

**ORIGINAL**

**OPTION TO PURCHASE AGREEMENT IN FAVOR OF REGENTS  
OF CITY-OWNED PROPERTY**

**THIS OPTION TO PURCHASE AGREEMENT IN FAVOR OF REGENTS OF CITY-OWNED PROPERTY ("Agreement")** is entered into by and between the CITY OF SAN DIEGO, a chartered California municipal corporation ("CITY") and the Regents of the University of California, a California public corporation ("REGENTS").

**RECITALS**

- A. CITY and Scripps Clinic and Research Foundation ("Scripps"), predecessor to REGENTS, entered into an Option Agreement ("Prior Option"), which was filed in the Office of the San Diego City Clerk on December 13, 1982, as Document No. R-257635-1. The Prior Option gave Scripps the right to lease from CITY that certain real property which was set forth in Exhibit A to the Prior Option. Scripps was given two (2) years to exercise its rights under the Prior Option and enter into a lease with CITY; the terms and conditions of said lease were set forth in Exhibit B to the Prior Option, which was titled *Agreement for Ground Lease, Development and Use of Real Property* ("Original Ground Lease").
- B. Scripps timely exercised its rights under the Prior Option and entered into the Original Ground Lease with CITY. The effective date of the Ground Lease was February 23, 1985. The term of the Original Ground Lease is 55 years, expiring on January 31, 2040 (the "Term").
- C. The real property leased pursuant to the Original Ground Lease is described as Parcel 1 of Parcel Map 9813; said parcel is more generally known as the Reservoir Site on North Torrey Pines Road and is approximately 2.87 acres in size (Torrey Pines Center South at 10280 North Torrey Pines Road) ("Option Site").
- D. Although the real property leased pursuant to the Original Ground Lease is a Pueblo Lot which was subject to City Charter Section 219, pursuant to Ordinance No. 8983, dated March 19, 1964, an election on June 24, 1964, and ratifying Resolution No. 180579, dated July 7, 1964, CITY was authorized to lease or sell the Pueblo Lot 1323, of which the leased real property is a part, for research and development purposes and such other uses necessarily incidental thereto.
- E. Scripps assigned its interest in the Original Ground Lease to McKellar Development of La Jolla ("McKellar") pursuant to an Assignment of Lease recorded in the Office of the San Diego County Recorder on April 15, 1985, as Instrument No. 85-093951. McKellar developed a two-story, 140,000 square foot, office building and related site improvements over two levels of subterranean parking.
- F. CITY and McKellar entered into a First Amendment to the Original Ground Lease dated March 4, 1985, and a Second Amendment to the Original Ground Lease dated June 30, 1986. Hereinafter the Original Ground Lease, along with the First Amendment and Second Amendment are all collectively referred to as the "Ground Lease."
- G. McKellar assigned the Ground Lease, along with all of McKellar's right, title and interest in and to the improvements, fixtures, and personal property located on the Option Site to REGENTS pursuant to the Assignment and Assumption of Ground Lease dated October 5, 1987. Hereinafter the Option Site, along with the improvements and fixtures located thereon are all collectively referred to as the "Option Property."

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- H. The City entered into a Site Lease dated as of July 1, 2012 by and between the City of San Diego and the Public Facilities Financing Authority and subsequent amendments thereto ("Site Lease"), and the Facilities Lease dated as of July 1, 2012 by and between the Public Facilities Financing Authority of the City of San Diego and the City of San Diego and subsequent amendments thereto ("Facilities Lease") (jointly referred to herein as the "Master Leases"). The Master Leases relate to lease revenue bonds issued by the Public Facilities Financing Authority originally set to expire on April 15, 2042.
- I. REGENTS desires to have the right and option to purchase the Option Property. City agrees to ensure that the Option Property can be purchased by October 15, 2042 through October 15, 2044 ("Option Period") subject only to encumbrances approved by REGENTS pursuant hereto. REGENTS desire to purchase the Option Property prior to October 15, 2042, if possible. CITY agrees to provide REGENTS with notice and the ability to exercise the Option Right (as defined below) earlier, if and only if, CITY in its sole discretion determines that it no longer desires the Option Property for lease revenue bond purposes and CITY chooses to permanently unencumber the Option Property and remove the Option Property from the Master Leases or any subsequent lease arrangements enter into by the City related to lease revenue bonds.
- J. Although the Option Period is many years from the present date, the right to own the Option Property is very valuable to REGENTS. Accordingly, CITY and REGENTS desire to enter into this Agreement in order to give assurances that REGENTS will have the right to purchase the Option Property ("**Option Right**") on the terms of this Agreement. In order to induce CITY to grant REGENTS such Option Right, and as consideration therefore, REGENTS has agreed to contribute to CITY's construction of a fire station ("**Fire Station**") on property currently owned by REGENTS, located at North Point Lane, La Jolla, CA 92093. A "Form Of" amendment to the Ground Lease, which addresses CITY's agreement to not increase the rent on the Option Property during any holdover period (running mostly coextensively with the Option Period), is attached hereto as EXHIBIT 1.
- K. REGENTS and CITY agree that the purpose of this sale is a valid public purpose. Selling the Option Property to REGENTS will assist REGENTS in providing services and educational facilities required to carry out its mission, pursuant to the University of California's purposes and goals.
- L. CITY and REGENTS agree that the details concerning the Fire Station and transfer of fee title to the site of the Fire Station shall be set forth in separate document(s) referred to herein as the Purchase and Sale Agreement "PSA."
- M. CITY, through its City Council, has determined that the Option Property would be sold at a price and upon such terms as the City Council deems to be fair, equitable and in the public interest. As required below, the Option Property will be sold at fair market value. In addition, CITY receives the real property for the Fire Station and REGENTS' multi-million dollar contribution for the Fire Station as independent consideration for this Option Right itself concurrent with delivery of a fully executed copy of this Agreement to Escrow.

#### AGREEMENT

NOW, THEREFORE, having incorporated the above Recitals into this Agreement by this reference, the parties agree as follows:

## ARTICLE I

### DEFINITIONS

The following terms shall have the meanings set forth next to each term for purposes of this Agreement. If an initial capitalized term is not shown in this Article I, it is defined within an individual section. Or, if an individual section contains a term different from the definition given in this Article I, for purposes of that section, the definition in that section should be the definition utilized therein.

**"Applicable Environmental Law"** means all laws applicable to the presence of any Hazardous Materials (as defined below) on or within the Option Property, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601, *et seq.*); the Resource Conservation and Recovery Act (42 U.S.C. §6901, *et seq.*); the Clean Water Act of 1972 (33 U.S.C. §1251, *et seq.*); the Safe Drinking Water Act (42 U.S.C. §300f, *et seq.*); the Hazardous Materials Transportation Act (49 U.S.C. §5101, *et seq.*); the Toxic Substances Control Act (15 U.S.C. §2601, *et seq.*); the Insecticides and Environmental Pesticide Control Act (7 U.S.C. §136, *et seq.*); the Atomic Energy Act (42 U.S.C. §2011, *et seq.*); the Nuclear Waste Policy Act (42 U.S.C. §10101, *et seq.*); the Clean Air Act (42 U.S.C. §7401, *et seq.*); the California Hazardous Waste Control Act (California Health and Safety Code §25100, *et seq.*); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code §25300, *et seq.*); the Safe Drinking Water and Toxic Enforcement Act ("Proposition 65") (California Health and Safety Code §25249.5, *et seq.*); and the Porter-Cologne Water Quality Control Act (California Water Code §13000, *et seq.*); and any similar federal, state or local laws, all regulations and publications implementing or promulgated pursuant to the foregoing, as any of the foregoing may be amended or supplemented from time to time.

**"Business Day"** means any day except for a Saturday, Sunday or holiday recognized by either REGENTS or CITY. In the event any date, deadline or due date set forth in this Agreement falls on a day that is not a Business Day, then such deadline or due date shall automatically be extended to the next Business Day.

**"CEQA"** means the California Environmental Quality Act, California Public Resources Code Sections 21000 *et seq.*

**"City Council"** means the San Diego City Council.

**"CITY's Parties"** shall have the meaning set forth in Article III, Section 13(c) of this Agreement.

**"Close" or "Closing"** means the close of Escrow as provided in this Agreement.

**"Closing Date"** means the date on which the Closing occurs, pursuant to Article III, Section 10 of this Agreement.

**"Effective Date"** means the date as of when both parties have executed this Agreement and the City Attorney has approved the Agreement.

**"Escrow"** means the escrow depository and disbursement services to be performed by the Escrow Agent pursuant to the provisions of this Agreement.

**"Escrow Agent"** means any duly licensed escrow agent mutually agreed upon by the parties to this Agreement.

**"First Preliminary Report"** is defined in Article II, Section 4 of this Agreement.

**"Grant Deed"** means a duly executed and acknowledged grant deed conveying fee simple title to the Option Property from CITY to REGENTS, as described in Article III, Section 2 of this Agreement.

**"Hazardous Materials"** means:

(1) Those substances included within the definitions of "hazardous substance," "hazardous waste," "hazardous material," "toxic substance," "solid waste," "pollutant," or "contaminant," or otherwise defined as hazardous in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 *et seq.*); the Resource Conservation and Recovery Act (42 U.S.C. §6901, *et seq.*); the Clean Water Act of 1972 (33 U.S.C. §1251, *et seq.*); the Toxic Substances Control Act (15 U.S.C. §2601, *et seq.*); the Hazardous Materials Transportation Act (49 U.S.C. §5101, *et seq.*); or under any other Applicable Environmental Laws.

(2) Those substances included within the definitions of "Extremely Hazardous Waste," "Hazardous Waste," or "Restricted Hazardous Waste," under §§25115, 25117, or 25122.7 of the California Health and Safety Code, or listed or identified pursuant to §§25140 or 44321 of the California Health and Safety Code.

(3) Those substances included within the definitions of "Hazardous Material," "Hazardous Substance," "Hazardous Waste," "Toxic Air Contaminant," or "Medical Waste" under §§25281, 25316, 25501, 117690 or 39655 of the California Health and Safety Code.

(4) Those substances included within the definitions of "Oil" listed or identified in the Clean Water Act of 1972, 33 U.S.C. §1321, as well as any other hydrocarbonic substance or by-product.

(5) Those substances included within the definitions of "Hazardous Waste," "Extremely Hazardous Waste" or an "Acutely Hazardous Waste" pursuant to Chapter 11 of Title 22 of the California Code of Regulations.

(6) Those substances listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to §25249.8 of the California Health and Safety Code.

(7) Any 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 purposes,

(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 Insecticides and Environmental Pesticide Controls 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.*), or the Nuclear Waste Policy Act (42 U.S.C. §10101 *et seq.*).

(12) Any material 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.*)

(13) Any material 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.

(14) Those substances listed in the United States Department of Transportation Table (49 CFR Part 172.101), or by the Environmental Protection Agency, or any successor agency, as hazardous substances (40 CFR Part 302).

(15) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under applicable federal, state or local laws or regulations.

(16) Any material, waste, or substance that is a petroleum or refined petroleum product, asbestos polychlorinated biphenyl, designated as a hazardous substance pursuant to 33 U.S.C. § 1321 or listed pursuant to 33 U.S.C. § 1317, a flammable explosive or a radioactive material.

**"Immediately Available Funds"** means a bank wire transfer or a certified bank or cashier's check.

**"Improvements"** means collectively: (i) any and all buildings, structures and improvements, of any kind whatsoever, located at or affixed to real property; (ii) all rights, privileges and easements appurtenant to the applicable property, if any, including, without limitation, all minerals, oil, gas and other hydrocarbon substances on and under the applicable property, if any; and (iii) all development rights, air rights, and water rights if any, relating to the applicable property.

**"Permitted Exceptions"** means collectively, the (i) the printed exceptions and exclusions in the First Preliminary Report and Second Preliminary Report that are approved by REGENTS; (ii) real property taxes and assessments which are a lien but not yet payable; and (iii) all applicable building, zoning and use restrictions and/or regulations of the City of San Diego, San Diego County, or the State of California.

**"PFFA Consent"** means the consent of the Public Facilities Financing Authority of the City of San Diego to this Agreement in substantially the form of EXHIBIT 6 hereto.

**"Purchase Price"** shall have the meaning set forth in the Article III, Section 4 of this Agreement.

**"REGENTS"** means the entity (Regents of the University of California) holding a legal option to purchase the Option Property; provided, however, if it assigns its interest in this Agreement pursuant to the applicable section of this Agreement, then the term "REGENTS" shall mean such assignee.

**"Second Preliminary Report"** is defined in Article III, Section 5 of this Agreement.

**"Title Policy"** means the policy of title insurance that conforms to the Second Preliminary Report and any other Permitted Exceptions.

## ARTICLE II

### OPTION TO PURCHASE AGREEMENT IN FAVOR OF REGENTS

1. Option. Subject to the terms of this Agreement, CITY hereby grants to REGENTS the Option Right to purchase the Option Property from CITY. Consideration for the Option Right consists of the fulfillment of the REGENTS' obligations pursuant to the PSA, specifically the transfer of the real property subject to the PSA and deposit of Seller's Contribution (as defined in the PSA) to be used for development, design, and construction of the fire station as required therein.

2. Memorandum of Option. CITY shall, immediately upon both parties' execution and the City Attorney's approval of this Agreement as to form, execute and have recorded a memorandum of option substantially in the form attached hereto as EXHIBIT 2.

3. No Change To Status of Option Property. CITY agrees and covenants that it will take any actions necessary to release the Option Property from any leases or encumbrances not permitted by this Agreement so that the Option Right may be exercised during the Option Period.

4. First Preliminary Report. CITY shall provide REGENTS a preliminary title report for the Option Property (the "First Preliminary Report") within three (3) Business Days after both parties have executed this Agreement. REGENTS shall notify CITY in writing within seven (7) Business Days after receipt of the First Preliminary Report of REGENTS' disapproval of any exception contained in the First Preliminary Report, if any, other than Permitted Exceptions and liens of deeds of trust or other monetary liens or encumbrances to be paid upon close of escrow out of CITY's proceeds. CITY shall have five (5) Business Days after such notice to advise REGENTS of any disapproved exceptions which CITY is unwilling/unable to remove. If CITY indicates that it will not correct any of the disapproved exceptions, REGENTS may elect to: (i) terminate this Agreement without liability on the part of either party; or (ii) consummate the purchase of the Option Property subject to such exceptions, without reduction in the Purchase Price and without any liability on CITY's part relative to the title to the Option Property.

5. Conditions Precedent to the Exercise of the Option Right. REGENTS may exercise the Option Right on or after October 15, 2042, or earlier should CITY allow REGENTS to exercise the Option prior to that date, only after all of the following conditions (the "Conditions Precedent") have been met. Once these Conditions Precedent have been met, the Option Right will be irrevocable:

(a) The City Council and REGENTS shall have approved this Agreement and the PSA; and

(b) REGENTS have complied with all of REGENTS' obligations pursuant to the PSA, including but not limited to conveying the real property as referenced in the PSA, to the City and depositing Seller's Contribution with the City for the purposes of building a fire station on the real property; and

(c) The 55-year term of the Ground Lease was not terminated earlier than the expiration date by CITY without reasonable cause therefor; and

(d) REGENTS is not at the time of exercise in default of the Ground Lease; and

(e) REGENTS shall have approved CEQA documents for the purchase contemplated hereunder.

6. Exercise of Option Right. If REGENTS chooses to exercise the Option Right, after all of the Conditions Precedent have been completed and/or fully complied with, REGENTS shall give CITY, at the notice addresses below, written notice of REGENTS' election to exercise the Option Right on or before April 15, 2044, and REGENTS shall open Escrow. If REGENTS fails to provide written notice to CITY that REGENTS is exercising its Option Right on or before April 15, 2044, the Option Right shall be deemed terminated, and shall no longer have any force and effect; and CITY shall be free to dispose of or use the Option Property as it determines most appropriate in its sole discretion.

7. Early Exercise of Option Right. If CITY, in its sole discretion, determines that the Option Property is no longer needed for lease revenue bond purposes and chooses to permanently remove the Option Property from the Master Leases or any other leases entered into by the City related to lease revenue bonds, CITY shall notify REGENTS in writing ("Early Exercise Right Notice") within 60 days of permanently removing the Option Property from the Master Leases or other lease revenue bond leases. Upon receipt of the written notice, REGENTS shall have the right to exercise the Option Right prior to the Option Period. If REGENTS chooses to exercise the Option Right, after all of the Conditions Precedent

have been completed and/or fully complied with, REGENTS shall give CITY written notice of REGENTS' election to exercise the Option Right no later than eighteen (18) months following REGENTS' receipt of the Early Exercise Right Notice. The eighteen (18) month period shall be calculated based on the day and month of receipt of the Early Exercise Right Notice, for example, if the Early Exercise Right Notice was received on October 15, 2035, then REGENTS must provide written notice to CITY that it is exercising its Option Right on or before April 15, 2037. If REGENTS fails to provide written notice to CITY that REGENTS is exercising its Option Right within 18 months of receiving notice that REGENTS may do so, then REGENTS Option Right will be deemed terminated, and will no longer have any force and effect; and CITY shall be free to dispose of or use the Option Property as it determines most appropriate in its sole discretion, with the exception that if Ground Lease is still effective at that time, than CITY and REGENTS will both remain subject to the terms and conditions of the Ground Lease.

### ARTICLE III

#### PURCHASE AND SALE AGREEMENT REGARDING OPTION PROPERTY

1. Purchase and Sale. CITY owns fee simple title to the land of the Option Property, and will become the owner of the improvements thereon upon termination of the Ground Lease. The legal description of the Option Property is set forth in EXHIBIT 3, attached hereto and incorporated herein by this reference. Subject to the terms and conditions of this Agreement, including satisfaction of the Conditions Precedent and upon payment of the Purchase Price, as set forth below, REGENTS may acquire the Option Property.

2. Conveyance of the Option Property. CITY agrees to sell the Option Property to REGENTS, and REGENTS agrees to purchase the Option Property from CITY, on the terms and conditions set forth in this Agreement. At the Closing of the Option Property, CITY shall convey its fee interest in the Option Property to REGENTS by recordation of a grant deed, which shall be in a form substantially similar to the "Form Of" deed which is set forth in EXHIBIT 4, attached hereto and incorporated herein by this reference. The Escrow Agent shall arrange for the issuance of a Title Policy to REGENTS at the Closing.

3. Possession of the Option Property. REGENTS may, at its sole discretion, hold over after expiration of the Ground Lease as provided in the form of the Ground Lease Amendment attached as EXHIBIT 1. If REGENTS exercises the option, CITY shall deliver possession of the Option Property to REGENTS at the conclusion of the Closing, subject only to Permitted Exceptions.

4. Purchase Price. The purchase price to be paid to CITY by REGENTS for the Option Property ("Purchase Price") shall be the amount designated in EXHIBIT 5 for the date the Option is exercised as approved by resolution of the City Council on 01-08-19, which resolution is on file with the City Clerk as Document No.: RR 312170. If REGENTS' Due Diligence (as defined below) shows that the conditions and assumptions of the David F. Davis, MAI, dated February 2, 2017 that was the basis for the Purchase Price are not valid as of the date of exercise, the REGENTS may request a reduction to the Purchase Price and CITY shall present such request to the Council of the City of San Diego, which shall approve or deny the request in its sole discretion.

(a) Delivery of Purchase Price into Escrow. Not less than one (1) Business Day prior to the Closing Date, REGENTS shall cause Immediately Available Funds to be delivered to the Escrow Agent in an amount equal to the Purchase Price.

(b) Disbursement to CITY. Immediately after the Closing, the Escrow Agent shall disburse to CITY the funds that CITY is entitled to receive under this Agreement.

5. Second Preliminary Report. Within ten (10) Business Days after REGENTS gives CITY notice, pursuant to Article II, Sections 6 or 7, that REGENTS is exercising the Option Right, CITY shall provide REGENTS a new preliminary title report for the Option Property, current as of the date it is provided (the "**Second Preliminary Report**"). REGENTS shall review the Second Preliminary Report, and shall notify CITY in writing within fourteen (14) Business Days after receipt of the Second Preliminary Report of REGENTS' disapproval of any exception that was not contained in the First Preliminary Report. REGENTS shall have no right to disapprove of any exception that was contained in the First Preliminary Report, unless either (i) CITY agreed to remove such exception as set forth in Section 4 of Article II of this Agreement, and CITY failed to do so, or (ii) the exception in the First Preliminary Report has a materially different effect due to changes in law or practical circumstances since the date of the First Preliminary Report. CITY shall pay off any and all monetary liens on the Option Property that arise from debts incurred by the CITY ("City Monetary Liens"); however, CITY shall have no obligation to pay off any monetary liens or encumbrances related to or arising from REGENTS leasehold interest. CITY shall have five (5) Business Days after such notice to advise REGENTS of any disapproved exceptions which CITY is unwilling/unable to remove. If CITY indicates that it will not correct any of the disapproved exceptions (other than City Monetary Liens), REGENTS shall have five (5) Business Days in which to elect to: (i) terminate this Agreement without liability on the part of either party; or (ii) consummate the purchase of the Option Property subject to such exceptions, without reduction in the Purchase Price and without any liability on CITY's part relative to the title to the Option Property.

6. Due Diligence Period. REGENTS' Due Diligence shall mean the period commencing on the date REGENTS gives notice it is exercising the Option Right and expiring one hundred twenty (120) calendar days thereafter ("Contingency Date"), during which REGENTS can conduct investigations in the Option Property at its sole costs and expense to determine if REGENTS desires to move forward with this Option Agreement or terminate this Option Agreement. REGENTS may (i) have prepared, at its sole expense, a Phase I environmental report and any other environmental or geotechnical reports concerning the Option Property, and (ii) request to review records in the possession and control of CITY's Real Estate Assets Department pertaining to the Option Property. CITY shall make such records available to REGENTS within a reasonable time, not to exceed ten (10) Business Days, after REGENTS' request. REGENTS acknowledges that additional Option Property-related records may be in the possession and control of other CITY departments, including, without limitation, the Development Services Department. REGENTS shall be solely responsible for contacting such other CITY departments to schedule a review of such additional records. If for any reason REGENTS chooses to terminate the Option Agreement, then to the extent that REGENTS caused any damage or alteration to the Option Property, REGENTS will at its sole costs and expense restore the Option Property to the condition that existed immediately prior to such tests and inspections. REGENTS shall indemnify, defend and hold harmless CITY and its officers, elected officials, employees and agents from and against all claims actions, losses, liabilities, damages, costs and expenses, including attorneys' fees and costs, incurred by reason of any damage to the Option Property or injury to persons caused by REGENTS exercising its right under this section. If REGENTS is not satisfied with the results of its due diligence investigation (including without limitation its inspection of the condition of the Option Property or review of the Option Property information), REGENTS may terminate this Agreement in its sole and absolute discretion by delivering to CITY written notice of such termination at any time prior to 5:00 p.m. on the Contingency Date. REGENTS shall manifest its approval of due diligence by delivering written notice to CITY that it desires to move forward with the Option Agreement ("Approval Notice"). If REGENTS fails to provide approval or disapproval, its approval shall be deemed to have been given as of the Contingency Date.

7. Environmental Document(s).

(a) REGENTS shall, at its expense, prepare, or cause to be prepared, any necessary environmental document(s), including but not limited to a new environmental impact report, if applicable, in order to comply with the provisions of CEQA related to REGENTS' purchase and/or future use of the Option Property. CITY may comment on these environmental documents during the public review period but shall have no certification authority as to them.

(b) REGENTS' written approval of the environmental and geotechnical condition of the Option Property is a contingency to Closing.

(c) If there is no Closing for any reason other than CITY's default, REGENTS shall deliver to CITY, at no charge to CITY, copies of all surveys, studies, assessments, maps, plans and other similar items prepared by or for REGENTS pertaining to the Option Property or any part thereof. REGENTS shall not be obligated to provide any such information which can be legally demonstrated to be confidential, proprietary or privileged information. Furthermore, REGENTS shall not be held liable for the accuracy, inaccuracy, completeness, or incompleteness of such reports. **The rights and obligations of REGENTS and CITY pursuant to this Section shall survive the termination of this Agreement.**

8. Risk of Loss. Separate and distinct from REGENTS obligations under the Ground Lease related to the Option Property, the following sections shall govern the rights of the Parties in the event of damage or destruction in relation to the sale of the Option Property:

(a) If between the REGENTS' exercise of the Option Right and the Closing Date, there is damage to or destruction of the Option Property, caused by REGENTS, its officers, agents, employees, contractors or invitees, the Purchase Price shall not be reduced and CITY shall not be obligated to repair or restore the Property.

(b) If between the REGENTS' exercise of the Option Right and the Closing Date, (i) any portion of the Option Property is destroyed or damaged through no fault of REGENTS or REGENTS' officers, employees, agents, contractors, or invitees, and the estimated cost of restoration or repair as reasonably estimated by REGENTS shall exceed five percent (5%) of the Purchase Price, or (ii) any condemnation or eminent domain proceeding is commenced that will result in the taking of any part of the Property, REGENTS may, at REGENT'S election, either:

(i) Terminate this Agreement, regardless of whether the Due Diligence period has expired, by giving written notice to CITY and the Escrow Agent in which event all remaining funds or other things deposited in Escrow by REGENTS shall be returned to REGENTS immediately from Escrow, neither Party shall have any liability to the other as a result of the failure to close escrow, and all fees and costs charged by the Escrow Agent shall be paid by REGENTS and CITY, each as to one-half (1/2); or

(ii) Proceed with the Closing with no reduction in the Purchase Price, in which event CITY shall assign to REGENTS all of CITY'S rights, titles and interests to any award made for the condemnation or eminent domain action and any insurance proceeds for damage or destruction, as applicable.

(c) Notice. If either Party becomes aware of any damage or destruction to all or any portion of the Option Property, or if CITY obtains notice of the commencement of or the threatened commencement of eminent domain or condemnation proceedings with respect to all or any portion of the Option Property, CITY shall promptly notify the BUYER in writing.

9. Indemnity. Separate and distinct from REGENTS' obligations to indemnify CITY under the Ground Lease, each party shall protect, defend, indemnify and hold harmless the other party, including the indemnified party's elected officials, officers, employees, representatives, and agents, against and from any and all liability, loss, injuries to, or death of any person or persons, and all claims, demands, suits, actions, proceedings, reasonable attorneys' fees, and defense costs, of any kind or nature, including workers' compensation claims, of or by anyone whomsoever, resulting from or arising out of the indemnifying party's actions which are related to this Agreement but only in proportion to and to the extent that such liability, loss, injuries, death, claims, demands, suits, actions, proceedings, fees, and costs result from the negligent or intentional acts or omissions of the indemnifying party, its officers, agents, or employees. This indemnification and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the indemnified party or its elected officials, officers, employees, representatives, and agents. **This indemnity, defense, and hold harmless obligation shall survive the termination of this Agreement.**

10. Closing.

(a) Closing shall occur on or before either of the following, at REGENTS' election: (i) six (6) calendar months after the REGENTS' exercise of the Option Right (e.g. if the Option Right was exercised on April 15, 2044, Closing shall occur no later than October 15, 2044) or (ii) fifteen (15) Business Days after the date REGENTS elects in writing to consummate the purchase of the Option Property subject to its review of the Second Preliminary Report (pursuant to Article III, Section 5) and REGENTS has approved, or has been deemed to approve, due diligence (pursuant to Article III, Section 6). In addition, in order for Closing to occur:

(1) REGENTS shall not be in default of any of its representations or warranties under this Agreement or any other material terms or conditions related to REGENTS;

(2) As of the Closing Date, REGENTS has not made an assignment for the benefit of creditors, filed a bankruptcy petition, been adjudicated insolvent or bankrupt, petitioned a court for the appointment of any receiver of, or trustee for, the REGENTS, or commenced any proceeding relating to the REGENTS under any reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or later in effect;

(3) The Escrow Agent is prepared and obligated to issue a title insurance policy in REGENTS' favor upon the recordation of the Grant Deed and there are no exceptions to the title insurance policy except for Permitted Exceptions;

(4) CITY is not in default of any of its representations or warranties under this Agreement or any other material terms or conditions related to CITY;

(5) As of the Closing Date, there is no pending or threatened action or proceeding by any person or before any government authority, the outcome of which could prohibit the transfer of the Option Property as intended by the parties;

(6) REGENTS' written approval of the Purchase Price has been obtained;

(7) REGENTS' written approval of the state of title has been obtained;

(8) REGENTS' timely approval of any necessary CEQA documents for the purchase has been obtained;

(9) REGENTS has not objected to any information acquired by its review of documents as described in Article III, Section 6;

(10) All other applicable terms and conditions precedent to this Closing which are set forth in this Agreement have been satisfied; and

(11) Escrow is in possession of the Authority's effective, signed PFFA Consent.

(b) At least three (3) Business Day prior to Closing, CITY shall deposit into Escrow the following:

(1) The Grant Deed, duly executed and acknowledged, conveying fee simple title to the Option Property to REGENTS; and

(2) All additional documents and instruments as are reasonably required by REGENTS and/or Escrow Agent to complete the Closing.

(c) At least one (1) Business Day prior to Closing, REGENTS shall deposit into Escrow the following:

(1) Immediately Available Funds in the amount of the Purchase Price.

(2) All other document and instruments required by this Agreement or reasonably required by CITY and/or Escrow Agent to complete the Closing.

(d) At least five (5) Business Days prior to Closing, the Escrow Agent shall deliver to REGENTS an estimated Buyer's settlement statement for REGENTS' review and approval.

11. Title. At the Closing, CITY shall convey good and indefeasible fee simple title to the Option Property to REGENTS by a Grant Deed, subject only to the Permitted Exceptions.

12. Escrow Costs.

(a) CITY is responsible for the costs of the Preliminary Report; all San Diego County documentary transfer taxes, if any; and all charges for CITY's document drafting and recording, if any.

(b) CITY is responsible for the cost of a standard-coverage California Land Title Association ("CLTA") Title Insurance Policy in the amount of the Purchase Price, insuring that title to the Option Property is vested in REGENTS subject only to the Permitted Exceptions. REGENTS may obtain an American Land Title Association ("ALTA") title insurance policy, in which event REGENTS shall pay the difference between the cost of the ALTA title insurance policy with any endorsements REGENTS requests and the cost of the CLTA title insurance policy.

(c) REGENTS is responsible for all charges for REGENTS' document drafting and recording fees, if any.

(d) Each party shall be responsible for fifty percent (50%) of the Escrow Agent's fee.

(e) The Escrow Agent shall prorate fees and costs between the parties as of the date of Closing.

13. Representations and Warranties; Waivers and Releases. When making the representations and warranties set forth in this Section, as applicable for this Article III, each party making a representation and/or warranty represents that the same are true, correct and complete as of the Closing Date. The representations and warranties shall survive the Closing.

(a) Representations and Warranties Regarding Authority. CITY and REGENTS each represents and warrants to the other that this Agreement and all documents or instruments executed by them which are to be delivered at or prior to the Closing are, or on the Closing Date will be, duly authorized, executed and delivered by CITY or REGENTS, as applicable.

(b) Representations and Warranties Regarding Enforceability of Agreement. CITY and REGENTS each represent and warrant to the other that this Agreement and all documents required to be executed by them pursuant to this Agreement shall be valid, legally binding obligations of, and enforceable against, CITY or REGENTS, as applicable, in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general principles of equity (whether enforcement is sought in equity or at law).

(c) "AS IS" CONDITION. REGENTS ACKNOWLEDGES, REPRESENTS, WARRANTS, COVENANTS AND AGREES THAT AS A MATERIAL INDUCEMENT TO CITY TO EXECUTE AND ACCEPT THIS AGREEMENT AND IN CONSIDERATION OF THE PERFORMANCE BY CITY OF ITS DUTIES AND OBLIGATIONS UNDER THIS AGREEMENT, THAT, EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT AND SUBJECT TO CITY'S EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT, THE SALE OF THE OPTION PROPERTY IS AND WILL BE MADE ON AN "AS IS, WHERE IS" BASIS. CITY HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, FUTURE OR OTHERWISE, OF, AS TO, CONCERNING OR WITH RESPECT TO: (1) THE EXISTENCE OR PRESENCE OF HAZARDOUS MATERIALS OR MOLD UPON, IN, OR ON, UNDER OR IN THE VICINITY OF THE OPTION PROPERTY OR ANY PORTION THEREOF; (2) GEOLOGICAL CONDITIONS, INCLUDING, WITHOUT LIMITATION, SUBSIDENCE, SUBSURFACE CONDITIONS, WATER TABLE, UNDERGROUND WATER RESERVOIRS, LIMITATIONS REGARDING THE WITHDRAWAL OF WATER AND FAULTING; (3) WHETHER OR NOT AND TO THE EXTENT TO WHICH THE OPTION PROPERTY OR ANY PORTION THEREOF IS AFFECTED BY ANY STREAM (SURFACE OR UNDERGROUND), BODY OF WATER, FLOOD PRONE AREA, FLOOD PLAIN, FLOODWAY OR SPECIAL FLOOD HAZARD; (4) DRAINAGE; (5) SOIL CONDITIONS, INCLUDING THE EXISTENCE OF INSTABILITY, PAST SOIL REPAIRS, SOIL ADDITIONS OR CONDITIONS OF SOIL FILL, OR SUSCEPTIBILITY TO LANDSLIDES, OR THE SUFFICIENCY OF ANY UNDERSHORE; (6) USES OF ADJOINING PROPERTIES; (7) THE VALUE, COMPLIANCE WITH THE PLANS AND SPECIFICATIONS, SIZE, LOCATION, AGE, USE, DESIGN, QUALITY, DESCRIPTION, DURABILITY, STRUCTURAL INTEGRITY, OPERATION, TITLE TO, OR PHYSICAL OR FINANCIAL CONDITION OF THE OPTION PROPERTY OR ANY PORTION THEREOF, OR ANY RIGHTS OR CLAIMS ON OR AFFECTING OR PERTAINING TO THE OPTION PROPERTY OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, WHETHER OR NOT THE IMPROVEMENTS COMPLY WITH THE REQUIREMENTS OF TITLE III OF THE AMERICANS WITH DISABILITIES ACT OF 1990, 42 U.S.C. §§ 12181-12183, 12186(B) - 12189 AND RELATED REGULATIONS; (8) THE SQUARE FOOTAGE OF THE OPTION PROPERTY OR THE IMPROVEMENTS THEREON; (9) IMPROVEMENTS AND INFRASTRUCTURE, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE ROOF, FOUNDATION, FIXTURES, AND PERSONAL PROPERTY, IF ANY; (10) DEVELOPMENT RIGHTS AND EXTRACTATIONS; (11) WATER OR WATER RIGHTS; (12) THE DEVELOPMENT POTENTIAL FOR THE OPTION PROPERTY; (13) THE ABILITY OF REGENTS TO REZONE THE OPTION PROPERTY OR CHANGE THE USE OF THE OPTION PROPERTY; (14) THE ABILITY OF REGENTS TO ACQUIRE ADJACENT PROPERTIES; (15) THE EXISTENCE AND POSSIBLE LOCATION OF ANY UNDERGROUND UTILITIES; (16) THE EXISTENCE AND POSSIBLE LOCATION OF ANY ENCROACHMENTS; (17) WHETHER THE IMPROVEMENTS ON THE OPTION PROPERTY WERE BUILT, IN WHOLE OR IN PART, IN COMPLIANCE WITH APPLICABLE BUILDING CODES; (18) THE STATUS OF ANY LIFE-SAFETY SYSTEMS IN THE IMPROVEMENTS ON THE OPTION PROPERTY; (19) THE CHARACTER OF THE NEIGHBORHOOD IN WHICH THE OPTION PROPERTY IS SITUATED; (20) THE CONDITION OR USE OF THE OPTION PROPERTY OR COMPLIANCE OF THE OPTION PROPERTY WITH ANY

OR ALL PAST, PRESENT OR FUTURE FEDERAL, STATE OR LOCAL ORDINANCES, RULES, REGULATIONS OR LAWS, BUILDING, FIRE OR ZONING ORDINANCES, CODES OR OTHER SIMILAR LAWS; (21) THE MERCHANTABILITY OF THE OPTION PROPERTY OR FITNESS OF THE OPTION PROPERTY FOR ANY PARTICULAR PURPOSE (REGENTS AFFIRMING THAT REGENTS HAS NOT RELIED ON CITY'S SKILL OR JUDGMENT TO SELECT OR FURNISH THE OPTION PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT CITY MAKES NO WARRANTY THAT THE OPTION PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE); AND/OR (22) ANY OTHER MATTER CONCERNING THE OPTION PROPERTY. NOTWITHSTANDING THE FOREGOING OR ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, CITY IS NOT RELEASED FROM ANY LIABILITY TO REGENTS FOR FRAUD OR BREACH OF ANY COVENANT, REPRESENTATION OR WARRANTY SET FORTH IN THIS AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, THIS SECTION, ANY RIGHT WAIVED BY REGENTS AND ANY RELEASE BY REGENTS, SHALL ONLY RELEASE OR WAIVE THE REGENTS' RIGHT TO ENFORCE ANY JUDGMENT (INCLUDING WITHOUT LIMITATION, DAMAGES, ATTORNEYS' FEES, COSTS, EXPENSES OR ANY OTHER COMPENSATION OF ANY TYPE WHATSOEVER) PERSONALLY AGAINST ONLY CITY AND CITY'S SUCCESSORS, ASSIGNS, PARTNERS, AFFILIATES AND MEMBERS AND ALL THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, PARTICIPANTS, PARTNERS, AFFILIATES, EMPLOYEES, REPRESENTATIVES, INVITEES AND AGENTS (COLLECTIVELY, "CITY'S PARTIES") OR ANY OF THEM. REGENTS IS NOT WAIVING ANY RIGHT TO BRING ANY ACTION AGAINST ANY OF THE "NON-RELEASED PARTIES" (DEFINED BELOW) OR WAIVING RECOVERY AGAINST OR OTHERWISE RELEASING OR AGREEING TO FOREGO REGENTS' RIGHTS WITH RESPECT TO ANY INSURANCE POLICY, OR ANY OTHER PERSON (OTHER THAN THE RIGHT TO ENFORCE A JUDGMENT PERSONALLY AGAINST ANY OF THE CITY'S PARTIES), INCLUDING WITHOUT LIMITATION PERSONS OBLIGATED TO THE CITY'S PARTIES, BY RIGHT OF SUBROGATION OR OTHERWISE, PRIOR OWNERS OR OCCUPANTS OF THE OPTION PROPERTY, THE TENANTS, PERSONS PERFORMING WORK AT THE OPTION PROPERTY AND/OR ANY INSURANCE POLICIES HELD BY ANY OR ALL SUCH PERSONS (COLLECTIVELY, THE "NON-RELEASED PARTIES").

REGENTS ACKNOWLEDGES THAT REGENTS SHALL HAVE COMPLETED ALL PHYSICAL AND FINANCIAL EXAMINATIONS RELATING TO THE ACQUISITION OF THE OPTION PROPERTY AND WILL ACQUIRE THE OPTION PROPERTY SOLELY ON THE BASIS OF SUCH EXAMINATIONS AND THE TITLE INSURANCE PROTECTION FOR THE OPTION PROPERTY AFFORDED BY THE TITLE POLICY, EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT AND SUBJECT TO CITY'S EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT. REGENTS FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE OPTION PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT CITY HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION, EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT AND SUBJECT TO CITY'S EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT. CITY SHALL NOT BE LIABLE FOR ANY NEGLIGENT MISREPRESENTATION OR FAILURE TO INVESTIGATE THE OPTION PROPERTY NOR SHALL CITY BE BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS, APPRAISALS, ENVIRONMENTAL ASSESSMENT REPORTS, OR OTHER INFORMATION PERTAINING TO THE OPTION PROPERTY OR THE OPERATION THEREOF, FURNISHED BY CITY, OR ANY REAL ESTATE BROKER, AGENT, REPRESENTATIVE, EMPLOYEE, SERVANT OR OTHER PERSON ACTING ON CITY'S BEHALF EXCEPT FOR

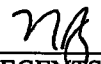
REPRESENTATIONS AND WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT: IT IS ACKNOWLEDGED AND AGREED THAT THE OPTION PROPERTY IS SOLD BY CITY AND PURCHASED BY REGENTS SUBJECT TO THE FOREGOING. NOTWITHSTANDING THE FOREGOING OR ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, CITY IS NOT RELEASED FROM ANY LIABILITY TO REGENTS FOR FRAUD OR BREACH OF ANY COVENANT, REPRESENTATION OR WARRANTY SET FORTH IN THIS AGREEMENT.

REGENTS ACKNOWLEDGES AND AGREES THAT REGENTS IS FULLY AWARE OF THE AGE OF THE OPTION PROPERTY, THAT OVER TIME VARIOUS EVENTS MAY HAVE OCCURRED ON THE OPTION PROPERTY WHICH EVENTS MAY BE TYPICAL AND/OR ATYPICAL OF EVENTS OCCURRING TO OTHER PROPERTIES OF SIMILAR AGE TO THE OPTION PROPERTY AND SIMILARLY LOCATED IN THE CITY OF SAN DIEGO AND/OR THE COUNTY OF SAN DIEGO, CALIFORNIA, AND THAT SUCH EVENTS MAY INCLUDE, WITHOUT LIMITATION, SLAB LEAKS, MOLD, FIRE, SHIFTING, AND VIOLATIONS OF LAWS, ORDINANCES, RULES, REGULATIONS, PERMITS, APPROVALS, LICENSES AND (OR) ORDERS OF GOVERNMENTAL AGENCIES WITH JURISDICTION OVER THE OPTION PROPERTY.

THE CLOSING OF THE PURCHASE OF THE OPTION PROPERTY BY REGENTS SHALL BE CONCLUSIVE EVIDENCE THAT: (A) REGENTS HAS FULLY AND COMPLETELY INSPECTED (OR HAS CAUSED TO BE FULLY AND COMPLETELY INSPECTED) THE OPTION PROPERTY; AND (B) REGENTS ACCEPTS THE OPTION PROPERTY AS BEING IN GOOD AND SATISFACTORY CONDITION AND SUITABLE FOR REGENTS' PURPOSES.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT FOR RELIANCE ON REPRESENTATIONS AND WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT, REGENTS SHALL PERFORM AND RELY SOLELY UPON ITS OWN INVESTIGATION CONCERNING ITS INTENDED USE OF THE OPTION PROPERTY, AND THE OPTION PROPERTY'S FITNESS FOR THAT USE. REGENTS FURTHER ACKNOWLEDGES AND AGREES THAT CITY'S COOPERATION WITH REGENTS WHETHER BY AUTHORIZING THIS AGREEMENT, PROVIDING DOCUMENTS RELATING TO THE OPTION PROPERTY, OR PERMITTING INSPECTION OF THE OPTION PROPERTY, SHALL NOT BE CONSTRUED AS ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OF ANY KIND WITH RESPECT TO THE OPTION PROPERTY, OR WITH RESPECT TO THE ACCURACY, COMPLETENESS, OR RELEVANCE OF THE DOCUMENTS PROVIDED TO REGENTS BY CITY IN RELATION TO THE OPTION PROPERTY, PROVIDED THAT THE FOREGOING SHALL NOT BE A LIMITATION OR MODIFICATION OF THE REPRESENTATIONS AND WARRANTIES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT.

  
CITY's INITIALS

  
REGENTS' INITIALS

(d) Except for claims for CITY's fraud or the breach of any representations and warranties of CITY expressly provided for in this Agreement, REGENTS further agrees as follows:

(1) REGENTS acknowledges that there is a risk that subsequent to the execution of this Agreement, REGENTS may discover, incur, or suffer from claims which were unknown or unanticipated at the time this release is executed, including, without limitation, unknown or unanticipated claims which, if known by REGENTS on the date this release is being executed, may have materially affected REGENTS' decision to execute this Agreement. REGENTS acknowledges that REGENTS is assuming the risk of such unknown and unanticipated claims arising from the exercise of the Option Right and the sale and purchase of the Option

Property pursuant to this Agreement and agrees that this release applies thereto. As to claims arising from the exercise of the Option Right and the sale and purchase of the Option Property as set forth in this Agreement, REGENTS expressly waives the benefits of Section 1542 of the California Civil Code, and any amendments thereto, which reads as follows:

**"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

(2) REGENTS represents and warrants that REGENTS has been represented by independent counsel of REGENTS' own choosing in connection with the preparation and review of this release, that REGENTS has specifically discussed with such counsel the meaning and effect of this release and that REGENTS has carefully read and understands the scope and effect of each provision contained in this release. REGENTS further represents and warrants that REGENTS does not rely and has not relied upon any representation or statement made by CITY or any of CITY's representatives, agents, employees, attorneys or officers with regard to the subject matter, basis or effect of this release.

(3) REGENTS represents and warrants to CITY that REGENTS has not and shall not assign or transfer or purport to assign or transfer any claim or claims or any portion thereof or any interest therein, and shall indemnify, defend, protect and hold the CITY harmless from and against any claim or claims based on or arising out of, whether directly or indirectly, any such assignment or transfer, or purported assignment or transfer.

  
CITY's INITIALS

  
REGENTS' INITIALS

(e) Survival. The provisions of this Section shall survive the Closing and, as applicable, the termination of this Agreement.

(f) Waiver of Subrogation; Survival. REGENTS waives any right of subrogation as to CITY or CITY's Parties. Each and every provision of this Section shall, except as may be expressly limited in this Section, survive the Closing and, as applicable, the termination of this Agreement, and, but for REGENTS' agreement to each and every provision of this Section, CITY would not have executed this Agreement.

#### ARTICLE IV

##### GENERAL PROVISIONS

1. Mandatory Disclosure of Business Interests. Pursuant to San Diego City Charter Section 225, REGENTS shall make a full and complete disclosure of the name and identity of each person directly or indirectly involved in the transactions contemplated by this Agreement and the precise nature of those parties' interests in the transactions.

2. Assignment. REGENTS shall not assign any of its rights or delegate any of its duties under this Agreement except to another political subdivision or public agency associated with or

succeeding to the responsibilities of REGENTS and only with the prior written consent of CITY, which consent may be withheld or granted in CITY's sole and absolute discretion.

3. Notices. All notices under this Agreement shall be in writing and sent (a) by certified or registered mail, return receipt requested, in which case notice shall be deemed delivered three (3) Business Days after deposit, postage prepaid in the United States Mail; (b) overnight by a nationally recognized overnight courier such as UPS Overnight, or FedEx, in which case notice shall be deemed delivered one (1) Business Day after deposit with that courier; or (c) by personal delivery, in which case notice shall be deemed delivered upon the actual date of delivery. All notices shall be delivered to the following addresses:

If to REGENTS:

Regents of the University of California  
Office of the President  
Attn: Eric Schueler  
Office of Real Estate Services & Strategies  
1111 Franklin Street, 6th Floor  
Oakland, CA 94607  
(510) 987-9318

and:

Regents of the University of California  
Office of the General Counsel  
Attn: Barton Lounsbury  
Senior Counsel  
1111 Franklin Street, 8th Floor  
Oakland, CA 94607  
(510) 987-0976

and:

The University of California San Diego  
Attention: Jeff W. Graham  
Executive Director of Real Estate  
Torrey Pines Center South, Suite 340  
9500 Gilman Drive #0982  
La Jolla, California 92093-0982

If to CITY:

City of San Diego  
Attn: Director, Real Estate Assets Department  
1200 Third Avenue, Suite 1700, MS 51A  
San Diego, CA 92101  
(619) 236-6020

The addresses above may be changed by written notice to the other party; provided however, that no notice of a change of address shall be effective until actual receipt of the notice.

4. Prorations. Real property taxes and assessments, utility costs, and other expenses of operating the Option Property (provided, however, no proration shall be made with regard to any capital improvements) shall be prorated as of the Close of Escrow. Each party shall pay all real property taxes

and assessments applicable to the period prior to the close of Escrow of the Option Property while they own it, and if any such taxes are unpaid after the Close of Escrow, then the party who previously owned the Option Property which was conveyed to the other party shall pay them within ten (10) Business Days after a request therefor (which shall include a copy of the relevant tax bill).

5. No Leasing or Marketing by CITY. CITY shall not enter into any leases with respect to the Option Property that prevent REGENTS from purchasing the Option Property on or after October 15, 2042, or market the Option Property for sale or exchange after the Effective Date of this Agreement, unless and until this Agreement is terminated pursuant to its terms or the Ground Lease is terminated as a result of REGENTS' default. The memorandum of option (i.e., Exhibit 2) gives notice of this provision, the existence of this Agreement, and the related amendment to the Ground Lease.

6. Waiver. A party's failure to insist upon the strict performance of any of the other party's obligations under this Agreement, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. A party's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by the non-defaulting party to constitute a valid and binding waiver. A party's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Agreement, at law or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. A party's failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but the party may at any and all times require the cure of the default.

7. Miscellaneous Provisions.

(a) Governing Law. This Agreement shall be interpreted and construed in accordance with California law, without regard to any choice of law principles.

(b) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(c) Captions. The captions in this Agreement are inserted for convenience of reference and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions of this Agreement.

(d) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors, heirs and permitted assigns.

(e) Amendments; Waiver. No amendment, modification, waiver, discharge or change of this Agreement shall be valid unless it is in writing and signed by both parties.

(f) Entire Agreement. This Agreement contains the entire agreement between the parties relating to the option granted to REGENTS, and all prior or contemporaneous agreements, understandings, representations or statements, oral or written, relating to that topic are superseded.

(g) Partial Invalidity. Any provision of this Agreement which is unenforceable, invalid, or the inclusion of which would adversely affect the validity, legality, or enforcement of this Agreement shall have no effect, but all the remaining provisions of this Agreement shall remain in full effect.

(h) Survival. Provisions of this Survival section, and all other provisions so identified, shall survive the Closing or the termination of this Agreement.

(i) No Third-Party Rights. Except as provided in the Survival paragraph (7(h)) of Article IV, nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties to this Agreement and their respective successors and assigns, any rights or remedies.

(j) Time of Essence. Time is of the essence in this Agreement.

(k) Relationship. Nothing contained in this Agreement shall be deemed or construed by the parties or by any third person to create a relationship of principal and agent or partnership or a joint venture between CITY and REGENTS or between either of them and any third party.

(l) CITY Approval. Where this Agreement refers to an action of consent or approval of CITY, it shall mean the consent or approval of the Mayor of the CITY, or his or her designee, unless otherwise provided.

(m) Exhibits and Recitals Incorporated. All exhibits referred to in this Agreement are incorporated in this Agreement by this reference, regardless of whether or not the exhibits are actually attached to this Agreement. The Recitals to this Agreement are incorporated in this Agreement by this reference.

(n) Independent Counsel. CITY and REGENTS each acknowledge that: (a) they have been given the opportunity to be represented by independent counsel in connection with this Agreement; (b) they have executed this Agreement with the advice of such counsel, if such counsel was retained; and (c) this Agreement is the result of negotiations between the parties and the advice and assistance of their respective counsel, if such counsel was retained. The fact that this Agreement was prepared or negotiated by CITY's or REGENTS' counsel as a matter of convenience shall have no import or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against either party due to the fact that CITY's or REGENTS' counsel prepared or negotiated this Agreement in its final form.

(o) Capacity and Authority. All individuals signing this Agreement for a party which is a corporation, limited liability company, partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, represent and warrant that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date written below.

THE CITY OF SAN DIEGO, a California municipal corporation

Date: \_\_\_\_\_

1/25/19

By: \_\_\_\_\_

Cybele Thompson  
Director, Real Estate Assets Department



REGENTS OF THE UNIVERSITY  
OF CALIFORNIA, a California public  
corporation

By: Nathan Brasnon  
Name: Nathan Brasnon  
Title: EVP - CFO

DATED: 11/13/2018

Environmental Analysis Section Environmental Clearance: This action is \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form this 29<sup>th</sup> day of  
January, 2019 ~~2018~~

MARA W. ELLIOTT, City Attorney

By: Melissa Ables  
Name: Melissa Ables  
Title: Deputy City Attorney

Approved as to form this \_\_\_\_\_ day of  
\_\_\_\_\_, 2018.

Office of the General Counsel

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM**

Janet C. Norris  
**JANET C. NORRIS**  
UNIVERSITY COUNSEL OF THE REGENTS  
OF THE UNIVERSITY OF CALIFORNIA

## **EXHIBIT 1**

### **FORM OF AMENDMENT TO GROUND LEASE**

#### **THIRD AMENDMENT TO GROUND LEASE**

THIS THIRD AMENDMENT TO GROUND LEASE ("Third Amendment") is entered into as of December \_\_, 2018, by and between the CITY OF SAN DIEGO, a chartered California municipal corporation ("CITY"), and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California public corporation ("REGENTS"), based on the following:

#### **RECITALS**

A. CITY and Scripps Clinic and Research Foundation ("Scripps"), predecessor to REGENTS, entered into an Option Agreement ("Prior Option"), which was filed in the Office of the San Diego City Clerk on December 13, 1982, as Document No. R-257635-1. The Prior Option gave Scripps the right to lease from CITY that certain real property which was set forth in Exhibit A to the Prior Option. Scripps was given two (2) years to exercise its rights under the Prior Option and enter into a lease with CITY; the terms and conditions of said lease were set forth in Exhibit B to the Prior Option, which was titled Agreement for Ground Lease, Development and Use of Real Property ("Ground Lease").

B. Scripps timely exercised its rights under the Prior Option and entered into the Ground Lease with CITY. The effective date of the Ground Lease was February 23, 1985. The term of the Ground Lease is 55 years, expiring on January 31, 2040.

C. The real property leased pursuant to the Ground Lease is described as Parcel 1 of Parcel Map 9813; said parcel is more generally known as the Reservoir Site on North Torrey Pines Road and is approximately 2.87 acres in size (Torrey Pines Center South at 10280 North Torrey Pines Road) (the "Site").

D. Although the real property leased pursuant to the Ground Lease is a Pueblo Lot which was subject to City Charter Section 219, pursuant to Ordinance No. 8983, dated March 19, 1964, an election on June 24, 1964, and ratifying Resolution No. 180579, dated July 7, 1964, CITY was authorized to lease or sell the Pueblo Lot 1323, of which the leased real property is a part, for research and development purposes and such other uses necessarily incidental thereto.

E. Scripps assigned its interest in the Ground Lease to McKellar Development of La Jolla ("McKellar") pursuant to an Assignment of Lease recorded in the Office of the County Recorder on April 15, 1985, as Instrument No. 85-093951. McKellar developed a two-story, 140,000 square foot, office building and related site improvements over two levels of subterranean parking ("Improvements").

F. CITY and McKellar entered into a First Amendment to the Ground Lease dated March 4, 1985, and a Second Amendment to Ground Lease dated June 30, 1986. Hereinafter the original Ground Lease, along with the First Amendment and Second Amendment are all collectively referred to as the "Ground Lease."

G. McKellar assigned the Ground Lease, along with all of McKellar's right, title and interest in and to the Improvements, fixtures, and personal property located on the Site to REGENTS pursuant to

the Assignment and Assumption of Ground Lease dated October 5, 1987. Hereinafter the Site, along with the improvements and fixtures located thereon are all collectively referred to as the "Property."

H. By separate agreement (the "Option Agreement"), CITY has granted REGENTS an option to purchase the Property. However, the Property is collateral for lease revenue bonds issued by CITY. As the bonds' conditions will remain in effect until October 15, 2042, REGENTS cannot exercise the option until 2042.

I. CITY and REGENTS thus intend to adjust the term and rent of the Ground Lease as stated in this Third Amendment to coordinate it with the Option Agreement.

### AGREEMENT

NOW, THEREFORE, having incorporated the above Recitals into this Agreement by this reference, the parties agree as follows:

1. Holdover. Section 2.02 of the Ground Lease shall be deleted in its entirety and replaced with the following:

Holdover. Any holding over by LESSEE after expiration or termination shall not be considered a renewal or extension of this lease nor shall it be considered LESSEE's default. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect, *except that* CITY shall not have the right to increase the rent during the holdover period until October 15, 2044. CITY shall have the right to increase the rent to then market value, on or after October 15, 2044, if LESSEE remains in possession of the premises in holdover status, and has not exercised its option right to purchase the premises, or has not closed escrow on the premises pursuant to the Option to Purchase Agreement on file with the City Clerk as Document No.:

2. Surrender. Section 2.03 of the Ground Lease shall be deleted in its entirety and replaced with the following:

Surrender of Premises. At termination of this lease for any reason or, if LESSEE holds over then at the end of the holdover period, LESSEE shall execute, acknowledge and deliver to the CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the leasehold premises. The premises shall be delivered free and clear of all liens and encumbrances, and in a decent, safe and sanitary condition.

3. Improvements. Section 6.03 of the Ground Lease shall be deleted in its entirety and replaced with the following:

Improvements/Alterations. Should LESSEE desire to construct additional improvements or alter existing improvements on the premises, it shall submit its request to CITY's Real Estate Assets Department or its successor as manager of the premises on behalf of CITY. The request shall contain sufficient information, such as architectural drawings, to enable CITY's appropriate review. The request shall be deemed approved unless CITY denies approval or requests additional information within fifteen (15) calendar days of when the request was submitted.

4. Signs. Section 6.08 of the Ground Lease is hereby deleted in its entirety and replaced with the following:

Exhibit 1

Signs. Lessee agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devises or advertising without the prior consent of the CITY. To obtain CITY's consent, LESSEE shall submit a description sufficient to enable CITY's appropriate review of any item that LESSEE wishes to erect or display to (and only to) CITY's Real Estate Assets Department. The request shall be deemed approved unless CITY denies approval or requests additional information within fifteen (15) calendar days of when the request was submitted. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours' notice thereof by CITY or CITY may thereupon remove the item at LESSEE's cost.

5. Effect of Option Agreement. To the extent the Ground Lease conflicts with the Option Agreement, the Option Agreement shall control.

6. Effect of Third Amendment. Except as expressly stated in this Third Amendment, the Ground Lease remains in force and effect.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date set forth above.

THE CITY OF SAN DIEGO, a California municipal corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Cybele Thompson  
Director, Real Estate Assets Department

Approved as to form this \_\_\_\_\_  
day of \_\_\_\_\_, 2018

MARA W. ELLIOTT, City Attorney

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Deputy City Attorney

THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA, a California public corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form this \_\_\_\_\_ day of  
\_\_\_\_\_, 2018.

Office of the General Counsel

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT 2**

**MEMORANDUM OF OPTION**

RECORDING REQUESTED BY: )  
)  
)  
WHEN RECORDED MAIL TO: )  
)  
)  
)  
)  
)

Above Space for Recorder's Use Only

**MEMORANDUM OF OPTION AGREEMENT**

This MEMORANDUM OF OPTION AGREEMENT ("Memorandum") is made and effective as of the date of recordation hereof by and between THE CITY OF SAN DIEGO, a chartered California municipal corporation ("Optionor"), and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California public corporation ("Optionee"), with reference to the facts set forth below.

**RECITALS**

A. Optionor owns fee title to that certain real property in the City of San Diego, California, legally described as follows ("the Property"):

PARCEL 1, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS SHOWN AT PAGE 9813 OF PARCEL MAPS, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MARCH 14, 1980.

APN: 342-010-34

B. Optionor and Optionee have entered into that certain Option to Purchase Agreement In Favor of Regents of City-Owned Property of even date herewith ("the Option Agreement").

NOW THEREFORE, the parties hereto wish to record this Memorandum to give notice of the Option Agreement and certain terms thereof.

1. Optionor has granted to Optionee an option to purchase the Property (the "Purchase Option") on the terms and conditions set forth in the Option Agreement.

2. Part of the Option Agreement includes an amendment to a ground lease, a memorandum of which was originally recorded April 15, 1985 as Instrument No. 85-128705 of Official Records. Memoranda of amendments to the ground lease were recorded April 15, 1985 as Instrument No. 85-0128706, and July 15, 1986 as Instrument No. 86-0291380 of Official Records. Memoranda of assignments and assumptions of the ground lease were recorded October 15, 1987 as Instrument No. 87-0582930 and 87-0582931 of Official Records (as amended, the "Ground Lease").

3. Optionor shall not enter into any leases with respect to the Property that prevent Optionee from purchasing the Property on or after October 15, 2042, or market the Property for sale or exchange after the Effective Date of the Option Agreement, unless and until the Option Agreement is terminated pursuant to its terms or the Ground Lease is terminated as a result of Optionee's default. This clause shall not affect the City's right to extend the Term of the Master Leases for other property that are subject to the Master Leases, or to refinance or refund the lease revenue bonds even if doing so may require the City to enter into new site leases and facilities leases associated therewith, provided that the Property can be released no later than October 15, 2042.

4. This Memorandum is being recorded to give notice of the Option Agreement, including notice of the amendment of the ground lease. This Memorandum is not intended to modify in any way the terms and conditions of the Option Agreement or the ground lease.

5. This Memorandum shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors in interest.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the day and year of its recordation.

**OPTIONOR:**

THE CITY OF SAN DIEGO, a California municipal corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Cybele Thompson  
Director, Real Estate Assets Department

Approved as to form this \_\_\_\_\_  
day of \_\_\_\_\_, 2018

MARA W. ELLIOTT, City Attorney

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Deputy City Attorney

**OPTIONEE:**

**THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA, a California public corporation**

**Dated:** \_\_\_\_\_

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**Approved as to form this \_\_\_\_\_ day of  
\_\_\_\_\_, 2018.**

**Office of the General Counsel**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_  
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 \_\_\_\_\_

(Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_  
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 \_\_\_\_\_

(Seal)

**EXHIBIT 3**

**LEGAL DESCRIPTION OF OPTION PROPERTY**

PARCEL 1, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO,  
STATE OF CALIFORNIA, AS SHOWN AT PAGE 9813 OF PARCEL  
MAPS, FILED IN THE OFFICE OF THE COUNTY RECORDER OF  
SAN DIEGO COUNTY, MARCH 14, 1980.

APN: 342-010-34

## "FORM OF" GRANT DEED FOR OPTION PROPERTY

WHEN RECORDED MAIL TO:

) ) ) ) ) ) )

Documentary Transfer Tax is \_\_\_\_\_ :

- APN: \_\_\_\_\_

PARCEL 1, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS SHOWN AT PAGE 9813 OF PARCEL MAPS, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MARCH 14, 1980.

**SUBJECT TO:**

1. Current taxes and assessments.
2. All covenants, conditions, restrictions, reservations, rights, rights-of-way, easements of record and all other matters of record, including but not limited to San Diego City Ordinance No. 8983, dated March 19, 1964, as ratified by the electorate as set forth in San Diego City Resolution No. 180579 dated July 7, 1964.

IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be executed.

**Grantor:**

THE CITY OF SAN DIEGO,  
a chartered California municipal corporation

**Grantee:**

THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA,  
a California public corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MAIL TAX STATEMENTS AS DIRECTED ABOVE**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_  
\_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_  
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 \_\_\_\_\_ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_  
\_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_  
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 \_\_\_\_\_ (Seal)

**EXHIBIT 5**  
**PURCHASE PRICE**

| <b>Year</b> | <b>Purchase<br/>Price</b> |
|-------------|---------------------------|
| 2018        | \$35,300,000              |
| 2019        | \$36,150,730              |
| 2020        | \$37,021,963              |
| 2021        | \$37,914,192              |
| 2022        | \$38,827,924              |
| 2023        | \$39,763,677              |
| 2024        | \$40,721,981              |
| 2025        | \$41,703,381              |
| 2026        | \$42,708,433              |
| 2027        | \$43,737,706              |
| 2028        | \$44,791,785              |
| 2029        | \$45,871,267              |
| 2030        | \$46,976,764              |
| 2031        | \$48,108,904              |
| 2032        | \$49,268,329              |
| 2033        | \$50,455,696              |
| 2034        | \$51,671,678              |
| 2035        | \$52,916,965              |
| 2036        | \$54,192,264              |
| 2037        | \$55,498,298              |
| 2038        | \$56,835,807              |
| 2039        | \$58,205,550              |
| 2040        | \$59,608,303              |
| 2041        | \$61,044,863              |
| 2042        | \$62,516,045              |
| 2043        | \$64,022,681              |
| 2044        | \$65,565,628              |

**EXHIBIT 6**

**"FORM OF" PFFA CONSENT**

RECORDING REQUESTED BY:

)

)

)

WHEN RECORDED MAIL TO:

)

)

)

)

)

Above Space for Recorder's Use Only

The Public Facilities Financing Authority of the City of San Diego ("**Authority**") hereby consents to the OPTION TO PURCHASE AGREEMENT IN FAVOR OF REGENTS OF CITY-OWNED PROPERTY by and between the CITY OF SAN DIEGO, a chartered California municipal corporation ("**CITY**") and the Regents of the University of California, a California public corporation ("**REGENTS**") dated \_\_\_\_\_, 2018 (the "**Option Agreement**"), which pertains to the real property located at 10280 North Torrey Pines Road, San Diego, California ("**Option Property**"). All capitalized terms in this Consent, not otherwise defined herein, shall have the meaning as defined in the Option Agreement. Specifically:

1. Authority hereby consents to the Option Agreement, and acknowledges that any rights of possession that the Authority may have pursuant to the Site Lease and the Master Facilities Lease, are subordinate to the REGENTS' rights to possession under the Ground Lease, and REGENTS' rights contained in the Option Agreement.
2. Authority acknowledges and agrees that REGENTS shall be entitled to exercise its option right to the Option Property without any interference from Authority and, if escrow closes pursuant to the Option Agreement, that REGENTS shall thereafter own fee title to the Option Property and Authority will have no further claim to any right, title, or interest in the Option Property.
3. Nothing herein shall be deemed to make the Authority a party to the Option Agreement.

**Authority:**

PUBLIC FACILITIES FINANCING AUTHORITY  
OF THE CITY OF SAN DIEGO

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

personally appeared \_\_\_\_\_, \_\_\_\_\_ (print name and title of the officer),  
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.

WITNESS my hand and official seal.

(Seal)