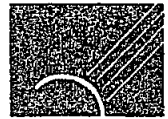


RECEIVED

MAR 20 2003



SEDC

REDEVELOPMENT AGENCY

Southeastern
Economic
Development
Corporation

TRANSMITTAL

DATE: March 20, 2003

PROJECT: Pacific Development Partners, Imperial Marketplace Project

T 619.527.7345
F 619.263.6912

RE: Requested Document

TO: Jeannette Santos, Agency Legislative Recorder
Redevelopment Agency of the City of San Diego
600 B Street, 4th Floor, MS904
San Diego, CA 92101

FROM: Sherry Brooks, Research Coordinator

WE ARE SENDING YOU

☐ Originals	☒ Copies	☐ Plans
PURPOSE:		
☐ Information	☐ Your Use	☐ Approved
☐ For Your Review	☒ Per Request	☐ For Recording

COMMENTS:

Dear Jeannette,

As you requested I am transmitting a copy of the executed and conformed ~~Third Amended and Restated Public Use Lease~~ between PDP Imperial Partners and the City of San Diego. If you have any questions or comments regarding this matter, please contact me at (619) 527-7345.

Thank you.

Recording Requested by:

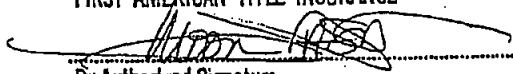
CITY OF SAN DIEGO
City Administration Building
202 "C" Street, M.S. 9B
San Diego, California 92101-4155

When Recorded Return to and
Mail Tax Statements to:

c/o Pacific Development Partners, LLC
177 South Beverly Drive
Beverly Hills, California 90212
Attn: Mark Burger

This instrument is certified to be a true and
exact copy of that certain instrument recorded
on 1-19-01 as File No. 2003-2889 in the
office of the County Recorder of San Diego County.

FIRST AMERICAN TITLE INSURANCE


By Authorized Signature

SPACE ABOVE THIS LINE FOR RECORDING USE

THIRD AMENDED AND RESTATED PUBLIC USE LEASE

This Third Amended Public Use Lease (the "Lease") is entered into by and between PDP IMPERIAL PARTNERS LLC, a California Limited Liability Company ("Lessor"), and the CITY OF SAN DIEGO ("City"), a charter city.

RECITALS

A. The Redevelopment Agency of the City of San Diego ("Agency") and Pacific Development Partners, LLC, a Nevada Limited Liability Company ("Developer" therein) entered into that certain Disposition and Development Agreement, dated September 9, 1999, as amended by a First Implementation Agreement to Disposition and Development Agreement dated April 16, 2000 a Second Implementation Agreement to Disposition and Development Agreement dated October 12, 2000 and a Third Implementation Agreement to Disposition and Development Agreement dated January 10, 2001 (collectively the "DDA") with respect to the redevelopment of certain real property (the "Site"), located within the Central Imperial Redevelopment Project area in the City as shown on the map attached hereto as Exhibit A and more particularly described in Exhibit B. However, pursuant to a Third Implementation Agreement to the DDA, Pacific Development Partners, LLC ("PDP") assigned and Lessor assumed all of PDP's rights and obligations under the DDA with respect to the development of the improvements on the Site as specified in the DDA, including, but not limited to, the construction and lease of that portion of the Site referred to as the "Park and Ride Parcel" to the City as more specifically provided for in the DDA. Such improvements may be developed in multiple phases.

Public Use Lease
1/17/01
Final Version

B. Lessor, as Developer under the DDA, has agreed to construct the improvements on the "Park and Ride Parcel", which is shown on the map attached hereto as Exhibit A and is more particularly described in Exhibit C.

C. In connection with its transportation planning and to further mitigate environmental impacts generated by proposed development within the City, PDP and the City entered in to that certain Amended Public Use Lease dated May 23, 2000 (the "Original Lease") for the purpose of increasing the opportunity of persons to participate in mass transit by making available convenient Park and Ride facilities to the general public pursuant to the terms of the Original Lease. Lessor, pursuant to the Original Lease and DDA, proposed to undertake certain improvements to the Park and Ride Parcel and the Site (the "Improvements") which are expected to positively affect the City's transportation planning.

D. However, as a consequence of the lender of the Lessor (the "Lender") providing the financing for the construction of the Improvements, certain revisions to the Original Lease including the assignment of the rights and obligations of PDP under the DDA and the Original Lease to Lessor, which if not done, shall result in the possible forfeiture of the construction financing necessary to construct the Improvements and the overall development of the commercial and retail shopping improvements on the Site as established in the DDA.

E. As such, the parties have terminated the Original Lease in its entirety pursuant to that certain Termination of Amended and Restated Public Use Lease executed by the City and PDP as dated January 10, 2001 and now desire to replace it with this proposed Third Amended and Restated Public Use Lease (the "Third Amended Lease") to provide requisite modifications and revisions of the Lender and Lessor.

NOW, THEREFORE, in consideration of the covenants and conditions hereafter contained, and subject to the following terms and conditions, Lessor and City hereby agree to terminate the Original Lease in its entirety and replace it with this proposed Third Amended Lease providing for the lease of the Park and Ride Parcel to the City as a "Park and Ride" facility.

ARTICLE 1. RENT

Amount and Terms of Payment

Section 1.011. For the purposes of this Third Amended Lease, the following terms shall have the following meanings:

(a) "Available Sales Tax" 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 as of the

time of a payment of the "Annual Rent Amount" payable to the Lessor by City from transactions originating in the applicable Lease Year from the Site, after reduction for any amounts received earlier by City and which are to be refunded because of an overpayment of such taxes for the Site. An example of the calculation of the Available Sales Tax is attached hereto as Exhibit E.

(b) "Base Rent" shall mean an amount of Three Million Three Hundred Sixty Thousand Dollars (\$3,360,000) which amount shall constitute the entire amount of Base Rent outstanding attributable to the entire Term of the Lease. Except as otherwise provided herein, the Base Rent shall be paid exclusively from Available Sales Tax.

(c) "Lease Year" shall mean the twelve (12) month period commencing with the sixth (6th) month following the Term Commencement Date through and including every such twelve month period thereafter for a period of nineteen (19) years.

(d) (1) "First Partial Lease Year" shall mean the first six (6) month period following the Term Commencement Date.

(2) "Last Partial Lease Year" shall mean the six (6) month period just prior to the Termination Date.

(e) "Sales Tax" shall consist 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 the Site, 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" shall mean the semi-annual or annual scheduled payments of Base Rent owed by City and payable to Lessor the First Partial Lease Year, each Lease Year and Final Partial Lease Year, or portion thereof, as shown on Rent Schedule A (Exhibit D).

(g) "Term Commencement Date" shall mean the later of the date on which (a) a Certificate of Completion for the Home Depot facility constructed upon the Site has been issued or deemed issued by the Agency pursuant to the terms of the DDA; or (b) Lessor has completed its obligations with respect to the Park and Ride Parcel.

(h) "Termination Date" shall mean the last day of the sixth (6th) month following the nineteenth (19th) or final Lease Year.

Section 1.012. Subject to Section 1.013 below, City hereby agrees to pay to Lessor the Base Rent owed for the First Partial Lease Year, each Lease Year and the Final Partial Lease Year, as applicable and shown on Rent Schedule A (Exhibit D).

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

Section 1.013. Base Rent shall be paid as follows:

Within forty-five (45) days after the City receives its final monthly installment of Sales Tax from the State of California (or such other governmental entity as may be the payer of Sales Tax in the future) for the First Partial Lease Year, each Lease Year and the Final Partial Lease Year, after the Term Commencement Date, City shall pay to Lessor the lesser of: (a) the Annual Rent Amount or (b) the sum of: (i) Available Sales Tax for the First Partial Lease Year, each successive Lease Year and the Final Partial Lease Year, as applicable, and (ii) Available Reserves Fund (as defined in Section 1.017 below) as of the end of each Lease Year and the Final Partial Lease Year, if applicable. Such amount is referred to herein as the "Annual Payment" for the First Partial Lease Year, Lease Year or Final Partial Lease Year, as applicable. An example of the calculation of the Annual Payment is attached hereto as Exhibit F. Any interest earned on Available Sales Tax due to investment of such funds by City prior to the making of any Annual Payment to Lessor shall be the property of City. Concurrently with the making of any such Annual Payment, City shall provide Lessor with a financial report showing the amount of Sales Tax allocated and paid to City for the First Partial Lease Year, Lease Year and Final Partial Lease Year or applicable portion thereof, as applicable, and how the amount paid to Lessor for the particular First Partial Lease Year, Lease Year and Final Partial Lease Year or portion thereof, was determined.

Section 1.014. City shall only be required to calculate the Annual Payment on the basis of Sales Tax, and to pay the Annual Payment from (a) Sales Tax, which are actually collected, allocated to and received by City for the applicable First Partial Lease Year, each successive Lease Year and Final Partial Lease Year; and (b) Available Reserves Fund (to the extent available and necessary) as of the end of the First Partial Lease Year and any Lease Year(s) immediately preceding the Lease Year or Final Partial Lease Year for which the Annual Payment(s) is (are) due. Any portion of Annual Rent Amount which is not paid for the First Partial Lease Year because there is insufficient Available Sales Tax for that First Partial Lease Year shall be deemed and treated as forgiven by the Lessor. Any portion of Annual Rent Amount which is not paid for a Lease Year or the Final Partial Lease Year, because there is insufficient Available Sales Tax for a Lease Year or the Final Partial Lease Year, as applicable, and for which no Available Reserves have been allocated by the City pursuant to Section 1.017 shall be deemed a deferred obligation, payable to Lessor from the Available Reserves Fund, if and as funds from the Available Reserves Fund are subsequently allocated pursuant to the terms of this Lease to Lessor on account of and up to the amount of the deferred obligation. Any deposit of funds into Available Reserves Fund during the First Partial Lease Year and/or Lease Year as provided in Section 1.015, shall be applied in the Lease Year or Final Partial Lease Year, as applicable, immediately following such deposit, to pay toward the outstanding balance of any and all deferred obligations. After such time as the City has deposited funds into the Available Reserves Fund and has reached the maximum cumulative limit of such deposits as established pursuant to Section 1.017 hereinbelow, then any portion of Annual Rent Amount which is not paid in a Lease Year or the Final Partial Lease Year because there is

insufficient Available Sales Tax for a Lease Year or the Final Partial Lease Year, and/or insufficient funds in the Available Reserves Fund from deposits made by the City before the limitation on the amount of the Available Reserves was reached, shall be deemed forgiven and the City shall have no further obligation or liability with respect thereto. For purposes of calculating the outstanding balance of Base Rent under this Lease, the portion of Annual Rent Amount deemed forgiven shall be treated as if it had been actually paid to Lessor.

Section 1.015. Lessor acknowledges and agrees that payment of the Base Rent shall be calculated solely upon City's receipt of Sales Tax from transactions on, from or attributable to the Site 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 as best as reasonably possible to permit application of Sections 1.012 through 1.014. If specific figures for the Site 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 any and all such calculations regarding transactions on the Site which generate Sales Tax may be only obtainable directly from the occupants of Site 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 revenue to which City is legally entitled so as not to jeopardize or impair Lessor's ability to receive rent payments 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, any payments made by City to Lessor during any period of time following the commencement of the Lease Term which is not subject to the Sales Tax Interference Act will be deemed full and complete payment of the Base Rent, 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 accordance 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 the Site, and shall most closely achieve the economic equivalent of the present situation for both City and Lessor.

Section 1.016. Notwithstanding any other provision of this Lease, City may prepay the outstanding balance (not paid, or deemed paid pursuant to Section 1.014 above) of the Base Rent 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 hereunder as may be reasonably

requested by City or in connection with any bond issue or other financing of City's obligations hereunder regarding any such prepayment.

Section 1.017. As security for and to facilitate City's obligation to make the Annual Payments to Lessor, City agrees to establish in its accounts a reserve fund (the "Available Reserves Fund" or "Fund"), which shall only be drawn upon by City, pursuant to the terms of this Lease, to pay toward any Annual Payment in any Lease Year or the Final Partial Lease Year, as applicable, in which Available Sales Tax is insufficient to pay the Annual Rent Amount in full, or to pay toward any Annual Payment obligation which accrued in any previous lease period, subject to the terms and limitations of this Lease, when the Available Sales Tax for any Lease Year or the Final Partial Lease Year and funds in the Available Reserves Fund as of the end of the immediately preceding First Partial Lease Year and Lease Year are insufficient to pay the Annual Rent Amount. Commencing with the First Partial Lease Year after the Term Commencement Date and concluding at the point in time when an aggregate amount of One Million Eleven Thousand Seven Hundred and Fifty-Nine Dollars (\$1,011,759) (i.e. $\$337,253 \times 3$ Lease Years) has been placed into the Available Reserve Fund, City, following allocation and actual receipt of any amount of Sales Tax, shall deposit into the Available Reserves Fund any and all amounts by which Available Sales Tax exceeds the Annual Rent Amount required for the First Partial Lease Year, each successive Lease Year and Final Partial Lease Year as set forth in the Rent Schedule A (Exhibit D). However, notwithstanding anything contained in the preceding sentence to the contrary, following the deposit of Three Hundred Thirty-Seven Thousand Two Hundred Fifty-Three Dollars (\$337,253) of excess Available Sales Tax into the Available Reserves Fund by City, the deposit requirement shall be reduced to fifty (50%) of any and all amounts by which Available Sales Tax exceeds the Annual Rent Amount required for the First Partial Lease Year, each successive Lease Year and Final Partial Lease Year as set forth in the Rent Schedule A (Exhibit D). Any interest or other investment return earned on monies in the Available Reserves Fund (determined by City in its absolute discretion), shall be added to the Available Reserves 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.

Notwithstanding anything contained herein to the contrary, in no event shall City be required to deposit into the Available Reserves Fund (including any interest added thereto) any amount in excess of an aggregate amount of One Million Eleven Thousand Seven Hundred and Fifty-Nine Dollars (\$1,011,759). Moreover, following the complete funding of the Available Reserves Fund, City shall have no further obligation to make available or place any additional Available Sales Tax or any other funds into the Available Reserves Fund. In addition, Lessor shall not be entitled to any additional payment of Available Sales Tax or other funds from the City in the event that Available Sales Tax is less than an Annual Payment Amount for any particular Lease Year or Final Partial Lease Year following the complete funding of the Available Reserves Fund by the City and the payment of all proceeds previously deposited into the Available Reserves Fund to the Lessor pursuant to Section 1.017 of this Lease.

However, notwithstanding the funding requirements and limitations of the City with respect to the Available Reserves Fund set forth in this Lease, all proceeds may be immediately withdrawn from the Available Reserves Fund by the City at any such point in time following the first Lease Year in which the amount of Available Sales Tax is equal to or greater than three (3) times the Annual Rent Amount of a Lease Year. Said withdrawal may take place without regard to the amount of proceeds in the Available Reserves Fund and/or whether the City has completely funded the Available Reserves Fund at the time of such withdrawal by the City.

Section 1.018. Lessor may only assign its rights to receive the Base Rent due under this Lease to upon the prior written consent of the Agency. However, City shall approve the assignment of the Lessor's right to receive Base Rent under this Lease to a "sophisticated institutional or an individual investor." For purposes of this Lease, a "sophisticated institutional or an individual investor" shall mean any legally recognized entity or individual(s) who possesses sufficient knowledge and experience in financial and business matters that renders it (them) capable of evaluating the merits and risks of investment of this Lease or has received such information as it (them) has (have) deemed necessary to make such evaluation and bear the economic risk of investment of this Lease. Any such approved assignee or assignment shall not interfere with, disturb or compromise the rights and interests of the City under this Lease. Moreover, any such assignment shall only be made pursuant to a written agreement reasonably satisfactory to the City in form and substance.

Notwithstanding the foregoing, City shall not be obligated to pay any portion of the Base Rent to any person other than Lessor unless City is notified by Lessor in writing of the name of any approved assignee to which payment of the Base Rent is to be paid directly, the amount to be paid to such assignee, 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 City approved lender ("Lender") which has financed all or a portion of the development of the Site, 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 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.

Section 1.019. Notwithstanding any other provision of this Lease, if City has made, or is treated as if having made pursuant to Section 1.014 above, the Base Rent payments in compliance with the provisions of Article 1 of this Lease for transactions occurring on the Site for the entire term of this Lease, the Base Rent 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 1.021. 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 Park and Ride Parcel 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 Park and Ride Parcel 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 Term Commencement Date pursuant to Section 1.023. Lessor shall provide City with proof reasonably satisfactory to City that such exception has been eliminated. If the Lessor fails to timely provide such proof to the City regarding the elimination of the exception or in the alternative provide proof satisfactory to the City that it has obtained the requisite bond or insurance around the exception, then the Term Commencement Date shall not take effect until such proof has been provided to the City. City's failure to object in this manner to any exception shall be deemed an approval by City of that exception. Notwithstanding the foregoing, (a) if the Park and Ride Parcel is within the Site 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 Park and Ride Parcel which existed at the time of the conveyance of the Site 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 Park and Ride Parcel which City has approved or is required to approve pursuant to Section 1.062 hereof.

Miscellaneous Conditions

Section 1.022. City's obligation to lease the Park and Ride Parcel 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 Park and Ride Parcel to City at the start of the Term Commencement Date, shall be free and clear of all title matters, uses and occupancies except those contemplated in the DDA unless otherwise approved in writing by City. City hereby consents to the use and occupancy of the Park and Ride Parcel for parking purposes by all tenants of the Site, and

by their employees, customers, invitees, and guests, provided such uses do not unreasonably interfere with use of the Park and Ride Parcel as a Park and Ride facility by the City.

Completion of Construction on Site

(b) Subject to the terms and conditions set forth in the DDA, Lessor shall develop the "Home Depot improvements" of not less than 100,000 feet along with ancillary and related improvements on the Home Depot designated portion of the Site (the "Improvements") as depicted and set forth in the plan in Exhibit G which is attached to this Lease and hereby incorporated by reference or any modification of the Improvements duly approved by City. Completion of the Improvements shall be evidenced by the issuance of a Certificate of Completion issued by the Agency stating that all required construction of the Improvements pursuant to the terms of the DDA, both exterior and interior, other than tenant signage and tenant improvements, has been completed.

Term of Lease

Section 1.023. The lease term shall commence on the Term Commencement Date, and shall continue for a period of twenty-one (21) years thereafter (hereafter referred to as the "Lease Term"), unless terminated earlier in accordance with the terms of this Lease. Upon the commencement of the Lease Term, the parties agree to execute an acknowledgment evidencing the date of the Term Commencement Date. 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 Park and Ride Parcel 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 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 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 as a result of such failure to cure by the City. In this regard, the parties hereby agree as follows:

Breach; Default; Remedies

(a) Lessor and City agree that if an attorney is consulted by Lessor in connection with a City Default or Breach (as hereinafter defined), \$350.00 is a reasonable minimum sum per such occurrence for legal service and costs in the preparation and service of a notice of Default, and that Lessor may include the cost of such services and costs in said notice as rent due and payable to cure said Default.

(b) Lessor and City agree that if an attorney is consulted by City in connection with a Lessor Default or Breach (as hereinafter defined), \$350.00 is a reasonable minimum sum per such

occurrence for legal service and costs in the preparation and service of a notice of Default, and that City may include the cost of such services and costs in said notice to cure said Default.

(c) For purposes of this Lease a "Default" is defined as a failure by the Lessor or City, as applicable, to observe, comply with or perform any material terms, covenants, conditions or rules applicable to Lessor or City, as applicable under this Lease. A "Breach" is defined as the occurrence of any one or more of the following Defaults, and, where a grace period for cure after notice is specified herein or in the notice of Default, and the Lessor or City, as applicable, fails to cure such Default prior to the expiration of the applicable grace period.

(d) The following events shall be a City Default:

(1) Vacating of the Park and Ride Parcel without the intention to reoccupy same, or the abandonment of the Park and Ride Parcel and the failure to reoccupy or re-establish the use of the Park and Ride Parcel within thirty (30) days following written notice from the Lessor.

(2) Except as expressly otherwise provided in this Lease, the failure by City to make any payment of Base Rent or any other monetary payment required to be made by City hereunder, whether to Lessor or to a third party, as and when due and such failure is not corrected within thirty (30) days following written notice from the Lessor.

(3) The failure of City to perform any obligation set forth in this Lease.

(e) The following event shall be a Lessor Default :

(1) The failure of Lessor to fulfill any obligation under this Lease necessary to prevent the occurrence or the continued existence of any dangerous condition on the Park and Ride Parcel which is an immediate threat to either life or property and such condition is not corrected or commenced to be corrected and diligently prosecuted to completion by Lessor within a period of three (3) business days following written notice thereof by or on behalf of City to Lessor.

(2) The failure of Lessor to perform any obligation set forth in this Lease.

(f) In the event of a Default or Breach by a party, the other party may pursue any other remedy now or hereafter available to it under the laws or judicial decisions of the state of California.

(g) The expiration or termination of this Lease and/or the termination of City's right to possession shall not relieve City or Lessor, as applicable from liability under any indemnity

provisions of this Lease as to matters occurring or accruing during the term of the Lease or by reason of Lessee's occupancy of the Park and Ride Parcel.

Late Charges

(h) City hereby acknowledges that late payment by City to Lessor of Base Rent and other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by the terms of any ground lease, mortgage or trust deed covering the Park and Ride Parcel. Accordingly, if any installment of Base Rent or any other sum due from City (as contemplated by this Lease) shall not be received by Lessor or Lessor's designee within five (5) business days after such amount shall be due, then, without any requirement for notice to City, City shall pay to Lessor a late charge equal to five percent (5%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of late payment by City. Acceptance of such late charge by Lessor shall in no event constitute a waiver of City's Default or Breach with respect to such overdue amount, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder.

Tenancy Statement

(i) Each Party (as "Responding Party") shall within fifteen (15) days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Tenancy Statement" form published by the American Industrial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

Extent of Leasehold Interest

Section 1.024. Upon commencement of the Lease Term pursuant to Section 1.023, Lessor shall lease the Park and Ride Parcel to City, and City shall lease the Park and Ride Parcel from Lessor, subject to the provisions and conditions herein set forth, for the Base Rent as described in Article 1 hereof, together with any and all parking facilities either now or hereafter located on the Park and Ride Parcel. (hereafter referred to as the "Park and Ride Improvements"). City's lease of the Park and Ride Parcel shall be deemed to include the nonexclusive right of access to the Park and Ride Parcel through all portions of the Site commonly reserved for common area 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 Park and Ride Parcel and the Park and Ride Improvements under such terms as it determines in its sole discretion; and

(b) construct upon the Park and Ride Parcel any improvements which Lessor determines are desirable or necessary,

provided, however, such use, rights and/or construction do not unreasonably interfere with the right and ability of City to use the Park and Ride Parcel for a Park and Ride facility, or create a lien upon City's interest in the Park and Ride Parcel which could threaten foreclosure of City's interest in the Park and Ride Parcel. 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 Park and Ride Parcel as a Park and Ride facility, provided such terms shall be in general accordance with Exhibit H. After such precise terms of usage have been determined, City may sublease the Park and Ride Parcel to any public entity pursuant to a sublease in general conformity with Exhibit H and such precise terms, subject to prior approval of Lessor, which approval shall not be unreasonably withheld, delayed or conditioned. Any and all improvements on the Park and Ride Parcel, whether now existing or hereafter constructed shall be and remain the property of Lessor.

Utilities

Section 1.025. Lessor shall order, obtain and pay for all utilities necessary for all operations related to the Park and Ride Parcel.

Taxes

Section 1.026. Lessor shall be solely responsible for all taxes, assessments and fees assessed or levied upon the Park and Ride Parcel, including the land and Park and Ride Improvements.

Maintenance

Section 1.027. Lessor covenants and agrees to maintain at its sole cost and expense the Park and Ride Parcel and the Park and Ride Parcel Improvements thereon in a good condition throughout the Lease Term, and to make all repairs and replacements necessary to maintain and preserve the Park and Ride Parcel and the Park and Ride Parcel 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 Park and Ride Parcel or Park and Ride Parcel Improvements are not being so maintained, City shall have the right, after not less than sixty (60) days prior written notice to Lessor to have any necessary maintenance work done, and invoice the Lessor for the entire cost thereof plus a ten percent (10%) administrative fee. In the event that the invoice is not paid by the Lessor within ten (10) days

following delivery of the invoice, City may sue Lessor to recover the invoice amount. In the event that an emergency condition occurs on the Park and Ride Parcel or Park and Ride Improvement, Lessor shall eliminate such condition as soon as reasonably possible. In the event such emergency condition is not corrected within a reasonable time by Lessor, City shall have the right to have any necessary maintenance work done, and invoice the Lessor for the entire cost thereof plus a ten percent (10%) administrative fee. In the event that the invoice is not paid by the Lessor within ten (10) days following delivery of the invoice, City may sue Lessor to recover the invoice amount.

Indemnification

Section 1.028. Lessor shall indemnify, defend, and hold City and its officers, agents, employees, representatives and attorneys 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 Park and Ride Parcel of any nature whatsoever which may exist by reason of any act, omission, neglect, or any use or occupation of the Park and Ride Parcel;
- (b) any improvement work by Lessor, or its agents and contractors, including without limitation the design and installation of equipment and the development of Park and Ride Parcel;
- (c) any maintenance of the Park and Ride Parcel or the Park and Ride Parcel 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 Park and Ride Parcel, even if such use is not in connection with the Park and Ride Improvement.

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. Moreover, in the event of an indemnification by the Lessor of Lessee pursuant to this Section, Lessor shall be permitted to provide a joint defense on the behalf of the Lessor and City with such defense being provided by legal counsel selected by Lessor. Moreover, all such defense costs shall be the sole responsibility of the Lessor.

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 Park and Ride Parcel. 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 1.029. 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 Park and Ride Parcel. 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 reasonably 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.

Nondiscrimination

Section 1.030. Lessor and City respectively covenant and agree for itself, its successors, its assigns and every successor in interest to the Park and Ride Parcel or any part thereof, as follows:

(a) 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 Park and Ride Parcel 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 Park and Ride Parcel.

(b) Lessor and City shall refrain from restricting the rental, sale or lease of the Park and Ride Parcel 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 1.031. Except as provided in Section 1.032, if any of the conditions set forth in this Lease fails to occur, or if City properly notifies Lessor in writing prior to the Term Commencement Date of Lessor's breach of any of Lessor's warranties set forth in this Lease and such breach is not

cured or commenced to be cured within thirty (30) days and diligently prosecuted to completion in the event that more than thirty days is required, following written notice from the City, 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 Term Commencement Date. 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 Term Commencement Date or of any failure to cure an unfulfilled condition which Lessor elected to remedy prior to the start of the Term Commencement Date.

Lessor's Election to Remedy Defects

Section 1.032. Notwithstanding any provision of this Lease to the contrary, Lessor shall have the right prior to the start of the Term Commencement Date 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 "Defect"). 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 actual 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 Term Commencement Date, its notice of election to remedy shall include a postponement of the start of the Term Commencement Date, and a specification of the number of days (if any) of postponement necessary for the Lessor to remedy the Defect. In the event of any such postponement, Lessor shall promptly begin to remedy the Defect and proceed diligently to complete the necessary remedy. If Lessor fails to provide a timely notice of election or fails to remedy the Defect prior to the Term Commencement Date (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 Term Commencement Date), may do any of the following:

- (1) If a material Defect (including without limitation, failure to deliver possession of the Park and Ride Parcel in the condition required by this Lease, failure to complete construction of the Park and Ride Improvements on Park and Ride Parcel required by this Lease, 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 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 two (2).

ARTICLE 4. RIGHTS AND WARRANTIES

Right of City to Enter the Park and Ride Parcel

Section 1.041. 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 Park and Ride Parcel 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 claims, 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 1.042. Lessor represents and warrants to City that as of the Term Commencement Date:

- (a) Lessor owns the Park and Ride Parcel, free and clear of all liens, licenses, claims, encumbrances, easements, encroachments on the property from adjacent properties, encroachments by improvements on the Park and Ride Parcel onto adjacent properties, and rights of way of any

nature, not disclosed by the public record or previously approved in writing by the City as set forth herein.

- (b) There is no pending litigation involving the Park and Ride Parcel.
- (c) There is no cited 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 Park and Ride Parcel, 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 Park and Ride Parcel.
- (e) Except as otherwise provided herein, the Park and Ride Parcel is in good condition and there is no material Defect in the Park and Ride Parcel.
- (f) Lessor will maintain the Park and Ride Parcel in good repair and in the same, or better, condition than is required during the Lease Term, 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 1.043. City represents and warrants to Lessor 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 1.051. Effective as of the date of execution of this Lease by City, Lessor shall defend, indemnify and hold harmless City and its officers, agents, employees, representatives and attorneys 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 the Site or the Park and Ride Parcel;

(b) Any releases (including, but not limited to, any releases as defined under the Comprehensive Environmental Response, Compensation and Liability Act of 1980) by Lessor 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 1.052. Lessor represents that all studies and analyses conducted on the Site by the Lessor will be made available to the City for review and inspection.

Within sixty (60) days following the execution of the DDA, Lessor shall furnish City with a copy of an environmental Phase I, and if appropriate Phase II, report (the "Environmental Report"). Within forty five (45) days after the delivery of the Environmental Report to City, City shall have the right to notify Lessor in writing of any objection to any environmental condition on the Site or the Park and Ride Parcel disclosed by the Environmental Report. If City makes a timely objection to any such condition, then not later than thirty (30) days prior to the Term Commencement Date: (a) the condition shall be eliminated or corrected at the sole cost and expense of Lessor, or (b) Lessor shall identify alternative space to serve as the Park and Ride Parcel leased pursuant to this Lease, so

long as (i) such alternative space is within the Site, and in connection with Lessor's identification of such alternative space, Lessor also delivers to City an Environmental Report pertaining thereto that is acceptable to City, (ii) such alternative space contains the number of parking spaces required by the DDA, and (iii) such alternative space is otherwise approved by City, which approval shall not be unreasonably withheld, delayed or conditioned. If the condition so objected to by City is not eliminated or corrected within such time, and Lessor does not timely identify acceptable alternative space to serve as the Park and Ride Parcel, then City may, in its sole discretion, either (1) terminate this Lease, or (2) start the Lease Term subject to Lessor providing security in a form reasonably acceptable to City to assure elimination or correction of the condition within a time period reasonably acceptable to City. City's failure to object in this manner to any condition disclosed by the Environmental Report shall be deemed approval by City of that condition.

However, notwithstanding anything contained in this Section 1.052 of this Lease to the contrary, in the event that the soil condition of the Site is in all respects suitable for the development of the Improvements thereon pursuant to Section 212 of the DDA at the time of the Term Commencement Date, then the City shall not object to the environmental condition of the Park and Ride Parcel.

Representations and Warranties

Section 1.053. As an inducement to City to enter into this Lease, Lessor represents and warrants to City that:

(a) During any and all previous periods of ownership of the Site and the Park and Ride Parcel 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 disclosed by Lessor to City and remedied in accordance with such laws or regulations;

(b) To Lessor's knowledge, there are no soil or geological conditions which might impair or adversely affect the current use or future plans for use of the Site or the Park and Ride Parcel by the City;

(c) Any business and operations of Lessor on the Site and the Park and Ride Parcel 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;

(d) 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 the Site or the Park and Ride Parcel;

(e) As of the Term Commencement Date, no underground storage tanks are located at, on or under the Site or the Park and Ride Parcel;

(f) As of the Term Commencement Date, no hazardous or toxic substances or wastes are located at the Site and to the extent such substances were located on the Site, they have been removed from the Site or the Park and Ride Parcel in compliance with all applicable California and federal environmental laws and regulations.

Condition Precedent to Lease Term

Section 1.054.

(a) As a condition precedent to City's obligation to start the Lease Term, Lessor shall promptly furnish to City true and complete copies of all documents, submissions and correspondences provided by Lessor to any environmental authority, and all documents, reports, directives and correspondences provided by such authority to Lessor. Lessor shall also promptly furnish to the City true and complete copies of all sampling and test results obtained from samples and tests taken at and around Park and Ride Parcel and the Park and Ride Parcel.

(b) Lessor represents and warrants to City that the Site and the Park and Ride Parcel and the operations thereon comply fully with all state and federal environmental laws.

(c) Lessor shall indemnify and defend City and its officers, agents, employees, representatives and attorneys 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 any of its obligations under any Cleanup Law affecting the Site or the Park and Ride Parcel or Lessor's breach of the representations and warranties set forth above:

Lessor's Cleanup Obligations

Section 1.055.

(a) Throughout the Lease Term Lessor shall, at Lessor's own expense, comply with any Cleanup Law respecting the Site and/or the Park and Ride Parcel, 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 the Site and/or the Park and Ride Parcel be required during the Lease Term under the Cleanup Law, City shall cooperate with Lessor with respect to any Cleanup obligations Lessor may have. In such event, Lessor shall diligently proceed with all required Cleanup activity and regulations and post-cleanup sampling required by the authorities and shall complete such activity as soon as possible. During any such Cleanup by activity by Lessor which

results in the closing of the Park and Ride or a material interference with the use of the Park and Ride Parcel by City, then the Lessor shall provide alternative spaces for Park and Ride use by the City in the exact amount of lost spaces on the Park and Ride Parcel or in the event that such alternative spaces cannot be made available by Lessor, the Base Rent shall either be suspended or pro-rated on the basis of spaces available to the City for the Park and Ride, as appropriate, until such time as the Park and Ride Parcel and all parking spaces thereto are fully restored to its prior condition. A "material interference" with the use of the Park and Ride Parcel for purposes of this Lease shall occur when fifty-six (56) or more parking spaces have been removed from use on the Park and Ride Parcel.

(c) Lessor shall indemnify and defend City and its officers, agents, employees, representatives and attorneys 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 Cleanup obligations set forth above. However, in the event of an indemnification by the Lessor of Lessee pursuant to this Section, Lessor shall be permitted to provide a joint defense on the behalf of the Lessor and City with such defense being provided by legal counsel selected by Lessor. Moreover, all such defense costs shall be the sole responsibility of the Lessor.

ARTICLE 6. MISCELLANEOUS PROVISIONS

Loss, Destruction and Condemnation

Section 1.061. 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 Park and Ride Parcel is destroyed without fault of Lessor and such damage is not repaired, or if all or any part of the Park and Ride Parcel is taken by eminent domain by any governmental entity, Lessor may substitute an alternative area on or near the Park and Ride Parcel of equal size to the portion of the Park and Ride Parcel 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 closest transit stop on or adjacent to the Site. 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 for the Park and Ride Parcel, determined by the proportion of the amount of the Park and Ride Parcel which has been so destroyed or taken and which is not available to City for parking uses to the amount of the Site or the Park and Ride Parcel which is still available for such use.

Assignment

Section 1.062. City may not sublet or assign this Lease without Lessor's prior written consent, which Lessor may give in its sole discretion. Any Lessor approved assignment of this Lease shall relieve City of liability under this Lease.

Lessor shall not transfer, assign, sell, or otherwise convey the Site or the Park and Ride Parcel, or any portion thereof or interest therein, without the prior written approval of City, which approval City shall give in the event that the proposed transfer, assignment, sell or conveyance is to a "sophisticated institutional or an individual investor" as that term is defined in Section 1.018 of this Lease. For purposes of this Lease, any such transfer, assignment, sale, or conveyance shall constitute a "Transfer." Under no circumstances shall the City be under any obligation to approve a Transfer to any entity or party other than a sophisticated institutional or individual investor. Moreover, any such Transfer approval or disapproval shall be at the sole discretion of the City. City shall not, however, withhold its consent to (a) the collateral assignment of the interests of Lessor under this Lease to the holder of a mortgage or deed of trust encumbering the Site in accordance the provisions of Section 316 of the DDA, or (b) the assignment of the rights to receive all Base Rent provided in Article 1 of this Lease to an owner of another parcel on the Site under the DDA pursuant to Section 1.018 of this Lease, or (d) the collateral assignment of such rights to an associated Lender as referred to in Section 1.018, or (e) any assignment of the Site approved by the Agency. 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.

Time of Essence

Section 1.063. Time is of the essence in this Lease.

Notices

Section 1.064. 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

With a copy to:

Deputy Executive Director
Redevelopment Agency of the City of San Diego
City Administration Building
Community Concourse
202 "C" Street
San Diego, California 92101

President
Southeastern Economic
Development Corporation
995 Gateway Center Way, Suite 300
San Diego, CA 92102
Facsimile No. (619) 263-6912

City Attorney
Civic Center Plaza
1200 Third Avenue, #1620
San Diego, California 92101-4155
Facsimile No. (619) 236-7215

Kane, Ballmer & Berkman
515 South Figueroa Street
Suite 1850
Los Angeles, California 90071
Royce K. Jones, Esq.
Facsimile No. (213) 625-0931

(b) If to Lessor:

Pacific Development Partners LLC
177 South Beverly Drive
Beverly Hills, California 90212
Facsimile No. (310) 279-6566

With a copy to:

Bouza, Klein & Goosenberg
949 So. Hope Street

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 1.065. This Lease and the attached Exhibits constitute the entire agreement between the parties relating to the leasing of the Park and Ride Parcel. 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 1.066. 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 Park and Ride Parcel or the Park and Ride Parcel 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 1.067. 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 1.068. 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 1.069. 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 1.070. 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 1.071. 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 1.072. Lessor agrees to make available for inspection by City at the Site a complete and accurate set of Lessor's books and records from which Sales Tax 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 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 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 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 the Site (i) make available for inspection by City at the Site their books and records of all transactions from which Sales Tax 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 amounts received by City; and (iv) to cooperate with City in making such inspection.

No Joint Venture

Section 1.073. 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 1.074.

(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 1.075. 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 1.076. 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 1.077. 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 1.078. 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 1.079. 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 as defined in Section 1.011(g).

Time Periods

Section 1.080. 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 1.081. 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 1.082. 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.

Subdivision of Site

Section 1.083. Upon a subdivision of the Site in compliance with applicable laws affecting the legal description of the Park and Ride Parcel, Lessee, upon the written request of Lessor, shall

execute the necessary documentation amending the legal description of the Park and Ride Parcel in accordance with such subdivision approval provided that the revised Park and Ride Parcel includes a minimum of 365 spaces.

No Merger

Section 1.084. There shall be no merger of the leasehold interest provided for in this Lease with the fee estate in such property (i.e., the Park and Ride Parcel) 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.

Automatic Termination

Section 1.085. This Lease will automatically terminate following the delivery of written notice by either party to the other if this Lease is executed by the parties prior to the closing and funding of the construction loan(s) to be provided by Cathay Bank for the development of the Home Depot improvements upon the Site (the "Loan Closing") and the Loan Closing fails to take place pursuant to the terms and conditions of the DDA and within the time established in the DDA.

Dated ^{on} this 10th day of January, 2001

PDP IMPERIAL PARTNERS, LLC, a
California Limited Liability Company
(Lessor)

Date: 1/17/01

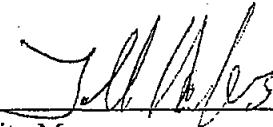
By: Ronald A. Recht
Ronald A. Recht
Its: Manager

Date: 1/17/01

By: Mark T. Burger
Mark T. Burger
Its: Manager

CITY OF SAN DIEGO,
a Charter City
(City)

Date: 1/18/01

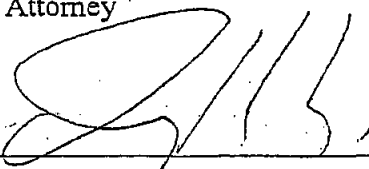
By: 
for City Manager

ATTEST:

By: _____
City Clerk

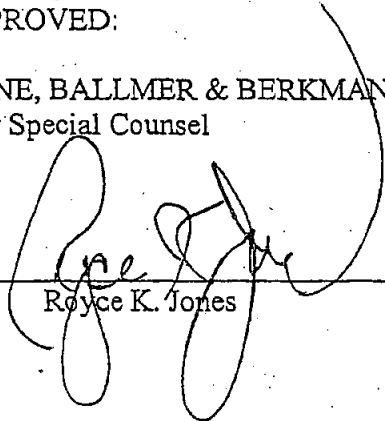
APPROVED AS TO FORM AND LEGALITY:

CASEY GWINN
City Attorney

By: 
Deputy

APPROVED:

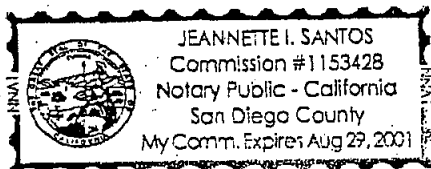
KANE, BALLMER & BERKMAN
City Special Counsel

By: 
Royce K. Jones

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
 County of San Diego
 On January 18, 2001 before me, Jeannette I. Santos Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
 personally appeared Todd Harris
Name(s) of Signer(s)

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



WITNESS my hand and official seal.

Jeannette I. Santos
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____
 Document Date: _____ Number of Pages: _____
 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

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

Signer Is Representing: _____

**RIGHT THUMBPRINT
OF SIGNER**
 Top of thumb here

Signer's Name: _____

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

Signer Is Representing: _____

**RIGHT THUMBPRINT
OF SIGNER**
 Top of thumb here

ALL-PURPOSE CERTIFICATE

State of California

County of Los Angeles

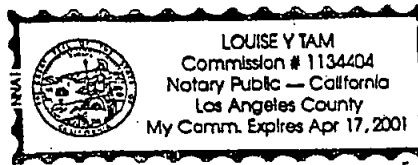
ss.

On 1/17/01, before me, Louise Y. Tam, Notary Public
personally appeared RONALD A. RECHT AND MARK T. BURGER

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

WITNESS my hand and official seal.


Notary Public



[seal]

GREENWOOD
CEMETARY
ENTRANCE

IMPERIAL

AVENUE



SAN PASQUAL STREET

PLOT 107 41
107 100
R.D.B. 2652

OCEAN

VIEW

BOULEVARD

IMPERIAL MARKETPLACE

E A

EXHIBIT B

Legal Description of Site

The Land referred to herein is situated in the state of California, County of San Diego and described as follows:

Lots 1 through 6 and 8 of Imperial Marketplace, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 13977, filed in the office of the County Recorder of San Diego County, June 6, 2000.

EXHIBIT C

Park and Ride Description

That portion of Lot 1 of Map 13977 in the city of San Diego, County of San Diego, State of California, according to Map thereof No. 13977 filed in the Office of the county Recorder of San Diego County, State of California June 6, 2000 as file No. 2000-297997, more particularly described as follows:

COMMENCING at the Southeasterly corner of said Lot 1;

THENCE along the Easterly line of Said Lot 1, North $00^{\circ}31'26''$ East, 4.95 feet to the TRUE POINT OF BEGINNING;

THENCE continuing along said line, North $00^{\circ}31'26''$ East, 225.12 feet to an angle point in the Easterly line of said Lot 1;

THENCE North $41^{\circ}03'12''$ West, 80.00 feet;

THENCE North $89^{\circ}27'14''$ West, 137.38 feet;

THENCE South $00^{\circ}31'11''$ West, 212.50 feet;

THENCE South $30^{\circ}45'38''$ East, 57.84 feet;

THENCE South $81^{\circ}17'14''$ East, 162.07 feet to the TRUE POINT OF BEGINNING.

CONTAINS: 1.134 Acres, more or less.

EXHIBIT D

Rent Schedule A

Amortization Schedule

Payment	Annual Rent Amount	Scheduled Principal Payment Amount	Scheduled Interest Payment Amount	Balance of Base Rent Amount
				\$3,360,000
1	(\$168,626)	(\$34,802)	(\$133,824)	\$3,325,198
2	(\$337,253)	(\$73,908)	(\$263,345)	\$3,251,290
3	(\$337,253)	(\$80,042)	(\$257,211)	\$3,171,248
4	(\$337,253)	(\$86,685)	(\$250,567)	\$3,084,563
5	(\$337,253)	(\$93,880)	(\$243,372)	\$2,990,683
6	(\$337,253)	(\$101,672)	(\$235,580)	\$2,889,010
7	(\$337,253)	(\$110,111)	(\$227,142)	\$2,778,899
8	(\$337,253)	(\$119,250)	(\$218,002)	\$2,659,649
9	(\$337,253)	(\$129,148)	(\$208,105)	\$2,530,501
10	(\$337,253)	(\$139,867)	(\$197,385)	\$2,390,634
11	(\$337,253)	(\$151,476)	(\$185,777)	\$2,239,158
12	(\$337,253)	(\$164,049)	(\$173,204)	\$2,075,109
13	(\$337,253)	(\$177,665)	(\$159,588)	\$1,897,444
14	(\$337,253)	(\$192,411)	(\$144,842)	\$1,705,034
15	(\$337,253)	(\$208,381)	(\$128,872)	\$1,496,653
16	(\$337,253)	(\$225,676)	(\$111,577)	\$1,270,977
17	(\$337,253)	(\$244,407)	(\$92,846)	\$1,026,570
18	(\$337,253)	(\$264,693)	(\$72,560)	\$761,878
19	(\$337,253)	(\$286,662)	(\$50,591)	\$475,215
20	(\$337,253)	(\$310,455)	(\$26,798)	\$164,761
21	(\$168,626)	(\$164,761)	(\$3,866)	(\$0)

EXHIBIT E

Sample Calculation of Available Sales Tax

	<u>Total Taxable Sales</u>	<u>Available Sales Tax (1)</u>
Year 0		
Year 1	\$ 27,000,000	\$ 270,000
Year 2	\$ 43,000,000	\$ 430,000
Year 3	\$ 45,000,000	\$ 450,000
Year 4	\$ 48,000,000	\$ 480,000
Year 5	\$ 50,000,000	\$ 500,000

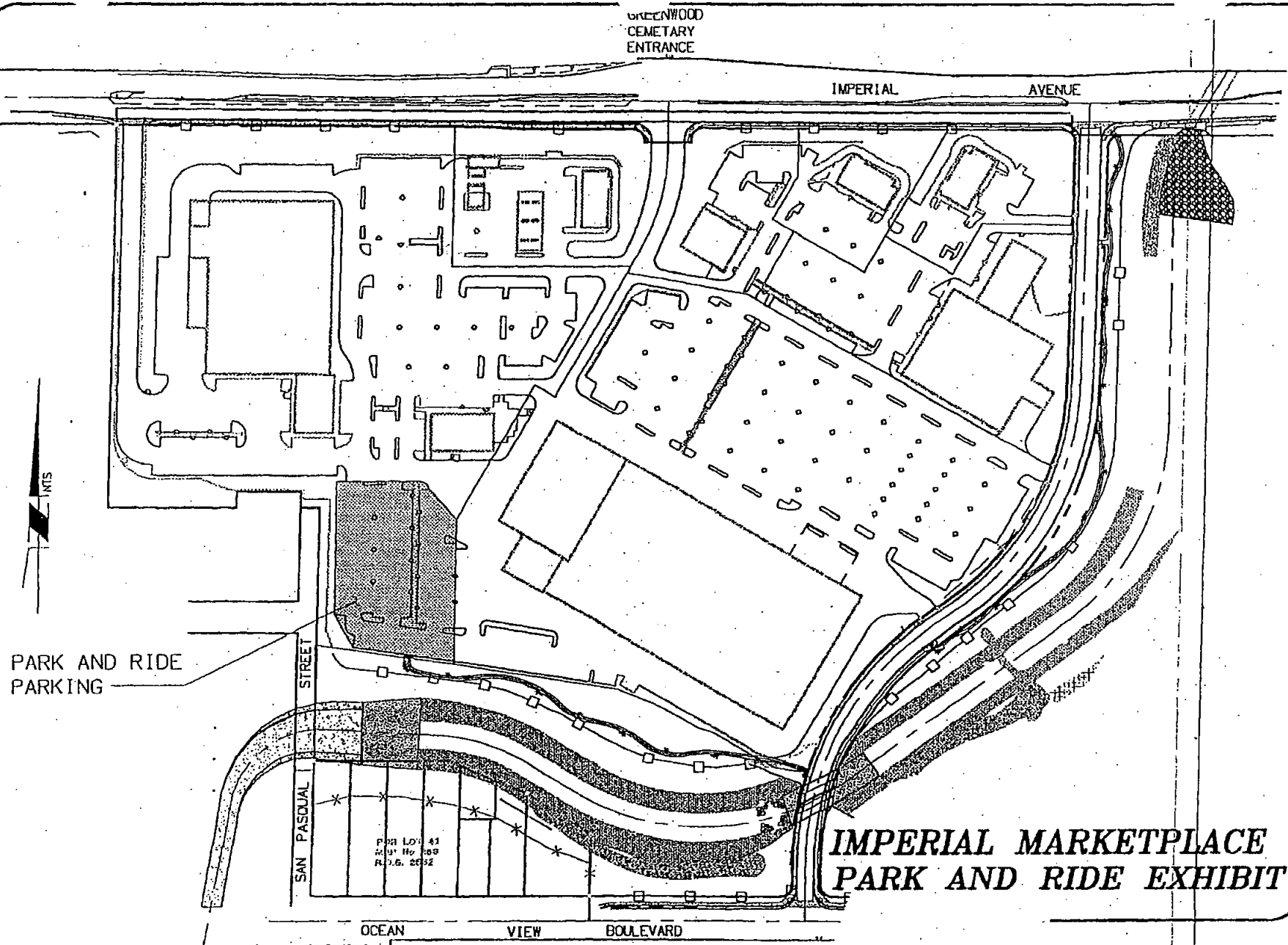
(1) 1% of Total Taxable Sales of Home Depot.

EXHIBIT F

Sample Calculation of Annual Payment

Annual Payment	Total Taxable Sales	Available Sales Tax (1)	Annual Rent Amount (2)	Surplus / (Shortfall) (3)	Accumulate Debt Reserve(4)
1	\$ 27,000,000	\$ 270,000	\$201,158 ⁽⁵⁾	\$ 68,654	\$ 68,654
2	\$ 43,170,000	\$ 432,000	\$402,316	\$ 29,384	\$ 98,038
3	\$ 45,330,000	\$ 453,000	\$402,316	\$ 50,969	\$ 149,007
4	\$ 47,600,000	\$ 476,000	\$402,316	\$ 73,633	\$ 222,640
5	\$ 49,975,000	\$ 500,000	\$402,316	\$ 97,430	\$ 320,070

- (1) 1% of Total Taxable Sales of Home Depot.
- (2) Per Section 8 Exhibit D
- (3) Available Sales Tax less Annual Rent Amount.
- (4) Debt Reserve is made up of any sales tax surplus above Annual Rent Amount up to 3 times the annual rent amount or \$1,206,948.
- (5) This amount represents the first year lease payment which consists of 6 months (50% of 402,316).



GREENWOOD
CEMETARY
ENTRANCE

IMPERIAL

AVENUE

PARK AND RIDE
PARKING

SAN PASQUAL
STREET

OCEAN

VIEW

BOULEVARD

**IMPERIAL MARKETPLACE
PARK AND RIDE EXHIBIT**

Exhibit

EXHIBIT H

General Terms for Park and Ride Use

The Park and Ride Parcel shall be used only as a parking lot by persons traveling in carpool, mass transit or other ridesharing vehicles. The Park and Ride Parcel may also be utilized by tenants of the Site and their employees, guests, invitees and patrons for parking. Lessor shall be responsible for assuring that use by persons other than those using the Site for Park and Ride uses does not interfere with use of the Park and Ride Parcel for Park and Ride uses. .

The Park and Ride Parcel shall be improved and landscaped, including, but not limited to, paving, lighting, and striping of parking stalls, in accordance with the requirements of the [Planned Commercial Development Permit] applicable to the Site.

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

ORDINANCE NUMBER O-18798 (NEW SERIES)

ADOPTED ON MAY 1, 2000

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A PUBLIC USE LEASE AGREEMENT WITH PACIFIC DEVELOPMENT PARTNERS, LLC, FOR A PARK 'N RIDE FACILITY THAT WILL BE DEVELOPED AS A PART OF THE IMPERIAL MARKETPLACE DEVELOPMENT LOCATED IN THE CENTRAL IMPERIAL REDEVELOPMENT PROJECT AREA.

WHEREAS, the Redevelopment Agency of The City of San Diego [the Agency] is engaged in activities necessary to carry out and implement the Redevelopment Plan for the Central Imperial Redevelopment Project [the Project]; and

WHEREAS, in order to carry out and implement the Redevelopment Plan, the Agency has entered into a Disposition and Development Agreement [the Agreement] with Pacific Development Partners [the Developer] for the sale and the redevelopment of real property in the Project area as shown on the map attached hereto as Exhibit A, and more particularly described in Exhibit B [the Site]; and

WHEREAS, the redevelopment of the Site involves construction of certain improvements specified in the Agreement, which may be constructed in multiple phases; and

WHEREAS, Developer shall construct improvements on a portion of the Site referred to as "Park and Ride Parcel," which is also shown on the map attached hereto as Exhibit A, and is more particularly described in Exhibit C; and

WHEREAS, 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 to the general public; and

WHEREAS, the Developer proposes to undertake certain improvements to the Park and Ride Parcel and the Site pursuant to the Agreement, which is expected to affect the City's transportation planning; and

WHEREAS, the City and Developer have negotiated a Public Use Lease at the initial rental rate of \$402,316 per year, the fair market rate; NOW, THEREFORE,

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

Section 1. That the City Manager is authorized to execute, for and on behalf of The City of San Diego, a Public Use Lease agreement with Pacific Development Partners, LLC, for a Park and Ride facility, at an initial annual rent of \$402,316, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. OO-18798.

Section 2. 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 3. 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
02/07/00
Or.Dept:SEDC
O-2000-135
Form=leaseo.frm