



THE CITY OF

SAN DIEGO

CITY ADMINISTRATION BUILDING • 202 C STREET • SAN DIEGO, CALIF. 92101

OFFICE OF THE
CITY MANAGER
236-6363

December 6, 1984

File: Job 915482

Scripps Clinic and Research Foundation
10666 North Torrey Pines Road
La Jolla, CA 92037

Attention Mr. Bill Nelson

Gentlemen:

Re: Right of Entry Permit - Portion of Pueblo Lot 1323 - Torrey Pines Golf Course

Permission is hereby granted to Scripps Clinic and Research Foundation or their assigns, hereinafter referred to as "Permittee," to enter upon the above-referenced City-owned property, as shown outlined in red on the attached Exhibit A, upon the following terms and conditions:

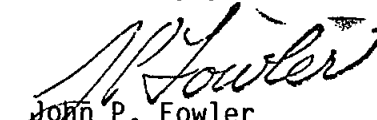
1. Permittee's use of the above-referenced property shall be limited to the grading, filling, landscaping, and maintaining landscaping after using the area for staging and material storage for the construction project on the adjacent leased Parcel 1 of Pueblo Lot 1323. The term that the property may be used for staging and material storage shall end on or before December 31, 1985. The landscaping shall be completed and approved by the City Manager on or before June 30, 1986.
2. As consideration to City for granting this permit, Permittee shall cause the improvements to Torrey Pines Golf Course to be completed in accordance with Exhibit A, attached hereto.
3. This permit shall be in effect upon the date of execution of this permit by Permittee and shall expire with the lease, City Document RR257635-2.
4. This permit is terminable at will by either party after the Permittee has completed the improvements in accordance with Exhibit A, subject to the provision that written notice be delivered to the opposite party 30 days prior to the projected termination date. It is mutually agreed that the City of San Diego shall not be obligated for any loss, financial or otherwise, which may be incurred by Permittee as a result of termination of this permit, and further that Permittee expressly waives any claim for expense or loss which Permittee might incur as a result of termination of this permit.

5. Permittee certifies that a policy of public liability and property damage insurance in which "The City of San Diego" is named as an additional insured has been secured in an amount of not less than \$1 million combined single limit liability, and said policy shall be kept in force for the duration of this permit. A certificate of said insurance shall be filed with the City Property Department upon execution of this permit.
6. Permittee shall assume the defense of and indemnify and save the City of San Diego harmless from all claims, expenses, and liabilities of every kind, nature, and description resulting in any manner from the use or condition of said property and any and all operations conducted thereon by Permittee.
7. All risks in connection with Permittee's use of said property and any damages to the improvements thereon, thereunder, or in the vicinity thereof shall be borne in full by Permittee.
8. Permittee shall not use the premises in any manner which in the opinion of the City Manager creates a nuisance or disturbs the peace of persons in the surrounding area.
9. Permittee recognizes and understands that this permit may create a possessory interest subject to property taxation attributable to the land covered hereby and that the Permittee may be subject to the payment of property taxes levied on such interest. Permittee further agrees that such tax payment shall not reduce any fee paid the City of San Diego hereunder and that such tax shall be paid by the Permittee before becoming delinquent.
10. Permittee shall at its sole cost and expense comply with all the requirements of all Municipal, State, and Federal authorities now in effect or which may hereafter be in effect, which pertain to the above-referenced City-owned property.
11. Upon termination or expiration of this permit, Permittee shall at its sole cost remove all materials placed by it on the property and repair and/or restore the premises to the condition as shown in Exhibit A and to the satisfaction of the City Manager.
12. Permittee shall not assign any rights granted by this permit nor any interest therein. Any assignment by operation of law shall automatically terminate this permit.
13. Maintenance of the premises shall be the sole responsibility of the Permittee during the entire term of this permit.
14. No signs shall be displayed by Permittee on the premises without the prior written consent of the City Manager.
15. Anything to the contrary herein notwithstanding, Permittee may not use the premises during the Andy Williams Golf Tournament, which will be held from February 9 through February 17, 1985.

Please acknowledge your agreement to the foregoing terms and conditions on the enclosed copy of this letter and return it to this office, together with your insurance certificate, within 10 days from receipt hereof.

If you should require additional information or have any questions, please call Bud Bass, Property Agent, at 236-6264.

Very truly yours,

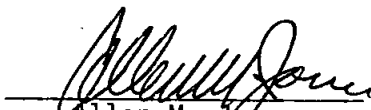

John P. Fowler
Deputy City Manager

JLS:MAB:jw:(3)B6

Attachments

cc: Auditor
Financial Management
County Assessor

VERIFIED FOR EXEMPTION


Allen M. Jones
EQD Deputy Director

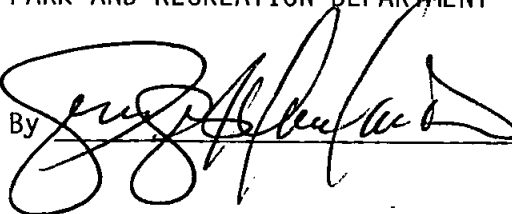
APPROVED AS TO FORM AND LEGALITY BY:

JOHN W. WITT, City Attorney

By 
Deputy City Attorney

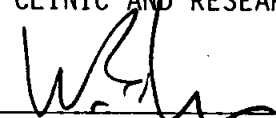
APPROVED BY:

PARK AND RECREATION DEPARTMENT

By 

THE ABOVE IS ACKNOWLEDGED AND ACCEPTED THIS ____ DAY OF _____, 1984.

SCRIPPS CLINIC AND RESEARCH FOUNDATION

By 

By _____

Recording Requested By:

When Recorded Mail To:

GRAY, CARY, AMES & FRYE
1200 Prospect Street, Suite 575
La Jolla, California 92037
Attention: Christopher C. Calkins

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is made effective as of _____, 19____, by and between THE CITY OF SAN DIEGO ("Landlord") and MCKELLAR DEVELOPMENT OF LA JOLLA, a California corporation ("Tenant"), with reference to the following facts:

A. Landlord and Tenant's predecessor in interest, Scripps Clinic and Research Foundation ("Scripps"), entered into that certain unrecorded Agreement for Ground Lease, Development and Use of Real Property (the "Lease") approved by San Diego City Council Resolution Nos. R-257274 and R-257635, dated October 4, 1982 and December 13, 1982, respectively (the "Lessee"), said Lease being filed in the office of the City Clerk of San Diego, California, on December 13, 1982, as Document No. RR-257635-2.

B. By way of the Lease, Landlord leased to Scripps, and Scripps leased from Landlord, that particular real property (the "Premises") located in the City of San Diego, County of San Diego, State of California, more particularly described as follows:

Parcel 1 of Parcel Map 9813 in the City of San Diego, County of San Diego, State of California.

C. By way of that certain document entitled Assignment of Lease (the "Assignment"), Scripps assigned and transferred to Tenant all of Scripps' right, title and interest in and to the Lease.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. Lease of Premises. Landlord leases to Tenant, and Tenant leases from Landlord, the Premises.

2. Term of Lease. The term of this Lease is fifty-five (55) years.

3. Landlord's Right of First Refusal. Landlord has a right of first refusal to purchase Tenant's interest in this Lease together with any of the improvements, trade fixtures and furnishings owned by Tenant on the Premises, which right must be exercised thirty (30) days after Landlord's receipt of notice from Tenant of a bona fide offer from any party to purchase the same, all as more fully set forth in the unrecorded Lease.

4. Tenant's Right of First Refusal. Tenant has a right of first refusal to purchase Landlord's interest in the Premises together with any of the improvements, trade fixtures, and furnishings owned by Landlord on the Premises, which right must be exercised within thirty (30) days after Tenant's receipt of notice from Landlord of a bona fide offer from any party to purchase the same, all as more fully set forth in the unrecorded Lease.

5. Purpose of Memorandum. This Memorandum is subject to the terms, conditions, and provisions of the unrecorded Lease. This Memorandum has been prepared for purposes of recordation only and in no way modifies the provisions of the Lease. The terms and provisions of the Lease are incorporated herein by reference and said terms and provisions shall have the same force and effect as though set out in full herein. In the event of any conflict between the provisions of this Memorandum and the provisions of the Lease, the provisions of the Lease shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum effective as of the date first above written.

"LANDLORD"

THE CITY OF SAN DIEGO

By: _____

[Signature]
Deputy City Manager

"TENANT"

McKELLAR DEVELOPMENT OF LA JOLLA,
a California Corporation

By: _____

[Signature]
Christopher S. McKellar, President

By: _____

[Signature]
Chris M. Judson, Vice President

APPROVED as to form and legality this 10 day of April, 1985.

By: _____

[Signature]
Deputy City Attorney

STATE OF CALIFORNIA } S.S.
COUNTY OF San Diego
On this the 18th day of March 19 85 before me,
the undersigned, a Notary Public in and for said County and State,
personally appeared Christopher S. McKellar, personally
known to me or proved to me on the basis of satisfactory evidence to be
the _____ President, and Chris M. Judson, personally
known to me or proved to me on the basis of satisfactory evidence to be
Vice President Secretary of the corporation that executed the within
instrument on behalf of the corporation therein named, and acknow-
ledged to me that such corporation executed the within instrument
pursuant to its by-laws or a resolution of it's board of directors.

Signature _____

[Signature]
Kay E. Klass



FOR NOTARY SEAL OR STAMP



DUPLICATE ORIGINAL

EXHIBIT B

City of San Diego

Agreement for Ground Lease,
Development and Use
of Real Property

with

SCRIPPS CLINIC AND RESEARCH FOUNDATION

Approved by City Council Resolution

No. R257274, Dated October 4, 1982

and
R-257635
No. , Dated DEC 13 1982

Precise Plan Document No. Date

DOCUMENT NO. **RR-257635 - 2**

FILED DEC 13 1982
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Job 95482
Exhibit A & B
September , 1982

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CITY OF SAN DIEGO

FLAT RATE LEASE

THIS LEASE AGREEMENT is executed between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and Scripps Clinic and Research Foundation, hereinafter called "LESSEE."

SECTION 1. USES

- 1.01 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, described in Exhibit "A" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises."
- 1.02 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of those uses permitted within the SR Zone, as it may be amended, and such other uses as may be approved for the premises through action of the City Council or through appropriate administrative or other procedures, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose.
- LESSEE covenants and agrees to use the premises for the above specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to continuously use the premises for said purposes or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.
- 1.03 Related Council Actions. By the granting of this lease, neither the CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the premises. Discretionary action includes, but is not limited to, rezonings, variances, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the leased premises.
- 1.04 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold and enjoy the premises. CITY hereby warrants that it has good, marketable title to the premises. If during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable but the parties shall agree to a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having quiet possession of all or a portion of the

premises. If within thirty (30) days from the date of such dispossession, the parties are unable to agree upon such proportionate reduction of rent, they shall determine the reduction by arbitration in San Diego County, California, in accordance with the rules of the American Arbitration Association. The reduction of rent hereunder shall in no way relieve the CITY of any liability it may have to LESSEE for any loss or damage resulting from such dispossession. If City for any reason cannot deliver possession of the premises to Lessee at the commencement of the term of this lease, the rent shall be off set until possession is delivered; provided, however, if possession is not delivered within sixty days (60) after commencement date, Lessee shall have the right to terminate the lease. Within ten (10) days from the date of such termination, CITY shall refund to LESSEE all monies previously paid by LESSEE to CITY under that certain Option Agreement dated DEC 13 1982, 1982, between CITY and LESSEE and under this agreement.

1.05 Easements and Reservations.

- a. CITY hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the premises, but shall have no right of access over the surface of the premises.
- b. CITY reserves the right to grant and use easements or establish and use rights-of-way over, under, along and across the leased premises for utilities, thoroughfares, or access as it deems necessary for the public good, provided such easement may not be established on any portion of the premises upon which LESSEE builds or intends to build improvements and such easements shall be located in a manner that least interfere with LESSEE'S use of the premises.
- c. CITY has the right to enter the premises for the purpose of making repairs to municipal requirements, provided CITY notifies LESSEE in advance.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY'S exercising the rights reserved in this section. Such reimbursement shall include a reduction in the rent proportionate to the amount of physical damage. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.06 Parking. Lessee shall provide off street parking in conformance with the SR Zone.

SECTION 2: TERM

- 2.01 Commencement. The term of this agreement shall be 55 years commencing on the first day of the calendar month following execution by the City Manager. "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager.
- 2.02 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 2.03 Surrender of Premises. At termination of this lease for any reason, LESSEE shall execute, acknowledge and deliver to the CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the leasehold premises. The premises shall be delivered free and clear of all liens and encumbrances, and in a decent, safe and sanitary condition.

SECTION 3: RENT

- 3.01 Place of Payment. Rent is due monthly in advance on or before the first day of each calendar month. All monthly rents will be prorated during the first and final months of any rental period in order to achieve payment on the first day of each calendar month. Checks should be made payable to the City Treasurer and mailed or delivered to the Office of the City Treasurer, City of San Diego, P. O. Box 2289, San Diego, California, 92112-4165.

The place and time of payment may be changed at any time by CITY upon thirty (30) days written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. LESSEE assumes all risk of loss and late payment charges if payments are made by mail, or if postmarks are illegible, in which case the payment shall be deemed paid upon actual receipt by the City Treasurer.

3.02 Rent.

- a. Rent Amount. The initial rent is \$20,833.33 per month. Said rent is subject to adjustments based on increases, if any, in the Consumer Price Index (CPI) and in the fair market value of the leased premises as hereinafter provided.
- b. (1) CPI Index Adjustments. On the first day of the seventh (7th) year following the effective date of the lease and every three (3) years thereafter during the lease term, the rent shall be adjusted upward to reflect increases in the Consumer Price Index (CPI); however, in no event shall an increase exceed eight percent per year (48 percent the first adjustment, or 24 percent each succeeding adjustment).

The index used will be the CPI for "All Urban Consumers" for Los Angeles/Long Beach/Anaheim, California. If this index is no longer published, the index for adjustment will be the U. S. Department of Labor's Comprehensive Official Index most comparable to aforesaid index. If a rental adjustment is calculated using an index from a different base year than 1967, which equaled a base figure of 100 for the CPI, the base figure used will first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of CITY and LESSEE. If the parties cannot agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor, notwithstanding continued reference herein to "CPI" in any event.

Regardless of the index publication dates, the effective date of the rent adjustment is as specified in this Section 3.02, b.(1). Until the rent adjustment can be reasonably determined by the index method, LESSEE will continue to make payments at the existing rental rate. When the adjustment is determined, the balance of rents due at the adjusted rate will be paid to the CITY within thirty (30) days.

- (2) Index Adjustment Computation. The rent for each rental period following the adjustment, until the next adjustment or other rental determination as provided herein, shall be determined prior to the date of adjustment by multiplying the rent which is effective immediately prior to said adjustment by the "adjustment figure" established as follows:

The "adjustment figure" shall be established by dividing the "current index" by the "base figure", both as defined herein:

The "base figure" for the first such adjustment shall be a three-month average of index figures published by said CPI using the fourth, fifth and sixth full months preceding the effective date of this agreement.

To illustrate, if the lease began in May, the CPI figures for November (sixth month), December (fifth month) and January (fourth month) preceding May would be averaged to establish the base figure (Example 1).

The "current index" shall be a three-month average of index figures published by said CPI. The three months to be used to establish said average shall be the fourth, fifth and sixth full months preceding the adjustment date.

The "base figure for each successive adjustment shall be the "current index" figure used in the last preceding adjustment period (Example 2).

Example 1

Current Index 121
Base Figure $\frac{121}{110} = 1.10$ (Adjustment Figure)

Effective Rent x 1.10 = Adjusted Rent

Example 2

Current Index 138
Base Figure $\frac{138}{121} = 1.14$ (Adjustment Figure)

Effective Rent x 1.14 = Adjusted Rent

The adjustment figure is then multiplied by the monthly rent from the preceding adjustment period and the new rent is determined. Using the foregoing examples, if the rent is now \$1,000 per month, after the first adjustment it will be \$1,100 per month ($\$1,000 \times 1.10$). In the second adjustment, it will be \$1,254 per month ($\$1,100 \times 1.14$).

- c. Market Value Adjustments. In addition to said CPI adjustments, upon the first day of the 25th and the 45th lease year following the effective date of this agreement, the rent for the ensuing years, subject to the aforesaid CPI adjustments, shall be determined by multiplying the capitalization rate of ten percent by the fair market value of the leased premises as of the adjustment date. The fair market value of the leased premises shall be determined by an appraisal made by a professional independent real estate appraiser selected by mutual consent of the parties from the list of appraisers approved by the CITY. In the event the parties cannot reach agreement upon selection of a mutually acceptable appraiser, then CITY and LESSEE will each select a professional independent real estate appraiser who in turn will select a third independent real estate appraiser, which third appraiser will be employed to make the appraisal of the fair market value of the premises and which value will be utilized to determine the adjusted rent previously described herein. In the event that the two selected appraisers fail to mutually select a third appraiser within thirty (30) days, then the third appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his or her individual capacity, on prompt application by either CITY or LESSEE with notice thereupon to the other party. Said third appraiser shall complete the assignment within sixty (60) days of appointment. Each party shall pay the cost of its own selected appraiser and both CITY and LESSEE agree to equally share the cost of the mutually selected or court appointed third appraiser. CITY and LESSEE agree to accept and be bound by the valuation determined by the selected or appointed appraiser.

In establishing the fair market value of the premises, the appraiser shall consider the property as a fee simple absolute estate and as vacant and available for lease or sale for the authorized purposes of this lease at the commencement of the rental period under review.

The date of value of the appraisal shall be the date of rental adjustment as hereinabove established. In the event the appraisal is not completed in time to permit the adjustment to be made upon the date specified, LESSEE agrees to continue to pay rent in accordance with the then existing lease rates and the adjustment, when determined, will be retroactive to said

effective date of rental adjustment. Any deficiency shall be paid by LESSEE to CITY within thirty (30) days after determination of the new rental rate.

- d. Increase Only. In no event shall the adjusted rent, as established by Consumer Price Index or by periodic appraisals as provided for herein, be less than the rent in existence on the day prior to the adjustment date.

3.03 Delinquent Rent. If the LESSEE fails to pay the rent when due, the LESSEE will pay in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, the LESSEE shall pay an additional ten percent (10%) (being a total of fifteen percent (15%) which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. However, CITY agrees that not more than once in any twelve-month period of this lease, in the event of a late rent payment or delinquent rent situation CITY will provide five (5) days' written notice that the rent is due and unpaid, and if the rent is paid within such five-day period, no rent delinquency payment will be charged to LESSEE.

3.04 Employment Guarantee Period. Employer shall notify CITY when the City Building Inspection Department issues the Occupancy Permit, and operations shall be deemed to have commenced as of the date of issuance thereof.

The period commencing with the commencement of operations and ending on the third anniversary thereof is herein referred to as the "Employment Guarantee Period."

Upon request of either party, as soon as practicable following the commencement of operations, the parties shall execute, acknowledge, and record with City Clerk, an instrument in form reasonably satisfactory to them, setting forth the date thereof.

3.05 Employment Guarantee. Employer guarantees that the number of employees employed at the SITE during the Employment Guarantee Period (referred to in Section 3.04) shall be as follows:

- a. During the last 13 weeks before the third anniversary of the commencement of the Employment Guarantee Period, an average of at least 150 full-time employees per week (first "Employment Period");

- b. A "full time employee" for purposes of this agreement shall mean a bona fide employee of Employer, working an average of at least 35 hours per week, a majority of which are at the SITE, and whose principal place of business is at the SITE. Equivalent hours spent by a bona fide employee during normal vacations, sick leave, or leaves of absence may be included. Bona fide employees who would otherwise be included but for the fact that they worked less than 35 hours per week may be included as full-time by accumulating their hours worked per week, dividing the sum by 40, and disregarding any fractions.

- 3.06 Additional Rent for Failure to Meet Employment Guarantee. If the employment guarantees referred to in Section 3.05 are not met for each Employment Period, then Employer agrees to pay to CITY, promptly upon receipt of CITY'S demand therefore, amount(s) as additional rent and not as damages or penalties (in recognition of the partial failure of CITY'S Industrial Lease Considerations that induced CITY to lease the SITE through negotiations), an amount computed by the then current annual rent for that portion of the Employment Guarantee deficiency in each Employment Period, as follows:

$$\frac{\$250,000 \times a}{b} = \text{Amount of Additional Rent to be Paid CITY}$$

Where;

- a = the actual number of full-time employees less than the required minimum number of full-time employees for the applicable Employment Period, and
- b = the required minimum number of full-time employees for the applicable Employment Period;

Provided, however, that such additional rent shall not, in any event, be less than \$1,000 for each such employee for each shortage, and, provided further, that Employer/Lessee shall receive no credit against the rent should the actual number of full-time employees exceed the minimum requirements.

- 3.07 Employment Audit. Employer/Lessee shall, at its own expense, provide to CITY within 30 days following Employment Period, a statement of an Independent Certified Public Accountant reasonably acceptable to CITY, certifying as to the number of bona fide employees employed during such Employment Period, computed as provided in Section 3.05 of this agreement.

3.08 Effect of Force Majeure. If during any Employment Period, an event or events of force majeure, or Unavoidable Delay as referred to in Section 6.1 occur so as to prevent Employer from meeting the Employment Guarantee (referred to in Section 3.05) for each period, then Employer/Lessee shall not be excused from meeting said guarantees, but the subject Employment Period during which said guarantees are to be met shall be that period 91 days in the aggregate during which Employer/Lessee is unaffected by such event or events, commencing on the first day during or following such period that Employer/Lessee is unaffected by such event or events.

SECTION 4: ASSIGNMENT

- 4.01 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants and conditions of this lease and, except as otherwise provided herein, all of the terms, covenants and conditions of this lease shall apply to, benefit and bind the successors and assigns of the respective parties, jointly and individually.
- 4.02 Assignment and Subletting. Subject to prior CITY Manager approval which shall not be unreasonably withheld in each instance, LESSEE may assign this lease or any interest therein and may sublease any portion hereof to any such assignee or sublessee who has the financial capability and overall competence to successfully operate the assigned or subleased portion of the premises. This lease and any interest herein shall not be assignable by operation of law without the written consent of the CITY. Any proposed assignment or sublease to other than a person or entity not affiliated with LESSEE must be approved by the City Manager.

"Assignment," for the purposes of this clause shall include any transfer of 50 percent or more ownership interest in LESSEE by any partners, principal, or stockholders, as the case may be.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions and provisions of this agreement which are applicable to the rights acquired.

- 4.03 Encumbrance. Subject to prior consent by the CITY, which shall not be unreasonably withheld, LESSEE may encumber this lease, its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security instrument to assure the payment of a promissory note or notes of the LESSEE, upon the express condition that the net proceeds of such loan or loans be devoted exclusively to the purpose of developing the leased premises in accordance with the section hereof entitled Precise Plan; consequently, loan proceeds may be used to pay all direct and indirect costs of acquisition, planning, design, construction and development, and including but not limited to the following: off-site improvements for service of the premises; onsite improvements; escrow charges; premiums for hazard insurance, or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest and commissions; and architectural, engineering and attorney's fees and such other normal expenses incidental to such construction.

Any subsequent encumbrances on the premises or on any permanent improvements thereon, must first have the approval in writing of City Manager, which shall not be unreasonably withheld.

In the event any such approved deed of trust or mortgage or other security type instrument should at any time be in default and be foreclosed, or the leasehold estate transferred to the mortgagee or beneficiary in lieu of foreclosure the CITY will accept the approved mortgagee or beneficiary thereof as its new tenant under this lease with all the rights, privileges and duties granted and imposed in this lease.

which shall not be enforceable withhold
See: Paragraph 3 of Second Amendment to Ground Lease.
Any default, foreclosure or sale pursuant to said deed of trust, mortgage or other security instrument, shall be invalid with respect to this lease without prior notice thereof to and approved by CITY. Upon prior approval by CITY, said mortgagee or beneficiary may assign this lease to its nominee, if nominee is a reputable, qualified and financially responsible person in the opinion of CITY. Any deed of trust, mortgage or other security instrument shall be subject to all of the terms, covenants and conditions of this lease and shall not be deemed to amend or alter any of the terms, covenants or conditions hereof.

CITY agrees to cooperate with LESSEE and any lender as reasonably required to allow LESSEE to obtain any such loans. CITY'S cooperation shall include but not be limited to including in the lease by suitable amendment from time-to-time any provision which may reasonably be requested by any proposed leasehold mortgagee for the purpose of providing any mortgage protection provisions in the lease and/or allowing such mortgagee reasonable means to protect or preserve the lien of the leasehold mortgage on the occurrence of a default under the terms of the lease. CITY agrees to execute and deliver (and to acknowledge, if necessary for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect the term or rent under this lease nor otherwise in any material respect adversely affect any rights of CITY under this lease. The amendments provided for herein, if required by a lender, shall include, but not be limited to the following items:

- a. The lease, any replacements of it, any subleases under it remaining superior to any mortgages, trust deeds, or similar instruments on the leasehold.
- b. Requirement that the leasehold mortgagee not become personally liable under the obligations of the lease unless and until it becomes an owner of the leasehold estate and that such liability thereafter cease in the event of an assignment.
- c. Adequate and appropriate mortgagee protection provisions to protect the lender against possibility of loss through termination of the lease due to default, and providing lender, and if the tenant fails to cure the default within the time prescribed to lender shall be allowed additional time to either cure or take possession of the premises as to institute and complete foreclosure proceedings, and provisions to allow the lender to take possession under the lease if necessary;

- d. Restrictions on mergers of estates;
- e. Restrictions on amendment or mutual termination without the consent of the leasehold mortgagee;
- f. Quiet possession and attornment provisions in favor of the leasehold mortgagee.

4.04 Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in paragraph a. (1) of this section is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event that there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default or defaults complained of, and the mortgagee or beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within 30 days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

- b. Remedies. If the mortgagee or beneficiary shall be required to exercise its right to cure said default or defaults through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that the default or defaults may be expeditiously corrected:
- (1) CITY may correct said default or defaults and charge the costs thereof to the account of the LESSEE, which charge shall be due and payable on the date that the rent is next due after presentation by CITY to LESSEE and mortgagee or beneficiary of a statement of said costs.
 - (2) CITY may correct said default or defaults and may pay the costs thereof from the proceeds of any insurance fund held by CITY, CITY and LESSEE or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or defaults or to pay the costs of correction performed by or at the direction of CITY.
 - (3) CITY may terminate this lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE agrees to assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related obligations by CITY. CITY may, as an alternative, substitute for the terminated LESSEE a new LESSEE reasonably satisfactory to the mortgagee or beneficiary.

Should the default or defaults be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold whose qualifications as an assignee have been approved by CITY shall have the absolute right to substitute itself to the estate of the LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default and the default, if curable, is cured by such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, the CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges and obligations of the LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.

- c. Abandonment by LESSEE. Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder, including, but not limited to, the right to recover the rent as it becomes due, plus damages.
- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. The CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is City-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or the City staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel but the CITY shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

4.05 Eminent Domain. If all or part of the premises is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of the CITY and LESSEE (or beneficiary or mortgagee), will be as follows:

- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. In the event of a partial taking, leaving the remainder unusable for lease purposes, if the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. In the event of a partial taking, leaving the remainder usable for lease purposes, if the remainder of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession of the condemning authority, whichever occurs first, but shall continue for the portion not taken.

The minimum rent shall be reduced in proportion to the amount of the taking.

- d. Award. All monies awarded in any such taking shall belong to CITY whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to, installations or improvements of LESSEE, loss of business and relocation expenses. **
- e. Transfer. CITY has the right to transfer the CITY'S interests in the premises, in lieu of condemnation, to any authority entitled to exercise the power of eminent domain. If a transfer occurs, the LESSEE shall retain its possessory interest in the fair market value of any improvements placed on the premises in accordance with this lease by LESSEE.
- f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

→ See: Paragraph 8 of First Amendment to Ground Lease.

SECTION 5: INSURANCE RISKS/SECURITY

5.01 Indemnity. LESSEE at all times, except at any act, omission or negligence on the part of City, shall relieve, indemnify, protect and save CITY and any and all of its boards, officers, agents and employees harmless from any and all claims and demands, actions, proceedings, losses, liens, costs, judgments, civil fines and penalties of any nature whatsoever in regard to or resulting from the use of the premises, including, but not limited to, expenses incurred in legal actions, death, injury or damage that may be caused directly or indirectly by:

- a. Any unsafe or defective condition in or on the premises of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the premises,
- b. Any operation, use or occupation conducted on the premises,
- c. Any act, omission or negligence on the part of LESSEE, its employees, agents, sublessees, invitees, licensees or
- d. Any failure by LESSEE to comply or secure compliance with any of the lease terms or conditions.

5.02 Insurance. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:

- a. Public liability and property damage insurance in the amount of not less than ONE MILLION DOLLARS (\$1,000,000) COMBINED SINGLE LIMIT LIABILITY. This policy shall cover all injury or damage, including death, suffered by any party or parties, from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE, on or in connection with the use or operation of the premises.
- b. Fire, extended coverage and vandalism insurance policy on all insurable property on the premises, in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with the ENCUMBRANCE section hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.

See Paragraph 4 of
Second Amendment
to Lease

The policy may name the mortgagee or beneficiary thereunder as an additional insured pursuant to a standard first mortgage endorsement and

- c. Conditions. All insurance policies will name the CITY as an additional insured, protect the CITY against any legal costs in defending claims and will not terminate without sixty (60) days prior written notice to the CITY. All insurance companies must be satisfactory to the CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises and full applicable Fire Insurance coverage shall be effective upon completion of each insurable improvement. Certificates, in a form satisfactory to the CITY, will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a policy has been obtained which meets the terms of this lease.
- d. Modification. CITY, at its discretion, may require the commercially reasonable revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to acquire any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- e. Accident Reports. LESSEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the premises. This report should 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.
- f. Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer or insurers and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this subsection f., if after reasonable notice by City, LESSEE fails or refuses to take out or maintain insurance as required in this lease, or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE and CITY shall be entitled to exercise all legal remedies in the event of such default.

5.03 Waste, Damage or Destruction. LESSEE agrees to give notice to the CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash and rubbish in a manner satisfactory to the CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy and sanitary, and which cause is covered by the insurance set forth in Section 5.02, Insurance, hereof, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage, or at the CITY'S option LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to the CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage using for either purpose the insurance proceeds as set forth in Section 5.02 Insurance, hereof, or should such damage be caused within the last five (5) years of the term of this lease, or if the damage is not covered by insurance as set forth in Section 5.02, Insurance, Lessee may elect to clear the site of all improvements, leaving site clean and sanitary, and then title to the site shall return to City, free and clear, and this lease shall terminate.

LESSEE agrees that preliminary steps toward performing repairs, restoration or replacement of the premises shall be commenced by LESSEE within ninety (90) days and the required repairs, restoration or replacement shall be completed within a reasonable time thereafter. There shall be an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenantable by reason of such damage.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.01 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations and observations in making this lease. LESSEE further acknowledges that premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises and that LESSEE does not hold CITY responsible for any defects in the premises.
- 6.02 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises, throughout the term. LESSEE will make all repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy and sanitary condition satisfactory to the CITY and in compliance with the Development Plan described in Section 6.11 hereof and with all applicable laws.
- 6.03 Improvements/Alterations. No improvements, structures or installations which exceeds a cost of \$100,000 shall be constructed within the premises and the premises may not be in any way altered by the LESSEE without prior written approval by the City Manager unless such alteration is mandated by any applicable law, ordinance, or public authority having jurisdiction over the premises. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures or installations may not be made on the premises without prior written approval by the City Manager unless such alteration is mandated by any applicable law, ordinance, or public authority having jurisdiction over the premises. This provision shall not relieve the LESSEE of any obligation under this lease to maintain the premises in decent, safe, healthy and sanitary condition, including structural repair and restoration of damaged or worn improvements. The CITY shall not be obligated by this lease to make, or assume any expense for, any improvements or alterations.
- 6.04 Utilities. LESSEE agrees to order, obtain and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground.
- 6.05 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY, prior to commencement of said construction a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The

bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY. In the event that LESSEE fails to comply with this provision, this lease may be terminated by CITY; provided, however, the City Manager may waive the requirement of a bond hereunder upon presentation of a performance covenant from LESSEE'S construction contractor and/or LESSEE and verification that the financial status of LESSEE'S construction contractor and/or LESSEE is sufficient to insure such performance.

- 6.06 Liens. LESSEE will at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations or repairs on or to the premises, and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations or repairs are made to the premises by LESSEE or by any party other than CITY and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

- a. Take all actions necessary to record a valid release of lien, or
- b. File with CITY a bond, cash, or other security acceptable to CITY, sufficient to pay in full all claims of all persons seeking relief under the lien.

- 6.07 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments and fees assessed or levied upon LESSEE or the premises including the land, any buildings, structures, machines, equipment, appliances or other improvements or property of any nature whatsoever, erected, installed or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and agrees that this lease may create a possessory interest subject to property taxation and that the LESSEE may be subject to the payment of taxes levied on such interest and that LESSEE shall pay all such possessory interest taxes.

LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due the CITY.

- 6.08 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without the prior written consent of the CITY. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY or CITY may thereupon remove the item at LESSEE'S cost.

6.09 Ownership of Improvements and Personal Property.

- a. All and any improvements, structures and installations or additions to the premises now existing or constructed on the premises by LESSEE, shall be the property of Lessee but shall at lease expiration or termination, be deemed to be part of the premises and shall become at CITY'S option the CITY'S property, free of all liens and claims except as otherwise provided in this lease.
- b. LESSEE-owned machines, appliances, equipment (other than trade fixtures) and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become the CITY'S property free of all claims and liens, or CITY may at its option remove said items at LESSEE'S expense.
- c. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
- d. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require rental by LESSEE to CITY at the rate in effect immediately prior to said expiration or termination.

6.10 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, that subject to any rent abatement provisions contained in this lease, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY claim the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten days after the beginning of any such claimed delay.

6.11 Development Plan. LESSEE agrees to develop the leased premises in accordance with the Precise Plan of Development approved by the City Manager and filed in the Office of the City Clerk which plan is hereby incorporated by this reference as the same may be amended by LESSEE with the consent of the CITY, which consent shall not be unreasonably withheld. The general contents and provisions of the development plan are described in Section 9.06 hereto. The City Manager or his designee shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk. Failure by LESSEE to comply with the Precise Plan of Development shall constitute a major default and subject this lease to termination by CITY.

SECTION 7: GENERAL PROVISIONS

7.01 Notices.

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at the leased premises or at such other address designated in writing by LESSEE; and to CITY as follows:

If to LESSEE:

Scripps Clinic and Research Foundation
10666 North Torrey Pines Road
La Jolla, California 92037

With copy to:

Luce, Forward, Hamilton and Scripps
1700 The Bank of California Plaza
110 West "A" Street
San Diego, California 92101

If to CITY:

City Manager, Attention Property Director
City Administration Building
202 C Street, M.S. 9B
San Diego, California 92101-4155

and to any mortgagee, trustee or beneficiary, as applicable at such appropriate address designated in writing by the respective party.

- b. Any party entitled or required to receive notice under this lease may by like notice designate a different address to which notices shall be sent.

7.02 Compliance with Law. LESSEE will at all times in the construction, maintenance, occupancy and operation of the premises, comply with all applicable laws, statutes, ordinances and regulations of the CITY, County, State and Federal Government, at LESSEE'S sole cost and expense.

7.03 CITY Approval. The approval or consent of the CITY, wherever required in this lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.

- 7.04 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age or physical handicap in LESSEE'S use of the premises, including, but not limited to, the providing of goods, services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment.
- 7.05 Affirmative Action. LESSEE agrees to abide by the CITY'S Affirmative Action Program for LESSEES as it exists or is amended to the extent that the program is applicable to this lease. A copy of the program effective as of the date of this lease is on file in the City Clerk's Office and by this reference is part hereof. The program's goal is the attainment of employment for minorities and women in all areas of employment, in a total percentage as established by the CITY for its Affirmative Action Program each year.
- 7.06 Partial Invalidity. If any term, covenant, condition or provision of this lease is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.07 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney's fees.
- 7.08 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the sense requires.
- 7.09 Captions. The lease Table of Contents, section headings and captions for various articles and paragraphs shall not be held to define, limit, augment or describe the scope, content or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. The LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties in respect to the lease premises. Each party has relied on his own examination of the premises, advice from his own attorneys and the warranties, representations and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent or attorney of any other party has made any promise, representation or warranty whatsoever, which is not contained in this lease.

See: Paragraph 5 of Second Amendment to Lease

The failure or refusal of any party to read the lease or other documents, inspect the premises and obtain legal or other advice relevant to this transaction, constitutes a waiver of any objection, contention or claim that might have been based on these actions. No modification, amendment or alteration of this lease will be valid unless it is in writing and signed by all parties.

7.11 Corporate Authority. LESSEE shall provide CITY with an opinion from LESSEE'S council that each individual executing this lease on behalf of LESSEE duly authorized to execute and deliver this lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the by-laws of the corporation, and that this lease is binding upon the corporation in accordance with its terms and that the LESSEE is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify LESSEE to do business in the state where the premises are situated.

7.12 CITY First Right to Purchase. In the event LESSEE desires to dispose of its interest in this lease together with any of its improvements, trade fixtures and furnishings owned by LESSEE on the leased premises, LESSEE shall notify the CITY with respect to which items it intends to dispose of and the purchase price it intends to charge. CITY shall be given the first right to purchase said interest and improvements at the price set forth in the notice for a period of thirty (30) days after receipt of said notice. If CITY does not exercise such right to purchase within said thirty-day (30) period, by notifying LESSEE in writing of such exercise, LESSEE shall have the right to sell or offer to sell its interest to others at the same or greater purchase price but not to sell or offer to sell its interest at a lower price without first reoffering to CITY the right to purchase at such lower price. If the CITY gives notice of its intent to exercise the first right to purchase during said 30-day period, CITY and LESSEE shall enter into a ninety-day (90) escrow to accomplish the actual conveyance.

7.13 LESSEE First Right to Purchase. In the event during the lease term or extensions thereof CITY desires to dispose of its interest in the premises together with any of its improvements, trade fixtures and furnishings owned by CITY on the leased premises, CITY shall notify LESSEE with respect to which items it intends to dispose of and the purchase price it intends to charge. LESSEE shall be given the first right to purchase said interest and improvements at the price set forth in the notice for a period of thirty (30) days after receipt of said notice. If LESSEE does not exercise such right to purchase within said thirty-day (30) period, by notifying CITY in writing of such exercise, CITY shall have the right to sell or offer to sell its interest to others at the same or greater purchase price but not to sell or offer to sell its interest at a lower price without first reoffering the LESSEE the right to purchase at such lower price.

- 7.14 Planting Strips. LESSEE shall be responsible, at its sole cost, to landscape and maintain all areas shown on the attached plat adjoining the leased premises.
- 7.15 Standard of Employees. The LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.

IN WITNESS WHEREOF, this lease agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date: 23 Jan. 1985

By: [Signature]
Deputy City Manager

LESSEE:

Date: 12/11/84

By: [Signature]
President

By: [Signature]
V.P. Finance

APPROVED as to form and legality this 22 day of January, 1985

By: [Signature]
Deputy City Attorney

MAB:mh(6)Disk 12
11/24/82

SECTION 9: EXHIBITS

9.01 Legal Description

Parcel 1 of Parcel Map 9813

9.02 This page may be substituted with Parcel Map 9813.

PARCEL MAP No. 9813

SHEET 1 OF 1 SHEET.

PARCEL MAP

IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, BEING A CONSOLIDATION OF PORTIONS OF PUEBLO LOT 1218 OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN THE YEAR 1870, A COPY OF WHICH MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 16, 1921, AS MISCELLANEOUS MAP No. 38.

TITLE REPORT BY: TITLE INSURANCE AND TRUST COMPANY, ORDER NO. 405742, APPROVED
ASSISTANTS: PARCEL MAP, 242-00-17 AND 242-00-18.
TOTAL NUMBER OF PARCELS: 1. GROSS AREA: 1.807 ACRES.

BASIS OF BEARINGS:

THE BASIS OF BEARINGS FOR THIS MAP IS THE LINE BETWEEN THE CITY CONTROL MONUMENT ON THE CENTERLINE OF SCIENCE PARK ROAD AND THE CONCRETE MONUMENT WITH A BRASS CAP MARKED "U.S.C. & G.S. STATION H111-1121" LOCATED ON DETAIL "B" OF TORREY PINES SCIENCE PARK UNIT 1, PER MAP NO. 1024, I.E. "W 51° 45' 00" E.

LEGEND:

- 1. FOUND CITY OF SAN DIEGO STANDARD CONTROL MONUMENT, NO RECORD, EXCEPT AS OTHERWISE NOTED. SAID CONTROL MONUMENTS ARE SHOWN ON CITY ENGINEER'S DATA, NOS. 11641-2-D AND 11642-3-D.
- 2. SET 2" X 1/2" IRON PIPE CENTERED WITH A CEMENT PLUG AND METAL DISC STAMPED "L.R. 1924."
- 3. SET LEAD AND DISC MARKED "L.S. 1924" AT AN OFFSET OF 21.5 FEET IN THE CURB ALONG AN EXTENSION OF THE PARCEL LINE AND AT POINTS OF CURVE. THE OFFSET SHALL BE MEASURED PERPENDICULARLY OR AT RIGHT ANGLES TO THE RIGHT OF WAY LINE, EXCEPT AS OTHERWISE NOTED.

NOTES:

- (1) - ADJACENT: SEE RECORDS.
- REC-1: BEARINGS BEING DATA ACCORDING TO A DEED IN THE RECORDS OF THE UNIVERSITY OF CALIFORNIA, RECORDED MAR 19, 1944, 1/2 P. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.
- REC-2: BEARINGS BEING DATA ACCORDING TO A DEED RECORDED 2-25-63 AS 1/2 P. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION, HEREBY CERTIFIES THAT IT IS THE OWNER OF THE PROPERTY COVERED BY THIS MAP AND HEREBY APPROVES SAID MAP.

BY: Pete Wilson MAYOR
BY: Charles D. Phillips CITY CLERK

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF THE CITY OF SAN DIEGO ON AUGUST 31, 1927. I HEREBY STATE THAT THIS PARCEL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED AND CONDITIONALLY APPROVED PLATS OF THE MAP, IF ANY.

BY: J. R. Casey LICENSED LAND SURVEYOR NO. 2776

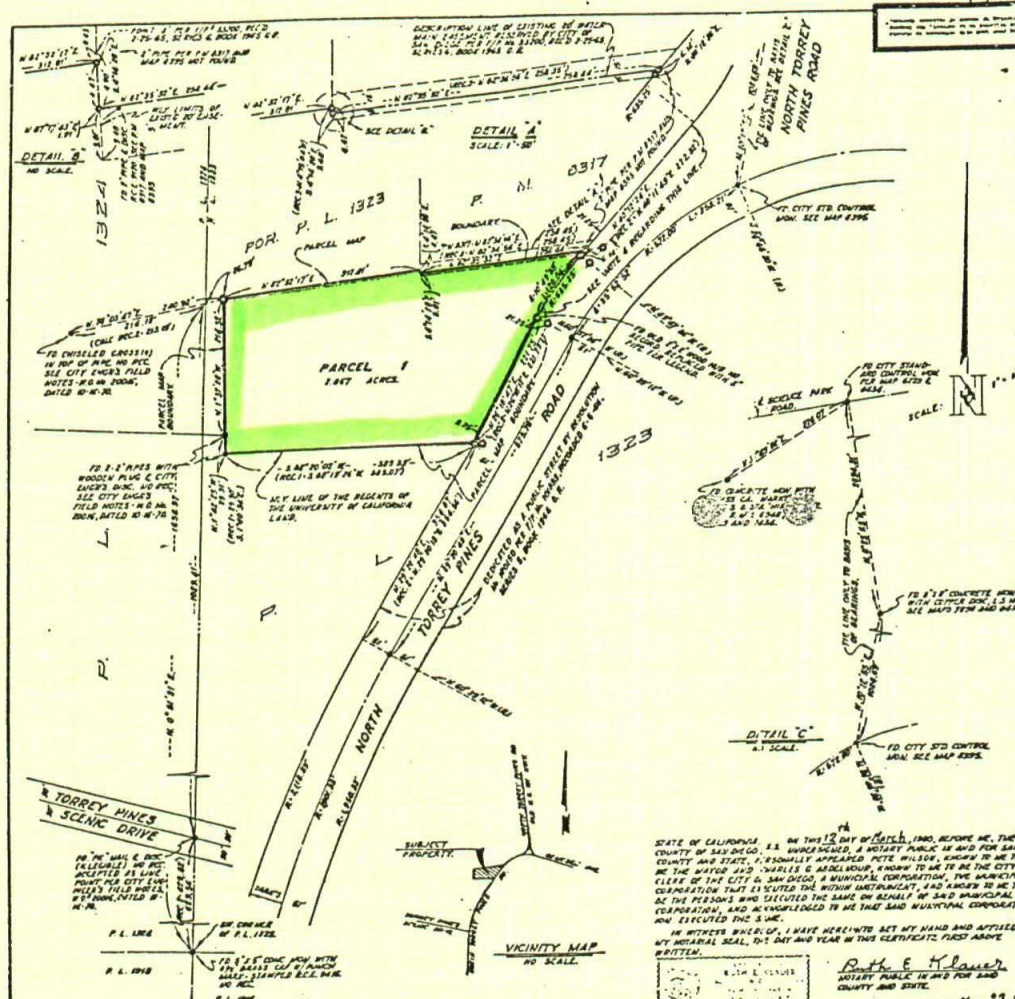
THIS MAP CONFORMS WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE.

BY: J. R. Casey CITY ENGINEER DATED: 3/6/28

FILE NO. 805000000
FILED THIS 11th DAY OF APRIL, 1928, AT ELITE T. M. IN BOOK OF PARCEL MAPS AT PAGE 2013 AT THE REQUEST OF THE CITY OF SAN DIEGO.

YEAR & TITLE
COUNTY RECORDER
BY: J. R. Casey COUNTY RECORDER.

FEE: NONE.



STATE OF CALIFORNIA, I, J. R. Casey, on this 11th day of APRIL, 1928, before me, the County of San Diego, I, J. R. Casey, a Notary Public in and for said County and State, personally appeared Pete Wilson, known to me to be the Mayor and Charles D. Phillips, known to me to be the City Engineer of the City of San Diego, a Municipal Corporation, the Municipal Clerk of the City of San Diego, a Municipal Corporation, and known to me to be the persons who executed the same on behalf of said Municipal Corporation, and acknowledged to me that said Municipal Corporation executed the same.

IN WITNESS WHEREOF, I HAVE HEREWITH SET MY HAND AND AFFIXED MY NOTARIAL SEAL, THIS 11th day of APRIL, 1928, at ELITE T. M. in the County of San Diego, State of California.

BY: J. R. Casey NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE.
MY COMMISSION EXPIRES MAY 23, 1931

342-01

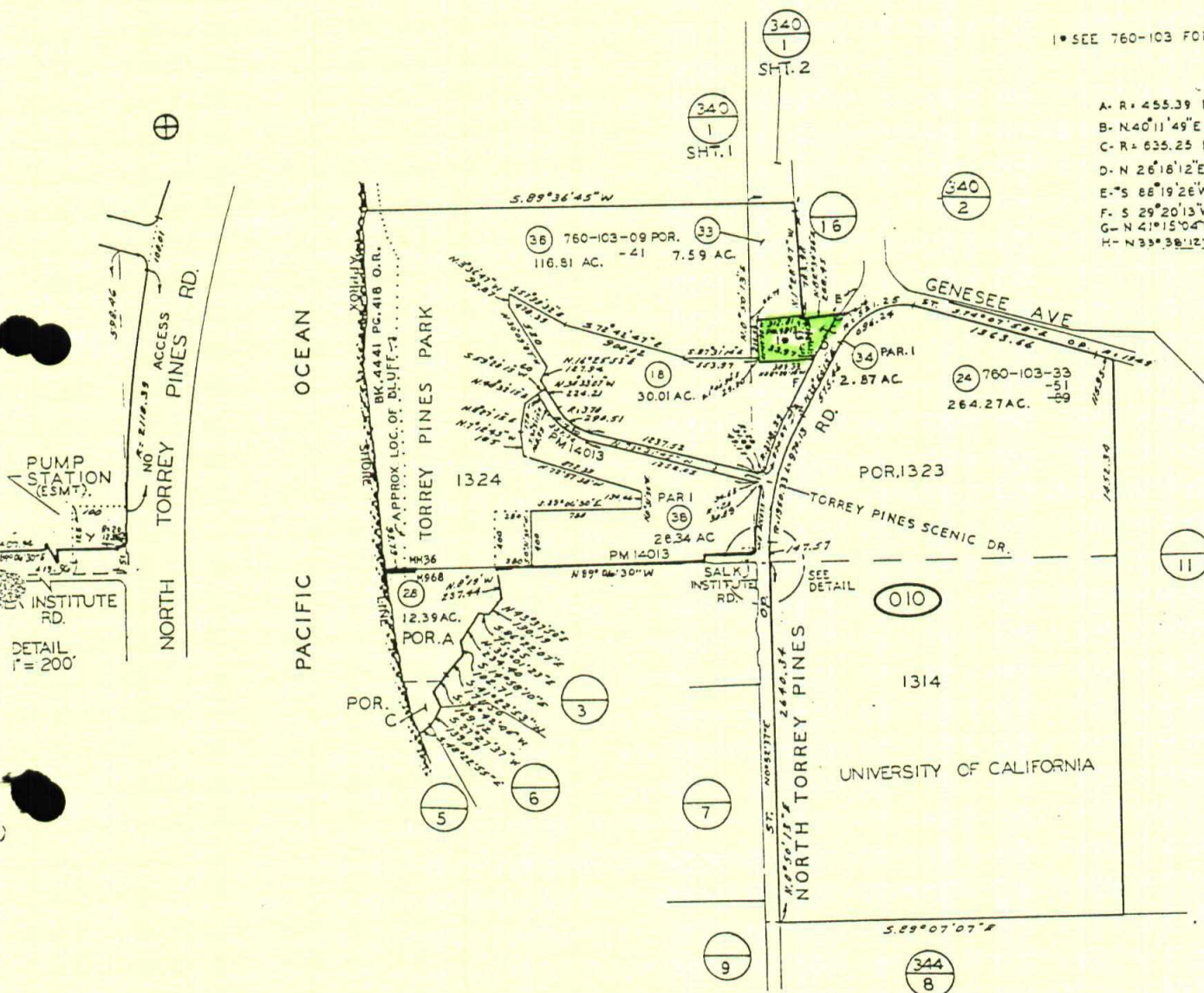
1"=800'

1- SEE 760-103 FOR LEASES.

A- R = 455.39 L = 335.35
 B- N 40° 11' 49" E 272.32
 C- R = 635.25 L = 120.04
 D- N 26° 18' 12" E 187.76
 E- S 88° 19' 26" W 82.88
 F- S 29° 20' 13" W 354.67
 G- N 41° 15' 04" W 246.10
 H- N 33° 38' 12" E 184.79

CHANGES

BLK	OLD	NEW	YR	CUT
010	020	28-30	74	10070
	27	51.32	74	2548
	32	100.82	74	7
	31	10.16	74	
	423	1714	74	
	21426	33434	81	1717
	29130	35	84	2476
	41420	36137	86	1679
	7437	38	86	2067
	35	39-41	87	1281
	40	88	88	251
	39(41)	89	89	41
	38	1238	89	4717



MAP 968 - PARTITION OF PUEBLO LOTS 1312 & 1313 - LOT B &
 POR LOTS A, C, D & E
 MM 36 - PUEBLO LANDS - LOTS 1314, 1324 & POR LOTS 1323 & 1326
 ROS 919

B. W. B.

SAN DIEGO COUNTY ASSESSOR'S MAP BK 342 PG 01

ENT PUMP

DETAIL "A"
SCALE: 1" = 50'

FD 2 PIPE G
RCE 9120'S
8317 AND M4
8395

JCC DETAIL

3-N 4°15'04"N)
S 4°10'28"E } ←
948'

25

A hand-drawn diagram showing a vertical line representing a sewer. An arrow points to a circle on the line, which is labeled 'SEWER' and 'MH'.

FOR

(REC) L. 4323

PARCEL MAP

BOLINDARY.

SEE DETAIL "A"

258.05
 258.45
 258.44

SEE

N. 78° 03' 47" E. 240
214.13'
(CALC. REC. 2: 213.19')

HISELED CROSS (+)
P OF PIPE. NO REC.
CITY ENGR'S FIELD
S. W. O. NO. 20016,
1 10-16-70

PARCEL
2.867 ACRES

PARCEL MAP -
BOUNDARY.

FD 2-2" PIPES WITH
WOODEN PLUG & CITY
ENGR'S DISC. NO REC.
SEE CITY ENGR'S
FIELD NOTES - W.O. No.
0016, DATED 10-16-70.

- S 88° 20' 02" W. - 389.33' -
(REC. 1: S 88° 19' 26" W. 389.07')

NLY. LINE OF THE REGENTS OF
THE UNIVERSITY OF CALIFORNIA
LAND.

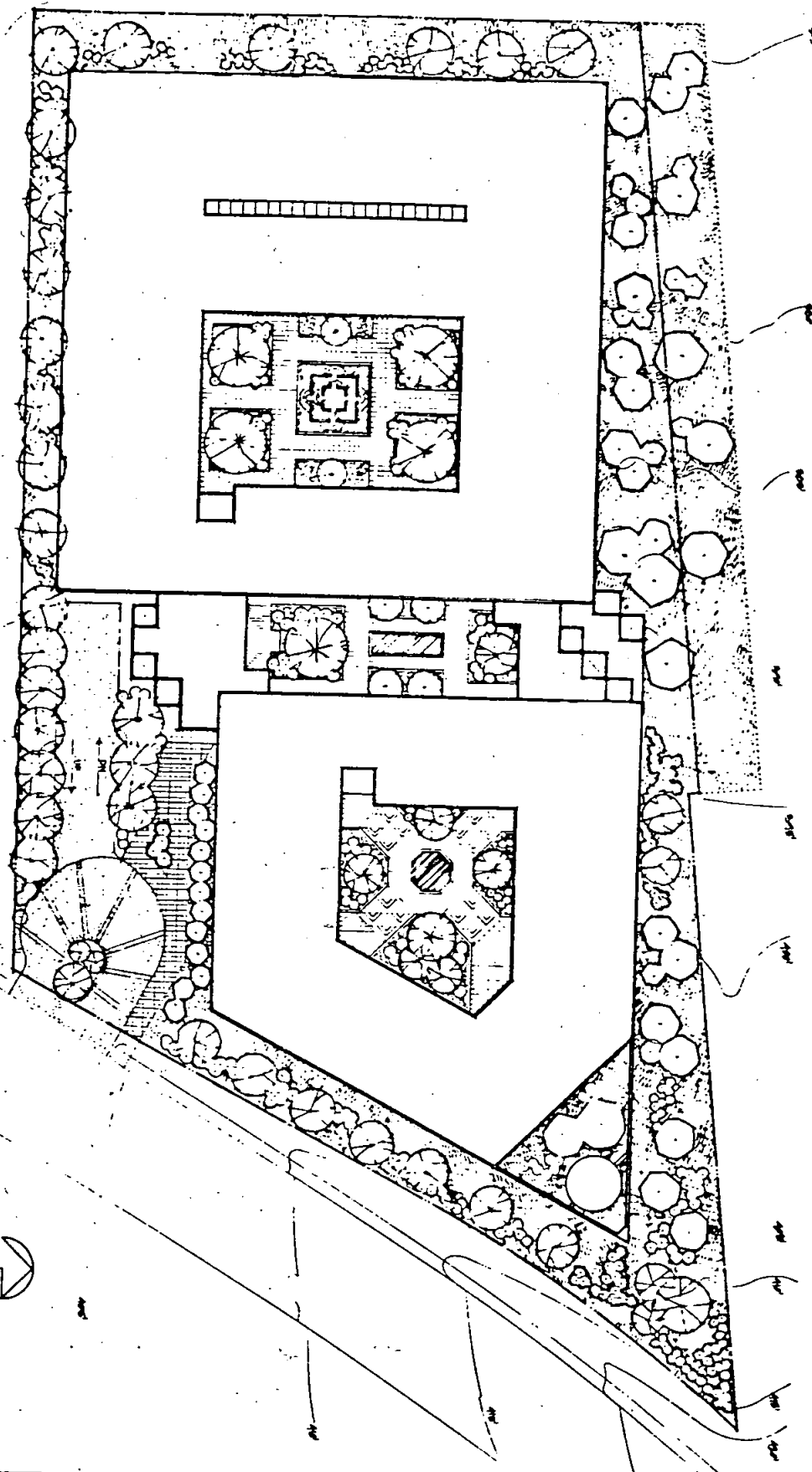
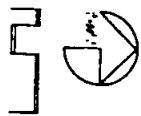
ROAD

18-47
2-N26-18
BOUNDARY
--575.78--
ROAD
AS A PUBLIC STREET BY RESOLUTION
F/P No 101883. RECORDED 6-5-64
1964 O.R.

9.03 Building Plan or Floor Plan(s)

PROGRAM
 BUILDING
 142,350 S.F.
 PARKING GARAGE
 145,466 S.F.
 PARKING
 262 full size
 223 compact
 485 total

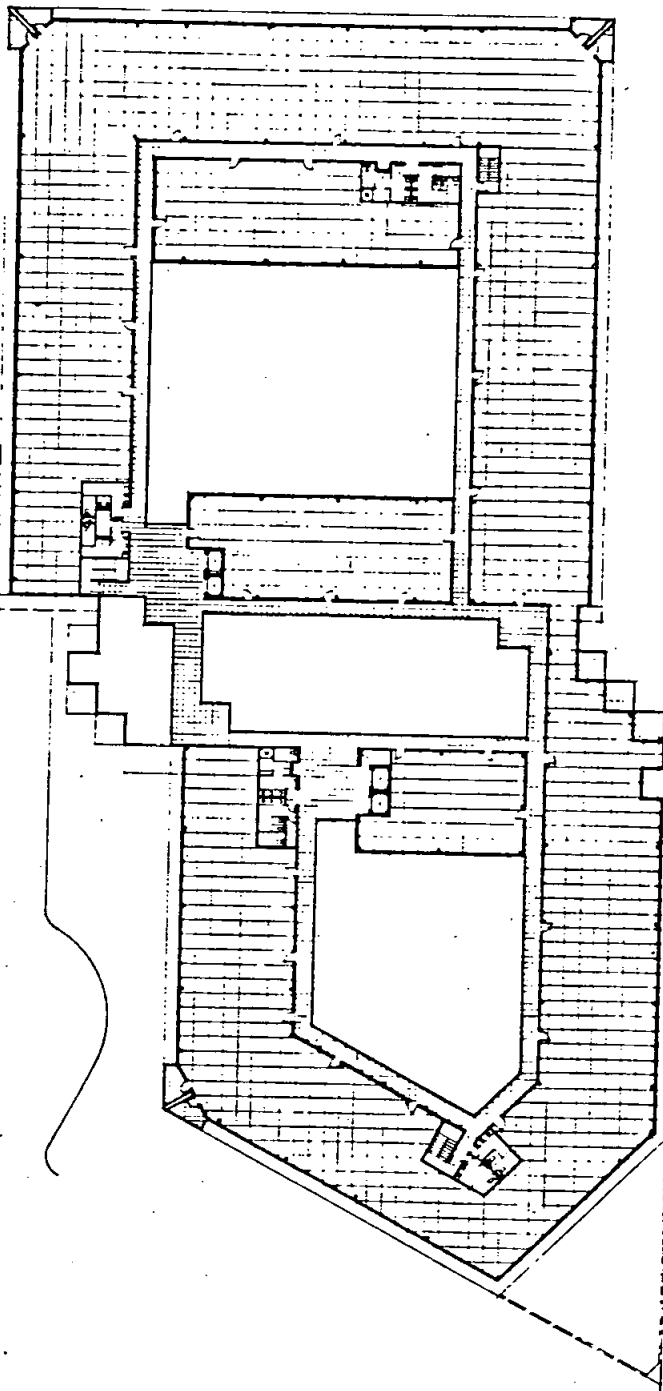
SITE PLAN
 SCRIPPS PLAZA



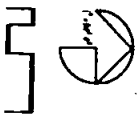
BRIAN PAUL & PARTNERS ARCHITECTS AND PLANNERS / SAN DIEGO, CA

MC KELLAR DEVELOPMENT
 OF LA JOLLA

DATE: 8-8-84	Δ	Δ
SCALE: 1/8" = 1'-0"	Δ	Δ
PROJECT NO.	Δ	Δ



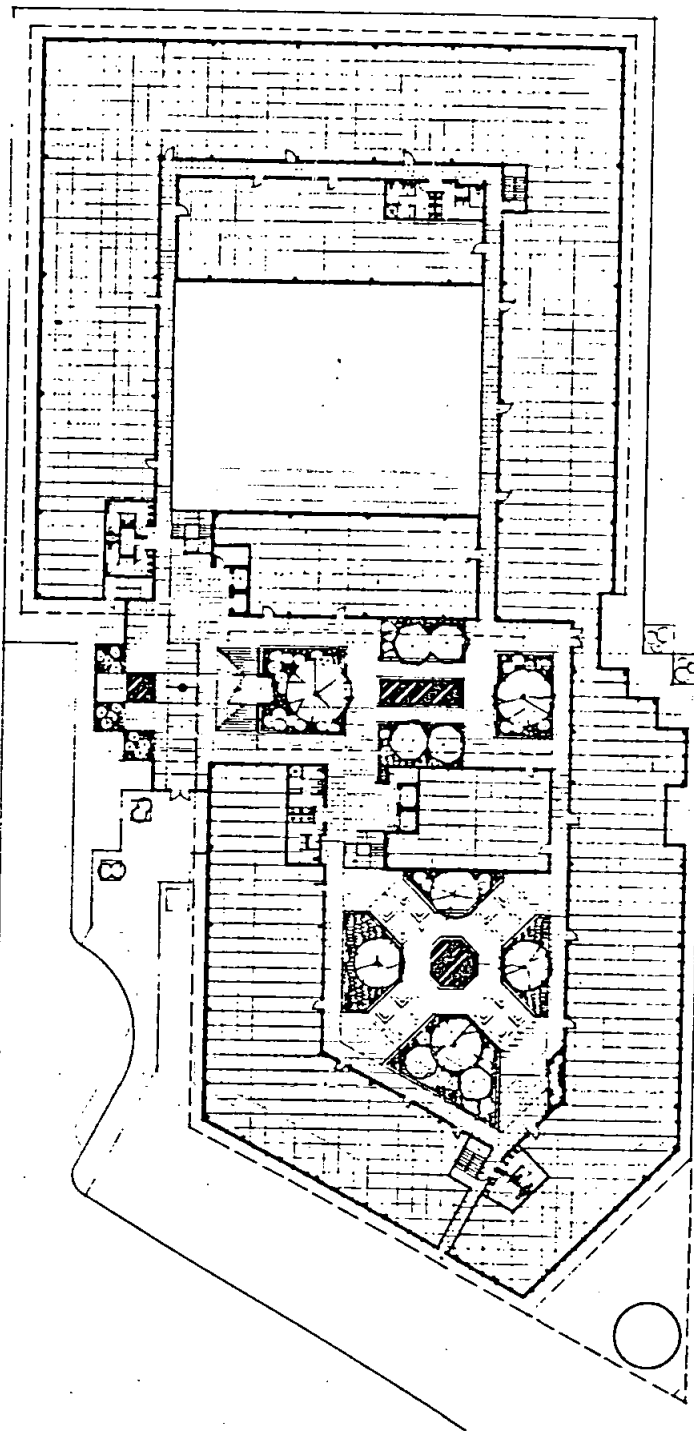
FLOOR PLAN
LEVEL 4
SCRIPPS PLAZA



BRIAN PAUL & PARTNERS ARCHITECTS AND PLANNERS / SAN DIEGO, CA

MC KELLAR DEVELOPMENT
OF LA JOLLA

DATE: 02.01.84	Δ	Δ
BY: B. PAUL	Δ	Δ
FOR: B. PAUL	Δ	Δ

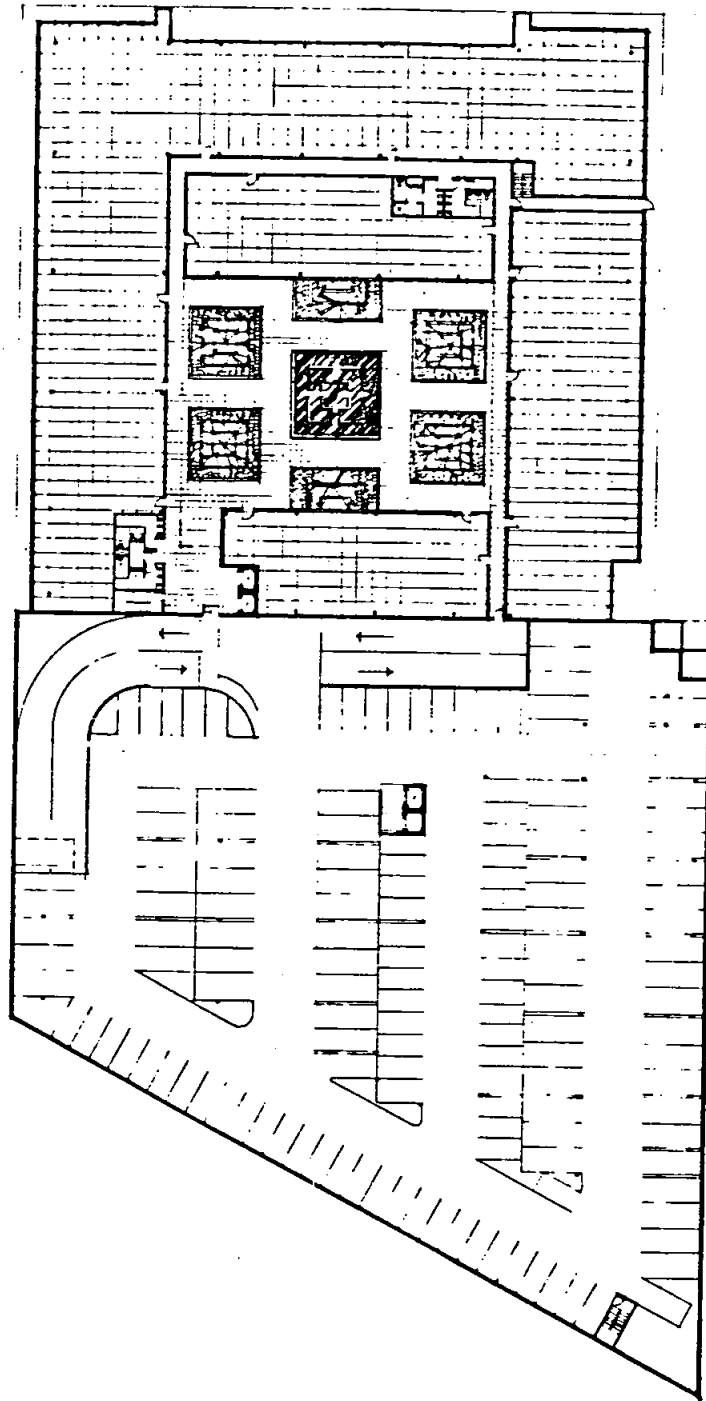



 GROUND FLOOR PLAN
 LEVEL 3
 SCRIPPS PLAZA

BRIAN PAUL & PARTNERS ARCHITECTS AND PLANNERS / SAN DIEGO, CA

MC KELLAR DEVELOPMENT
OF LA JOLLA

DATE	08/01	Δ	Δ
BY	Δ	Δ	Δ
REVISION			

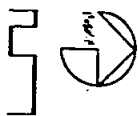
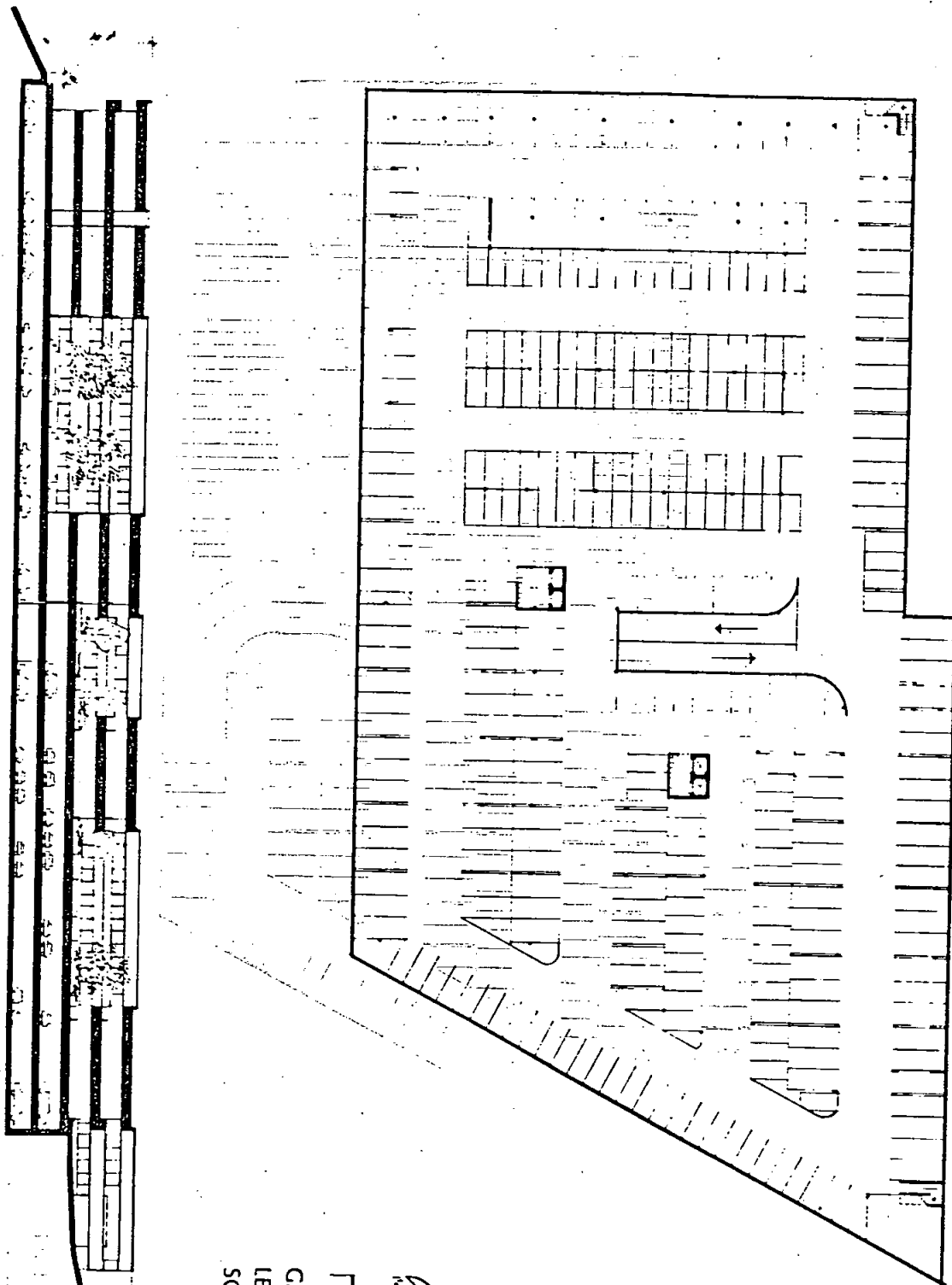




 PARKING/FLOOR PLAN
 LEVEL 2
 SCRIPPS PLAZA

BRIAN PAUL & PARTNERS ARCHITECTS AND PLANNERS / SAN DIEGO, CA

4		MC KELLAR DEVELOPMENT OF LA JOLLA	DATE: 02.88	Δ	Δ
			BY: [Signature]	Δ	Δ
			CHECKED BY: [Signature]	Δ	Δ

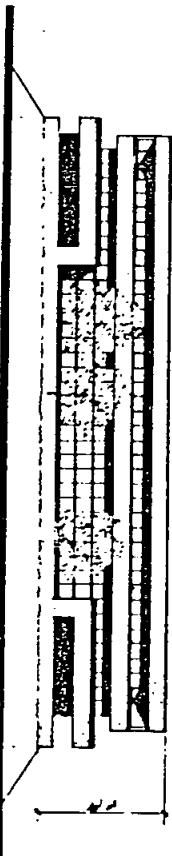


GARAGE PLAN
LEVEL 1
SCRIPPS PLAZA

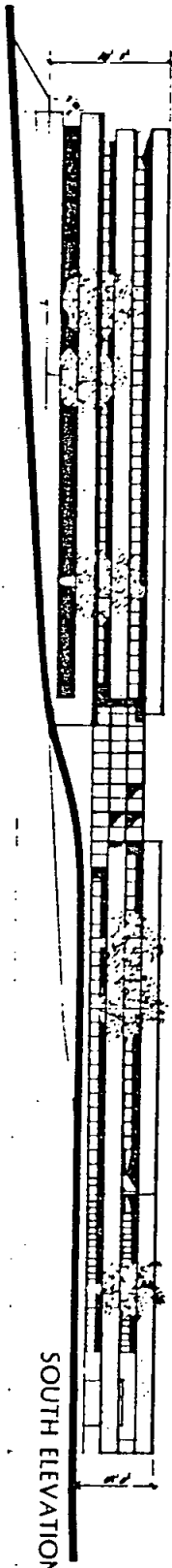
L4
L3
L2
L1

LONGITUDINAL SECTION

WEST ELEVATION
SCRIPPS PLAZA



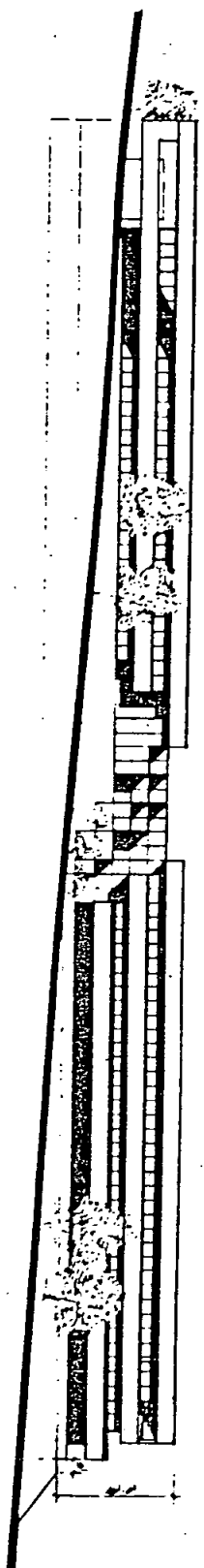
SOUTH ELEVATION



EAST ELEVATION



NORTH ELEVATION



BRIAN PAUL & PARTNERS ARCHITECTS AND PLANNERS / SAN DIEGO, CA

MC KELLAR DEVELOPMENT
OF LA JOLLA

DATE: 10/1/81	BY: B.P.	Δ	Δ
SCALE: 1/4" = 1'-0"	DATE: 10/1/81	Δ	Δ
PROJECT: MC KELLAR DEVELOPMENT	BY: B.P.	Δ	Δ

SCRIPPS PLAZA PRELIMINARY LANDSCAPE PLAN

VERTICAL PLANT / SHADE TREE PLANTING
15' GROUND
- BOUTANIC CUSCUTTA / BOUTANIC
- BOUTANIC CUSCUTTA / BOUTANIC
- BOUTANIC CUSCUTTA / BOUTANIC

OUTER CROWN
VOLUME PLANT

VIEW PLANTING

15' GROUND
- BOUTANIC CUSCUTTA / BOUTANIC
- BOUTANIC CUSCUTTA / BOUTANIC

INTERIOR PLANTING
15' GROUND
- BOUTANIC CUSCUTTA / BOUTANIC
- BOUTANIC CUSCUTTA / BOUTANIC

OUTER CROWN

TRAIL PLANTING

INTERIOR PLANTING
15' GROUND
- BOUTANIC CUSCUTTA / BOUTANIC
- BOUTANIC CUSCUTTA / BOUTANIC

INTERIOR PLANTING
15' GROUND
- BOUTANIC CUSCUTTA / BOUTANIC
- BOUTANIC CUSCUTTA / BOUTANIC

LAWN - 15' GROUND

LAWN PLANTING
15' GROUND
- BOUTANIC CUSCUTTA / BOUTANIC
- BOUTANIC CUSCUTTA / BOUTANIC

BRIDGE PLANTING & ENTRY

PERIMETER / ENTRY PLANTING
15' GROUND
- BOUTANIC CUSCUTTA / BOUTANIC
- BOUTANIC CUSCUTTA / BOUTANIC

SMALL PLANTING ENTRY
15' GROUND
- BOUTANIC CUSCUTTA / BOUTANIC
- BOUTANIC CUSCUTTA / BOUTANIC

SCALE 1" = 20' 0"

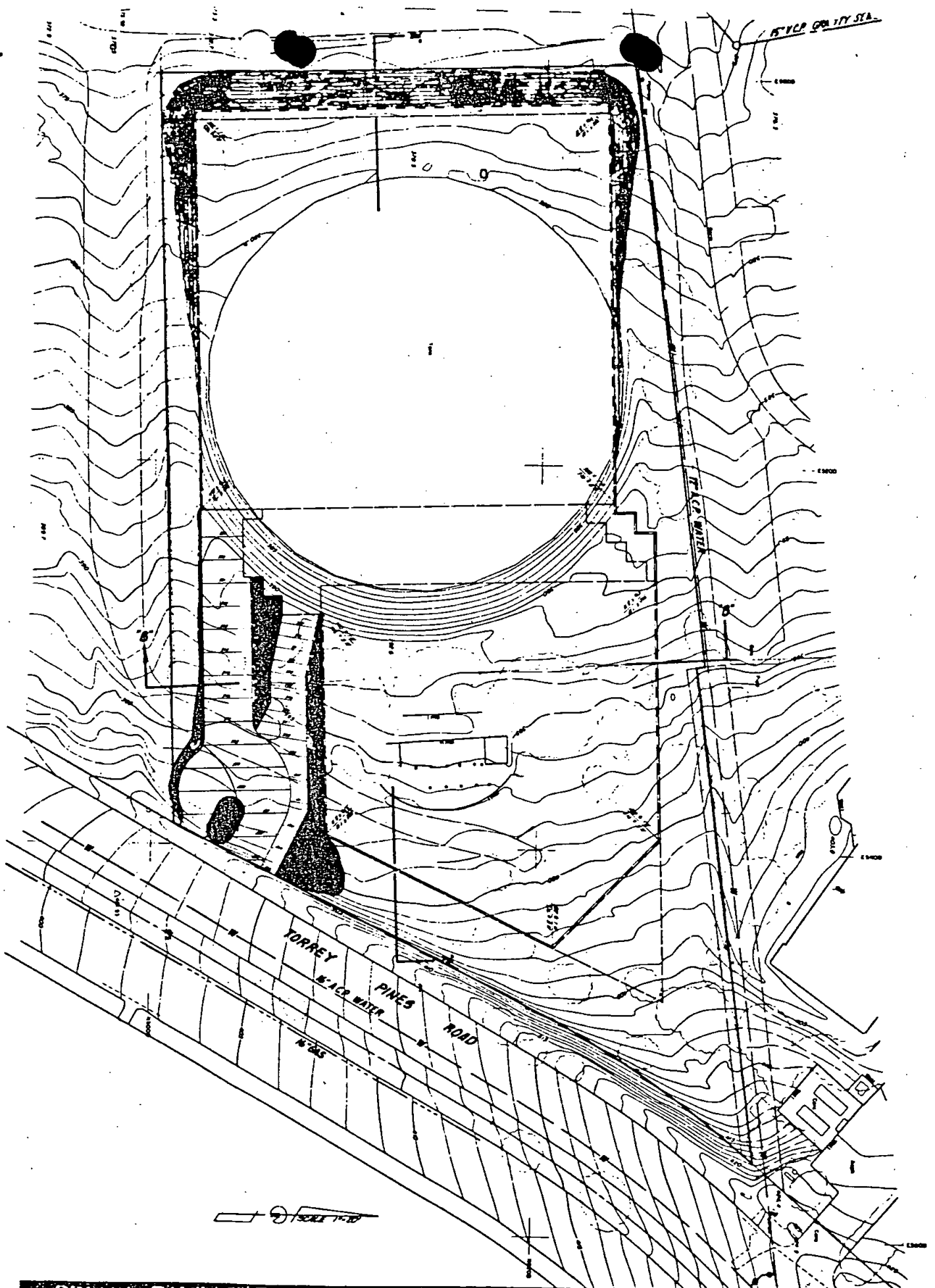


MC KELLAR DEVELOPMENT
OF JOLLA

W. L. GARNER AND COMPANY, A.E.L.A.

DATE	BY	REVISION
10/1/77	WLG	1.0
10/1/77	WLG	1.1
10/1/77	WLG	1.2
10/1/77	WLG	1.3
10/1/77	WLG	1.4
10/1/77	WLG	1.5
10/1/77	WLG	1.6
10/1/77	WLG	1.7
10/1/77	WLG	1.8
10/1/77	WLG	1.9
10/1/77	WLG	2.0

8



BRIAN PAUL & PARTNERS ARCHITECTS AND PLANNERS / SAN DIEGO, CA

VEN

MC KELLAR DEVELOPMENT

1" = 100' 1" = 100' 1" = 100'

9.04 LESSEE IMPROVEMENTS SUBJECT TO SECTION 6.09, OWNERSHIP OF
IMPROVEMENTS AND PERSONAL PROPERTY:

9.05 CITY PERSONAL PROPERTY SUBJECT TO SECTION 6.09, OWNERSHIP OF
IMPROVEMENTS AND PERSONAL PROPERTY:

9.06 General Development Plan.

The General Development Plan consists of:

- a. Plot Plan
- b. Development Schedule
- c. Financial Plan
- d. Schematic Elevations
- e. Landscape Plan
- f. Others as applicable

and is filed in the Office of the City Clerk referenced to this lease.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of the 14th day of AUGUST, 1984, by and between MCKELLAR DEVELOPMENT OF LA JOLLA, a California corporation (the "Developer"), and SCRIPPS CLINIC AND RESEARCH FOUNDATION, a California nonprofit corporation (the "Foundation"), with reference to the following facts:

A. The City of San Diego (the "City") is the owner of certain land in said City consisting of approximately 2.87 acres. City has, by appropriate municipal action, granted to the Foundation an option to lease such land. The Option, the Lease, and the legal description are as set forth in Exhibit "A", attached hereto and incorporated herein by this reference.

B. Foundation, subject to the approval of City, proposes to assign the said Option or (if so required by City) to exercise the Option and assign the Lease to Developer, and Developer proposes to accept such assignment under the terms of this Development Agreement..

C. Developer shall develop and construct upon said leased land a project composed of (1) an office building containing approximately 140,000 sq. ft.; (2) tenant improvements, fixtures, facilities, systems, fixed equipment and other interior improvements in the building; (3) parking areas capable of accommodating approximately 485 automobiles in single car (non-tandem) stalls; (4) site landscaping; (5) access facilities to the public street; and, (6) related utilities, facilities, excavation, filling, grading, flood protection and other improvements all as generally depicted on Exhibit "B" attached hereto and incorporated herein by this reference. All of the foregoing items (1) through (6) shall be hereinafter referred to collectively as "The Project".

D. The Developer intends to lease the Project, subject to the Land Lease from the City to the Foundation pursuant to the terms of that certain Building Lease which is attached hereto as Exhibit "C" and incorporated herein by this reference (the "Building Lease").

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

SERVICES OF DEVELOPER

The Developer shall provide all customary developer services necessary for the turn-key completion of the Project, including, without limitation, arranging all necessary financing for the Project, obtaining all governmental and utility approvals, and Project as provided in Article II hereof, coordinating and supervising the work of architects, engineers, consultants, construction contractors, and all other parties involved in the performing all other duties and obligations as set forth in this Agreement, specifically including (without limitation) observing the obligations imposed by the Option and Lease in Exhibit "A" and preserving the rights and privileges conferred thereby.

ARTICLE II

FINANCING OF PROJECT

2.1 Developer to Obtain Financing. The Developer shall obtain all financing required for development, construction and completion of the Project, as well as permanent financing for the Project. Such financing may be procured entirely from institution lenders, or may consist of funds obtained through institutional loans and capital contributions by the Developer. The Developer agrees to advance all fees and costs for the Project that are required over and beyond loan funds from such financing.

2.2 Encumbrance of Project. Developer may execute one or more trust deeds as security for a loan or loans during the development period, encumbering the Project, subject to the retained interest of Foundation to enter into the Building Lease and to Foundation rights under such lease when executed. Foundation herewith subordinates such lease and the rights hereunder to lien of any such trust deed, and by "take out" financing obtained with respect thereto and will execute such documents as may be requested by any lender so secured to evidence such subordination.

ARTICLE III

ARCHITECTURAL AND ENGINEERING SERVICES

3.1 Architect. The architect to be retained by the Developer for planning, design engineering and supervision for the Project (the "Project Architect") shall be Brian Paul, San Diego, California.

3.2 Conceptual Drawings and Specifications.

3.2.1 The Developer has furnished the Foundation with conceptual drawings and specifications and study model of the Building and Site (the "Concept").

3.2.2 Foundation has advised the Developer of its approval thereof or objections thereto. Approval by the Foundation shall not be deemed an acceptance of any structural or engineering defects in the drawings or any deviation from requirements of cognizant authorities, nor is it to be considered approval of the Design Development Drawings and Specifications or Working Drawings and Specifications.

3.3 Submission to City as Lessor.

3.3.1 Developer (acting in the name of Foundation if appropriate) shall forthwith deliver to the appropriate departments of the City the architectural and engineering drawings and specifications for the Building and Parking area, the model and any other required data and fees, for the purpose of compliance with the Option in Exhibit "A".

3.3.2 If the City objects to any part of the submittal, the Developer will notify the Foundation, in writing, of the objections and of the changes required to meet said objections by the City. The Foundation may, within fourteen (14) days after receiving the Developer's notice of the City's required changes, state in writing any objections it may have to the changes required by the City, and the Developer will use its best efforts to persuade the City to modify its changes with relation to the Foundation's objections thereto. If the Foundation makes no objections within said period of fourteen (14) days, or to the extent the City will not modify its changes with relation to the Foundation's objections after the Developer is given an opportunity to confront and negotiate with the City, the Foundation shall be deemed to have approved such changes required by the City, whether or not they are in substantial accordance with Exhibit "B"; provided, however, if such changes required by the City are so substantial as to

materially and adversely affect the satisfactory consummation of the transactions contemplated hereby, including without limitation the beneficial use and occupancy of the Project by the Foundation pursuant to the Building Lease, either party may terminate the Agreement within thirty (30) days after receipt of final notification that the City will not accept the requested Project, whereupon neither the Developer nor the Foundation shall have any further rights, obligations or liabilities by reason of this Agreement.

3.4 Design Development Drawings and Specifications; Working Drawings.

3.4.1 Developer shall promptly prepare Design Development Drawings and Specifications after City approval of the submissions provided in 3.3 above, which shall be delivered to Foundation for its approval within fifteen (15) working days of such delivery. If Foundation fails to notify Developer within said fifteen (15) days of any objections, the Design Development Drawings and Specifications shall be deemed approved. If Foundation objects to any portion of said Design Development Drawings and Specifications, it shall specify its objections, and Developer shall incorporate any such changes to the extent consistent with City standards and so long as the cost resulting therefrom does not exceed the costs estimated for the Project based on the Conceptual Drawings.

3.4.2 Following approval of the Design Development Drawings and Specifications, the Developer shall deliver to Foundation for its review Working Drawings and Specifications generally consistent with the approved Conceptual Drawings and Design Development Drawings and Specifications. Foundation shall specify any item which is inconsistent with such prior approvals within fifteen (15) working days of such submission and Developer shall change the Working Drawings and Specifications as necessary to bring them into conformance. If no inconsistency is noted by Foundation within said fifteen (15) days, the Working Drawings and Specifications shall be deemed approved.

3.5 Tenant Improvements.

3.5.1 At the Foundation's direction, the Developer shall retain the services of an office space design specialist mutually selected by the Foundation and the Developer. Said specialist's fees shall be included in the Tenant Improvement Costs. The Foundation shall furnish such information as is needed by said specialist and the Project Architect to timely prepare plans and specifications for tenant

improvements for the space to be leased by Foundation, and in accordance with the budget provided in 4.2 below (the "Tenant Improvements"), and the Working Drawings.

3.5.2 The Developer shall furnish the Foundation with detailed working architectural and engineering drawings and specifications for the Tenant Improvements at the same time as the Working Drawings and Specifications are submitted. Said Tenant Improvements Working Drawings shall be consistent with the approved Working Drawings furnished by the Developer.

3.5.3 Within fifteen (15) working days after receipt by the Foundation of the Tenant Improvements Working Drawings, the Foundation shall notify the Developer of its approval thereof or objections thereto. Failure of the Foundation so to notify the Developer shall be deemed an approval of said Tenant Improvements Working Drawings. If the Foundation objects to said Tenant Improvements Working Drawings, the Foundation shall specify its objections, and the Developer will revise said Tenant Improvements Working Drawings to incorporate such changes to the extent such changes are not inconsistent with applicable City Building Code requirements, or the Tenant Improvements Budget of 4.2 below.

3.5.4 Tenant Improvements shall not include that work necessary or desired to produce the Building, Garage and Site as shown for "Building Shell" in Exhibit "B".

3.5.5 Upon receipt of approval of the Foundation, the Developer shall deliver to the Foundation for its review and approval the Working Drawings and Specifications general. CONSTRUCTION SERVICES

4.1 Commencement of Construction. Upon receipt of the necessary building permits and of the Foundation's approval of the Working Drawings and Specifications (inclusive of Tenant Improvements), the Developer shall proceed with due diligence and reasonable good faith efforts with the construction and completion of the Project in substantial accordance herewith.

4.2 Tenant Improvements Budget. Developer will furnish and pay for Tenant Improvements designated by Foundation up to an aggregate sum equal to \$15.00 for each square foot of area leased. Developer will submit to the Foundation for review and approval the Developer's contract cost of the Tenant Improvements, in a detailed and itemized format satisfactory to the Foundation (the "Tenant Improvement Budget"). The Foundation herewith approves said Tenant Improvement Budget, if it shall be within the limits to be paid

by Developer and no charges shall be incurred by or assessed to Foundation. If the Tenant Improvement Budget shall exceed the limit to be paid by Developer, Foundation may elect to:

(1) cause such work to be rebid by and let to other contractors; (2) modify the approved drawings; (3) pay the additional cost; or, (4) any combination of such elections, but at no cost to Developer. If upon rebid the Tenant Improvement Budget still exceeds the limit to be paid by Developer, Foundation shall, within fifteen (15) working days of such bid, elect (2) or (3), or a combination thereof.

4.3 Delays. The construction of the Project shall be carried on with due diligence. The Project shall be completed and possession of the Project (together with Tenant Improvements) shall be delivered to the Foundation not later than eighteen (18) months from the execution of this Agreement, nor later than twelve (12) months after a building permit is issued for construction of the Building each of which date shall be extended an additional four (4) months if such delivery cannot be made despite good faith efforts by Developer to perform; provided further, however, that the time during which the Developer is delayed (i) by fire, weather or acts of God, (ii) by delay in obtaining or inability to obtain the necessary materials, tools, implements and appliances on account of governmental acts, restrictions or regulations, (iii) by any civil disorders, labor disturbances, strikes, boycotts, walk-outs, labor troubles or like obstruction action by any person or persons, or (iv) by delays of which the fault of the Foundation or changes requested by the Foundation of this Agreement is a proximate cause, shall be added to the aforesaid times for such completion and delivery of possession. If the Developer shall fail to complete the construction of the Project and deliver possession of the Project by the above-referenced deadline, the Foundation shall have the right to pursue any and all equitable or legal remedies available to it.

4.4 Notice of Estimated Completion Date. The Developer agrees to give the Foundation not less than two months' prior written notice of the date by which the Developer estimates that the Project will be ready for possession by the Foundation.

4.5 Changes. Should the Foundation, at any time or times, desire to make any additions to, or alterations, deviations or omissions from the scope of the work specified in the drawings and specifications which are from time to time approved or deemed to have been approved (the "Changes"), the Foundation shall be at liberty to do so, but only subject to

and in compliance with all applicable laws, ordinances and administrative determinations, and subject to the Developer's consent which shall not be unreasonably withheld. The Developer may withhold consent to material changes from the approved design, or changes which would cause reduction in rentable area. The Changes shall in no way affect or make void this Agreement.

4.6 Costs for Changes. Before commencing any Changes, the Developer agrees to notify the Foundation of the costs thereof. Any proposed Changes which do not alter the Total Project Costs by more than \$1,000.00 and do not affect the scope or completion time for the work, shall be approved or disapproved by the Foundation within five (5) business days after the Foundation receives the notice thereof. All other proposed Changes shall be approved or disapproved by the Foundation within ten (10) days after the Foundation receives notice thereof. If the Foundation does not give the Developer written notice within said time deadlines that the Foundation does not wish to go forward with the Changes in view of such costs, the Foundation shall be deemed to have agreed to such costs as the costs for the Changes, and shall pay such costs upon demand by Developer. ~~a. Implementer and applicant on account of governmental acts, restrictions or regulations~~ (iii) by 4.7 Special Accommodations for Foundation. In addition to the portion of the Project and the Tenant's Improvements to be made available to Foundation for lease as provided herein, Developer acknowledges that the following special accommodations (which Developer will use reasonable good faith efforts to obtain or to assist Foundation in obtaining), are of great importance to the effective use and enjoyment by Foundation: ~~set and deliver project in office~~ Project by the above-referenced deadline, the Foundation shall have the right to ~~reasonable ingress and egress improvements~~ which Developer deems appropriate to enhance and improve access improvement to the Project from Torrey Pines Road as recommended by a traffic consultant employed by Developer.

b. An easement or similar right or privilege to install and maintain conduit to link the Project with Foundation's main campus at 10666 North Torrey Pines Road (including the adjacent Phase III Immunological Research Building), to the extent granted by the City over other City lands and consistent with Exhibit "A," to be obtained, improved and maintained at Foundation's expense.

c. A right to install at Foundation's expense, in a location on the Project which does not unreasonably interfere with Developer's use of the Project, a

"Line-of-Sight" microwave facility to line with said main campus.

d. A right during the Building Lease term, and consistent with the City's right to install and maintain at Foundation's expense, a pedestrian and utility vehicle path or roadway which is direct and internal, not requiring use of the dedicated public streets.

e. Reasonable approval of co-tenants in the Project.

Therefore, Developer agrees to provide the foregoing as a part of the Project. The parties recognize that certain items will require the approval of the City of San Diego, and as to these items, Developer agrees to use reasonable good faith efforts to accommodate the Foundation.

ARTICLE V.

LEASING OF PROJECT

5.1 Notice of Completion and Delivery of Possession. The Developer shall give the Foundation written notice of the completion of the Project and the obtaining of certificates of occupancy in such form as will permit the occupancy contemplated hereby. Within five (5) days (exclusive of Saturdays, Sundays and holidays) after the Developer shall have given the Foundation such notice, provided the Project is completed, the Owner shall deliver possession therein leased to the Foundation and the Foundation shall accept possession, and concurrently therewith the Foundation and the Owner shall date as of said date and execute the Building Lease; provided, however, that the Foundation shall not be obligated to take possession of the Project or to pay rent under the Building Lease prior to July, 1985. If, notwithstanding the Developer's notice of completion, the Foundation contends that the Project is not completed, the Foundation shall specify in writing with said five (5) days after the Developer shall have given the Foundation said notice of completion in what respect the Project is not completed. If the Foundation's contentions are correct, possession of the Project shall be delivered to the Foundation when the Foundation's correct objections have been obviated. If the Foundation's contentions are incorrect, the term of the Building Lease shall be deemed to have commenced as of the date the Foundation should have taken possession. Any such dispute as cannot be resolved between the parties shall be resolved by a single neutral architect mutually selected by the

Developer, the Foundation and the Project Architect, or by the agreement of a majority of said three parties.

5.2 Definition of "Completed". "Completed" as used in this Agreement means complete in all respects as provided in the approved Working Drawings and in the Tenant Improvements Working Drawings as modified by the approved Changes. Notwithstanding the completion of the Project, the commencement of the Building Lease, and the acceptance and occupancy of the Project by the Foundation, any items which are incomplete, improperly done or defectively constructed, including both patent and latent defects, shall be completed and corrected promptly by the Developer, at the Developer's or the Owner's expense, in full conformance with the approved Working Drawings and the Tenant Improvements Working Drawings, as modified by the approved Changes.

5.3 Base Rent. The monthly rental sum shall be:

a. for the first 15,000 square feet of net rentable area (which must be in Lease Area "A"), the base rent shall be \$1.20 per month per square foot;

b. for the next 15,000 square feet of net rentable area which must include any balance of Lease Area "A," and then such of Lease Area "B," as necessary to reach the total leased square footage, the base rent shall be \$1.40 per month per square foot;

c. for space over 30,000 square feet of net rentable area (all in Lease Area "B"), the base rent shall be \$1.65 per month per square foot; as of said date and execute the Building Lease, provided, however, that d. All such rents shall be on a "full office service" basis to include all utilities, janitorial, taxes, repairs, maintenance, and management as stated in the Lease (Exhibit "C");

e. This sum, so established shall be written in Article IV, Section 4.1 of the Lease.

Exhibit "A" to the Building Lease (attached hereto as Exhibit "A") delineates, in schematic form, Lease Areas A and B.

5.4 Term. The initial term of the Lease shall be five (5) years but shall be established at the time of execution by an independent accounting firm designated by Foundation so as to be consistent with, in their opinion, an "operating lease" in accord with Financial Accounting Standards Board Bulletin 13. Foundation shall be granted three (3)

options (as provided in the Building Lease) for consecutive additional terms of five (5) years each at market rates and terms.

5.5. Lease Areas. Within ninety (90) days of execution of this Agreement, Foundation by written notice to Developer shall preliminarily identify the area in which it intends to lease. Upon written notice, given to Developer not later than one hundred twenty (120) days prior to completion date, Foundation may elect to lease up to 41,000 square feet. In making such election, Foundation shall select first from Lease Area A until all of such area is taken, thereafter, from Lease Area B until the total leased area is 41,000 square feet. All such space shall be contiguous on each floor.

ARTICLE VI

REIMBURSEMENT OF FOUNDATION

6.1 Option Payments. Developer shall reimburse Foundation, upon approval by the City of the assignment of Exhibit "A," for all payments and costs incurred to that date by Foundation for the acquisition and retention of the Option contained in Exhibit "A". Such reimbursement, however, shall not exceed \$125,000.

ARTICLE VII

TERMINATION

In the event of termination upon the City's Disapproval of the Project pursuant to Section 3.3, the Developer and the Foundation shall each bear their own respective costs and neither shall seek reimbursement from the other.

ARTICLE VIII

GENERAL PROVISIONS

8.1 Notices. All notices, requests or demands herein provided to be given or made or which may be given or made by either party to the other shall be in writing and shall be deemed to have been duly given when delivered personally to any one of the persons designated in writing from time to time for the receipt of personal notices, requests and demands by and on

behalf of the party to whom such notices, requests or demands are to be given. The Foundation hereby so designates Arnold LaGuardia, the Developer hereby so designates Christopher S. McKellar. Whenever any person or persons are designated for the receipt of personal notices, requests and demands, the address or addresses at which such person or persons may generally be found shall also be stated in writing if said address is different from the address specified below. Alternatively, all notices, requests or demands herein provided to be given or made or which may be given or made by either party to the other shall be in writing and shall be deemed to have been duly given on the third day after the day the same is enclosed in a sealed envelope and deposited in any post office or branch post office regularly maintained in San Diego County by the United States government, certified mail, postage thereon prepaid, or on the first day after the same is deposited prepaid with a telegraph or cable company for immediate transmission, and addressed as follows:

To the Developer: MCKELLAR DEVELOPMENT OF LA JOLLA
1250 Prospect, Suite 103
La Jolla, CA 92037

Foundation: Attn: Christopher S. McKellar

With a Copy to: Gray, Cary, Ames & Frye
1200 Prospect, Suite 575
La Jolla, CA 92037

Attn: Christopher C. Calkins, Esq.

To the Foundation: SCRIPPS CLINIC AND RESEARCH
FOUNDATION
10666 North Torrey Pines Road
La Jolla, CA 92037

In the event of termination of the Project pursuant to Section 8.1, the Developer shall be responsible for the payment of the reasonable and necessary costs of the Foundation. In the event of termination of the Project pursuant to Section 8.2, the Developer shall be responsible for the payment of the reasonable and necessary costs of the Foundation. In the event of termination of the Project pursuant to Section 8.3, the Developer shall be responsible for the payment of the reasonable and necessary costs of the Foundation.

8.2 Short Form of Lease. At the time of execution of the Building Lease, the Foundation and the Owner shall execute, in a manner suitable for recording, a Short Form of Lease in a form mutually approved by the Foundation and the Developer.

8.3 Independent Status. It is understood and agreed that in performing the obligations on its part to be performed hereunder, the Developer shall act independently and not as the representative, agent, servant or employee of the Foundation. Developer shall not be construed to be or held as partner, joint venturer or associate of Foundation.

8.4 Assignment. Prior to the recordation of the Short Form of Lease pursuant to the provisions of Section 5.3 of this Agreement, no party may assign this Agreement or any of its rights or obligations, or both, herein without the other's written consent thereto, which consent shall not be unreasonably withheld, except that the Developer may assign its rights under this Agreement, without the Foundation's consent, for security purposes to the person, firm or corporation furnishing the construction or permanent financing for the Project, or to an entity which is more than sixty percent (60%) owned and controlled by the Developer or its individual owners. Subject to the foregoing, the provisions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto. No assignment shall effect a novation or otherwise release the assignor from its obligations under this Agreement unless the other party to this Agreement consents thereto in writing. Whenever consent to an assignment is required under this Section 8.4 and such consent is given, such consent shall not be deemed a consent to any other assignment.

8.5 Time of the Essence. Time is of the essence of the obligations of the parties hereto.

8.6 Broker's Commissions. The Developer, the Owner and the Foundation hereby represent and warrant to each other that neither has incurred any obligation to pay any broker's commission or finder's fee in connection with entering into this Agreement, nor the option and lease with the City. Each therefore agrees to indemnify and hold harmless the other from and against any other such commission or fee claimed to be owing as a result of any commitment by the indemnifying party. This clause has no application to any broker's commission or finder's fee in connection with any loan financing which may be obtained for the Project, which loan brokerage commission or finder's fee shall be included as part of the Developer's Costs, nor any leasing commissions for other tenants of the Project hereafter acquired by Developer as to which Foundation shall be held harmless and indemnified.

8.7 Headings. The captions and paragraph headings used in this Agreement are inserted as a matter of convenience and for reference, and are not a part of this Agreement and in no way define, limit or describe the scope of this Agreement or the intent of any provisions hereof.

8.8 Early Entry by Foundation. The Developer shall permit such persons as are designated in writing by the Foundation to enter at the Foundation's sole risk upon the

Project from time to time prior to delivery of possession thereof to the Foundation for the purpose of inspecting the Project and doing work thereon and installing its equipment and facilities therein, provided such entry does not violate any union agreements or governmental laws or regulations or interfere with or in any way hinder the Developer's construction and completion of the Project. The Foundation agrees to indemnify and hold the Developer harmless from any damages, claim or liability arising out of or in connection with the entry, as aforesaid, by the Foundation or its agents upon the Project, the Developer's gross negligence or willful misconduct excepted. Such entry shall be subject to such reasonable rules and regulations as the Developer may from time to time prescribe.

8.9 Cumulative Remedies. Notwithstanding any rights or remedies which are set forth in this Agreement, such rights or remedies shall not be exclusive and the parties hereto shall have any rights or remedies at law or in equity which may be available in the premises.

8.10 Additional Documents. Provided the other party is not in default, each party agrees to execute all other instruments, documents or other papers, and perform all acts necessary and proper to carry out and consummate the transactions contemplated hereby.

8.11 Survival of Provisions. The provisions of this Agreement to the extent applicable shall survive the execution of the Building Lease.

8.12 Entire Agreement. This Agreement and the documents referred to herein or incorporated herein by reference constitute the entire agreement between the parties and supersede all prior negotiations, representations, proposals, letters, understandings and agreements. This Agreement cannot be modified or altered except by a written instrument signed by the authorized representatives of all parties, provided, that Developer shall be deemed to be the authorized representative of Owner. No officer, agent, employee or representative of any party has any authority to make any representation or promise in connection with this Agreement or the subject matter hereof which is not contained herein, and the parties agree that they have not executed this Agreement in reliance upon any such representation or promise.

8.13 Rule Against Perpetuities. In the event the initial term of the Building Lease does not commence within five (5) years after the date thereof, then this Agreement and

the Building Lease shall be null and void and of no further force and effect.

8.14 California Law Governs. This Agreement in all respects shall be subject to the laws of the State of California and shall be deemed executed and subject to performance in San Diego County.

8.15 Name. Foundation shall be entitled to reasonable sign identification of its premises under the Lease, upon its request.

8.16 Nonliability of Individuals. The members of the Board of Trustees or Board of Directors, and the officers, employees and agents of the parties hereto shall have no personal liability with respect to any of the obligations in this Agreement. In the event of an assignment by the Developer pursuant to Section 8.3, the foregoing shall not apply to any individual or general partner assignee.

8.17 Attorneys' Fees. In the event of any litigation or arbitration with respect to this Agreement, including any action to enforce or interpret this Agreement or to collect any damages or to exercise any remedies under this Agreement, the party prevailing in such action or proceedings shall be entitled to recover its reasonable costs, expenses, and disbursements incurred in connection therewith, including reasonably attorneys' fees, witness fees, consultant fees, and other such expenses.

8.18 Insurance and Bonds. To the extent required by City pursuant to Exhibit "A," any or all work for constructing and completing the Project shall be covered by performance, payment and completion bonds for the Foundation's benefit, in customary form issued by qualified insurance companies approved by the Foundation. Through the course of construction of the Project, the Developer shall pay for and maintain customary liability insurance and property damage insurance. The Developer shall also furnish or cause others to furnish all customary worker's compensation insurance and unemployment insurance for employees working on the Project. The costs of all said insurance and bonds shall be included as part of the Developer's Costs.

8.19 Governmental Controls and Permits. The Developer and the Owner covenant to take any and all action and to exercise their diligent reasonable good faith efforts and due diligence to attempt to comply with all applicable laws, ordinances and governmental regulations and to obtain all

necessary governmental approvals and permits, including zoning, conditional use permits, coastal commission permits, grading and building permits, and other such permits, as may be necessary in connection with the completion and use of the Project as contemplated in this Agreement. If for any reason any such permits cannot be obtained, either party may terminate this Agreement without further obligation, except as specified in Section 7.1 above.

8.20 Course of Construction Signs, Barricades and Access. During the course of construction, all signs, barricades, temporary structures and other matters on the Project which are visible from the public street or the adjoining property shall be subject to the mutual control and approval of the Developer and the Foundation. Both the Developer and the Owner and the Foundation may have their names prominently displayed on an aesthetically suitable sign. No other signs shall be permitted on the Project during the course of construction, including without limitation, driveways, parking areas, storage areas, utilities, equipment, and drainage areas, without the prior written approval of the Foundation.

8.21 Approvals. Except as otherwise specifically provided hereunder, no approval or consent shall be unreasonably withheld.

8.22 Authority. Each signatory represents and warrants that he has authority to execute this Agreement and upon executing the Agreement shall be binding upon, and enforceable against, the party for whom he is signatory.

IN WITNESS WHEREOF, this Agreement is entered into as of the date first set forth above.

"Foundation"

SCRIPPS CLINIC AND RESEARCH FOUNDATION,
a California nonprofit corporation

By:



Its



"Developer"

McKELLAR DEVELOPMENT OF LA JOLLA,
a California corporation

By:



Its

PRESIDENT

EXHIBIT A

Note: "Exhibit A" consists of a copy of the Option Agreement between the City and Scripps Clinic and Research Foundation.

9.07 EXHIBIT "E"

CORPORATE NAME

I, _____, Certify that I am the _____
of the corporation named in the attached agreement; that _____
_____ who signed this agreement on behalf of the corporation, was then
_____ of said corporation; that said
agreement was duly signed for and in behalf of said corporation by authority
of its governing body, pursuant to a resolution duly adopted by its Board of
Directors on _____, 19____ and is within the scope
of its corporate powers; and that set out below are the names of the officers
and directors of said corporation.

By: _____

CORPORATE SEAL

NAME _____
TITLE _____

NAME _____
TITLE _____

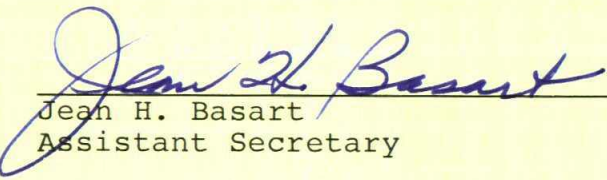
NAME _____
TITLE _____

NAME _____
TITLE _____

SCRIPPS CLINIC AND RESEARCH FOUNDATION

I, Jean H. Basart, certify that I am the Assistant Secretary of the corporation named in the attached agreement; that Charles C. Edwards, M.D., and Arnold LaGuardia, who signed this agreement on behalf of the corporation, were then the President and Vice President, Finance, respectively, of said corporation; that said agreement was duly signed for and in behalf of said corporation by authority under its bylaws and is within the scope of its corporate powers.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said corporation this 12th day of December, 1984.



Jean H. Basart
Assistant Secretary

9.08 Guarantor's Agreement.

The undersigned guarantees to CITY, its successors and assigns, in consideration of the granting of the annexed lease to _____, LESSEE, the payment by LESSEE of the rent required by said lease, and the performance by LESSEE of all of the terms, covenants and conditions thereof.

The undersigned waives notice of all defaults, and agrees that the waiver of any rights by CITY against LESSEE arising out of the defaults of LESSEE or otherwise shall not, in any way, modify or release the obligations undertaken by the undersigned.

Dated: _____

By: _____
Title

In the presence of:

Acknowledgement

Property
Bass
503

(R-83-874)

RESOLUTION NUMBER R- 257635

Adopted on DEC 13 1982

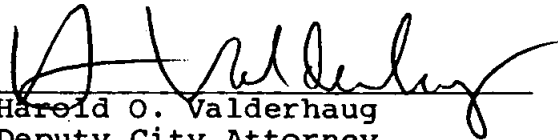
BE IT RESOLVED, by the Council of The City of San Diego, as follows:

That the City Manager is hereby authorized to execute a two-year option to lease, Parcel 1 of Parcel Map 9813, which parcel is more generally known as the Reservoir Site on North Torrey Pines Road, and which site is approximately 2.89 acres in size, with SCRIPPS CLINIC AND RESEARCH FOUNDATION, pursuant to which option Scripps Clinic shall pay an option consideration in the amount of \$125,000 per year payable \$10,416.66 per month in advance, under the terms and conditions set forth in that option to lease on file in the office of the City Clerk as Document No. RR- 257635-/.

BE IT FURTHER RESOLVED, that subject to Scripps Clinic's compliance with the terms and conditions of said option agreement, and subject to the adoption of a future resolution by the City Council certifying and approving the environmental documents which shall be prepared during the option period, the City Manager is hereby authorized to execute a 55-year lease of the Reservoir Site to Scripps Clinic for an initial lease rental in the amount of \$250,000 per year, which initial rent is based upon a fair market appraisal of the property of \$2.5 million and which lease provides for the utilization of the property for any use permitted in the SR Zone, under the terms and conditions set forth in that form of lease agreement on file in the office of

the City Clerk as Document No. RR- 257635-2.

APPROVED: John W. Witt, City Attorney

By 
Harold O. Valderhaug
Deputy City Attorney

HOV:ps
11/30/82
Or.Dept:Prop.
Job: 915482
Form=r.none

Passed and adopted by the Council of The City of San Diego
on December 13, 1982, by the following vote:

YEAS: Mitchell, Cleator, Golding, Williams, Struiksma, Gotch,
Murphy.

NAYS: None.

NOT PRESENT: Wilson. District 8 vacant.

AUTHENTICATED BY:

PETE WILSON
Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(SEAL)

By ELLEN BOVARD, Deputy.

I HEREBY CERTIFY that the above and foregoing is a full,
true and correct copy of RESOLUTION NO. R-257635
passed and adopted by the Council of The City of San Diego,
California, on DEC 13 1982.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(SEAL)

By Ellen Bovard, Deputy.

RESOLUTION NUMBER R- 257274

(R-83-436)

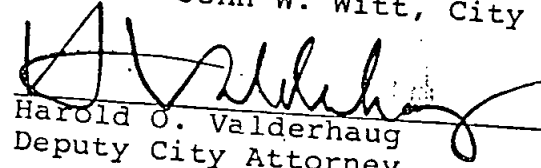
Adopted on OCT 4 1982

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

That the City Manager is hereby authorized to negotiate, for and on behalf of The City of San Diego, a two-year option agreement with SCRIPPS CLINIC, whereby Scripps Clinic would lease Parcel 1 of Parcel Map 9813, Torrey Pines Reservoir Site, for \$125,000 per year, paid in advance.

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized to negotiate with Scripps Clinic, a 50-year lease agreement for Parcel 1, Parcel Map 9813, at an annual rent of \$250,000 plus CPI and appraisal adjustments, and subject to Scripps Clinic submitting an approved Environmental Impact Report.

APPROVED: John W. Witt, City Attorney

By 
Harold O. Valderhaug
Deputy City Attorney

HOV:ps
9/15/82
Or.Dept:Prop.
Job: 915482
Form=r.none