring Tenant's Leasehold interests shall not be obligated to pay Landlord any of Landlord's Cure Payments.

d. RIGHTS OF PERMITTED LEASEHOLD MORTGAGEE: If Tenant and/or Tenant's successors and assigns (including, but not limited to, any sublessee of Tenant) shall mortgage its interest in this Lease and its leasehold estate in the Property, or any part or parts thereof as permitted by this Section 2.30, above, the following provisions shall apply:

(i) No Amendment. There shall be no amendment, cancellation, termination, surrender or modification of this Lease by joint action of Landlord and Tenant without the prior consent in writing of any Permitted Leasehold Mortgagee.

(ii) Right to Notice of Default. Landlord shall, upon serving Tenant with any notice of default, simultaneously serve a copy of the notice of default upon any Permitted Leasehold Mortgagee.

(iii) Right to Cure. Any Permitted Leasehold Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Lease, to pay all of the rents due hereunder, to effect any insurance, to pay any taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Tenant hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Lease. Any Permitted Leasehold Mortgagee and its agents and contractors shall have full access to the Property for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Permitted Leasehold Mortgagee shall be as effective to prevent a termination of this Lease as the same would have been if done by Tenant.

(iv) Additional Cure Period. Anything contained in this Lease notwithstanding, if any default shall occur which, pursuant to any provision of this Lease, purportedly entitles Landlord to terminate this Lease, Landlord shall not be entitled to terminate this Lease as to any Permitted Leasehold Mortgagee, nor to disturb the right of possession of any subtenant of Tenant, and the notice shall be rendered void as to such parties, if the Permitted Leasehold Mortgagee, within sixty (60) days after expiration of the period within which Tenant was permitted to cure the default (but in no event later than ninety (90) days after receipt by the Leasehold Mortgagee of the notice of default referred to in paragraph d.(ii) of this Section 2.30, above), shall both:

(aa) either (1) cure the default if the same can be cured by the expenditure of money, or (2) if the default or breach is not so curable, commence, or cause any trustee under the mortgage to commence, and thereafter to diligently pursue to completion steps and proceedings to foreclose on the interests covered by the mortgage; and

(bb) perform or cause the performance of all of the covenants and conditions of this Lease requiring the

expenditure of money by Tenant until such time as the leasehold shall be sold upon foreclosure pursuant to the mortgage, or shall be released or reconveyed thereunder, or shall be transferred upon judicial foreclosure or by deed or assignment in lieu of foreclosure.

(v) Condition of Termination. All right of Landlord to terminate this Lease as the result of the occurrence of any default shall be subject to, and conditioned upon, Landlord having first given to each Permitted Leasehold Mortgagee written notice of the default as required under Section 2.30.d.(ii), above, and each Permitted Leasehold Mortgagee having failed to remedy such default or acquire Tenant's leasehold estate hereunder or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in Section 2.30.d.(iv), above.

(vi) Suspension of Cure Period. If any Permitted Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court, or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant, the times specified in paragraph (iv) above, for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition, so long as the Permitted Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant under this Lease and shall continue to pay currently those monetary obligations as and when the same fall due, subject to any applicable notice and grace periods.

(vii) Loss Payable Endorsement. Landlord and Tenant agree that the name of the Permitted Leasehold Mortgage shall, at its request, be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Tenant under this Lease on condition that the insurance proceeds are to be applied in the manner specified in this Lease.

(viii) No Consent to Foreclosure. Foreclosure of any leasehold mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the leasehold mortgage, or any conveyance of the leasehold estate hereunder from Tenant to any Leasehold Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance, Landlord shall recognize in writing the purchaser or other transferee referred to in the preceding sentence in connection therewith as the Tenant hereunder.

Further, following such foreclosure or conveyance, any assignment or subleasing by the purchaser or other transferee shall not require the consent of Landlord, despite any other provisions of this Lease to the contrary.

(ix) Proceeds of Insurance and Condemnation. The proceeds from any insurance policies or arising from a condemnation award to Tenant shall be paid to and held by the Permitted Leasehold Mortgagee of highest priority and distributed pursuant to the provisions of this Lease, except that the Permitted Leasehold Mortgagee may reserve the right to apply to the mortgagee debt (in the order of priority) all, or any part, of the proceeds not used to repair or restore the Property and the Improvements.

(x) Notice of Proceedings. The parties hereto shall give to any Permitted Leasehold Mortgagee notice of any arbitration proceedings or condemnation proceedings involving Tenant's interest in the Property, or of any pending adjustment of insurance claims, and any Permitted Leasehold Mortgagee shall have the right to intervene therein and shall be made a party to such proceedings. The parties hereto do hereby consent to such intervention. In the event that any Permitted Leasehold Mortgagee shall not elect to intervene or become a party to the proceedings, that Permitted Leasehold Mortgagee shall receive notice and a copy of any award or decision made in connection therewith.

(xi) Further Protections. Landlord and Tenant shall cooperate in including in this Lease, by suitable amendment from time to time, any provision which may be reasonably requested by any proposed Permitted Leasehold Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Section 2.30 and allowing that Permitted Leasehold Mortgagee reasonable means to protect or preserve the lien of its leasehold mortgage upon the occurrence of a default under the terms of this Lease. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that no such amendment shall in any way affect the term or rent under this Lease, nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.

(xii) Additional Agreement. Landlord shall, upon request, execute, acknowledge and deliver to each Leasehold Mortgagee, an agreement prepared by a Permitted Leasehold Mortgagee and reviewed by Landlord at the sole cost and expense of Tenant, in form satisfactory to Permitted Leasehold Mortgagee, between Landlord, Tenant and the Permitted Leasehold Mortgagee, agreeing to all of the provisions of this Lease.

e. NOTICE: If Tenant and/or Tenant's successors and assigns shall mortgage its interest in this Lease or its leasehold estate in the Property, or any part or parts thereof, Tenant shall send to Landlord a true copy thereof, together with written notice specifying the name and address of the leasehold mortgagee(s) and the pertinent recording data with respect to such mortgage(s).

f. NEW LEASE:

(i) Landlord agrees that in the event of termination of this Lease by reason of any default by Tenant, or by reason of the disaffirmance hereof by a receiver, liquidator or trustee for Tenant or its property, Landlord if requested by any Permitted Leasehold Mortgagee will enter into a new lease of the Property, with the Permitted Leasehold Mortgagee requesting a new lease or its designee, for the remainder of the Term, effective as of the date of such termination, at the rent and additional rent and upon the terms, provisions, covenants and agreements as herein contained and subject to the rights, if any, of any parties then in possession of any part of the Property, provided:

(aa) The Permitted Leasehold Mortgagee shall make written request upon Landlord for the new lease within one hundred twenty (120) days after the date of termination:

(bb) Within thirty (30) days after receipt of the new lease from Landlord complying with the terms of this paragraph (f), the Permitted Leasehold Mortgagee shall execute and deliver the new lease to Landlord and shall pay any and all sums which would, at the time of the execution and delivery thereof, be due and unpaid pursuant to this Lease but for its termination.

(cc) The Permitted Leasehold Mortgagee shall perform and observe all covenants herein contained on Tenant's part to be performed, and shall further remedy any other conditions which Tenant under the terminated Lease was obligated to perform under its terms, in each instance as and to the extent the same are curable or may be performed by the Permitted Leasehold Mortgagee:

(dd) The tenant under the new lease shall have the same right, title and interest in and to the buildings and improvements on the Property as Tenant had under the terminated Lease immediately prior to its termination; and

(ee) Notwithstanding anything to the contrary expressed or implied elsewhere in this Lease, any new lease made pursuant to this Section 2.30.f.(i) shall enjoy the same priority in time as the Lease over any mortgage, deed of trust, or other lien, charge, or encumbrance on the Property.

(ii) Any new lease made pursuant to Section 2.30.f.(i) shall be accompanied by a conveyance from Landlord to the new tenant of title to the Improvements (free of any mortgage, deed of trust, lien, charge, or encumbrance created by Landlord) for a term of years equal to the term of the new lease, subject to the reversion in favor of Landlord upon expiration or sooner termination of the new lease.

(iii) Nothing herein contained shall require any Permitted Leasehold Mortgagee to enter into a new lease pursuant to Section 2.30.f.(i), above, nor to cure any default of Tenant referred to above.

(iv) If a Permitted Leasehold Mortgagee shall elect to demand a new lease, Landlord agrees, at the request of, on behalf of and at the expense of the Permitted Leasehold Mortgagee, to institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or remove the original Tenant from the Property, but not any subtenants of Tenant actually occupying the Property, or any part thereof.

(v) Unless and until Landlord has received notice from any Permitted Leasehold Mortgagee that the Permitted Leasehold Mortgagee elects not to demand a new lease as provided in Section 2.30.f.(i), or until the period therefor has expired, Landlord shall not cancel or agree to the termination or surrender of any existing subleases nor enter into any new subleases hereunder without the prior written consent of the Permitted Leasehold Mortgagee.

g. LENDER'S LIABILITY: In the event any Permitted Leasehold Mortgagee or any designee of it becomes the Tenant under this Lease or under any new lease obtained pursuant to Section 2.30.f.(i), above, and subject to Section 2.24(j), the Permitted Leasehold Mortgagee or its designee shall be personally liable for the obligations of Tenant under this Lease or a new sublease only for the period of time that the Permitted Leasehold Mortgagee or its designee remains the actual beneficial holder of the leasehold estate hereunder.

h. **QUIET ENJOYMENT:** Absent an uncured default by Tenant, Landlord agrees not to disturb the possession, interest or quiet enjoyment of Tenant in the Property for any reason, or in a manner which would materially adversely affect any Permitted Leasehold Mortgage.

i. **APPROVAL OF MODIFICATIONS:** Landlord (through its Executive Director or designee) shall approve reasonable modifications to the terms of this Lease which are reasonably requested by a proposed Leasehold Mortgagee as a condition of financing contemplated by this Lease, and which are limited to procedures, notice provisions or similar mechanical matters relating to lenders' remedies which the Executive Director or designee determines, in his sole discretion, will not adversely affect Landlord's rights.

j. **THE PROVISIONS OF THIS LEASE DO NOT GIVE TO TENANT OR ANY PERSON WHATSOEVER OTHER THAN LANDLORD THE RIGHT TO MORTGAGE, HYPOTHECATE OR OTHERWISE TO ENCUMBER OR TO CAUSE ANY LIENS TO BE PLACED AGAINST THE FREEHOLD ESTATE OF LANDLORD, NOR SHALL SAID PROVISIONS BE CONSTRUED AS RESULTING IN A SUBORDINATION IN WHOLE OR IN PART OF THE FREEHOLD ESTATE OF LANDLORD OR LANDLORD'S RIGHT TO RECEIVE RENT TO ANY INDEBTEDNESS OF TENANT.**

2.31 GENERAL PROVISIONS

a. **Waivers.** The waiver by either party of any term, covenant, or condition herein contained shall not be a waiver of such term, covenant, or condition on any subsequent breach.

b. **Notices.** Formal notices, demands and communications between Landlord and Tenant shall be deemed sufficiently given if dispatched by first class mail, registered or certified mail, postage prepaid, return receipt requested, or by electronic facsimile transmission followed by delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), to the addresses of Landlord and Tenant as set forth in Sections 1.6 and 1.7 hereof. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail. Any notice that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission, provided that if such transmission is delivered after 5:00 p.m., notice shall be deemed given on the next business day; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal

Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

c. Time is of the Essence. Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

d. Binding on Successors and Assigns. This Lease, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and assigns.

e. Force Majeure.

(i) Performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation brought by a third party (but only to the extent performance is enjoined by a court of competent jurisdiction as the result of such litigation) unusually severe weather, reasonably unforeseeable site conditions including the presence of Hazardous Materials, inability to secure necessary labor, material or tools, delays of any contractor, sub-contractor or supplier, acts of the other party, acts or failure to act of the City of San Diego or any other public or governmental agency or entity (except that acts or failure to act of Landlord shall not excuse performance of Landlord), or any causes beyond the control or without the fault of the party claiming an extension of time to perform. Provided, however, in the event Tenant reasonably determines (and Landlord's Executive Director or designee concurs with such determination, which concurrence shall not be unreasonably withheld) that litigation brought by a third party is the cause of Tenant or any assignee's inability to obtain necessary entitlements or financing despite the best efforts of such party to do so, the failure to timely perform any obligation hereunder as the result of such litigation shall not be a default so long as Tenant or such assignee continues to perform its obligations to the maximum extent possible.

(ii) An extension of time for any such cause (a "Force Majeure Delay") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is

sent to the other party within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom. Any party claiming a Force Majeure Delay shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event. Times of performance under this Agreement may also be extended in writing by Landlord and Tenant.

(iii) Notwithstanding any provision of this Agreement, Landlord agrees that in the event Tenant fails to perform any obligation to be performed by Tenant hereunder as the result of adverse changes in market conditions affecting the development, sale or lease of any part of the Property, the Landlord Executive Director shall not terminate this Agreement or exercise the Landlord's right of reverter without first providing Tenant a reasonable opportunity to address the governing body of the Landlord at a public meeting.

f. Costs of Proceedings and Attorneys' Fees. If any action or proceeding is brought by either party against the other under this Lease or by a Leasehold Mortgagee against any such party, whether for interpretation, enforcement, recovery of possession, or otherwise, the prevailing party shall be entitled to recover all costs and expenses, including the fees of its attorney in such action or proceeding. This provision shall also apply to any postjudgment action by either party, including without limitation efforts to enforce a judgment.

g. Severability. Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

h. No Exclusive Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

i. Laws of California. This Lease shall be governed by the laws of the State of California. Proper venue for any action shall be in San Diego, California.

j. No Partnership. Nothing contained in this Lease shall be deemed or construed as creating a partnership, joint venture, or any other relationship between the parties hereto other than Landlord and Tenant according to the provisions contained herein, or cause Landlord to be responsible in any way for the debts or obligations of Tenant, or any other party.

k. Final Agreement. This Lease, including any document or instrument incorporated therein or herein by reference, contains a complete and final expression of the agreement between Landlord and Tenant, and there are no promises, representations, agreements, warranties, or inducements either express or implied other than as are set forth in this Lease. Any and all previous discussions or agreements between Landlord and Tenant with respect to the premises, whether oral or written, are superseded by the DDA and this Lease.

l. Language of Lease. When the context so requires when used in this Lease, the masculine gender shall be deemed to include the feminine and neuter gender and the neuter gender shall be deemed to include the masculine and feminine gender. When the context so requires when used in this Lease, the singular shall be deemed to include the plural. The term "including" shall mean "including but not limited to."

m. Waiver. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being lawfully evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the Property by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise.

n. Requirement of a Writing. No amendment, change, or addition to, or waiver of termination of, this Lease or any part hereof shall be valid unless in writing and signed by both Landlord and Tenant.

o. No Third Party Beneficiaries. The parties acknowledge and agree that the provisions of this Lease are for the sole benefit of Landlord and Tenant, and not for the benefit, directly or indirectly, of any other person or entity, except as otherwise expressly provided herein.

p. Authority of Tenant. The party executing this Lease on behalf of Tenant has full authority to do so and to bind Tenant to perform pursuant to the terms and conditions of this Lease.

q. Incorporation by Reference. Each of the attachments and exhibits attached hereto is incorporated herein by this reference.

r. Interpretation.

(i) The language in all parts of this Lease shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Lease has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Lease with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Lease, this Lease shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

(ii) If any term or provision of this Lease, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each other term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties hereto that in lieu of each clause or provision of this Lease that is illegal, invalid, or unenforceable, there be added as a part of this Lease an enforceable clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible.

(iii) The captions of the articles, sections, and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

(iv) References in this instrument to this "Lease" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation, and/or undertaking "herein," "hereunder," or "pursuant hereto" (or language of like import) shall mean, refer to, and include the covenants, obligations, and

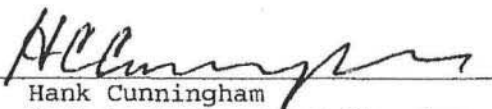
undertakings existing pursuant to this instrument and any riders, exhibits, addenda, and attachments or other documents affixed to or expressly incorporated by reference in this instrument.

s. Merger. So long as any Leasehold Mortgagee holds a Leasehold Mortgage, the fee title to the Property and the leasehold estate created by this Lease shall not merge unless all Leasehold Mortgagees expressly consent to the merger in writing. This provision shall apply even if Tenant or Landlord or any third party acquires both the fee title and this Lease.

t. Priority. This Lease, and any extensions, renewals or replacements thereof, and any sublease entered into by Tenant as sublessor, and any Leasehold Mortgage or other encumbrance recorded by Leasehold Mortgagee shall be superior to any mortgages, deeds of trust or similar encumbrances placed by Landlord on the Property (except for the Agreement Affecting Real Property being recorded concurrently with the Memorandum of Lease) and to any lien right, if any, of Landlord on the buildings, and any furniture, fixtures, equipment or other personal property of Tenant upon the Property.

u. Counterparts. This Lease may be executed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

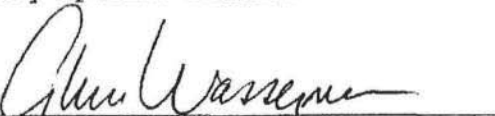
REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

By: 
Hank Cunningham
Assistant Executive Director

APPROVED AS TO FORM AND LEGALITY
Casey Gwinn
Agency General Counsel

By: 
Elisa A. Cusato

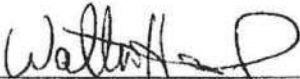
KANE, BALLMER & BERKMAN
Agency Special Counsel

By: 
Glenn F. Wasserman

McMILLIN-NTC, LLC, a Delaware
limited liability company

By: McMillin Management Services,
L.P., a California limited
partnership, its Manager

By: Corky McMillin
Construction Services,
Inc., a California
corporation, its General
Partner

By: 
Walter D. Heiberg
Sr. Vice President

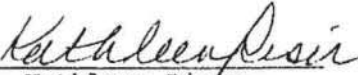
By: 
Kathleen Riser
Vice President

Exhibit "A"

LEGAL DESCRIPTION

Real Property in the City of San Diego, County of San Diego, State of California, described as follows:

Lot 23 of NTC - Unit No. 5, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 14723, filed in the Office of the County Recorder of San Diego County, December 19, 2003.

Excepting and reserving unto the State of California, its successors and assigns, forever, as to a portion of the herein described property, all minerals and all mineral rights in the lands of every kind and character now known to exist or hereafter discovered including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to the State of California or to its successors and assigns, except that notwithstanding Chapter 700 of the Statutes of 1911, as amended, or Section 6401 of the Public Resources Code, the reservations shall not include the right of the state or its successors or assignees in connection with any mineral reservation, removal or disposal activity, to do either of the following: (1) enter upon, use or damage the surface of the lands or interfere with the use of the surface by any grantee or by the grantee's successor or assignees; or (2) conduct any mining activities of any nature whatsoever above a plane located five hundred feet below the surface of the lands without written permission of any grantee of the lands or the grantee's successors or assigns, as set forth in document entitled "State of California Patent of Trust Termination Parcels" recorded February 28, 2002 as File No. 2002-0170372 of Official Records.

Exhibit "B"

MAP OF THE LEASED PROPERTY

[BEHIND THIS PAGE]

MAP NO. 14723

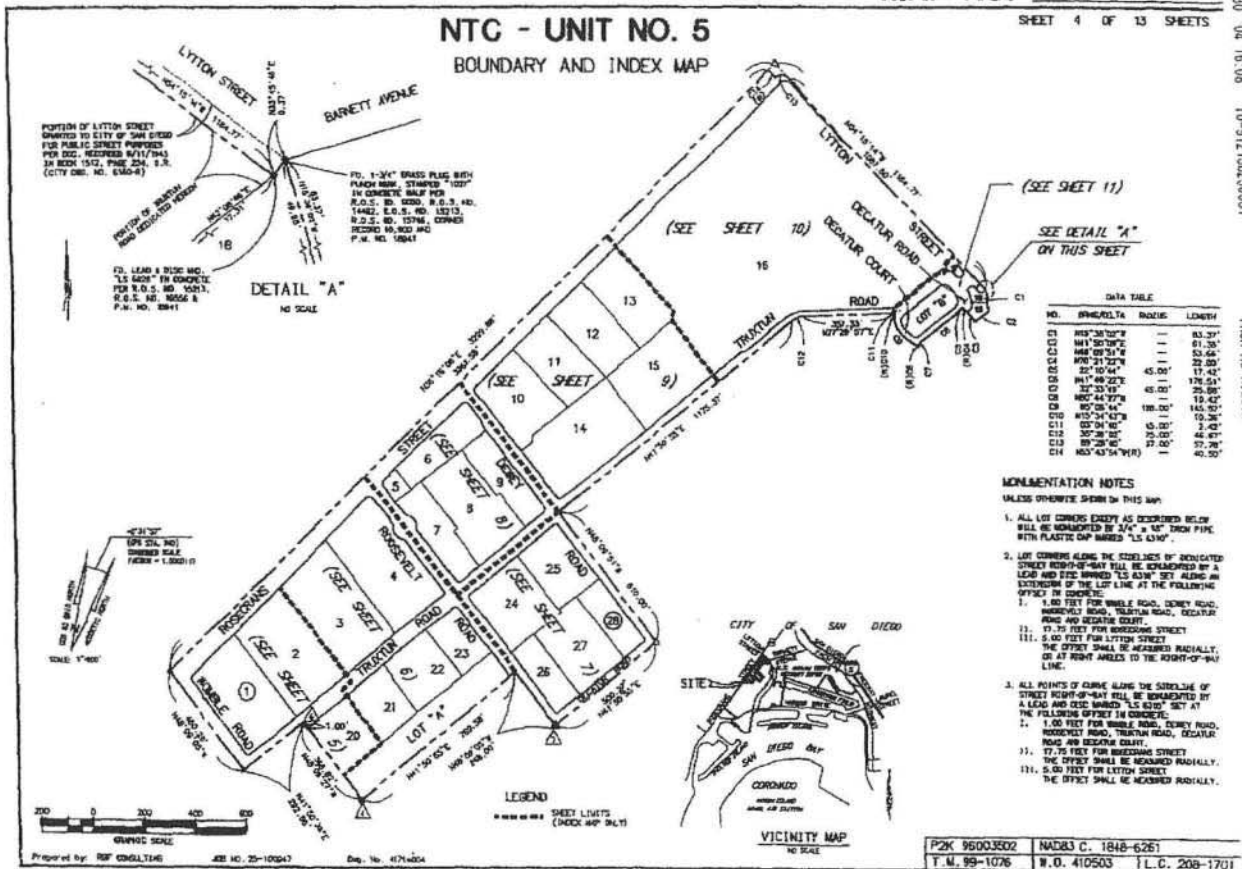
SHEET 4 OF 13 SHEETS

APR 30 '04 16:08 10-912136250931

FROM: HC HILLMAN

I-013 P. 02/07 I-4529

NTG - UNIT NO. 5 BOUNDARY AND INDEX MAP



PORTION OF LYTTON STREET
DEDICATED TO CITY OF SAN DIEGO
FOR PUBLIC STREET PURPOSES
PER DEC. RECORDS 8411/7443
3A BOOK 1542, PAGE 234, T.S.
(CITY ORD. NO. 5340-8)

FD. 1-3/4" BRASS PLUG WITH
PLAIN END, STAMPED "100"
IN CONCRETE HALF PER
R.O.S. NO. 6020, R.O.S. NO.
1442, E.O.S. NO. 15213,
R.O.S. NO. 15786, CORNER
SECOND W. 1/2 SEC. 16, T. 37 N.,
R. 17 W. NO. 15841

FD. LEAD & ZINC WIRE,
1.5" DIA. IN CONCRETE
PER R.O.S. NO. 15213,
R.O.S. NO. 15256 &
P.W. NO. 5841

DETAIL "A"
NO SCALE

(SEE SHEET 11)
(SEE DETAIL "A"
ON THIS SHEET)

NO.	BEARING	LENGTH
C1	N83°30'00"W	83.37'
C2	N41°30'00"W	81.35'
C3	N89°51'00"W	53.66'
C4	N70°21'00"W	29.83'
C5	S2°10'00"W	17.42'
C6	N17°48'00"E	176.51'
C7	S2°33'00"W	26.88'
C8	N80°44'00"E	19.42'
C9	N07°08'00"W	145.01'
C10	N75°24'00"E	10.36'
C11	S57°04'00"W	3.43'
C12	S07°38'00"W	46.67'
C13	S89°28'00"E	37.28'
C14	N83°43'00"W	40.20'

MONUMENTATION NOTES

- UNLESS OTHERWISE SHOWN ON THIS MAP:
- ALL LOT CORNERS EXCEPT AS INDICATED BELOW SHALL BE MONUMENTED BY 3/4" x 1/2" IRON PIPE WITH PLASTIC CAP MARKED "LS 1314".
 - LOT CORNERS ALONG THE SIDELINES OF INDICATED STREET RIGHT-OF-WAY SHALL BE INDICATED BY A LEAD AND ZINC WIRE "LS 1314" SET ALONG AN EXTENSION OF THE LOT LINE AT THE FOLLOWING OFFSET IN CONCRETE:
 - 4.00 FEET FOR ROSMARE ROAD, SENEY ROAD, HARBORVIEW ROAD, TRUSTAN ROAD, DECATUR ROAD AND RESERVE COURT.
 - 7.75 FEET FOR BROADWAY STREET.
 - 5.00 FEET FOR LYTTON STREET. THE OFFSET SHALL BE MARKED RADIALLY, OR AT RIGHT ANGLES TO THE RIGHT-OF-WAY LINE.
 - ALL POINTS OF CURVE ALONG THE SIDELINE OF STREET RIGHT-OF-WAY SHALL BE INDICATED BY A LEAD AND ZINC WIRE "LS 1314" SET AT THE FOLLOWING OFFSET IN CONCRETE:
 - 1.00 FEET FOR ROSMARE ROAD, SENEY ROAD, HARBORVIEW ROAD, TRUSTAN ROAD, DECATUR ROAD AND RESERVE COURT.
 - 7.75 FEET FOR BROADWAY STREET.
 - 5.00 FEET FOR LYTTON STREET. THE OFFSET SHALL BE MARKED RADIALLY.

P2K 96003002 NAD83 C. 1848-6261
T.M. 99-1076 W.O. 410503 I.L.C. 208-1701

Exhibit "C"

MEMORANDUM OF LEASE

[BEHIND THIS PAGE]

OFFICIAL BUSINESS
Document entitled to free
recording per Government
Code Section 6103

Recording Requested by

REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

When Recorded Return to:
Redevelopment Agency of the
City of San Diego
600 B Street, Suite 400
San Diego, California 92101
Attn: NTC Project Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NAVAL TRAINING CENTER REDEVELOPMENT PROJECT
MEMORANDUM OF LEASE
[UNIT 5 LOT 23]

This Memorandum of Lease (the "Memorandum") is made as of _____, 2004, by and between THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, CALIFORNIA ("Landlord") and McMILLIN-NTC, LLC, a California limited liability company ("Tenant"), who agree as follows:

1. Concurrently herewith, Landlord and Tenant have entered into that certain Ground Lease (the "Lease") with respect to the real property (the "Property") described as set forth in Exhibit "A" attached hereto and incorporated herein by this reference. Pursuant to the Lease, Landlord hereby leases the Property to Tenant and Tenant hereby accepts tenancy of the Property from Landlord.

2. Pursuant to Section 2.16 of the Lease, during the Term of the Lease, all buildings, structures, fixtures, additions and improvements located on the Property shall be owned in fee by Tenant, subject to the below described reversionary interest, and Landlord hereby quitclaims its right, title and interest in and to such items to Tenant, subject to the below described reversionary interest. Also pursuant to Section 2.16 of the Lease, upon the expiration or termination of the Lease, all buildings, structures, fixtures, additions, building equipment, improvements, and any

other real property whatsoever located on the Property, shall become the Property of Landlord and owned in fee by Landlord and shall be surrendered to Landlord with the Property.

3. The provisions of the Lease to be performed by Landlord, whether affirmative or negative in nature, are intended to and shall bind Landlord and its successors and assigns at any time, and shall inure to the benefit of Tenant and its successors and assigns.

4. This Memorandum is prepared for the purpose of recordation only and it in no way modifies the provisions of the Lease.

5. Reference is hereby made to the entire Lease for any and all purposes. A true copy of the Lease is on file in the offices of the Redevelopment Agency of the City of San Diego, California, at its offices located at 600 B Street, Suite 400, San Diego, California 92101.

**REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO**

By: _____
Hank Cunningham
Assistant Executive Director

APPROVED AS TO FORM AND LEGALITY
Casey Gwinn
Agency General Counsel

By: _____
Elisa A. Cusato

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Glenn F. Wasserman

McMILLIN-NTC, LLC, a Delaware
limited liability company

By: McMillin Management Services,
L.P., a California limited
partnership, its Manager

By: Corky McMillin
Construction Services,
Inc., a California
corporation, its General
Partner

By: _____
Walter D. Heiberg
Sr. Vice President

By: _____
Kathleen Riser
Vice President

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

On _____ before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(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.

Signature _____

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

On _____ before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(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.

Signature _____

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

On _____ before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(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.

Signature _____

Exhibit "A"

Legal Description

Real Property in the City of San Diego, County of San Diego, State of California, described as follows:

Lot 23 of NTC - Unit No. 5, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 14723, filed in the Office of the County Recorder of San Diego County, December 19, 2003.

Excepting and reserving unto the State of California, its successors and assigns, forever, as to a portion of the herein described property, all minerals and all mineral rights in the lands of every kind and character now known to exist or hereafter discovered including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to the State of California or to its successors and assigns, except that notwithstanding Chapter 700 of the Statutes of 1911, as amended, or Section 6401 of the Public Resources Code, the reservations shall not include the right of the state or its successors or assignees in connection with any mineral reservation, removal or disposal activity, to do either of the following: (1) enter upon, use or damage the surface of the lands or interfere with the use of the surface by any grantee or by the grantee's successor or assignees; or (2) conduct any mining activities of any nature whatsoever above a plane located five hundred feet below the surface of the lands without written permission of any grantee of the lands or the grantee's successors or assigns, as set forth in document entitled "State of California Patent of Trust Termination Parcels" recorded February 28, 2002 as File No. 2002-0170372 of Official Records.

Exhibit "D"

FORM OF TENANT'S NONDISTURBANCE AND ATTORNMENT AGREEMENT

[BEHIND THIS PAGE]

[Attachment No. 11 to DDA]

**TENANT'S NONDISTURBANCE
AND LEASE RECOGNITION AGREEMENT
[UNIT 5 LOT 23]**

THIS TENANT'S NONDISTURBANCE AND LEASE RECOGNITION AGREEMENT (this "Agreement") is made as of _____, by and among THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO (hereinafter referred to as "Agency"), McMILLIN-NTC, LLC, a Delaware limited liability company (hereinafter referred to as "Tenant") and _____, a _____ (hereinafter referred to as "Subtenant").

1. Recitals.

1.1 Agency and Tenant have entered into a ground lease dated _____, 2004 for the premises legally described on Exhibit A attached hereto and made a part hereof (the "Ground Lease").

1.2 Tenant is executing an agreement of sublease with Subtenant for a portion of the premises leased under the Ground Lease (the "Sublease").

1.3 The parties desire to set forth their respective rights and obligations in the event of the termination of the Ground Lease.

2. Nondisturbance.

2.1 In the event that the Ground Lease is terminated before its expiration, Agency hereby agrees to recognize the Sublease as a direct lease between Agency and Subtenant, and Subtenant agrees to attorn to Agency, subject to the following:

(a) Agency shall retain all rights under the Sublease in the event of any default by Subtenant.

(b) Agency shall not be liable to Subtenant for any default under the Sublease by Tenant as sublandlord.

(c) Agency shall not be required to return to Subtenant any security deposit not received by Agency.

(d) Agency shall not be obligated to credit Subtenant with any rent paid under the Sublease more than one month in advance.

3. Miscellaneous Provisions.

3.1 Applicable Law and Venue. This Agreement is made in, and shall be governed, enforced and construed under the laws of, the State of California. Venue for any action brought regarding this Agreement or the transaction contemplated herein shall be in San Diego County, California.

3.2 Binding Upon Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, estates, personal representatives, successors, and assigns. No assignment shall relieve the assignor of any liability accruing under this Agreement either before or after the assignment.

3.3 Entire Agreement; Integration. This Agreement constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof, and shall supersede and replace all prior understandings and agreements, whether verbal or in writing. The parties confirm and acknowledge that there are no other promises, covenants, understandings, agreements, representations, or warranties with respect to the subject matter of this Agreement except as expressly set forth herein, or in any instrument executed by the parties of even date herewith.

3.4 Amendments Only in Writing. This Agreement may not be modified, terminated, or amended in any respect, except pursuant to an instrument in writing duly executed by all of the parties hereto.

3.5 Attorneys' Fees. In the event that any party hereto shall bring any legal action or other proceeding with respect to the breach, interpretation, or enforcement of this Agreement, or with respect to any dispute relating to any transaction covered by this Agreement, or in connection with any bankruptcy proceeding relating to a party, the losing party or parties (or the debtor party involved in the bankruptcy) in such action or proceeding shall reimburse the prevailing party or parties therein for all reasonable costs of litigation, including the reasonable non-contingent fees of attorneys, paralegals and other professionals, in such amount as may be determined by the court or other tribunal having jurisdiction, including matters on appeal.

3.6 Interpretation. The language of this agreement shall not be construed against any party, since all parties have participated in the negotiation and drafting of this Agreement. The term "including" shall mean "including but not limited to"

All captions and headings herein are for convenience and ease of reference only, and shall not be used or referred to in any way in connection with the interpretation or enforcement of this Agreement. As used herein, the masculine, feminine or neuter gender, and the singular and plural numbers, shall each be deemed to include the others, whenever and wherever the context so indicates.

3.7 Counterparts. This Agreement may be executed in one or more counterpart copies, and each of which so executed, irrespective of the date of execution and delivery, shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove set forth.

[SIGNATURES APPEAR ON NEXT PAGE]

TENANT:

McMILLIN-NTC, LLC, a Delaware
limited liability company

By: McMillin Management Services,
L.P., a California limited
partnership, its Manager

By: Corky McMillin
Construction Services,
Inc., a California
corporation, its General
Partner

By: _____
Walter D. Heiberg
Sr. Vice President

By: _____
Kathleen Riser
Vice President

SUBTENANT:

[NAME OF SUBTENANT TO BE INSERTED]

By: _____

[SIGNATURES CONTINUE ON NEXT PAGE]

AGENCY:

REDEVELOPMENT AGENCY OF THE CITY OF
SAN DIEGO

By:

Hank Cunningham
Assistant Executive Director

APPROVED AS TO FORM AND LEGALITY:
CASEY GWINN
Agency General Counsel

By:

Elisa A. Cusato

KANE, BALLMER & BERKMAN
Agency Special Counsel

By:

Glenn F. Wasserman

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Real Property in the City of San Diego, County of San Diego, State of California, described as follows:

Lot 23 of NTC - Unit No. 5, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 14723, filed in the Office of the County Recorder of San Diego County, December 19, 2003.

Excepting and reserving unto the State of California, its successors and assigns, forever, as to a portion of the herein described property, all minerals and all mineral rights in the lands of every kind and character now known to exist or hereafter discovered including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to the State of California or to its successors and assigns, except that notwithstanding Chapter 700 of the Statutes of 1911, as amended, or Section 6401 of the Public Resources Code, the reservations shall not include the right of the state or its successors or assignees in connection with any mineral reservation, removal or disposal activity, to do either of the following: (1) enter upon, use or damage the surface of the lands or interfere with the use of the surface by any grantee or by the grantee's successor or assignees; or (2) conduct any mining activities of any nature whatsoever above a plane located five hundred feet below the surface of the lands without written permission of any grantee of the lands or the grantee's successors or assigns, as set forth in document entitled "State of California Patent of Trust Termination Parcels" recorded February 28, 2002 as File No. 2002-0170372 of Official Records.

Exhibit "E"

FORM OF LENDER'S NONDISTURBANCE AND LEASE RECOGNITION
AGREEMENT

[BEHIND THIS PAGE]

[Attachment No. 10-A to DDA]

LENDER'S NONDISTURBANCE AND ATTORNMENT AGREEMENT
[UNIT 5 LOT 23]

THIS LENDER'S NONDISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made as of _____, by and among THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO (hereinafter referred to as "Agency"), McMILLIN-NTC, LLC, a Delaware limited liability company (hereinafter referred to as "McMillin") and INDYMAC BANK, FSB, dba CONSTRUCTION LENDING CORPORATION OF AMERICA (hereinafter referred to as "Lender").

RECITALS

A. Agency and McMillin have heretofore entered into a Disposition and Development Agreement, dated June 26, 2000, as amended (the "DDA"), which provides for the disposition of certain property (described in the DDA as the "Site") by the Agency to McMillin.

B. Pursuant to the DDA, the Agency and McMillin have entered (or are entering) into a Ground Lease substantially in the form attached to the DDA as Attachment No. 6 (the "Ground Lease"), pursuant to which Agency has demised (will demise) and leased (will lease) to McMillin a portion of the Site which is described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").

C. Concurrently with the execution of this Agreement, McMillin, as borrower, and Lender, as lender, have executed and entered into a loan agreement and other agreements and instruments pursuant to which Lender will provide financing to McMillin (the "Lender Loan Documents"), secured by a deed of trust and other security instruments on McMillin's leasehold interest in the Property (the "Lender Deed of Trust").

D. The parties hereto now desire to enter into this Agreement so as to clarify their rights, duties and obligations under the Ground Lease and the Lender Loan Documents and to further provide for various contingencies as hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreement of the parties hereto to the terms and conditions hereinafter contained, the parties hereto agree as follows:

Lender's Nondisturbance
and Attornment Agreement

Page 1 of 5

1. In the event McMillin shall default in its obligations under the Lender Loan Documents which results in a foreclosure of the Lender Deed of Trust by Lender or a transfer by deed in lieu of foreclosure or other conveyance, as provided therein, then Agency, McMillin and Lender do hereby agree that the Ground Lease and all terms, provisions, covenants and agreements thereof shall survive any such default in and foreclosure of the Lender Deed of Trust, and the Ground Lease shall remain in full force and effect, in accordance with and subject to all of its terms, provisions, agreements and covenants as a direct lease between Agency (as lessor) and Lender, any purchaser at foreclosure or any assignee of Lender (as lessee). Lender agrees, in that event, to attorn to Agency and to recognize Agency as the lessor under the Ground Lease. Agency shall, in such event, exercise and undertake all of the rights and obligations of the lessor in and under the Ground Lease. From and after the time of attornment, Lender, such purchaser at foreclosure or such assignee, as lessee, shall keep, observe and perform as to Agency all of the terms, covenants and conditions to be kept by the lessee pursuant to the Ground Lease, and Agency shall have the same remedies for nonperformance or default of any agreement or term of the Ground Lease as it would had or would have had as lessor under the Ground Lease if Lender had not foreclosed on the Lender Deed of Trust.

2. In the event Lender, a purchaser at foreclosure or any assignee of Lender becomes the lessee as provided in Section 1 of this Agreement, Lender, such purchaser or such assignee, as the case may be, shall thereupon have the option to obtain a new lease by providing the Agency with a written request for a new lease. Within thirty (30) days after receipt of written request by Lender, such purchaser or such assignee for a new lease, the Agency shall enter into a new lease with respect to the Property with Lender, such purchaser or such assignee. Such new lease shall be effective as of the date of execution by the Agency and shall be for the remainder of the term of the Ground Lease, and upon the agreements, terms, covenants and conditions thereof.

3. For and during the term of the Ground Lease, Agency agrees that, prior to terminating the Ground Lease or taking any proceedings to enforce any such termination thereof for any reason other than the expiration of the term of the Ground Lease, Agency shall give Lender, at the same time it gives McMillin notice thereof, prior notice in writing of such termination, specifying the reason for such termination. Such notice shall be given to Lender in the manner provided in the Ground Lease at the following address:

Lender's Nondisturbance
and Attornment Agreement

Page 2 of 5

Construction Lending Corporation of America
155 North Lake Avenue
Mail Stop #11-CLCA
Pasadena, CA 91101
Attention: Builder Division

or at such other address as Lender shall provide Agency in writing in the same manner.

4. For and during the term of the Lender Loan Documents, Lender agrees that, prior to foreclosing on the Lender Deed of Trust or taking any proceedings to enforce any such foreclosure thereof for any reason, Lender shall give to Agency, at the same time it gives such notice to McMillin, a copy of all notices of default and notices of sale. Such notices shall be given to Agency in the manner provided in the Ground Lease at the following address:

Redevelopment Agency of the City of San Diego
600 "B" Street, Suite 400
San Diego, California 92101
Attention: NTC Project Manager

or at such other address as Agency shall provide Lender in writing in the same manner.

5. Subject only to the due execution and delivery of documents, Agency hereby approves of the Lender Deed of Trust, and Lender hereby approves of the Ground Lease.

6. No provision contained herein shall be deemed an amendment or modification of any provisions contained in any Lender Loan Document or the Ground Lease, including, without limiting the generality of the foregoing, any rights given thereunder to McMillin to terminate the Ground Lease.

7. Upon the execution of this Agreement, the Ground Lease and the Lender Deed of Trust, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors, transferees and assigns.

Lender's Nondisturbance
and Attornment Agreement

Page 3 of 5

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove set forth.

McMILLIN-NTC, LLC, a Delaware limited liability company

By: McMillin Management Services, L.P., a California limited partnership, its Manager

By: Corky McMillin
Construction Services, Inc., a California corporation, its General Partner

By: _____
Walter D. Heiberg
Sr. Vice President

By: _____
Kathleen Riser
Vice President

INDYMAC BANK, F.S.B., dba
CONSTRUCTION LENDING CORPORATION OF
AMERICA

By: _____
Thomas Hallock
Sr. Vice President

Lender's Nondisturbance
and Attornment Agreement

Page 4 of 5

REDEVELOPMENT AGENCY OF THE CITY OF
SAN DIEGO

By: _____
Hank Cunningham
Assistant Executive Director

APPROVED AS TO FORM AND LEGALITY:
CASEY GWINN
Agency General Counsel

By: _____
Elisa A. Cusato

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Glenn F. Wasserman

Lender's Nondisturbance
and Attornment Agreement

Page 5 of 5

Exhibit "A"

Legal Description

Real Property in the City of San Diego, County of San Diego, State of California, described as follows:

Lot 23 inclusive of NTC - Unit No. 5, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 14723, filed in the Office of the County Recorder of San Diego County, December 19, 2003.

Excepting and reserving unto the State of California, its successors and assigns, forever, as to a portion of the herein described property, all minerals and all mineral rights in the lands of every kind and character now known to exist or hereafter discovered including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to the State of California or to its successors and assigns, except that notwithstanding Chapter 700 of the Statutes of 1911, as amended, or Section 6401 of the Public Resources Code, the reservations shall not include the right of the state or its successors or assignees in connection with any mineral reservation, removal or disposal activity, to do either of the following: (1) enter upon, use or damage the surface of the lands or interfere with the use of the surface by any grantee or by the grantee's successor or assignees; or (2) conduct any mining activities of any nature whatsoever above a plane located five hundred feet below the surface of the lands without written permission of any grantee of the lands or the grantee's successors or assigns, as set forth in document entitled "State of California Patent of Trust Termination Parcels" recorded February 28, 2002 as File No. 2002-0170372 of Official Records.

10
OFFICIAL BUSINESS
Document entitled to free
recording per Government
Code Section 6103

Recording Requested by:

REDEVELOPMENT OF THE
CITY OF SAN DIEGO

When Recorded Return to:

Redevelopment Agency of the
City of San Diego
600 B Street, Suite 400
San Diego, California 92101
Attn: NTC Project Manager

THE ORIGINAL OF THIS DOCUMENT
WAS RECORDED ON JUN 07, 2006
DOCUMENT NUMBER 2006-0402431
GREGORY J. SMITH, COUNTY RECORDER
SAN DIEGO COUNTY RECORDER'S OFFICE
TIME: 12:21 PM

Space Above This Line for Recorder's Use

FIRST AMENDMENT TO GROUND LEASE

This First Amendment to Ground Lease (the "Amendment") is entered into as of June 1
2006, between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO
("Landlord") and MCMILLIN-NTC, LLC, a Delaware limited liability company ("Tenant").

RECITALS:

A. Landlord and Tenant previously entered into that certain Ground Lease dated August 1, 2004 (the "Lease") relating to the lease of that certain property described in Exhibit "A" attached hereto (the "Property") located in the City of San Diego, County of San Diego, California. A Memorandum of the Lease was recorded in the Official Records of San Diego County on October 27, 2004 as Document No. 2004-~~101554~~ (the "Memorandum").

101554

B. Landlord and Tenant now desire to amend the Lease in the manner described herein.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

AGREEMENT:

1. Permitted Use. Section 1.9 of the Lease is hereby superceded in its entirety by the following:

"1.9 The specified use of the Property: For the Term of this Lease, the Property may only be used for retail, restaurant, office, commercial, recreational, arts and cultural, light industrial, special educational and other uses permitted by and consistent with the NTC Precise Plan and Local Coastal Program as certified by the California Coastal Commission on September 11, 2001, as same may be amended in the future, and other additional uses as may be reasonably related thereto, and for no other purposes."

2. Memorandum. The reference to Tenant being a California limited liability company in the preface to the Memorandum is hereby corrected to reflect that Tenant is a Delaware limited liability company.

3. Ratification. Except as modified by this Amendment, the Lease remains in full force and effect.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment as of the date first written above.

Date: ^{JUN 26}
June, 2006

REDEVELOPMENT AGENCY OF THE CITY OF
SAN DIEGO

By: James T. Waring

Name: James T. Waring

Its: Assistant Executive Director

APPROVED AS TO FORM AND LEGALITY

MICHAEL J. AGUIRRE
Agency General Counsel

By: Michael J. Aguirre

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: Glen Wasser

STATE OF California)
) ss.
COUNTY OF San Diego)

On May 26, 2006, before me, Shelia Billiard, a Notary Public, personally appeared James T. Waring, 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.

Signature Shelia Billiard (Seal)



STATE OF _____)
) ss.
COUNTY OF _____)

On _____, before me, _____, a Notary Public, 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.

Signature _____ (Seal)

EXHIBIT "A"

LEGAL DESCRIPTION

Real property in the City of San Diego, County of San Diego, State of California, described as follows:

Lot 23 of NTC-Unit No. 5, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 14723, filed in the Office of the County Recorder of San Diego County, December 19, 2003.

Excepting and reserving unto the State of California, its successors and/or assigns, forever, as to a portion of the herein described property, all minerals and all mineral rights in the lands of every kind and character now known to exist or hereafter discovered including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to the State of California or to its successors and/or assigns, except that notwithstanding Chapter 700 of the Statutes of 1911, as amended, or Section 6401 of the Public Resources Code, the reservations shall not include the right of the State or its successors and/or assignees in connection with any mineral reservation, removal, or disposal activity, to do either of the following: (1) enter upon, use or damage the surface of the lands or interfere with the use of the surface by any grantee or by the grantee's successor and/or assignees; or (2) conduct any mining activities of any nature whatsoever above a plane located five hundred feet below the surface of the lands without written permission of any grantee of the lands or the grantee's successors and/or assigns, as set forth in document entitled "State of California Patent of Trust Termination Parcels" recorded February 28, 2002 as File No. 2002-0170372 of Official Records.

ORIGINAL

DOC # 2010-0414197



AUG 11, 2010 3:47 PM

OFFICIAL BUSINESS
Document entitled to free recording
Per Government Code Section 6103 and 27383

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
DAVID L. BUTLER, COUNTY RECORDER
FEES: 0.00

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

PAGES: 11



*FS
110
NF
1000*

The Redevelopment Agency of the
City of San Diego
1200 Third Avenue, Suite 1400
San Diego, California 92101-4110
Attention: NTC Project Manager

11923

SECOND AMENDMENT TO GROUND LEASE

This Second Amendment to Ground Lease ("**Amendment**") is made and entered into as of ~~July~~ ^{Aug} 9, 2010, by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body corporate and politic ("**Landlord**"), and LIBERTY STATION MARKETPLACE, LLC, a Delaware limited liability company ("**Tenant**") with reference to the following facts:

RECITALS

- A. Landlord and McMillin-NTC, LLC, a Delaware limited liability company previously entered into that certain Ground Lease dated as of August 1, 2004 ("**Original Ground Lease**") related to the lease of that certain real property described in Exhibit A attached hereto (the "**Property**") located in the City of San Diego, County of San Diego, California, a memorandum of which was recorded in the Official Records of San Diego County ("**Official Records**") on October 27, 2004 as Document No. 2004-1015554.
- B. The Original Ground Lease was amended by that certain First Amendment to Ground Lease dated as of June 1, 2006 and recorded in the Official Records on June 7, 2006 as Document No. 2006-0402431 ("**First Amendment**") and was subsequently assigned to Tenant pursuant to that certain Assignment of Ground Leases dated as of July 27, 2006 and recorded in the Official Records on July 28, 2006 as Document No. 2006-0537240 ("**Assignment**"). The Original Ground Lease as amended by the First Amendment and Assignment is referred to herein as the "**Ground Lease**".
- C. Due to fluctuating real estate market conditions, Landlord and Tenant now desire to amend the Ground Lease in the manner described herein.

DOCUMENT NO. D-04562/R-04562

FILED AUG 11 2010

OFFICE OF THE REDEVELOPMENT AGENCY
SAN DIEGO, CALIF.

Unit 5, Lot 23

11924

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

AGREEMENT

1. Modification. Section 2.30(b)(viii) of the Ground Lease is hereby deleted in its entirety and replaced with the following:

“(viii) No extension, modification, change or amendment to a Permitted Leasehold Mortgage shall be effective, or binding upon Landlord, unless and until approved by Landlord, which approval shall be granted so long as such extension, modification, change or amendment satisfies the applicable requirements of paragraphs (i) through (vii), above. Any extension, modification, change or amendment to a Permitted Leasehold Mortgage that exceeds eighty percent (80%) of the fair market value of Tenant’s interest in the Lease as set forth in paragraph (i) above, but that does satisfy the applicable requirements of paragraphs (ii) through (vii) above, may be approved by the Landlord’s Executive Director, in his or her sole discretion, provided the Permitted Leasehold Mortgagee has not declared the involved mortgage in default and the extension, modification, change or amendment to the Permitted Leasehold Mortgage satisfies the underwriting standards of the Permitted Leasehold Mortgagee and of the Landlord, as imposed from time to time, which standards may include, but are not limited to, the following:

- (aa) Minimum loan to value standards
- (bb) Minimum net operating income
- (cc) Minimum operating and lease-up reserves
- (dd) Minimum debt service coverage
- (ee) Approval of new tenant leases or modifications to existing tenant leases
- (ff) use of encumbrance proceeds
- (gg) status of development of the improvements
- (hh) term of encumbrance”

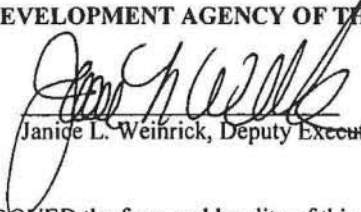
2. Ratification. Except as modified by this Amendment, the Ground Lease remains in full force and effect.
3. Counterparts. This Amendment may be executed in counterparts, which when taken together shall constitute a single signed original as though all parties had executed the same page.

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11925

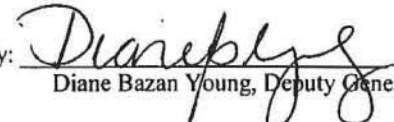
IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment as of the date first written above.

REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO

By: 
Janice L. Wehrick, Deputy Executive Director

APPROVED the form and legality of this
Amendment this 9th day of August, 2010.

JAN I. GOLDSMITH,
General Counsel

By: 
Diane Bazan Young, Deputy General Counsel

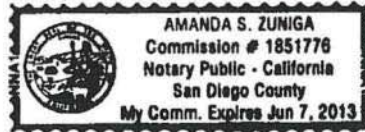
[Remainder of Page Intentionally Left Blank]

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

On August 9, 2010, before me, Amanda S Zuniga ---, a
Notary Public in and for said State, personally appeared Janice L Weirich
-----, who proved to me on the basis of satisfactory
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the
entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California
The foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Amanda S Zuniga

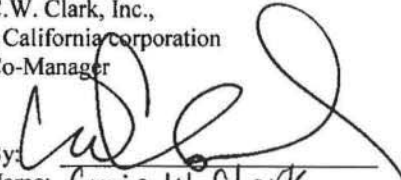
(Seal)

11927

**LIBERTY STATION MARKETPLACE, LLC,
a Delaware limited liability company**

By: Liberty Station Marketplace Investors, LLC,
a Delaware limited liability company,
Its: Manager

By: C.W. Clark, Inc.,
a California corporation
Its: Co-Manager

By: 
Name: Craig W. Clark
Title: President

By: McMillin Companies, LLC,
a Delaware limited liability company
Its: Co-Manager

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

CONSENTED TO BY PERMITTED LEASEHOLD MORTGAGEE:

BANK OF AMERICA, N.A.,
a national banking association

By: _____
Barbara Colter, Senior Vice President

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

11928

State of California

} ss.

County of San Diego

On July 7, 2010, before me, Morgan Kell, Notary Public
Date Name and Title of officer (e.g., "Jane Doe, Notary Public")

personally appeared Craig W. Clark
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Morgan Kell
Signature of Notary Public



(Area for Notary Seal)

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Second Amendment to Ground Lease

Document Date: July 1, 2010 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

- Signer's Name: _____
- Individual
 - Corporate Officer - Title(s): _____
 - Partner - Limited General
 - Attorney in Fact
 - Trustee
 - Guardian or Conservator

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

11929

**LIBERTY STATION MARKETPLACE, LLC,
a Delaware limited liability company**

By: Liberty Station Marketplace Investors, LLC,
a Delaware limited liability company,
Its: Manager

By: C.W. Clark, Inc.,
a California corporation
Its: Co-Manager

By: _____
Name: _____
Title: _____

By: McMillin Companies, LLC,
a Delaware limited liability company
Its: Co-Manager

By: Kimberly K. Elliott
Name: Kimberly K. Elliott
Title: SVP

By: Chai Doty
Name: _____
Title: EVF

CONSENTED TO BY PERMITTED LEASEHOLD MORTGAGEE:

**BANK OF AMERICA, N.A.,
a national banking association**

By: _____
Barbara Colter, Senior Vice President

11930

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

11930

State of California

County of San Diego }

On 7-7-10 before me, Rhonda M. Dow, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Kimberly Elliott and Cassi Doty
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Rhonda M. Dow
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Second Amendment to Ground Lease

Document Date: 7/10 Number of Pages: 5

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

11931

**LIBERTY STATION MARKETPLACE, LLC,
a Delaware limited liability company**

By: Liberty Station Marketplace Investors, LLC,
a Delaware limited liability company,
Its: Manager

By: C.W. Clark, Inc.,
a California corporation
Its: Co-Manager

By: _____
Name: _____
Title: _____

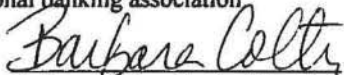
By: McMillin Companies, LLC,
a Delaware limited liability company
Its: Co-Manager

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

CONSENTED TO BY PERMITTED LEASEHOLD MORTGAGEE:

**BANK OF AMERICA, N.A.,
a national banking association**

By: 
Barbara Colter, Senior Vice President

11932

State of Utah
County of Utah

On 7/7/2010 before me, Nathan Sandall, Notary Public for the State of Utah, personally appeared Barbara Colter, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Utah that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature] (Seal)

11933

EXHIBIT A

Legal Description

Real property in the City of San Diego, County of San Diego, State of California, described as follows:

Lot 23 of NTC-Unit No. 5, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 14723, filed in the Office of the County Recorder of San Diego County, December 19, 2003.

Excepting and reserving unto the State of California, its successors and/or assigns, forever, as to a portion of the herein described property, all minerals and all mineral rights in the lands of every kind and character now known to exist or hereafter discovered including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to the State of California or to its successors and/or assigns, except that notwithstanding Chapter 700 of the Statutes of 1911, as amended, or Section 6401 of the Public Resources Code, the reservations shall not include the right of the State or its successors and/or assignees in connection with any mineral reservation, removal, or disposal activity, to do either of the following: (1) enter upon, use or damage the surface of the lands or interfere with the use of the surface by any grantee or by the grantee's successor and/or assignees; or (2) conduct any mining activities of any nature whatsoever above a plane located five hundred feet below the surface of the lands without written permission of any grantee of the lands or the grantee's successors and/or assigns, as set forth in document entitled "State of California Patent of Trust Termination Parcels" recorded February 28, 2002 as File No. 2002-0170372 of Official Records.

APN 450-840-13-00