

DUPLICATE

DUPLICATE ORIGINAL

Recording Requested by:

CITY OF SAN DIEGO

When Recorded Return to and
Mail Tax Statements to:

CITY OF SAN DIEGO
Community & Economic
Development Department
202 C Street
Third Floor, MS3A
San Diego, CA 92101-3863
Attention: Patricia K. Hightman

Free Recording Requested
per Government Code § 6103

PUBLIC USE LEASE
(Parcel A)

This Public Use Lease (the "Lease") is entered into by and between INTERNATIONAL GATEWAY ASSOCIATES, LLC, a Delaware limited liability company, ("Lessor"), and the CITY OF SAN DIEGO, a charter city ("City").

RECITALS

A. The Redevelopment Agency of the City of San Diego ("Agency") and Lessor ("Developer" therein) are the parties to that certain Disposition and Development Agreement dated May 29, 1998, as amended by the First Implementation Agreement dated February 23, 2000, and the Second Implementation Agreement dated November 27, 2000 (collectively the "DDA") with respect to the redevelopment of certain real property (the "Site"), within the San Ysidro Redevelopment Project area in the City. The redevelopment of the Site involves construction of certain improvements specified in the DDA. Such improvements are to be constructed in phases.

B. Lessor, as Developer under the DDA, is now commencing to construct such improvements on a portion of the Site referred to as "Parcel A", which is shown on the map attached hereto as Exhibit A and is more particularly described in Exhibit B.

C. In connection with its transportation planning and to further mitigate environmental impacts generated by proposed development within the City, City desires to increase the opportunity for persons to participate in mass transit by making available convenient Park and Ride facilities. Lessor proposes to undertake certain improvements to Parcel A and the Site pursuant to

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the DDA, which is expected to affect City's transportation planning.

NOW, THEREFORE, in consideration of the covenants and conditions hereafter contained, and subject to the following terms and conditions, Lessor agrees to lease to City the real property situated in the City of San Diego, San Diego County, California (the "Parking Area"), and more particularly described in Exhibit C, which is attached to this Lease and hereby incorporated by reference, for use by City as a "Park and Ride" facility. The Parking Area shall contain approximately 454 parking spaces.

[The City Manager (or his designee) is hereby authorized to approve, prior to execution of this Lease by the City, an adjusted Parking Area boundary and Exhibit C as necessary or appropriate to accommodate the final configuration of Improvements on the Site and otherwise consistent in all material respects with this Lease, if and as determined by the City Manager (or his designee) in his sole and absolute discretion.]

ARTICLE 1. RENT

Amount and Terms of Payment

Section 1.01. For the purposes of this Lease, the following terms shall have the following meanings:

(a) "Additional Rent A" shall mean the amounts to be paid each Lease Year during the Term, calculated at the rate of ten percent (10%) per annum on the First Tier Base Rent A, and at the rate of six percent (6%) per annum on the Second Tier Base Rent A, which when paid with the Annual Base Rent A applicable to each such Lease Year, will equal the Annual Rent Amount A. The Additional Rent A for each Lease Year, and the composition thereof, is shown on Rent Schedule A, which is attached to this Lease as Exhibit D and hereby incorporated by reference.

(b) "Available Sales Tax A" shall mean the amount of sales and use taxes (i.e., those taxes levied by City under the authority of the California Sales and Use Tax Law (Part 1 of Division 2 of the California Revenue and Taxation Code commencing at Section 6001) or any successor law thereto) which have been collected, allocated and paid to, and actually received by City from transactions originating in any applicable Lease Year from Parcel A, after reduction for any amounts received earlier by City and which are to be refunded because of an overpayment of such taxes. An example of the calculation of the Available Sales Tax A is attached hereto as Exhibit E.

(c) "Base Rent A" shall mean the amount of Six Million Three Hundred Six Thousand Dollars (\$6,306,000), constituting the initial total amount of Base Rent outstanding attributable to the entire Term of the Lease. The Base Rent A is comprised of the sum of: (1) the initial total amount of Base Rent A outstanding related to the first tier of annual Additional Rent in the amount of One Million One Hundred Forty Five Thousand Dollars (\$1,145,000) (the "First Tier Base Rent A"); plus (2) the initial total amount of Base Rent A outstanding related to the second tier of annual Additional Rent in the amount of Five Million One Hundred Sixty One Thousand Dollars (\$5,161,000) (the "Second Tier Base Rent A").

(d) "Lease Year" shall mean the period from July 1 of one calendar year, through and including June 30 of the immediately following calendar year.

(e) "Sales Tax A" shall include (but only include) sales and use taxes (i.e., those taxes levied by City under the authority of the California Sales and Use Tax Law (Part 1 of Division 2 of the California Revenue and Taxation Code commencing at Section 6001) or any successor law thereto) which have been collected, allocated and paid to, and actually received by City from transactions originating in any applicable Lease Year from Parcel A, without reduction for any amounts received earlier by City and which are to be refunded because of an overpayment of such taxes.

(f) "Annual Rent Amount A" shall mean the equal annual scheduled payment for Base Rent A and Additional Rent A owed by City to Lessor each Lease Year as shown on Rent Schedule A (Exhibit D).

(g) "Term Commencement Date A" shall mean the July 1 next following the earlier to occur of: (i) the date when the amount of Improvements on Parcel A Required by Section 2.02 (b), and the Parking Area Improvements referred to in Section 2.04, have been completed; or (ii) the date established in the Schedule of Performance (Attachment No. 3) of the DDA for completion of construction of the development on Parcel A, as such date may be extended by City for purposes of this provision only pursuant to Section 3.02, or as such date may be extended for purposes of this provision only pursuant to Section 6.19, to the extent, and only to the extent, that the causes under that Section delay completion of the amount of Improvements on Parcel A required by Section 2.02 (b), or the completion of the Parking Area Improvements referred to in Section 2.04.

(h) "Termination Date A" shall mean June 30 of the thirtieth (30th) Lease Year of scheduled rental payments of the Base Rent A and Additional Rent A under this Lease.

Section 1.02. City hereby agrees to pay to Lessor each Lease Year, the Base Rent A and Additional Rent A owed for that Lease Year as shown on Rent Schedule A (Exhibit D), until Termination Date A, at which time any as yet unpaid Base Rent A and/or Additional Rent A shall be deemed forgiven.

The Base Rent A and Additional Rent A shall be payable in cash or by check drawn to the order of Lessor.

Section 1.03. Within forty-five (45) days after City receives its final installment of Sales Tax A from the State of California (or such other governmental entity as may be the payor of Sales Tax A in the future) for each Lease Year after the Term Commencement Date A, City shall pay to Lessor the lesser of: (a) the Annual Rent Amount A, or (b) the sum of (i) Available Sales Tax A for the applicable Lease Year, and (ii) Available Reserves A (as defined in Section 1.07 below) as of the end of the immediately preceding Lease Year. Such amount is referred to herein as the "Annual Payment" for the applicable Lease Year. An example of the calculation of the Annual Payment is attached hereto as Exhibit F. Any interest earned on Available Sales Tax A due to investment of such funds by City prior to the making of such Annual Payment to Lessor shall be the property of City. Concurrently with the making of such Annual Payment, City shall provide Lessor with a financial report showing the amount of Sales Tax A allocated and paid to City for the preceding Lease Year and how the amount paid to Lessor for that Lease Year was determined. Such report further shall detail the amount (if any) of Annual Rent Amount A that continues to be unpaid for any past Lease Year as referred to in Section 1.04.

Section 1.04. City shall only be required to calculate the Annual Payments on the basis of Sales Tax A, and to pay such amounts from (a) Sales Tax A, which are actually collected, allocated to and received by City for the applicable Lease Year; and (b) Available Reserves A as of the end of the Lease Year immediately preceding the Lease Year for which the applicable Annual Payment is due. Any portion of Annual Rent Amount A which is not paid in a Lease Year because there is insufficient Available Sales Tax A for that Lease Year, or insufficient Available Reserves A, shall be deemed a deferred obligation payable (without interest) from Available Reserves A, if and as there are Available Reserves A to pay to Lessor on account of such deferred obligation. Any deposit in the Fund for Available Reserves A in a Lease Year as provided for in Section 1.05, shall be used in that Lease Year, immediately upon such deposit, to pay toward the outstanding balance of deferred obligations, if any. After such time as City

has deposited into the Fund for Available Reserves A, the maximum cumulative limit of such deposits established pursuant to Section 1.07 hereinbelow, then any portion of Annual Rent Amount A which is not paid in a Lease Year because there is insufficient Available Sales Tax A for that Lease Year, or insufficient Available Reserves A available from deposits made before the limit was reached, shall be deemed forgiven, and City shall have no further obligation or liability with respect thereto. For the purpose of calculating the outstanding balance of Base Rent A under this Lease, the portion of Annual Rent Amount A deemed forgiven shall be treated as if it actually had been paid.

Section 1.05. Lessor acknowledges and agrees that payment of the Base Rent A and Additional Rent A shall be calculated solely upon City's receipt of Sales Tax A from transactions on or from Parcel A based upon the percentage of sales taxes received by City for general fund purposes as of the date of this Lease. The parties acknowledge that the documentation as to sales tax generation received by City from the State of California (or other distributing entity) may not be available in a form to undertake such calculation, and agree to reasonably cooperate with each other to establish procedures and means to ascertain the Sales Tax A as best as reasonably possible to permit application of Sections 1.02 through 1.04. If specific figures for Parcel A are available from the State or other governmental agency, City will cooperate with Lessor in attempting to have such figures provided to City. It is recognized, however, that figures regarding transactions on Parcel A which generate Sales Tax A may be only obtainable directly from the occupants of Parcel A engaged in such transactions. In such circumstances, Lessor acknowledges and agrees that it is the party best positioned to obtain such figures from such occupants in a form reasonably acceptable to City.

City covenants to take all actions legally required to obtain and receive the maximum amount of Sales Tax A revenue to which City is legally entitled so as not to jeopardize or impair Lessor's ability to receive payment pursuant to this Lease. Lessor acknowledges and agrees that to the extent that any future constitutional, legislative or judicial amendment, act, ruling or decision (hereafter referred to as a "Sales Tax Interference Act") interferes with the ability of City to receive Sales Tax A, any payments made by City to Lessor during the period following the start of the Lease Term that such Sales Tax Interference Act is not in effect will be deemed full and complete payment of the Base Rent A and Additional Rent A, even if the amount of such payments total less than otherwise required by this Lease, unless an alternative payment formula and procedure is agreed to by the parties in accord with this Section. In the event of a Sales Tax Interference Act, the parties will reasonably cooperate to establish an alternative payment formula and procedure, provided, however, that such

alternative shall be based solely upon transactions occurring on Parcel A, and shall most closely achieve the economic equivalent of the present situation for both City and Lessor.

Section 1.06. Notwithstanding any other provision of this Lease, City may prepay the outstanding balance (not paid, or deemed paid pursuant to Section 1.04 above) of the Base Rent A, or the outstanding balance (not paid, or deemed paid pursuant to Section 1.04 above) of the First Tier Base Rent A or the Second Tier Base Rent A, together with all Additional Rent, or the first tier of annual Additional Rent or the second tier of annual Additional Rent, as applicable, accrued (and not paid, or deemed paid pursuant to Section 1.04 above) as of the date of prepayment, at any time without prior notice to Lessor and without any penalty or charge. Lessor agrees to cooperate with City, including without limitation providing any appropriate estoppel certificate regarding the status of this Lease, and the prepayment of Base Rent A and the payment of accrued Additional Rent A, or the first tier of annual Additional Rent or the second tier of annual Additional Rent accrued, as applicable, hereunder as may be reasonably requested by City or in connection with any bond issue or other financing of City's obligations hereunder.

Section 1.07. As security for City's obligation to make the Annual Payments to Lessor, City agrees to establish in its accounts a reserve fund (the "Fund for Available Reserves A"), which shall be drawn upon by City to pay toward any Annual Payment in a Lease Year when the Available Sales Tax A for the applicable Lease Year is insufficient to pay the Annual Rent Amount A in full, or to pay toward any obligations accrued in a previous Lease Year when the Available Sales Tax A for the applicable Lease Year and Available Reserves A as of the end of the immediately preceding Lease Year were insufficient to pay the Annual Rent Amount A. Commencing with the first Lease Year after the closing of the mortgage loan and/or other financing for the development of Parcel A under the DDA, when City is allocated and actually receives any amount of Sales Tax A, City shall deposit in the Fund for Available Reserves A any amount by which Available Sales Tax A exceeds the Annual Rent Amount A required for the applicable Lease Year. Any interest or other investment return earned on monies in the Fund for Available Reserves A (determined by City in its absolute discretion), shall be added to the Fund and used for the same purposes and under the same conditions and limitations, provided for herein with respect to amounts deposited by City from Available Sales Tax A. Notwithstanding the foregoing, in no event shall City be required to deposit into the Fund for Available Reserves A (including any interest added thereto) in excess of Five Hundred Eighty-Eight Thousand Ninety Six Dollars (\$588,096) for the entire term of this Lease, independent of whether or how much of such deposits are withdrawn to cover current or past shortfalls in Annual Rent Amount

A. Provided however, that on the earlier of (a) the end of the tenth Lease Year, or (b) the July 1 next following the first Lease Year in which Available Sales Tax A is greater than 1.5 times the Annual Rent Amount A, the maximum cumulative limit on deposits into the Fund for Available Revenues A shall be reduced to an amount equal to the greater of (i) the Annual Rent Amount A, or (ii) the amount theretofore withdrawn by City from the Fund for Available Reserves A to cover current or past shortfalls in Annual Rent Amount A. Any balance in the Fund for Available Reserves A in excess of such revised limit may be immediately withdrawn by City.

Section 1.08. Upon the prior written approval of City, Lessor may assign its rights to receive the Base Rent A and Additional Rent A due under this Lease to one or more construction or permanent lenders (each a "Lender") that makes a construction or permanent loan secured by all or any portion of Parcel A. Such assignment shall be made pursuant to a written agreement reasonably satisfactory to City in form and substance.

Notwithstanding the foregoing, City shall not be obligated to pay any portion of the Base Rent A, or any Annual Payment related thereto, to any person other than Lessor unless City is notified by Lessor in writing of the name of any Lender to which payment of the Base Rent A, and the Annual Payments related thereto, are to be paid directly, the amount to be paid to such Lender, and the address to which such payment is to be sent. City shall not be liable for any failure on the part of Lessor to give such notice to City or if City for any reason does not actually receive any such notice.

In the event that Lessor defaults on its obligations to any Lender, or defaults as the Developer on its obligations to the Agency under the DDA, and such Lender elects to assume the obligations of Lessor (as the Developer) pursuant to Section 320 of the DDA, Lessor may assign its rights under this Lease to such Lender with the prior written approval of City and City shall pay the Base Rent A, and the Annual Payments related thereto, directly to such Lender as provided for in this Lease. Such assignment shall be made pursuant to a written agreement reasonably satisfactory to City in form and substance.

No request by International Gateway Associates, LLC to transfer and/or assign any of its rights under this Lease Agreement will be granted or approved unless the proposed transferee/assignee is a 'sophisticated institutional or individual investor'. For purposes of this Agreement, a 'sophisticated institutional or individual investor' shall mean any legally recognized entity or individual(s) with knowledge and experience in financial and business matters that renders it (them) reasonably capable of evaluating the merits and risks of investment in this Lease

Agreement and has received such information as it (they) has (have) deemed necessary to make such evaluation and able to bear the economic risk of investment in this Lease Agreement.

Section 1.09. Notwithstanding any other provision of this Lease, if City has made, or is treated as if having made pursuant to Section 1.04 above, the Base Rent A and Additional Rent A payments in compliance with the provisions of Article 1 of this Lease for transactions occurring on Parcel A for thirty (30) Lease Years beginning with the Term Commencement Date A, the Base Rent A, and any Additional Rent A, shall be deemed to have been completely paid, even if the sum of such installments totals less than otherwise required by this Lease.

ARTICLE 2. ADDITIONAL TERMS AND CONDITIONS REGARDING PARKING AREA

Title

Section 2.01. Within thirty (30) days following execution of this Lease, Lessor shall furnish City with a preliminary California Land Title Association report of the title to the Parking Area and each document shown as an exception or encumbrance in the report. This shall be done at the expense of Lessor. Within fifteen (15) days after the delivery of the report and related documents to City, City shall notify Lessor in writing of any objection to any exception therein. City's right to object to an exception shall be limited to those items which in City's discretion could interfere with City's proposed use of the Parking Area for a Park and Ride facility. If City makes a timely objection to any such exception, Lessor shall have the right to eliminate such exception, provided such elimination shall be at the sole cost and expense of Lessor and shall be completed not later than thirty (30) days prior to the date scheduled for the start of the Lease Term pursuant to Section 2.03. Lessor shall provide City with proof reasonably satisfactory to City that such exception has been eliminated. If such exception is not eliminated within such time, City may, in its sole discretion, either (i) terminate this Lease pursuant to Section 3.01, or (ii) begin the Lease Term subject to Lessor providing security in a form reasonably acceptable to City to assure elimination of the exception within a time period reasonably acceptable to City. City's failure to object in this manner to any exception shall be an approval by City of that exception. Notwithstanding the foregoing, (a) if the Parking Area was within a Sales Parcel conveyed by the Agency to Lessor as the Developer under the DDA, then City shall not have the right to object to any exception to title to the Parking Area which existed at the time of the conveyance of the applicable Sales Parcel to the Developer in accordance with the terms of the DDA, and (b) City shall not have the right to object to any encumbrance of Lessor's interests in the

Parking Area which City has approved or is acquired to approve pursuant to Section 6.02 hereof, provided that any such encumbrance is subject and subordinate to this Lease.

Miscellaneous Conditions

Section 2.02. City's obligation to lease the Parking Area pursuant to this Lease is subject to the satisfaction of the following conditions, which are solely for City's benefit unless otherwise indicated:

Delivery of Possession

(a) The delivery of possession of the Parking Area to City at the start of the Lease Term, free and clear of all uses and occupancies except those approved in writing by City. City hereby consents to the use and occupancy of the Parking Area for parking purposes by all tenants of Parcel A, and by their employees, customers, invitees, and guests, provided such uses do not interfere with use of the Parking Area for a Park and Ride facility.

Completion of Construction on Parcel A

(b) The completion by Lessor of not less than 157,950 square feet of improvements on Parcel A in the approximate locations set forth in the plan in Exhibit G which is attached to this Lease and hereby incorporated by reference ("the "Improvements") or any modification of the Improvements duly approved by City. Completion of the Improvements shall be evidenced by the issuance of a certificate by a licensed architect stating that all required construction necessary for occupancy of the Improvements, both exterior and interior, other than tenant signage and tenant improvements, has been completed.

Term of Lease

Section 2.03. The lease term shall commence on the Term Commencement Date A, and shall continue for thirty (30) Lease Years thereafter (hereafter referred to as the "Lease Term"), unless terminated earlier in accordance with the terms of this Lease. Each consecutive twelve (12) month period is a "Lease Year." Upon the commencement of the Lease Term, the parties agree to execute an acknowledgment evidencing the date of such commencement. Except as otherwise expressly set forth herein, City shall have no right to extend the Lease Term. Upon the termination or expiration of the Lease Term, City shall immediately surrender possession of the Parking Area to Lessor or its successors or assigns, and shall not allow delay in said transfer of possession for any reason.

Lessor shall have the right to terminate the Lease Term prior to the end of the Lease Term by giving written notice of termination to City, in the event City fails to pay the Base Rent A or Additional Rent A as required by this Lease, provided Lessor has first given City written notice of such failure, and thirty (30) days from the date of such notice have elapsed without cure of the default by City. Such remedy shall be in addition to any other remedies Lessor may have for such failure.

Extent of Leasehold Interest

Section 2.04. Upon commencement of the Lease Term pursuant to Section 2.03, Lessor shall lease the Parking Area to City, and City shall lease the Parking Area from Lessor, subject to the provisions and conditions herein set forth, for the Base Rent A and Additional Rent A as described in Article 1 hereof, together with any and all parking facilities either now or hereafter located on the Parking Area (hereafter referred to as the "Parking Area Improvements"). City's lease of the Parking Area shall be deemed to include the nonexclusive right of access to the Parking Area through all portions of Parcel A commonly reserved for vehicular and pedestrian use.

City's leasehold interest shall be subject to the right of Lessor to:

(a) grant the right (previously or in the future) to any third party to use the Parking Area and the Parking Area Improvements under such terms as it determines in its sole discretion; and

(b) construct upon the Parking Area any improvements which Lessor determines are desirable or necessary;

provided, however, such use rights and/or construction do not interfere with the right and ability of City to use the Parking Area for a Park and Ride facility, or create a lien upon City's interest in the Parking Area which could threaten foreclosure of City's interest in the Parking Area. The general terms for the use of property as a Park and Ride facility are set forth in Exhibit H, which is attached to this Lease and hereby incorporated by this reference. The parties agree to cooperate with one another to establish the precise terms of usage of the Parking Area as a Park and Ride facility, provided such terms shall be in general accordance with Exhibit H. Any and all improvements on the Parking Area, whether now existing or hereafter constructed shall be and remain the property of Lessor.

Utilities

Section 2.05. Lessor shall order, obtain and pay for all utilities necessary for all operations related to the Parking Area.

Taxes

Section 2.06 Lessor shall be solely responsible for all taxes, assessments and fees assessed or levied upon the Parking Area, including the land and Parking Area Improvements.

Maintenance

Section 2.07. Lessor covenants and agrees to maintain at its sole cost and expense the Parking Area and the Parking Area Improvements thereon in a good condition throughout the Lease Term, and to make all repairs and replacements necessary to maintain and preserve the Parking Area and the Parking Area Improvements in a decent, safe, healthy and sanitary condition reasonably satisfactory to City, and in compliance with all applicable codes and standards of City, state and federal agencies. In the event that City reasonably determines that the Parking Area or Parking Area Improvements are not being so maintained, it shall have the right, after not less than thirty (30) days prior written notice to Lessor, to have any necessary maintenance work done, and to subtract the costs of such work from the Base Rent A and/or Additional Rent A.

Indemnification

Section 2.08. Lessor shall indemnify, defend, and hold City 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:

(a) any unsafe or defective condition in or on the Parking Area of any nature whatsoever which may exist by reason of any act, omission, neglect, or any use or occupation of the Parking Area;

(b) any improvement work by Lessor, or its agents and contractors, including without limitation the design and installation of equipment and the development of Parcel A;

(c) any maintenance of the Parking Area or the Parking Area Improvements;

(d) any act, omission or negligence on the part of Lessor, its employees, agents, lessees, invitees, or licensees; and

(e) use by any person of the Parking Area, even if such use is in connection with the Park and Ride facility.

The foregoing indemnifications shall not be applicable to loss caused solely by active negligence of City, provided, however, that nothing in such exemption from indemnification shall be deemed to impose any obligation on City not otherwise required by this Lease.

Lessor shall report to City any accident causing more than Ten Thousand Dollars (\$10,000.00) worth of property damage or any serious injury to persons on the Parking Area. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.

Insurance

Section 2.09. Lessor shall take out and maintain at all times during the Lease Term public liability and property damage insurance in the amount of not less than Three Million Dollar (\$3,000,000.00) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failure to act by City or Lessor or by authorized representatives of City or Lessor on or in connection with the use or operation of the Parking Area. All insurance policies shall name City and its officers, agents, employees, representatives and attorneys as an additional insured, protect City and its officers, agents, employees, representatives and attorneys against legal costs in defending claims, and will not terminate without at least sixty (60) days prior written notice to City. All insurance companies must be satisfactory to City and licensed to do business in California. A copy of the insurance policy shall remain on file with City during the Lease Term. Should Lessor fail to take out and maintain the required insurance, City may do so, and the costs thereof shall be subtracted from the Base Rent A and/or Additional Rent A.

Nondiscrimination

Section 2.10. Lessor covenants and agrees for itself, its successors, its assigns and every successor in interest to the Parking Area 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 Parking Area nor shall Lessor 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 Parking Area.

Lessor shall refrain from restricting the rental, sale or lease of the Parking Area on the basis of race, color, creed, religion, sex, sexual orientation, marital status, ancestry or national origin of any person.

ARTICLE 3. FAILURE OF CONDITION AND LESSOR'S BREACH OF WARRANTY

Section 3.01. Except as provided in Section 3.02, if any of the conditions set forth in this Lease fails to occur, or if City notifies Lessor in writing prior to the anticipated start of the Lease Term of Lessor's breach of any of Lessor's warranties set forth in this Lease, then City may terminate this Lease. City shall exercise this power to terminate by complying with any applicable notice requirements specified in the relevant condition and, in all other cases, by providing written notice to Lessor at any time prior to the start of the Lease Term. The exercise of this power shall not waive any other rights City may have against Lessor for breach of this Lease, but shall be the sole remedy for any failure of condition prior to the start of the Lease Term or of any failure to cure an unfulfilled condition which Lessor elected to remedy prior to the start of the Lease Term.

Lessor's Election to Remedy Defects

Section 3.02. Notwithstanding any provision of this Lease to the contrary, Lessor shall have the right prior to the start of the Lease Term to remedy any failure of any condition or any breach of any representation or warranty of this Lease which could otherwise permit City to terminate this Lease (hereafter referred to as "defects"). This right to remedy shall be subject to the following requirements and restrictions:

(a) City shall immediately notify Lessor in writing of City's discovery, prior to the start of the Lease Term, of a defect. If City has knowledge of a defect and fails to give notice, City shall waive the defect and the defect shall not be a violation of this Lease.

(b) If City gives notice, Lessor may elect to remedy the defect by giving City, within thirty (30) days of receipt of City's notice, written notice of its intent to remedy the defect. If Lessor anticipates that the defect cannot be remedied prior to the scheduled start of the Lease Term, its notice of election to remedy may include a request for postponement of the start of the Lease Term, and a specification of the number of days (if any) that such act be postponed so that Lessor may remedy the defect. City, at

its sole discretion, may give its written approval of such postponement. Approval of any such postponement shall be subject to the condition that Lessor promptly begin to remedy the defect and proceed diligently to complete the necessary remedy. If City fails to respond to such request within ten (10) days of such request or the scheduled start of the Lease Term shall occur prior to any response from City, then City shall be deemed to have rejected the request for postponement. If Lessor fails to provide a timely notice of election or fails to remedy the defect prior to the start of the Lease Term (including any extension pursuant to this Section), then City, at City's election (made in a written notice delivered to Lessor within thirty (30) days after the date otherwise scheduled for the start of the Lease Term), may do any of the following:

- (1) If a material defect (including without limitation, failure to deliver possession of the Parking Area in the condition required by this Lease, failure to complete construction of the amount of Improvements on Parcel A required by Section 2.02 (b), failure to clean-up any required environmental contamination, failure to clear any required encumbrances, etc.) terminate the Lease without any liability on the part of either party; or
- (2) Start the Lease Term subject to Lessor providing security in a form reasonably acceptable to City to assure remediation of the defect or defects within a time period reasonably acceptable to City; or
- (3) Start the Lease Term without a reduction in the Base Rent A and Additional Rent A and without any liability for the unremedied defect or defects on the part of Lessor.

The failure by City to make such an election shall be deemed an election of option (2).

ARTICLE 4. RIGHTS AND WARRANTIES

Right of City to Enter the Parking Area

Section 4.01. Lessor grants to City, or City's agents, the right, at any time and from time to time after the execution of this Lease, to enter onto the Parking Area to conduct tests or investigations, provided that:

- (a) The acts shall be conducted at the sole cost and expense of City;

(b) The acts do not unreasonably interfere with Lessor's possession;

(c) City shall defend, indemnify and hold Lessor harmless from any costs or liability resulting from the acts;

(d) City shall give Lessor written notice of the intention to enter not less than three (3) business days prior to the date of the planned entry;

(e) Lessor shall have the right to have its representative present at any testing or investigation; and

(f) Any physical testing shall be conducted by licensed professionals in the field of testing being conducted.

Representations and Warranties of Lessor

Section 4.02. Lessor represents and warrants that:

(a) Lessor owns the Parking Area, free and clear of all liens, licenses, claims, encumbrances, easements, encroachments on the property from adjacent properties, encroachments by improvements on the Parking Area onto adjacent properties, and rights of way of any nature, not disclosed by the public record.

(b) There is no pending litigation involving the Parking Area.

(c) There is no violation of, or notice concerning defects or noncompliance with, any applicable building code or other code, statute, regulation, ordinance, judicial order, or judicial holding pertaining to the Parking Area, provided, however, that any defects or noncompliance with environmental or hazardous waste issues are governed by Article 5 hereof.

(d) Lessor is not in default under any contract, note, or encumbrance relating to the Parking Area.

(e) As of the Term Commencement Date A, the Parking Area will be in good condition and there will be no material defect in the Parking Area.

(f) Lessor will maintain the Parking Area in good repair and in the same, or better, condition than is required when the Lease Term commences, reasonable wear and tear excepted.

(g) Lessor has the full right, authority and power to enter into this Lease, to consummate the transactions contemplated herein and to perform its obligations hereunder, and under those documents

and instruments to be executed by it at the closing, and this Lease constitutes a valid and legally binding obligation of Lessor enforceable against Lessor in accordance with its terms.

(h) Lessor's execution and delivery of this Lease and the consummation of the transactions contemplated and the performance of Lessor's obligations hereunder do not violate any agreement, instrument, mortgage, loan agreement, statute, ordinance or regulation to which Lessor is a party or by which Lessor is bound.

(i) The individuals executing this Lease and the instruments referenced herein on behalf of Lessor have the legal power, right and actual authority to bind Lessor to the terms and conditions hereof.

Representations and Warranties of City

Section 4.03. City represents and warrants that:

(a) City has the full right, authority and power to enter into this Lease, to consummate the transactions contemplated herein and to perform its obligations hereunder and under those documents and instruments to be executed by it at the closing, and this Lease constitutes a valid and legally binding obligation of City enforceable against City in accordance with its terms.

(b) City's execution and delivery of this Lease and the consummation of the transactions contemplated and the performance of City's obligations hereunder do not violate any agreement, instrument, mortgage, loan agreement, statute, ordinance or regulation to which City is a party or by which City is bound.

(c) The individuals executing this Lease and the instruments referenced herein on behalf of City have the legal power, right and actual authority to bind City to the terms and conditions hereof.

ARTICLE 5. ENVIRONMENTAL PROVISIONS

Indemnification by Lessor

Section 5.01. Effective as of the date of execution of this Lease by City, Lessor shall defend, indemnify and hold harmless City from and against any and all claims, damages or liabilities (whether or not caused by negligence), including civil or criminal fines, arising out of or relating to any of the following:

(a) Any generation, processing, handling, transportation, storage, treatment or disposal of solid wastes or hazardous wastes by Lessor, including, but not limited to, any of such activities occurring on Parcel A or the Parking Area;

(b) Any releases (including, but not limited to, any releases as defined under the Comprehensive Environmental Response, Compensation and Liability Act of 1980) to the extent occurring or existing prior to the date of execution of this Lease by City, including, but not limited to such releases to land, ground water, surface water or into the air.

Background

Section 5.02. Lessor represents that the following studies and analyses have taken place in relation to Parcel A:

(a) Phase I Environmental Site Assessment Report for the IGA Project dated July 9, 1999, prepared by Gradient Engineers, Inc.

(b) Supplemental Information for Phase I Environmental Site Assessment Report for the IGA Project dated July 27, 1999, by Gradient Engineers, Inc.

(c) Revised Supplemental Phase II Environmental Site Assessment Report for the IGA Project dated January 19, 2000, revised February 25, 2000, by Gradient Engineers, Inc.

(d) Remedial Closure Report for Removal of Black Grit Material for the IGA Project dated February 13, 2001, by Gradient Engineers, Inc.

Representations and Warranties

Section 5.03. As an inducement to City to enter into this Lease, Lessor represents and warrants that:

(a) Throughout the period of ownership of Parcel A and the Parking Area by Lessor, there has been no notice, directive, violation report or action by any local, state or federal department or agency concerning environmental laws or regulations, which has not been remedied in accordance with such laws or regulations;

(b) There are no soil or geological conditions which might impair or adversely affect the current use or future plans for use of Parcel A or the Parking Area;

(c) None of Parcel A or the Parking Area is located in an area identified by an agency or department of federal, state or local governments, or identified by Lessor, as having special flood or mudslide hazards or wetlands;

(a) Any business and operations of Lessor on Parcel A and the Parking Area will at all times be conducted in compliance in all material respects with all applicable federal, state, local or foreign laws, ordinances, regulations, orders and other requirements of governmental authorities with respect to matters relating to the environment;

(b) There has been no spill, discharge, release, cleanup or contamination of or by any hazardous or toxic waste or substance used, generated, treated, stored, disposed of or handled by Lessor at Parcel A or the Parking Area;

(c) There are not now, nor have there ever been any underground storage tanks located at, on or under Parcel A or the Parking Area;

(d) No hazardous or toxic substances or wastes are located at, or have been removed from Parcel A or the Parking Area, and Parcel A and the Parking Area are in compliance with all California and federal environmental laws.

Condition Precedent to Lease Term

Section 5.04. (a) As a condition precedent to City's obligation to start the Lease Term, Lessor shall have received not less than thirty (30) days prior to the anticipated start date, from a governmental authority ("authority"), pursuant to any environmental cleanup responsibility law (the "Cleanup Law") affecting Parcel A or the Parking Area or the leasing of the Parking Area, either (i) a determination by the authority that the transaction is not subject to the law, or (ii) a determination that the transaction satisfies the requirements of the Cleanup Law without the need for any cleanup of hazardous substances or wastes at the premises. If this condition precedent shall not be satisfied, then City shall have the right to void this Lease on notice to Lessor.

(b) Lessor shall promptly furnish to City true and complete copies of all documents, submissions and correspondence provided by Lessor to the authority, and all documents, reports, directives and correspondence provided by the authority to Lessor in line with environmental compliance under subparagraph (a) above. Lessor shall also promptly furnish to City true and complete copies of all sampling and test results obtained from samples and tests taken at and around Parcel A and the Parking Area.

(c) Lessor shall, upon request of City, provide to City a description of all operations, past and present, known by Lessor to have been undertaken at Parcel A or the Parking Area and any existing maps and diagrams in Lessor's possession or control

designating the location of past and present operations and past and present storage of hazardous substances and wastes, above and below ground, at Parcel A or the Parking Area.

(d) City shall have the right after execution of this Lease and prior to the start of the Lease Term, at City's own expense, to undertake sampling at any of Parcel A or the Parking Area or any operations located thereon, for which purpose Lessor shall allow City and City's agents reasonable access. Should City's sampling reveal that there has been a spill or discharge of hazardous substances or wastes at Parcel A or the Parking Area or the operations thereon, then City shall have the right to void this Lease on notice to Lessor.

(e) Lessor represents and warrants to City that Parcel A and the Parking Area and the operations thereon comply fully with all state and federal environmental laws.

(f) Lessor shall indemnify and defend City from and against any and all liabilities, losses and costs, including City's reasonable counsel fees, which City may incur because of Lessor's failure to perform all of its obligations under any Cleanup Law affecting Parcel A or the Parking Area or Lessor's breach of the representations and warranties set forth above.

Lessor's Cleanup Obligations

Section 5.05. (a) No later than thirty (30) days prior to the anticipated execution of this Lease by City, and thereafter throughout the Lease Term, Lessor shall, at Lessor's own expense, comply with any Cleanup Law respecting Parcel A and/or the Parking Area, and shall obtain the necessary approvals, if any are required, from the appropriate governmental authority permitting the transaction to be completed.

(b) Should a cleanup of Parcel A and/or the Parking Area be required under the Cleanup Law, and should the authorities permit closing of this transaction prior to the cleanup and City agrees at its sole discretion to execution of this Lease, or commencement of the Lease Term, as the case may be, then the Lease shall be executed, or the Lease Term shall begin, and Lessor shall diligently proceed with all required cleanups and post-cleanup sampling required by the authorities and shall complete such activity as soon as possible. Should Lessor fail to obtain final approval of cleanup from the authorities, City shall be indemnified and defended from all costs, expenses and damages resulting from Lessor's failure to obtain final approval.

(c) Lessor shall indemnify and defend City from and against all liabilities, losses and costs, including City's reasonable

counsel fees, which City may incur by reason of Lessor's failure to perform any of the above obligations.

ARTICLE 6. MISCELLANEOUS PROVISIONS

Loss, Destruction and Condemnation

Section 6.01. The parties agree that the following provisions shall govern the risk of loss:

If after execution of this Lease by City, all or any part of the Parking Area is destroyed without fault of Lessor and such damage is not repaired, or if all or any part of the Parking Area is taken by eminent domain by any governmental entity, Lessor may substitute an alternative area on or near Parcel A of equal size to the portion of the Parking Area so destroyed or taken, which area shall thereafter be designated for the Park and Ride facility and operated in accord with the requirements of this Lease. Such alternative area shall be located as near as possible to the transit stop on Parcel A. To the extent that an alternative area cannot be so found, City shall be relieved from a pro-rata portion of City's obligation under this Lease to pay the Base Rent A and Additional Rent A for the Parking Area, determined by the proportion of the amount of the Parking Area which has been so destroyed or taken and which is not available to City for parking uses to the amount of Parcel A or the Parking Area which is still available for such use.

Assignment

Section 6.02. City may not assign this Lease without Lessor's prior written consent. The valid assignment of this Lease shall relieve City of liability under this Lease.

Lessor shall not transfer, assign, sell, or otherwise convey Parcel A or the Parking Area, or any portion thereof or interest therein, without the prior written approval of City, which approval City shall not unreasonably withhold or delay. For purposes of this Lease, any such transfer, assignment, sale, or conveyance shall be referred to as a "Transfer." City shall approve or disapprove a proposed Transfer within thirty (30) days after receipt of notice from Lessor and such reasonable information concerning the proposed transferee and the proposed terms of the Transfer to permit City to make a reasonable determination. City shall have the right to disapprove a proposed Transfer in the event City reasonably determines that the proposed transferee is not capable, willing and able to fulfill the terms and conditions of this Lease. City shall not, however, withhold its consent to (a) the assignment of the rights of Lessor under this Lease to any assignee that concurrently received conveyance of fee title to

Parcel A in accordance with the provisions of the DDA, or (b) the collateral assignment of the interests of Lessor under this Lease to the holder of a mortgage or deed of trust encumbering Parcel A in accordance the provisions of Section 318 of the DDA, or (c) an assignment which Lessor can reasonably demonstrate will not impair the City's rights and benefits under this Lease. Any assignment approved by City hereunder shall be subject to this Lease, and the assignee shall be required to execute an assumption and/or nondisturbance agreement reasonably satisfactory to City in form and substance. All costs of City incurred in processing any assignment shall be borne by Lessor.

No request by International Gateway Associates, LLC to transfer and/or assign any of its rights under this Lease Agreement will be granted or approved unless the proposed transferee/assignee is a 'sophisticated institutional or individual investor'. For purposes of this Agreement, a 'sophisticated institutional or individual investor' shall mean any legally recognized entity or individual(s) with knowledge and experience in financial and business matters that renders it (them) reasonably capable of evaluating the merits and risks of investment in this Lease Agreement and has received such information as it (they) has (have) deemed necessary to make such evaluation and able to bear the economic risk of investment in this Lease Agreement.

Time of Essence

Section 6.03. Time is of the essence in this Lease.

Notices

Section 6.04. Any notice, tender, delivery, or other communication pursuant to this Lease shall be in writing and shall be deemed to be properly given if delivered, dispatched by registered or certified mail, postage prepaid, return receipt requested, or sent by facsimile transmission or other wire communication in the manner provided in this Section, to the following persons:

(a) If to City:

Assistant City Manager
City Administration Building
202 "C" Street, M.S. 9B
San Diego, California 92101-4155
Facsimile No. (619) 236-6067

(b) If to Lessor:

c/o Gateway Retail Group, LLC
LandGrant Development
12625 High Bluff Drive
Suite 212
San Diego, California 92130-2054
Attention: C. Samuel Marasco
Facsimile No. (619) 481-3108

Either party may change that party's address for these purposes by giving written notice of the change to the other party in the manner provided in this Section.

If sent by mail, any notice, delivery, or other communication shall be effective or deemed to have been given forty-eight (48) hours after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by facsimile transmission, wire or other form of wire communication, any notice, delivery, or other communication shall be effective or deemed to have been given on the date sent or transmitted and received by the recipient's receiving apparatus. If delivered, it shall be deemed given on the date delivered.

Entire Agreement

Section 6.05. This Lease and the attached Exhibits constitute the entire agreement between the parties relating to the leasing of the Parking Area. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Lease are of no force and effect. Any amendment to this Lease shall be of no force and effect unless it is in writing and signed by City and Lessor.

Notwithstanding the foregoing, should any provision of this Lease prove to be invalid, void, or illegal, such determination shall in no way affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

Subordination

Section 6.06. Upon twenty (20) days prior written request by Lessor, City agrees to execute and deliver to any construction, permanent, or refinancing lender an agreement subordinating City's interest in Parcel A or the Parking Area to such lender's interest subject to the lender agreeing to nondisturbance and attornment provisions in the form reasonably acceptable to City to prevent interference with the rights to be afforded to City hereunder.

Attorneys' Fees

Section 6.07. If any action, proceeding, or arbitration arising out of or relating to this Lease is commenced by either party to this Lease, then as between City and Lessor, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs, and expenses incurred in the action, proceeding, or arbitration by the prevailing party.

Binding Effect

Section 6.08. This Lease shall be binding on and inure to the benefit of the parties to this Lease and their heirs, personal representatives, successors, and assigns, except as otherwise provided in this Lease.

Governing Law

Section 6.09. This Lease and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of California. Proper venue for any action shall be in San Diego, California.

Headings

Section 6.10. The headings of the articles and sections of this Lease are inserted for convenience only. They do not constitute part of this Lease and shall not be used in its construction.

Waiver

Section 6.11. The waiver by any party to this Lease of a breach of any provision of this Lease shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Lease.

Production of Records

Section 6.12. Lessor agrees to make available for inspection by City at Parcel A a complete and accurate set of Lessor's books and records from which Sales Tax A can be determined, including, without limitation, all federal, state and local tax returns. Lessor agrees it will keep, retain, and preserve for at least three (3) years all such books and records. City shall have the right, upon reasonable notice, to inspect said books and records and to make transcripts therefrom to verify the Sales Tax A amounts received by City. Such inspection may be made at any reasonable time during normal business hours, and Lessor shall cooperate with City in making such inspection. In addition, City shall have the right to audit such books and records once per year. Such audit

shall be at City's sole cost and expense, provided, however, that if such audit determines that the actual Sales Tax A received by City is two percent (2%) or more greater or less than that reported by Lessor, City shall be reimbursed for such cost and expense by Lessor.

To the extent permitted by law, City agrees to make available for inspection by Lessor such books and records as it has available to permit Lessor to determine Sales Tax A received by City. Such inspection may be made at any reasonable time during normal business hours at City offices, and City shall cooperate with Lessor in making such inspection. Lessor acknowledges that inspection of such records may be limited pursuant to California Revenue and Taxation Code Section 7056 or any successor thereto.

Lessor further agrees to make reasonable efforts to require all of its tenants at Parcel A (i) to make available for inspection by City at Parcel A their books and records of all transactions from which Sales Tax A can be determined, including, without limitation, all federal, state and local tax returns; (ii) to retain such books and records for at least three (3) years; (iii) to permit City to have the right to inspect and audit such books and records upon reasonable notice and to make transcripts therefrom to verify the Sales Tax A amounts received by City; and (iv) to cooperate with City in making such inspection.

No Joint Venture

Section 6.13. 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 as specifically set forth according to the provisions contained herein, or cause City to be responsible in any way for the debts or obligations of Lessor, or any other party.

Interpretation

Section 6.14. (a) 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.

(b) 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.

Conflict of Interest

Section 6.15. No member, official or employee of City shall have any direct or indirect interest in this Lease, nor participate in any decision relating to this Lease which is prohibited by law.

No Third Party Obligation

Section 6.16. This Lease shall not be deemed to confer any rights upon, nor obligate either of the parties to this Lease to, any person or entity not a party to this Lease.

Indemnification

Section 6.17. Lessor shall indemnify, defend and hold harmless City, its officers, agents, employees, representatives and attorneys, and their respective heirs, estates, representatives, agents and employees, from and against any and all claims, liabilities, damages, losses, causes of action, and/or obligation or expenses, including reasonable attorneys fees, incurred as a result of, or arising in connection with the breach of any warranty, representation or obligation of Lessor under this Lease.

City shall indemnify, defend and hold harmless Lessor, and its shareholders, officers, directors, employees, agents, representatives and attorneys, and their respective heirs, estates, representatives, agents and employees, from and against any and all claims, liabilities, damages, losses, causes of action, and/or obligation or expenses, including reasonable attorneys fees, incurred as a result of, or arising in connection with the breach of any warranty, representation or obligation of City under this Lease.

Any obligation in this Lease of Lessor to indemnify, defend and hold harmless City shall include the obligation to indemnify, defend and hold harmless City's officers, agents, employees, representatives, and attorneys, and their respective heirs, estates, representatives, agents and employees. Any obligation in this Lease of City to indemnify, defend and hold harmless Lessor shall include the obligation to indemnify, defend and hold harmless

Lessors's shareholders, officers, directors, employees, agents, representatives and attorneys, and their respective heirs, estates, representatives, agents and employees.

Statement of Compliance

Section 6.18. Within fifteen (15) days following receipt of any written request which either party may make of the other party from time to time, the other party shall execute and deliver to the requesting party a statement certifying that:

(a) this Lease is unmodified and in full force and effect, if such be the case; or, if there has been modification thereto, that this Lease is in full force and effect as modified, and stating the date and nature of such modification;

(b) there are no current breaches under this Lease, or specify the dates and nature of any such breaches; and

(c) any other reasonable information requested.

Force Majeure

Section 6.19. Except as specifically set forth in this Lease, in the event that any of the parties to this Lease are prevented from proceeding with any of their obligations under this Lease by reason of events that are beyond that party's control, such as strikes, lockouts, earthquake, war, insurrection, riots, floods, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, or inclement weather, then that party shall be entitled to an additional grace period or extension of time in which event to perform the obligation whose performance is precluded by such event, equal to the period of delay caused by such event beyond that party's control, provided the party seeking such extension shall have provided notice of the event to the other party within ten (10) days of the event's occurrence. Notwithstanding the foregoing, the date for the start of the Lease Term shall not under any circumstances extend past the Term Commencement Date A as defined in Section 1.01 (g).

Time Periods

Section 6.20. In the event the time for performance of any obligation hereunder expires on a Saturday, Sunday or legal holiday, the time for performance shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

Further Instruments

Section 6.21. Each party, promptly upon the request of the other, shall execute and have acknowledged and deliver to the other any and all further instruments reasonably requested or appropriate to evidence or give effect to the provisions of this Lease and which are consistent with the provisions hereof.

Brokers

Section 6.22. Each party hereto represents and warrants that each has dealt with no brokers, leasing agents, or finders in connection with this Lease, and covenants and agrees to indemnify, defend and hold harmless the other party from and against claims by third parties for real estate or brokerage commissions, or finder's fees in connection with this transaction, and all costs and expenses incurred by the indemnified party in connection therewith, including, but not limited to, reasonable attorneys' fees.

No Merger

Section 6.23. There shall be no merger of the leasehold interest provided for in this Lease with the fee estate in such property (i.e., the Parking Area) by reason of the fact that this Lease or the leasehold estate to be created by this Lease may be held directly or indirectly, by or for the account of any person who shall own the fee estate in such property or any interest in such fee estate, and no such merger shall occur unless and until all persons having any interest in this Lease or in the leasehold estate to be created thereby shall join in a written instrument effecting such merger and shall duly record the same.

///

Independent Obligations

Section 6.24 The City's obligation to pay rent in accordance with and subject to the terms and conditions of this Lease are independent of the obligations of the Developer under the DDA with respect to Parcels other than Parcel A, and the City's obligations to make any such payment shall not be diminished, reduced or subject to setoff as a consequence of a breach by the Developer of any of its obligations under the DDA with respect to such other Parcels.

Dated this _____ day of MAR 20 2001, _____.

INTERNATIONAL GATEWAY ASSOCIATES, LLC
a Delaware limited liability company
(Lessor)

By: Gateway Retail Group, LLC,
a California limited liability
company
(Managing Member)

By: LandGrant Development
Unlimited, a California
corporation
(Managing Member)

By: [Signature]

Name: MANUSCO

Title: preside

By: [Signature]

Name: CHRIS SMITH

Title: EX U.P.

0-18932

CITY OF SAN DIEGO
(City)

By: Todd Hooks

Name: Todd Hooks

Title: Deputy Director Redevelopment

APPROVED AS TO FORM AND LEGALITY:

CASEY GWINN
City Attorney

By: [Signature]

file:SY_IGA_ParkingLease_Parcel_A

EXHIBIT A
Map of Parcel A

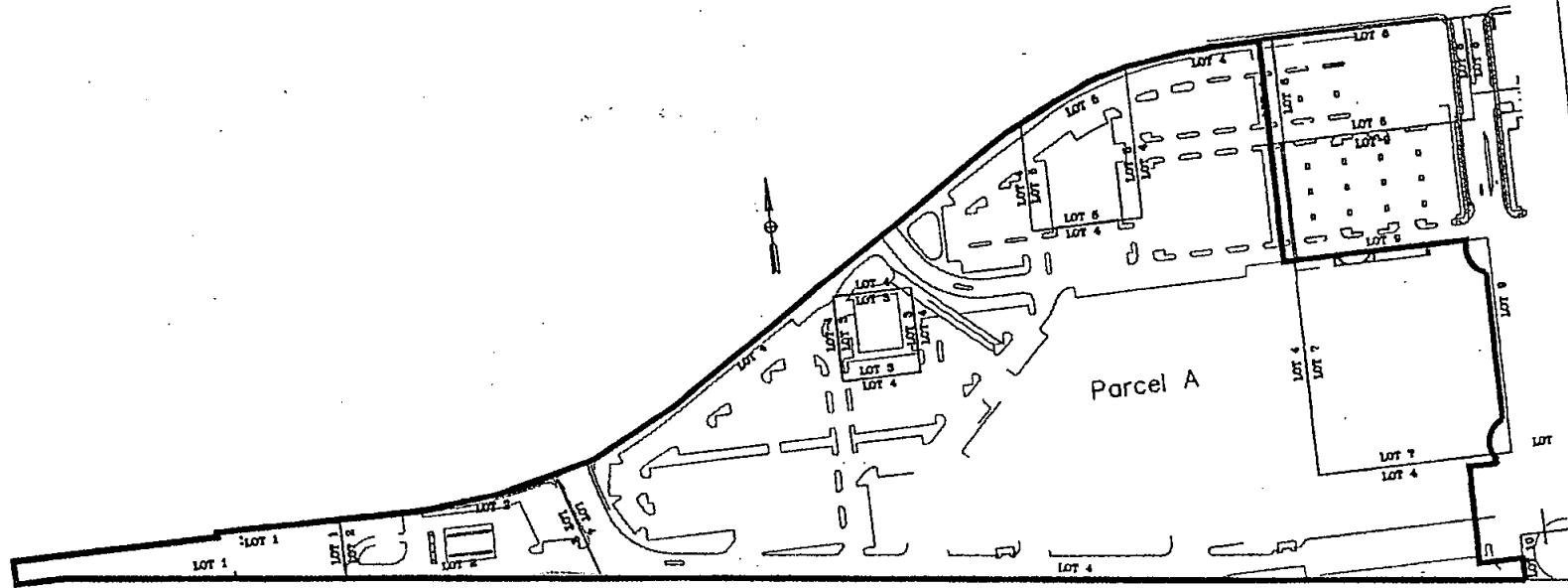


EXHIBIT B

Legal Description of Parcel A

Parcel A

A portion of Lot 1 of Section 2, Township 19 South, Range 2 West San Bernardino Meridian plus a portion of Lot 4 of Section 1, Township 19 South, Range 2 West San Bernardino Base Meridian in the City of San Diego, County of San Diego, State of California, according to the official plat thereof plus portions of Lots 9, 10, 11 and Blocks 11 and 29 of the Map of Tia Juana City according to Map No 562 filed in the Office of the County Recorder of San Diego County, August 29, 1888, plus a portion the Map of Coral Gate Unit No. 1 as shown on Map 13372 filed in the Office of the County Recorder of the County of San Diego, November 18, 1996, more particularly described as follows:

BEGINNING at the intersection of the west line of the east half of the east half of said lot 1 with the centerline of Tia Juana Street as said street is shown on Map 562; thence along said centerline of Tia Juana Street south $89^{\circ}41'26''$ east, 861.89 feet; thence north $0^{\circ}19'34''$ east 9.82 feet to the intersection of the north line of Tia Juana Street (60 feet wide) with the south line of Camino de la Plaza (92 feet wide) as said streets are shown on said Map 13372; thence easterly along the south line of said Camino de la Plaza south $89^{\circ}26'59''$ east, 348.13 feet to a tangent curve concave to the northwest having a radius of 746.00 feet; thence northeasterly along said tangent curve through a central angle of $32^{\circ}47'08''$ a distance of 426.87 feet to a tangent line; thence along said tangent line north $57^{\circ}45'52''$ east, 719.55 feet to a tangent curve concave to the southeast, having a radius of 654.00 feet; thence along said tangent curve through a central angle of $32^{\circ}37'02''$ a distance of 372.31 feet to a tangent line said tangent line being parallel to and 46 feet southeast of the centerline of said Camino de la Plaza; thence along last said tangent line south $89^{\circ}36'42''$ east, 79.20 feet to the northwest corner of Lot 6 of the Final map of the International Gateway of the Americas; thence along the west line of said lot 6 and the west line of lot 9 due south 362.66 feet; thence continuing along lot 9 due east 299.00 feet; thence south $6^{\circ}13'32''$ west 12.00 feet to a tangent curve concave to the northeast having a radius of 44.50 feet; thence along the said tangent curve through a central angle of $74^{\circ}41'10''$ a distance of 58.01 feet to a non tangent line, said non-tangent line being also the west line of Lot 9; thence along said non-tangent line due south 241.89 feet to a non tangent curve concave to the south east having a radius of 42.00 feet; Thence southwesterly and southerly along last said non-tangent curve through a central angle of $108^{\circ}10'24''$ a distance of 79.30 feet; thence south $45^{\circ}17'35''$ west 5.22 feet; thence continuing along the west line of lot 9 due west 43.51 feet; thence due south 159.42 feet; thence due east 71.42 feet to the northwest corner of Lot 10 of said final Map of the International Gateway of the Americas; thence along the west line of said lot

10 due south 35.49 feet to the north line of the flood control channel as condemned and taken by the City of San Diego by final order of condemnation recorded on August 29, 1979 as File No. 79-363927 of official records of San Diego County; thence along the said north line of the flood control channel north 87°07'50" west 2396.68 feet; thence north 89°26'55" west 95.11 feet to the west line of the said east half of the east half of Lot 1; thence along the last said west line north 0°47'22" east 38.53 feet to the BEGINNING.

The above described Parcel A contains 21.2 acres, more or less.

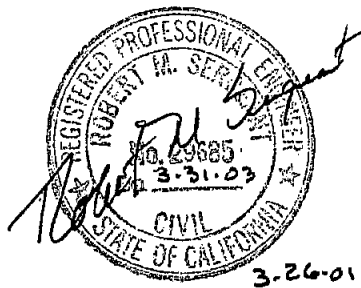


EXHIBIT C

Parking Area Description

(Page 1 of 3)

454 spaces total

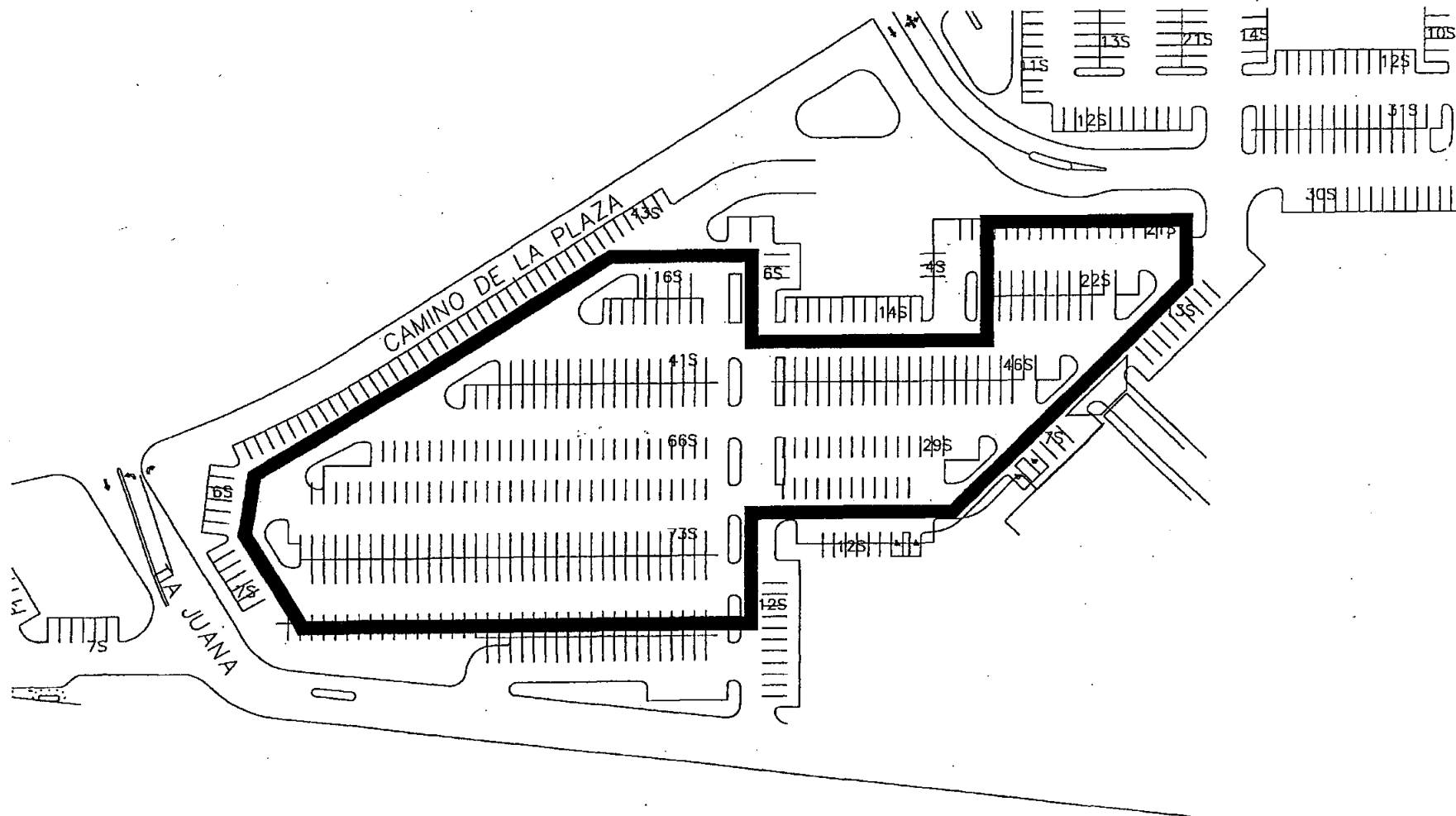
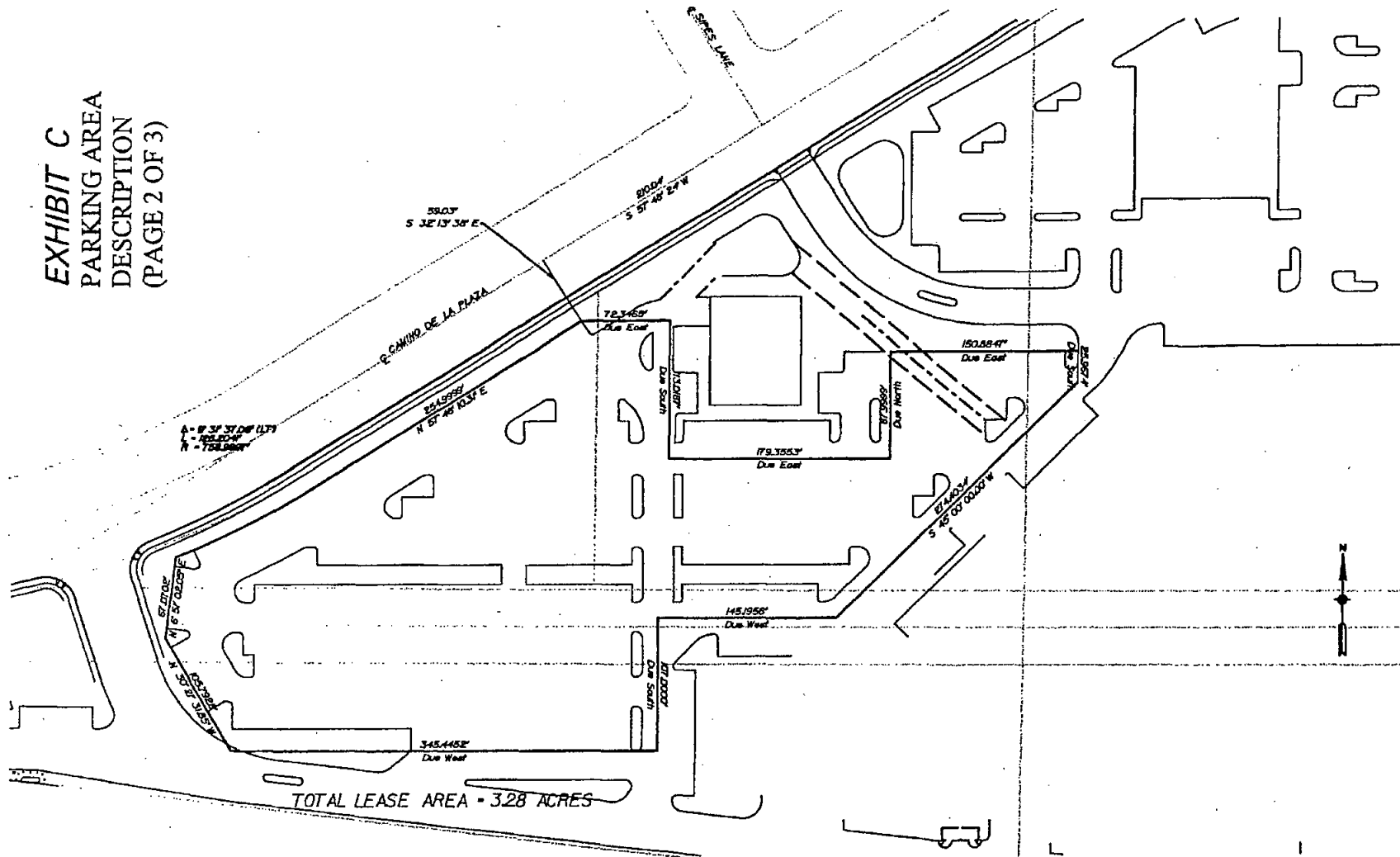


EXHIBIT C
PARKING AREA
DESCRIPTION
(PAGE 2 OF 3)



INTERNATIONAL GATEWAY OF THE AMERICAS



PARSONS TRANSPORTATION GROUP
 1100 L STREET, N.W.
 WASHINGTON, D.C. 20004

EXHIBIT C
Parking Area Description
(Page 3 of 3)

A portion of Blocks 4 and 9 of the Map of Tia Juana City according to Map No 562 filed in the Office of the County Recorder of San Diego County, August 29, 1888, and a portion of the Map of Coral Gate Unit No. 1 as shown on Map 13372 filed in the Office of the County Recorder of the County of San Diego, November 18, 1996, more particularly described as follows:

Commencing at the intersection of the centerline of Camino de la Plaza with the centerline of Sipes Lane; thence southwesterly along the said centerline of Camino de la Plaza South $57^{\circ}48'24''$ West, 210.04 feet; thence South $32^{\circ}13'36''$ East, 59.03 feet to the TRUE POINT OF BEGINNING. Thence Due East 72.36 feet; thence Due South 113.02 feet; thence Due East 179.35 feet; thence Due North 88.00 feet; thence Due East 150.88 feet; thence Due South 25.97 feet; thence South $45^{\circ}00'00''$ West, 274.40 feet; thence Due West, 145.20 feet; thence Due South 107.00 feet; thence Due West 345.44 feet; thence North $30^{\circ}21'32''$ West, 105.79 feet; thence North $06^{\circ}51'02''$ East, 67.07 feet to a non-tangent curve concave to the northwest having a radius of 759.00 feet, (a radial to said non-tangent curve bears South $22^{\circ}42'12''$ East); thence northeasterly along said non-tangent curve through a central angle of $9^{\circ}31'37''$ a distance of 126.20 feet to a tangent line; thence along last said tangent line North $51^{\circ}46'11''$ East, 255.00 feet to the TRUE POINT OF BEGINNING.

The above described Parcel contains 3.28 acres, more or less.

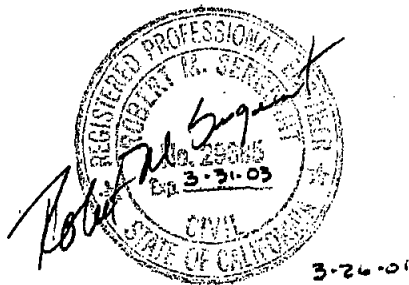


EXHIBIT D

Rent Schedule A

Column	A	B	C	D	E	F	G	H
Lease Year	Annual Rent Amount	Annual Base Rent	Annual First Tier Additional Rent	Balance of First Tier Base Rent Due For Term	Annual Second Tier Additional Rent	Balance of Second Tier Base Rent Due for Term	Total Annual Additional Rent	Balance of Base Rent Due for Term
0				\$1,145,000		\$5,161,000		\$6,306,000
1	\$496,402	(\$72,242)	(\$114,500)	\$1,138,039	(\$309,660)	\$5,095,719	(\$424,160)	\$6,233,758
2	\$496,402	(\$76,855)	(\$113,804)	\$1,130,382	(\$305,743)	\$5,026,521	(\$419,547)	\$6,156,904
3	\$496,402	(\$81,772)	(\$113,038)	\$1,121,960	(\$301,591)	\$4,953,171	(\$414,630)	\$6,075,131
4	\$496,402	(\$87,015)	(\$112,196)	\$1,112,695	(\$297,190)	\$4,875,421	(\$409,386)	\$5,988,116
5	\$496,402	(\$92,607)	(\$111,270)	\$1,102,504	(\$292,525)	\$4,793,005	(\$403,795)	\$5,895,509
6	\$496,402	(\$98,571)	(\$110,250)	\$1,091,294	(\$287,580)	\$4,705,644	(\$397,831)	\$5,796,938
	\$496,402	(\$104,934)	(\$109,129)	\$1,078,962	(\$282,339)	\$4,613,042	(\$391,468)	\$5,692,004
9	\$496,402	(\$111,723)	(\$107,896)	\$1,065,398	(\$276,782)	\$4,514,883	(\$384,679)	\$5,580,281
10	\$496,402	(\$118,969)	(\$106,540)	\$1,050,477	(\$270,893)	\$4,410,835	(\$377,433)	\$5,461,312
11	\$496,402	(\$126,704)	(\$105,048)	\$1,034,064	(\$264,650)	\$4,300,544	(\$369,698)	\$5,334,608
12	\$496,402	(\$134,963)	(\$103,406)	\$1,016,009	(\$258,033)	\$4,183,636	(\$361,439)	\$5,199,645
13	\$496,402	(\$143,783)	(\$101,601)	\$996,150	(\$251,018)	\$4,059,713	(\$352,619)	\$5,055,862
14	\$496,402	(\$153,204)	(\$99,615)	\$974,304	(\$243,583)	\$3,928,355	(\$343,198)	\$4,902,658
15	\$496,402	(\$163,270)	(\$97,430)	\$950,273	(\$235,701)	\$3,789,115	(\$333,132)	\$4,739,388
16	\$496,402	(\$174,028)	(\$95,027)	\$923,840	(\$227,347)	\$3,641,521	(\$322,374)	\$4,565,361
17	\$496,402	(\$185,527)	(\$92,384)	\$894,763	(\$218,491)	\$3,485,071	(\$310,875)	\$4,379,834
18	\$496,402	(\$197,821)	(\$89,476)	\$862,779	(\$209,104)	\$3,319,234	(\$298,581)	\$4,182,013
19	\$496,402	(\$210,970)	(\$86,278)	\$827,596	(\$199,154)	\$3,143,447	(\$285,432)	\$3,971,043
20	\$496,402	(\$225,035)	(\$82,760)	\$788,895	(\$188,607)	\$2,957,113	(\$271,366)	\$3,746,008
21	\$496,402	(\$240,086)	(\$78,889)	\$746,324	(\$177,427)	\$2,759,599	(\$256,316)	\$3,505,922
22	\$496,402	(\$256,193)	(\$74,632)	\$699,495	(\$165,576)	\$2,550,234	(\$240,208)	\$3,249,729
23	\$496,402	(\$273,438)	(\$69,950)	\$647,984	(\$153,014)	\$2,328,307	(\$222,964)	\$2,976,291
24	\$496,402	(\$291,905)	(\$64,798)	\$591,322	(\$139,698)	\$2,093,064	(\$204,497)	\$2,684,386
25	\$496,402	(\$311,686)	(\$59,132)	\$528,993	(\$125,584)	\$1,843,707	(\$184,716)	\$2,372,700
26	\$496,402	(\$332,880)	(\$52,899)	\$460,432	(\$110,622)	\$1,579,388	(\$163,522)	\$2,039,820
27	\$496,402	(\$355,595)	(\$46,043)	\$385,014	(\$94,763)	\$1,299,210	(\$140,806)	\$1,684,224
28	\$496,402	(\$379,948)	(\$38,501)	\$302,055	(\$77,953)	\$1,002,222	(\$116,454)	\$1,304,277
29	\$496,402	(\$406,063)	(\$30,205)	\$210,800	(\$60,133)	\$687,414	(\$90,339)	\$898,214
30	\$496,402	(\$434,077)	(\$21,080)	\$110,419	(\$41,245)	\$353,718	(\$62,325)	\$464,137
	\$496,402	(\$464,137)	(\$11,042)	\$0	(\$21,223)	\$0	(\$32,265)	\$0

EXHIBIT E

Sample Calculation of Available Sales Tax A

	Total Taxable Sales	California Sales Tax 7.50%	City of SD Share @ 1% of Taxable Sales	Refunded Overpmts	Available Sales Tax A
Yr. 1	\$77,000,000	\$5,775,000	\$770,000	\$2,000	\$768,000

sylGAparkingleaseExhE

EXHIBIT F

Sample Calculation of Annual Payment

Column	A	B	C	D	E	F	G	H	I
	Annual Payment	Total Taxable Sales	Refunded Overpayments	Available Sales Tax A (1)	Annual Rent Amount	Surplus / (Shortfall) (2)	Interest Earned (3)	Available Reserve A (4)	Total Deposits & Interest Earned (5)
1		\$77,000,000	\$2,000	\$768,000	\$496,402	\$271,598	\$0	\$271,598	\$271,598
2		\$40,000,000	\$2,000	\$398,000	\$496,402	(\$98,402)	\$8,148	\$181,344	\$279,746
3		\$60,000,000	\$2,000	\$598,000	\$496,402	\$101,598	\$5,440	\$282,942	\$386,784
4		\$61,800,000	\$2,000	\$616,000	\$496,402	\$119,598	\$8,488	\$402,540	\$514,871
5		\$63,654,000	\$2,000	\$634,640	\$496,402	\$138,138	\$12,076	\$491,694	\$588,096
6		\$65,563,620	\$2,000	\$653,636	\$496,402	\$157,234	\$14,751	\$491,694	\$588,096

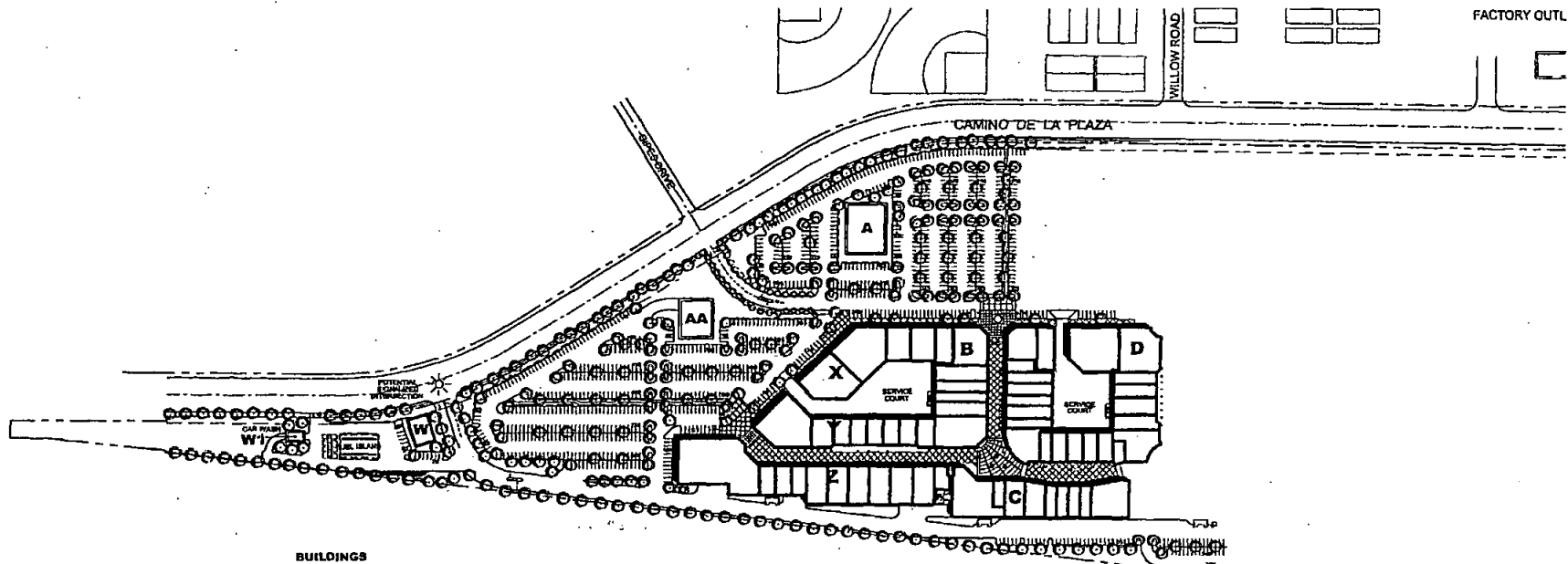
(1) 1% of Total Taxable Sales from Parcel A less any refunded overpayments. (1% of column B less Column C)

(2) Available Sales Tax A less Annual Rent Amount. (Column D less Column E)

(3) Available Reserve is projected to earn 3%.

(4) Available Reserve is made up of any sales tax surplus above Annual Rent Amount and less any shortfalls.

(5) Maximum funding for available debt reserve A is \$588,096 independent of any shortfalls and including any interest earned.



BUILDINGS	
PHASE 1B	
BUILDING "B"	28,560 SF
BUILDING "C"	28,535 SF
BUILDING "D"	72,955 SF
BUILDING "X"	28,440 SF
BUILDING "Y"	25,690 SF
BUILDING "Z"	48,835 SF
SUB-TOTAL	233,115 SF
PAD "AA"	8,500 SF
PAD "A"	10,000 SF
PAD "E"	10,400 SF
PAD "W" (not shown)	3,000 SF
PAD "W1" (not shown)	1,000 SF
SUB-TOTAL	30,900 SF
TOTAL	264,015 SF
PHASE 1B	

*LOSS OF RESTROOM BLDG. "C", NOT INCLUDED
 *LOSS OF RESTROOM BLDG. "B", NOT INCLUDED

EXHIBIT G

Plans for Improvement

D.D.A. Parcels A



**LANDGRANT
DEVELOPMENT**
 12625 High Bluff Dr., Suite 212
 San Diego, California 92130
 Telephone: (619) 481-0094
 Telecopy: (619) 481-5108
 E-Mail: information@landgrant.net

International Gateway Of The Americas SAN DIEGO, CALIFORNIA, USA

Puerta Internacional De Las Americas SAN DIEGO, CALIFORNIA, USA

Scheme T3 - Phase 1A
 07 February 2001

0 60 120 240 360
 0 15m 30m 120m

DISCLAIMER: This plan indicates preliminary housing concepts only. It is subject to change and should not be relied upon as representing the identity, size, location, use, or opening date of any future and/or space within the project.



EXHIBIT H

General Terms for Park and Ride Use

The Parking Area shall be used only as a parking lot and staging area by persons traveling in carpool, mass transit or other ridesharing vehicles. The Parking Area may also be utilized by tenants of Parcel A and their employees and patrons for parking. Lessor shall be responsible for assuring that use by persons other than those using the Parking Area for Park and Ride uses does not interfere with use of the Parking Area for Park and Ride uses. Lessor shall have the right, however, to charge fees for parking in any of the parking spaces located within Parcel A, including parking spaces within the Parking Area, in a manner consistent with the purposes of this Lease.

The Parking Area shall be improved and landscaped, including, but not limited to, paving, lighting, and striping of parking stalls, in accordance with the requirements of the Coastal Development Permit/Site Development Permit applicable to Parcel A.

Sufficient lighting and security personnel to assure the safety of persons utilizing the Parking Area shall be provided by Lessor during normal commuting hours.

City may post at its own expense Park and Ride and directional signs on the Parking Area and Parcel A. The exact location of such signs shall be subject to approval of Lessor, which approval shall not be unreasonably withheld. Upon termination of City's use of the Parking Area, such signs shall be removed by City, and City shall repair any damage caused by the installation and removal of said signs.

sd\edd\sy\landgrnt\pclA\lease

(O-2001-120)

ORDINANCE NUMBER O- 18932 (NEW SERIES)

ADOPTED ON MAR 20 2001

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING A PUBLIC USE LEASE (PARCEL A) BETWEEN THE CITY OF SAN DIEGO AND INTERNATIONAL GATEWAY ASSOCIATES, LLC, FOR PARK AND RIDE FACILITIES AT THE INTERNATIONAL GATEWAY OF THE AMERICAS SHOPPING CENTER (PARCEL A).

WHEREAS, International Gateway Associates, LLC, a Delaware limited liability company [IGA], is the owner of that certain real property commonly known as the International Gateway of the Americas Shopping Center, located on the west side of Virginia Avenue and the south side of Camino de la Plaza in the San Ysidro community of San Diego; and

WHEREAS, the City of San Diego, a charter city, is authorized pursuant to Section 99 of the Charter of the City of San Diego to enter into binding agreements for a term in excess of five years by ordinance; and

WHEREAS, IGA has agreed to lease certain land at the International Gateway of the Americas Shopping Center to the City for use as a Park and Ride facility for a thirty year term, subject to the terms and conditions of the Public Use Lease (Parcel A); and

WHEREAS, the City has reviewed and considered Mitigated Negative Declaration [MND] SC No. 98031064 for the International Gateway of the Americas Project, which was

previously certified on May 12, 1998, by City Council Resolution No. R-290105, and determined that the MND covers this lease; and

WHEREAS, on MAR 20 2001, 2001, the Council of the City of San Diego, after giving notice pursuant to Section 99 of the Charter of the City of San Diego, held a hearing for the purpose of considering entry into the Public Use Lease (Parcel A); and

WHEREAS, the City Council has reviewed and considered the Public Use Lease (Parcel A) and determined the content of it to be complete and correct; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That the City Council finds and determines the facts stated to be true.

Section 2. That the City Council, by at least a two-thirds majority of the members elected to the Council, approves the Public Use Lease (Parcel A), and authorizes and directs the City Manager to execute the Public Use Lease (Parcel A) in the name of the City of San Diego not later than fifteen days following the effective date of the ordinance. Failure of IGA to execute the Public Use Lease (Parcel A) within thirty days shall render this action null and void. A copy of the Public Use Lease (Parcel A) is on file in the office of the City Clerk as Document No.

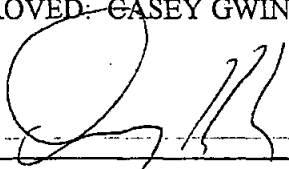
OO- 18932

Section 3. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from
and after its passage.

APPROVED: CASEY GWINN, City Attorney

By



Douglas K. Humphreys
Deputy City Attorney

DKH:lc
02/12/01
Or.Dept.Redev.
Aud.Cert:N/A
O-2001-120
Form=o&t.frm

Passed and adopted by the Council of The City of San Diego on

March 20, 2001 by the following vote:

YEAS: PETERS, ATKINS, STEVENS, MALENSCHEIN, MADAFFER, INZUNZA, MAYOR MURPHY.

NAYS: NONE.

NOT PRESENT WEAR.

VACANT: DISTRICT 6.

AUTHENTICATED BY:

DICK MURPHY

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(Seal)

By: Peggy Rogers, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. O-18932 (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on FEBRUARY 27, 2001 and on MARCH 20, 2001.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(Seal)

By: Peggy Rogers, Deputy

OFFICE OF CITY CLERK
SAN DIEGO, CALIFORNIA

DOCUMENT NO. OO-18932

FILED - MARCH 20, 2001

RESOLUTION/ORDINANCE NO. O-18932

COUNCIL DOCKET OF MARCH 20, 2001

ITEM NO. 337A

FILE LOCATION LEAS- International Gateway Associates, LLC

LEGISLATIVE RECORDER PR

DATE SENT OUT FOR SIGNATURE 4-5-01

* Distribution of Executed Document: *

ORIGINATING DEPARTMENT Community and Economic Dev.

NAME Pat Hightman

TELEPHONE

X66107

M.S.# 3A

cc: Auditor - M.S.# -

cc: Assessor (for Leases)

Date distributed MAY 7 2001 Processor's initials GA

Picked up by Pat Hightman

(Please Print Name)

on 5/7/01

PLEASE SEND PAT HIGHTMAN ONE EXECUTED COPY PER HER REQUEST



THE CITY OF SAN DIEGO

Publication Date: March 9, 2001

Requesting Department: Community and Economic Development

NOTICE OF CITY COUNCIL PUBLIC HEARING

PLEASE ACCEPT THIS AS NOTICE TO INFORM YOU, as a property owner, tenant, or interested citizen, that the City Council of the City of San Diego, California, will conduct a public hearing, as part of a scheduled City Council meeting, on the following project:

Adoption of an Ordinance authorizing the City Manager to execute two-thirty (30) year agreements for the operation, maintenance, and lease of a Park and Ride Facilities within the International Gateway of the Americas Project located in the San Ysidro community of the City of San Diego.

DATE OF MEETING: March 20, 2001
TIME OF MEETING: 10:00 a.m.
PLACE OF MEETING: Council Chambers, 12th Floor, City Administration Building,
202 "C" Street, San Diego, California

PROJECT NAME: Two Parking Lease Agreements with International Gateway Associates,
LLC for the Gateway of the Americas Project Shopping Center.

FOR ADDITIONAL INFORMATION, PLEASE CONTACT PATRICIA K. HIGHTMAN,
ASSISTANT DEPUTY DIRECTOR, REDEVELOPMENT AT (619) 236-6207.

COMMUNICATIONS

The item may begin at any time after the time specified. Any interested person may address the City Council to express support or opposition to this issue. Time allotted to each speaker is determined by the Chair, and, in general, is limited to two (2) minutes; moreover, collective testimony by those in support or opposition shall be limited to no more than fifteen (15) minutes total per side.

Those unable to attend the hearing may write a letter to the Mayor and City Council, Attention: City Clerk, City Administration Building, 202 "C" Street, San Diego, California 92101-3862, Mail Station 2A. All communications will be forwarded to the Mayor and Council.

This material is available in alternative formats upon request. To order information in an alternative format, or to arrange for a sign language or oral interpreter for the meeting, please call the Clerk's office at least five (5) working days prior to the meeting at (619) 533-4000 (voice) or (619) 235-7012 (TT).

CHARLES G. ABDELNOUR
SAN DIEGO CITY CLERK

18-18932 0-18933