



Real Estate Assets Department
SDC003

Document Type

LEGAL DOCUMENTS



Sub - Category

AGREEMENTS



Co. Recorder # 82-169570
6-3-82

DUPLICATE
COPY

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

NISSAN DESIGN INTERNATIONAL, INC.
c/o Allen, Matkins, Leck, Gamble & Mallory
4590 MacArthur Boulevard, Suite 500
Newport Beach, California 92660
Attention: John C. Gamble, Esq.

(Space above for Recorder's Use Only)

AMENDED MEMORANDUM OF GROUND LEASE

This Amended Memorandum of Ground Lease is made and entered into as of June 2, 1982 by and between the CITY OF SAN DIEGO, a municipal corporation, whose address is 1222 First Avenue, San Diego, California, 92101 ("Landlord") and NISSAN DESIGN INTERNATIONAL, INC., a Delaware corporation, whose address is 3130 Villa Norte, Suite 2243, La Jolla, California, 92037 ("Tenant"). This Amended Memorandum of Ground Lease amends and supersedes that certain Memorandum of Lease recorded at file/page 81-133800 on May 1, 1981 in Official Records of San Diego County, which shall be of no further force or effect.

By said Ground Lease Landlord has leased to Tenant, and Tenant has hired from Landlord, the real property in the City of San Diego, County of San Diego, State of California, more particularly described in Exhibit A attached hereto and incorporated herein ("Premises") at the rental and upon all of the terms and conditions set forth in that certain unrecorded Ground Lease (the "Ground Lease") between the parties dated as of August 11, 1980 and filed on August 12, 1980 in the City Clerk's office as Document No. RR-252454.

DOCUMENT NO. 768475
FILED JUN 3 1982
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

The Primary Term of the Lease is for a period of fifty-five (55) years, commencing on February 18, 1982, and ending on February 17, 2037.

Tenant was further granted certain rights of first refusal to purchase the Premises leased by the Ground Lease upon the terms and conditions therein set forth, which rights are applicable to a sale or lease of the Premises by Landlord.

All the terms, conditions, provisions and covenants of the Ground Lease are incorporated in this Amended Memorandum of Ground Lease by reference as though written out at length herein.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Amended Memorandum of Ground Lease as of the date first written above.

LANDLORD

THE CITY OF SAN DIEGO, a
municipal corporation

By: J. P. Foula
Its: Deputy City Manager

Approved as to form:

JOHN W. WITT

By: [Signature]
Deputy

TENANT

NISSAN DESIGN INTERNATIONAL,
INC., a Delaware corporation

By: K. Yotsumoto
Kazumi Yotsumoto
Its: President

By: Shigeru Nagata
Shigeru Nagata
Its: Secretary/Treasurer

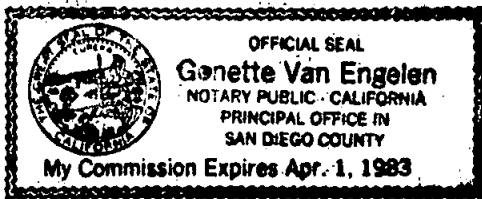
DOCUMENT NO. **768475**
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SAN DIEGO, CALIFORNIA

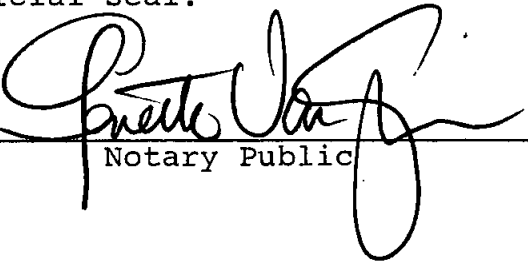
ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) SS:
COUNTY OF SAN DIEGO)

On 5/28, 1982, before me, the undersigned,
a Notary Public in and for said State, personally appeared Kazumi
Yotsumoto, known to me to be the President, and Shigeru Nagata,
known to me to be the Secretary of the corporation that executed
the within instrument, known to me to be the persons who executed
the within instrument on behalf of the corporation therein named,
and acknowledged to me that such corporation executed the within
instrument pursuant to its by-laws or a resolution of its board
of directors.

WITNESS my hand and official seal.




Notary Public

DOCUMENT NO. 768475
FILED JUN 3 1982
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) SS:
COUNTY OF SAN DIEGO)

On June 2, 1982, before me, the undersigned,
a Notary Public in and for said County and State, personally, Deputy
appeared J. P. Fowler known to me to be the City
Manager of the CITY OF SAN DIEGO, a municipal corporation, and
known to me to be the person who executed the within instrument
on behalf of said municipal corporation, and acknowledged to me
that said municipal corporation executed the same pursuant to its
charter, ordinances and applicable state law.

WITNESS my hand and official seal.



Lorna M. Murt
Notary Public
Lorna M. Murt

EXHIBIT "A"

Legal Description

Parcel 2 of Parcel Map 10410 being a subdivision of Lot 3 Campus Point Subdivision (Map 9303) as shown in the Office of the County Recorder of San Diego County.

LAW OFFICES

ALLEN, MATKINS, LECK, GAMBLE & MALLORY

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

4590 MAC ARTHUR BOULEVARD, SUITE 500

NEWPORT BEACH, CALIFORNIA 92660

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JOSEPH E. MCKEEVER
GEORGE T. McDONNELL
SAUL B. PINTO
MICHAEL F. SPREGOLA
BARBARA J. ELIADES
GLENN A. SONNENBERG
DAVID A. B. BURTON
THOMAS B. WALPER
ANGELA M. YATES
DEBRA DISON HALL

May 24, 1982

RECEIVED

MAY 28 1982

PROPERTY DEPT.

Mr. Bud Bass
City Operations Building
1222 First Avenue, Fifth Floor
Mail Station No. 503
San Diego, California 92101

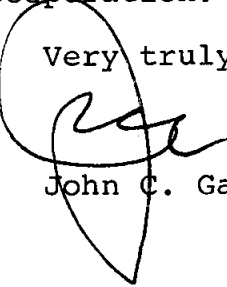
Re: City of San Diego - Nissan Design International,
Inc./Ground Lease filed August 12, 1980, Office
of City Clerk, San Diego, California
Our File No. N6012-002

Dear Bud:

Enclosed are two (2) executed copies of the Amended Memorandum of Ground Lease for the above captioned Lease, incorporating the changes requested by the City Attorney's office. Please cause both copies of the Amended Memorandum to be duly executed and acknowledged by the City and have one (1) original recorded in the San Diego County Recorder's office.

If you have any further questions or comments concerning the Amended Memorandum, please do not hesitate to call me. Thank you for your continued cooperation.

Very truly yours,


John C. Gamble

JCG/ljs
Encl.

cc: Mr. Kazumi Yotsumoto
Mr. Shigeru Nagata
Frederick L. Allen, Esq.

WHEN RECORDED MAIL TO:

City of San Diego
Operations Building
Attn: Bud Bass
1222 First Avenue
San Diego, California 92101

1425

81-133800

FILE/PAGE NO. _____
BOOK 1981
RECORDED REQUEST OF
TITLE INSURANCE & TRUST CO.

MAY 1 8:00 AM '81

OFFICIAL RECORDS
SAN DIEGO COUNTY, CALIF.
VERA L. LYLE

Memorandum RECORDED \$5.00

M.F.
\$1.00

By that certain 55 year lease (Document RR-252454 on file in the City Clerk's office of the City of San Diego, 202 "C" Street, San Diego, California 92101), the parties hereto do establish commencement date to be April 21, 1981. The parties being:

Lessor: City of San Diego, a municipal corporation
202 "C" Street
San Diego, California 92101

Lessee: Nissan Design International, Inc., a Delaware Corporation
3130 Villa Norte, Suite 2243
La Jolla, California 92037

Property: Parcel 2 of Parcel 10410 (being a division of Lot 3, Campus Point Subdivision) filed September 4, 1980 in the office of County Recorder, County of San Diego, State of California.

Subject to the terms, conditions and provisions of that certain unrecorded lease agreement between the parties hereto, filed August 12, 1980 on file in the City Clerk's office as Document No. RR-252454. MAB

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease:

Nissan Design International, Inc.,
a Delaware Corporation (Lessee)

By: K. Yotsumoto
Title: President

By: Shigen Nagata
Title: Secretary & Treasurer

City of San Diego, a municipal
corporation (Lessor)

By: J. L. Towne
Deputy City Manager

Approved as to form and legality
this 27 day of April, 1981.

John W. Witt, City Attorney

By: [Signature]
Deputy City Attorney

TO 449 CA (5-73)
(Corporation)

 TITLE INSURANCE
AND TRUST
A TICOR COMPANY

STATE OF CALIFORNIA }
COUNTY OF SAN DIEGO } SS.

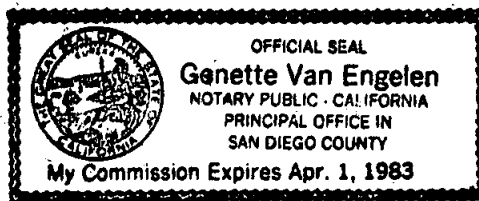
On APRIL 22, 1981 before me, the undersigned, a Notary Public in and for said State, personally appeared KAZUMI YOTSUMOTO AND SHIGEN NAGATA known to me to be the PRESIDENT AND SECRETARY-TREASURER of the corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature

GENETTE VAN ENGELN

Name (Typed or Printed)



(This area for official notarial seal)

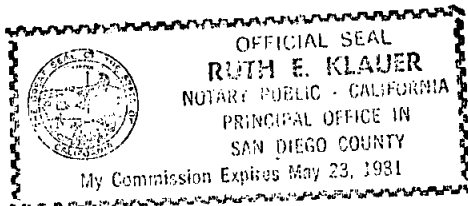
STATE OF CALIFORNIA,)
) SS.
 COUNTY OF SAN DIEGO.)

On April 30, 1981, before me, the undersigned, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared J.P. Fowler, known to me to be the Deputy City Manager of The City of San Diego, the municipal corporation that executed the within instrument, and known to me to be the person who executed the within instrument on behalf of the municipal corporation therein named, and acknowledged to me that such municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, in the County of San Diego, State of California, the day and year in this certificate first above written.

(Insert Notary
Stamp below)

Ruth E. Klauer
 Notary Public in and for said San Diego County,
 State of California.



DUPLICATE ORIGINAL

CAMPUS POINT

CITY OF SAN DIEGO

NISSAN DESIGN INTERNATIONAL, INC.

GROUND LEASE

Revised 7/17/80

DOCUMENT NO. *PR*-**252454**

FILED **AUG 12 1980**

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

CAMPUS POINT
CITY OF SAN DIEGO
NISSAN DESIGN INTERNATIONAL, INC.
GROUND LEASE

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CAMPUS POINT
CITY OF SAN DIEGO
NISSAN DESIGN INTERNATIONAL, INC.
GROUND LEASE

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EXHIBITS:

- A Tentative Parcel Map
- B Legal Description of Premises
- C Standards for permitted assignees or successors

CAMPUS POINT

NISSAN DESIGN INTERNATIONAL, INC.

GROUND LEASE

ARTICLE I

PARTIES; OPENING CLAUSE; WORDS OF LEASING

This Ground Lease is made as of August 11, 1980, by and between THE CITY OF SAN DIEGO, a Municipal corporation, ("Landlord") and NISSAN DESIGN INTERNATIONAL, INC., a Delaware corporation, ("Tenant"). Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises hereafter described.

ARTICLE II

PREMISES

2.1 Definition.

Except as expressly provided to the contrary in this Lease, reference to the "Premises" is to the herein-described real property plus any described appurtenances, exclusive of any improvements now or hereafter located on the Premises, notwithstanding that any such improvements may or shall be construed as affixed to and as constituting part of the real property, and without regard to whether ownership of the improvements is in the Landlord or in the Tenant.

2.2 General Description.

The Premises consists of real property totaling approximately 6 acres located in the Campus Point Subdivision of the City of San Diego, California as more particularly depicted on the tentative Parcel Map attached hereto as Exhibit "A" as Parcel 2 of said tentative Parcel Map. The parties hereto acknowledge that Landlord, at its sole expense, shall use its best efforts to have a Parcel Map (herein the "Parcel Map") recorded containing a legal parcel substantially similar to the Premises as depicted on Exhibit "A". Tenant agrees to approve such Parcel Map within 5 days of receipt of same as long as the legal parcel on the Parcel Map created for the Premises is designed in conformance with the proposed Parcel Map which Tenant has already approved.

2.3 Legal Description.

Following the recording of the Parcel Map it shall be attached hereto as Exhibit "B" and the portion on the Parcel Map corresponding to the Premises as shown on Exhibit "A" shall be the Premises and shall supersede the depiction of the Premises on Exhibit "A".

ARTICLE III

TERM

The Primary Term of this Lease ("Primary Term") is 55 years beginning on the last to occur of the following ("Commencement Date"): (1) recordation by the Landlord of the Parcel Map referred to in Paragraph 2.2 above; (2) approval by the Landlord of the Plans and Specifications for the Design Facility as that term is defined in Paragraph 6.1 below; (3) issuance of a Building Permit by the Landlord and the obtaining of all other governmental approvals necessary for commencement of construction of the Design Facility; (4) Tenant's approval of the Covenants, Conditions and Restrictions relating to the Premises; and (5) issuance of the leasehold title policy to Tenant, as set forth in Paragraph 4.3 below. In the event all said conditions are not satisfied by July 1, 1981 and provided that Tenant was not the cause of the failure to satisfy said conditions, the Tenant may at its option, enforceable by notice to Landlord, terminate this Lease at which time all rights and obligations of Landlord and Tenant hereunder shall cease, and any money paid by Tenant in accordance with Article IV shall be immediately refunded by Landlord.

Until the Parcel Map is recorded this Lease shall constitute only a conditionally accepted offer to lease by Landlord to Tenant, subject only to the recording of the Parcel Map. Immediately upon the commencement of the Primary Term the parties hereto shall execute a memorandum, in recordable form, setting forth the Commencement Date and termination date of the Primary Term.

ARTICLE IV

RENT; SECURITY; OTHER PAYMENTS

4.1 Tenant's Covenant to Pay Rent.

Tenant shall pay without abatement, deduction, or offset the following sums:

4.1.1 Execution. Upon execution of this Lease, Tenant shall pay to Landlord without abatement, deduction or offset the sum of twenty-five thousand dollars (\$25,000.00). Said amount shall be credited to the Minimum Net Rent referenced in Section 4.1.2 below. If Tenant defaults under any of the terms or

provisions of this Lease prior to the Commencement Date which remain uncured pursuant to the provisions hereof ("Default"), then, in any such event, the Landlord may cancel this Lease and thereupon be released from its obligations under this Lease. Tenant and Landlord agree that it would be impractical or extremely difficult to fix actual damages in case of Tenant's Default, that Twenty Five Thousand Dollars (\$25,000) (the "Liquidated Damages") is a reasonable estimate of Landlord's damages in such event, and that in the event of Default of Tenant hereunder as aforesaid, Landlord shall retain the Liquidated Damages. The Liquidated Damages so remitted to Landlord shall constitute Landlord's sole and exclusive right to receive damages from Tenant in the event of any Default of Tenant as aforesaid. However, in the event of cancellation of this lease as a result of Tenant's default, Landlord shall also be entitled to reimbursement for any real estate broker's commission actually paid and for any costs necessary to remove any liens or encumbrances placed or caused to be placed on the premises as a result of Tenant's actions together with any costs necessary to return the premises to substantially its condition as existed on the date of execution of this lease. Landlord and Tenant acknowledge that they have read and understand the provisions of this Paragraph 4.1.1 and by their initials immediately below agree to be bound by its terms.

Landlord

Tenant

 S.N

4.1.2 Minimum Net Rent. Tenant shall pay to Landlord without abatement, deduction or offset on the Commencement Date the sum of One Million One Hundred Eighty-Five Thousand Dollars (\$1,185,000.00) as minimum net rent ("Minimum Net Rent") for the entire 55-year Primary Term. Notwithstanding anything to the contrary contained herein, if within eight (8) months from the execution date of this Lease the Commencement Date has not occurred, the Minimum Net Rent shall be increased by an amount equal to one and one-half percent (1 1/2%) per month until the Commencement Date; provided, however, at its sole option at the end of said eight (8) month period, Tenant may, in lieu of paying an increased Minimum Net Rent, pay, within ten (10) days following the eight (8) month period, the Minimum Net Rent of \$1,185,000.00 set forth above. Furthermore, in the event all of the conditions required in Article III to establish the Commencement Date are not met as a result of any unreasonable delay by Landlord, its agents or its employees, the eight (8) month period established herein shall be extended for all purposes herein by a term equal to the length of such unreasonable delay. The period of any such delay, if any, shall be established by mutual agreement of the parties hereto, or if they are unable to agree within ten (10) days of the expiration of the eight (8) month period on the length of the delay and if it was unreasonable, the parties agree that the matter shall be

submitted to binding arbitration under the rules of the American Arbitration Association. In the event of arbitration, Tenant's payment of the Minimum Net Rent shall be postponed until the conclusion of such arbitration proceeding. However, Tenant shall in any event at the conclusion of such arbitration, be responsible for and shall pay to Landlord the above referenced one and one-half percent (1-1/2%) per month for any period beyond eight (8) months for which such arbitration proceedings determine that no unreasonable delay was caused by Landlord. If Tenant at its option pays the Minimum Net Rent prior to the Commencement Date and the conditions precedent to the Commencement Date referred to in Article III are for any reason not met by the later of (i) fifteen (15) months from the execution date of this Lease, which date shall be deemed to be the date the City Council of the City of San Diego adopts a resolution approving the Lease, or (ii) November 1, 1981, Tenant, or Landlord (if the conditions precedent in Article III are not met other than as a result of Landlord's action or inaction causing unreasonable delays) may terminate this Lease and in such event Landlord shall reimburse Tenant the Minimum Net Rent together with one-half of the interest which accrued on said amount, within ten (10) days of such termination.

For purposes of the parties election to terminate the Lease referenced hereinabove, condition number 3 in Article III, the issuance of a building permit by Landlord, shall be deemed not to have been satisfied if at the time of the issuance of said building permit, there exists any statute, ordinance, regulation, court order, decree, holding, injunction or other judicial determination, moratorium, or any similar action, the effect of which would prevent Tenant from commencing and completing the construction of the Design Facility.

4.1.3 Net Lease. This Lease is intended to be a net Lease under which Landlord shall receive the entire rent provided for in this Lease without any offset, deduction or counterclaim by Tenant against said rent.

4.2 Taxes; Assessments.

4.2.1 On Real and Personal Property. Tenant shall pay all real estate and personal property taxes, general and special assessments, and other charges of every description levied on or assessed against the Premises, improvements located on the Premises, personal property located on or in the Premises or improvements, the leasehold estate, or any subleasehold estate, to the full extent of installments falling due during the Term. Tenant shall make all such payments directly to the charging authority before delinquency and before any fine, interest, or penalty shall become due or be imposed by operation of law for their nonpayment. If, however, the law expressly permits the payment of any or all of the above items in installments (whether or not interest accrues on the unpaid balance), Tenant may, at

Tenant's election, utilize the permitted installment method, but shall pay each installment, with any interest, before delinquency.

4.2.2 Tenant's Right to Contest. Tenant may contest the legal validity or amount of any taxes, assessments, or charges for which Tenant is responsible under this Lease, and, upon written notice to Landlord, may institute such proceedings as Tenant considers necessary. If Tenant contests any such tax, assessment, or charge, Tenant may withhold or defer payment or pay under protest but shall protect Landlord and the Premises from any lien by adequate surety bond or other appropriate security.

4.3 Title Insurance.

Upon payment of the Minimum Net Rent, Landlord shall, at Landlord's sole expense, deliver to Tenant a CLTA leasehold form of title insurance in the amount of the Minimum Net Rent insuring Tenant's leasehold estate in the Premises, subject only to the following conditions of title ("Conditions of Title"):

(a) A lien to secure payment of real estate taxes, not delinquent;

(b) Matters affecting the condition of title suffered or created by, or with the written consent of, Tenant; and

(c) Approved exceptions, including printed matters, disclosed by a standard Preliminary Title Report with respect to the Premises together with copies of the Report. Landlord shall provide Tenant with the title report and with copies of such underlying documents within fifteen (15) days from the execution of this Lease. Failure to disapprove any such exception within thirty (30) business days from receipt of the standard Preliminary Title Report and all underlying documents referred to in said Report shall be conclusively deemed to be the approval thereof by Tenant. If Tenant disapproves any such exception Landlord shall use his best efforts to have such exception removed, at Landlord's sole cost. In the event Landlord is unable to remove such disapproved exception, this Lease shall terminate, any deposits made by Tenant hereunder shall be returned to Tenant and all of Landlord's and Tenant's rights and duties hereunder shall terminate.

4.4 Brokerage Fees. Any and all brokerage fees in an amount not to exceed Thirty-One Thousand Two Hundred Dollars (\$31,200.00) incurred with respect to this Lease or the exercise of the option to purchase referenced in Article XIII hereof shall be paid by Landlord to Grubb and Ellis Commercial Brokerage Company,

550 Carson Plaza Drive, Suite 200, Carson, California 90746, Attention James F. Biondi. Further, Landlord hereby indemnifies and holds Tenant free and harmless from any and all claims for brokerage fees related to this Lease except for any claim which may be made by Coldwell Banker Commercial Brokerage Company ("CB"). If any such claim is made by CB, Tenant hereby indemnifies and holds Landlord harmless therefrom.

ARTICLE V

USE OF PREMISES

5.1 Use of Premises.

Tenant shall initially use the Premises as follows: For the construction and operation of a full service automotive and multidimensional transportation design facility. Additionally, the Premises may be used for any use permitted by law and consistent with the uses permitted by any covenants, conditions and restrictions which are part of the Conditions of Title.

5.2 Land Use Restrictions.

Tenant may enter into an agreement restricting the use of or granting easements over the Premises, or obtaining zoning changes or conditional use permits, provided they are limited to the Term of this Lease as may be extended. Tenant must obtain Landlord's prior written consent to any restrictions on the Premises, its use or its alienation, for period extending beyond the Term of this Lease.

ARTICLE VI

IMPROVEMENTS

6.1 Construction.

6.1.1 Tenant's Duty to Construct Major New Improvements. Within one hundred eighty (180) days after the Commencement Date, Tenant shall comply with the Conditions of Major Construction below and shall commence the construction of improvements ("Commencement of Construction") consisting of an automobile design facility (the "Design Facility") of not less than Twenty-Five Thousand (25,000) square feet, subject to reasonable deviations to such minimum size so that the Design Facility would not be less than Twenty-Two Thousand Five Hundred (22,500) square feet. If Tenant has paid the Minimum Net Rent prior to all of the conditions in Article III being satisfied as permitted in Section 4.1.2, the Commencement Date (only for purposes of establishing when the 180 day period within which construction shall commence)

shall be the date on which a building permit is issued for the Design Facility. However, Tenant shall be entitled to extend the date of Commencement of Construction upon payment to Landlord of an additional fee of one percent (1%) of the Minimum Net Rent for each thirty (30) day extension period up to three such periods, and two percent (2%) of the Minimum Net Rent for each additional thirty (30) day extension; provided, however, cumulative extensions shall not exceed one hundred eighty (180) days. Any fee paid pursuant to this Section shall be non-refundable and payable directly to Landlord at the time of the requested extension.

6.1.2 Conditions of Major Construction. Before any Major Construction (which is defined to mean construction which is projected to cost in excess of One Million Dollars (\$1,000,000), adjusted proportionately as of December, 1980, to any increase in the Consumer Price Index for all Urban Consumers as published by the United States Department of Labor, Bureau of Labor Statistics for the San Diego area, All Items (1967 = 100)) is commenced on the Premises, and before any building materials have been delivered to the Premises by Tenant or under Tenant's authority, Tenant shall comply with all the following conditions or procure Landlord's written waiver of the condition or conditions specified in the waiver:

(a) Plans, Specifications.

(i) Deliver to Landlord. Tenant shall deliver to Landlord for Landlord's approval one set of preliminary site improvement plans and specifications ("Preliminary Plans") for the improvements to be constructed on the Premises by Tenant including grading and elevation plans. It is the intention of Landlord to limit the scope of its review of the Preliminary Plans to determine that (i) Landlord's approval thereof would not violate any existing covenants, conditions or restrictions of record or any existing leases to which Landlord is a party and (ii) the basic design and proposed building materials are not materially inconsistent with the general aesthetic environment of the overall Campus Point subdivision area. Landlord understands that Tenant's Design Facility is intended to be a unique architectural statement consistent with the building and zoning requirements of the City of San Diego. All improvements shall be constructed within the exterior property lines of the Premises; provided that required work beyond the Premises on utilities, access, and conditional use requirements do not violate this provision.

(ii) Landlord's Approval. Approval or disapproval shall be communicated in the manner provided for in the notice article of this Lease, and disapproval shall be accompanied by a listing of the grounds for disapproval; provided that Landlord's failure to approve or disapprove within thirty (30) days if such approval is required from Landlord's City Manager or

sixty (60) days if such approval is required from Landlord's City Council, after delivery to Landlord of such Preliminary Plans shall be conclusively considered to be approval of such Preliminary Plans. Following Landlord's first or any subsequent disapproval, Tenant shall resubmit revised plans and specifications to Landlord or, if Tenant has acted in good faith in preparing the submitting Preliminary Plans which were intended to substantially comply with the building and zoning standards of the City of San Diego and the provisions of this Lease, terminate this Lease and shall be entitled to all monies paid to Landlord pursuant to Section 4.1.1 of this Lease. Disapproval by Landlord shall not extend the time for commencing or completing construction. Landlord shall approve such Preliminary Plans if they comply with the provisions of any recorded declaration of covenants and restrictions affecting the Premises and if they are in compliance with Article V of this Lease. Such approval shall not be unreasonably withheld.

(iii) Final Plans, Specifications.

Tenant shall prepare final working plans and specifications substantially conforming to Preliminary Plans previously approved by Landlord, submit them to the appropriate governmental agencies for approval, and deliver to Landlord one complete set as approved by the governmental agencies.

(b) Notice of Intent to Construct. Tenant shall notify Landlord of Tenant's intention to commence any construction or improvement work at least 30 days before commencement of any such work or delivery of any materials. The notice shall specify the approximate location and nature of the intended improvements. Landlord shall have the right to post and maintain on the Premises any Notices of Nonresponsibility provided for under applicable law, and to inspect the Premises in relation to the construction at all reasonable times.

(c) Required Governmental Permits. On written request by Landlord, Tenant shall procure and deliver to Landlord at Tenant's expense evidence of compliance with all then applicable codes, ordinances, regulations, and requirements for permits and approvals, including but not restricted to a grading permit, building permits, zoning and planning requirements, and approvals from various governmental agencies and bodies having jurisdiction.

6.1.3 Completion

(a) Diligent Prosecution to Completion. Once the work is begun, Tenant shall with reasonable diligence prosecute to completion all construction of improvements, additions, or alterations. All work shall be performed in a good and workmanlike manner, shall substantially comply with the plans and specifications submitted to Landlord as required by this Lease, and shall comply

with all applicable governmental permits, laws, ordinances, and regulations. Failure to commence construction of the Design Facility within the time limits required herein (or as that date may be extended by the payment of the fee referenced in Section 6.1.1 or the occurrence of events referenced in Section 10.4.1) shall enable Landlord, at its election exercised by notice, to terminate this Lease upon refund to Tenant of the Minimum Net Rent after deducting therefrom any paid real estate brokerage commissions and the cost to return the Premises to Landlord in substantially the same condition as prior to the execution of the Lease, and the payment of any liens or charges which Tenant has incurred with respect to the Premises.

(b) Protection of Landlord Against Cost or Claim. Tenant shall pay or cause to be paid the total cost and expense of all works of improvement, as that phrase is defined in the Mechanics' Lien Law in effect at the place of construction when the work begins. No such payment shall be construed as rent. Tenant shall not suffer or permit to be enforced against the Premises or any part of it any mechanic's, materialman's, contractor's or subcontractor's lien arising from any work of improvement, however it may arise. However, Tenant may in good faith and at Tenant's own expense contest the validity of any such asserted lien, claim or demand, provided Tenant has furnished a bond freeing the Premises from the effect of such a lien claim.

Tenant shall defend and indemnify Landlord against all liability and loss of any type arising out of work performed on the Premises by Tenant.

(c) Landlord's Right to Discharge Lien. If Tenant does not cause to be recorded any bond required above or otherwise protect the Premises and any improvements thereon, and a final judgment has been rendered against Tenant by a court of competent jurisdiction for the foreclosure of a mechanic's, materialman's, contractor's or subcontractor's lien claim, and if Tenant fails to stay the execution of the judgment by lawful means or to pay the judgment, Landlord shall have the right, but not the duty, to pay or otherwise discharge, stay or prevent the execution of any such judgment or lien or both. Tenant shall reimburse Landlord for all sums paid by Landlord under this paragraph, together with all Landlord's reasonable attorneys' fees and costs, plus interest on those sums, fees and costs at the rate which is the greater of (i) the Prime Rate charged by the Bank of America from the date of payment until the date of reimbursement or (ii) ten percent (10%) per year from the date of payment until the date of reimbursement.

(d) Notice of Completion. Upon substantial completion of any work of improvement during the Term, Tenant shall file or cause to be filed a notice of completion.

6.2 Maintenance; Repairs; Alterations; Reconstruction.

6.2.1 Tenant Required To Maintain Premises.

(a) Definition of Duty; Compliance with Laws. Throughout the Term, Tenant shall, at Tenant's sole cost and expense, maintain the Premises and all improvements thereon in good condition and repair, ordinary wear and tear excepted, and in accordance with all applicable laws, rules, ordinances, order and regulations of (1) federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials; (2) the insurance underwriting board or insurance inspection bureau having or claiming jurisdiction; and (3) all insurance companies insuring all or any part of the Premises or improvements or both.

(b) Cost of Maintenance. All expenses to maintain, repair, alter or reconstruct the Premises and improvements thereon shall be at the sole cost of Tenant.

(c) Right to Contest Governmental Order. Tenant has the right to contest by appropriate judicial or administrative proceedings, without cost or expense to Landlord, the validity or application of any law, ordinance, order, rule, regulation, or requirement (hereafter "Law") that Tenant repair, maintain, alter, or replace said improvements in whole or in part, and Tenant shall not be in default for failing to do such work until a reasonable time following final determination of Tenant's contest. If Tenant withholds payment of such taxes, and if Landlord gives notice of request, Tenant shall first furnish Landlord a bond, satisfactory to Landlord in form, amount, and insurer, guaranteeing compliance by Tenant with the contested law and indemnifying Landlord against all liability or loss that Landlord may sustain by reason of Tenant's failure or delay in complying with the law.

6.3 Ownership of Improvements.

6.3.1 Ownership of New Improvements During Term. All improvements constructed on the Premises by Tenant as permitted by this Lease shall be owned by Tenant until expiration of the Term or sooner termination of this Lease.

6.3.2 Ownership at Termination. All alterations, improvements, additions and utility installations (whether or not such utility installations constitute a trade fixture of Tenant) on the Premises at the expiration of the Term or sooner termination of this Lease shall, without compensation to Tenant, then become Landlord's property free and clear of all claims to or liens against them by Tenant or any third person with a claim

arising out of an act or omission of Tenant, unless Landlord has executed a Landlord's Consent or Waiver in this regard, and Tenant shall defend and indemnify Landlord against all liability and loss arising from such claims or from Landlord's exercise of the rights conferred by this paragraph.

At the normal expiration of the Term or at the earlier termination of the Lease as provided herein, provided Tenant is not then in default, Tenant shall have the right to remove any or all trade fixtures, personal property and equipment provided all resultant injuries to the Premises and improvements are completely remedied. Trade fixtures shall not include the shell building or buildings or any other permanent improvements.

6.4 Right to Alter or Expand Improvements.

Subject to the provisions of this Article VI Tenant shall have the right at any time to construct new improvements or to alter, expand, demolish, or otherwise deal with any existing improvements.

ARTICLE VII

ENCUMBRANCE; ASSIGNMENT; SUBLETTING

7.1 Financing; Encumbrance. Tenant shall have the right at any time and from time to time to subject this Lease, its leasehold estate and any or all improvements thereon to a mortgage as security for a loan or other obligations of Tenant, provided that:

7.1.1 The proceeds of any such financing or refinancing shall be used exclusively for development and construction of all improvements for the use and enjoyment of the Premises for uses authorized herein.

7.1.2 The mortgage and all rights acquired under it shall be subject to each and all of the covenants, conditions, and restrictions stated in this Lease and to all rights and interests of Landlord except as otherwise provided in this Lease.

7.1.3 On the recording of the mortgage, Tenant shall, at Tenant's expense, cause to be recorded in the office of the San Diego County Recorder a written request executed and acknowledged by Landlord for a copy of all notices of default and all notices of sale under the mortgage as provided by the statutes of the State of California. Inclusion in the body of the recorded mortgage itself of a request for notice having the effect described above shall constitute compliance with this provision.

7.1.4 The Leasehold Mortgagee shall not be liable to perform Tenant's obligations under this Lease until the Mortgagee acquires Tenant's right by foreclosure or transfer in lieu thereof. After acquiring Tenant's rights by foreclosure or otherwise, Mortgagee shall be liable to perform Tenant's obligations and shall be bound by the terms and conditions as contained in this Lease.

7.1.5 No mortgage shall cover any interest in any real property located on, or which is a part of, the Premises other than interests specifically subjected to mortgage by this Lease.

7.2 Assignment and Subletting.

Landlord and Tenant have carefully considered what factors or standards a potential assignee or successor must meet in order to qualify as an assignee or successor of this Lease. Therefore:

7.2.1 Subject to the terms and conditions as set forth in Article XIII, Tenant shall have the right to assign, sublet, or otherwise transfer Tenant's interest in this Lease and the estate created by this Lease to a Permitted Assignee or Successor, each of which is defined as follows:

(a) During the initial ten (10) years of the Term of this Lease, an assignee or sublessee who substantially conforms to the standards set forth in Exhibit "D" attached hereto ("Permitted Assignee").

(b) A Successor, defined as:

(1) Any corporation that controls or is controlled by Tenant;

(2) Another corporation in connection with a corporate reorganization, or the merger of Tenant into, or the consolidation of Tenant with, another corporation or corporations; or

(3) Any successor of all or substantially all of Tenant's business or assets ("Successor").

Except as provided above, Tenant may not assign or sublet its interest in this Lease or any portion thereof or the estate created by this Lease without the prior written consent of Landlord. Should Tenant desire to assign or sublet its interest in this Lease and the estate created by this Lease to a person or entity other than a Permitted Assignee or Successor the Tenant shall first give Landlord prior written notice, which notice shall set

forth the information required by Section 7.2.2 below. Within thirty (30) days of the receipt of such notice if such action is required by Landlord's City Manager or within sixty (60) days if such action is required by Landlord's City Council, Landlord shall notify Tenant of its consent or disapproval of the proposed assignment or subletting. Failure to consent to or disapprove such subletting or assignment within the stated time periods shall be deemed approval of same. Landlord's consent shall not be unreasonably withheld.

7.2.2 Data and Assumptions.

(a) Sublessee or Assignee Data. In connection with any proposed assignment or sublease, Tenant shall submit to Landlord in writing (1) the name of the proposed assignee or sublessee, (2) all of the terms and conditions upon which the proposed assignment or subletting is to be made, and (3) where Landlord's consent to such an assignment or subletting is required, such information as to the financial responsibility and standing of the proposed assignee or sublessee as Landlord may reasonably require.

(b) Assumption. No assignment shall be binding upon Landlord unless Tenant shall deliver to Landlord an assignment in recordable form which contains an assumption by the assignee, but the failure or refusal of the assignee to execute such instrument or assumption shall not release or discharge assignee from liability as Tenant hereunder, provided that the terms and provisions of the assignment or subletting shall specifically make applicable to the assignee or sublessee all of the provisions of this Lease.

7.2.3 Release. Whenever Landlord conveys its interest in the Premises, Landlord shall be automatically released from the further performance of covenants on the part of Landlord herein contained, and from any and all further liability, obligations, costs and expenses, demands, causes of action, claims or judgments arising from or growing out of, or connected with this Lease after the effective date of said release. The effective date of said release shall be the date the assignee of the Landlord's interest executes an assumption of such an assignment whereby the assignee expressly agrees to assume all of Landlord's obligations, duties, responsibilities and liabilities with respect to this Lease. If requested, Tenant shall execute a form of release and such other documentation as may be required to further effect the provisions of this Paragraph 7.2.3.

ARTICLE VIII

INSURANCE

8.1 Public Liability Insurance.

During the entire Term of this Lease, Tenant agrees to procure and maintain public liability insurance which names Landlord as an additional insured with an insurance company satisfactory to Landlord, licensed to do business in California to protect against loss from liability imposed by law for damages on account of bodily injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever, resulting directly or indirectly from any act or activities of Landlord or Tenant, its sublessees or any person acting for Landlord, or Tenant, or under its control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from acts or activities of Landlord or Tenant or its sublessees, or any person acting for Landlord or Tenant, or under its control or direction. Such property damage and public liability insurance shall also provide for and protect Landlord against incurring any legal cost in defending claims for alleged loss. Such public liability and property damage insurance shall be maintained in full force and effect during the entire Term of this Lease in the amount of not less than One Million Dollars (\$1,000,000) combined single limit liability. Tenant agrees to submit a policy of said insurance to the Landlord on or before the effective date of this agreement indicating full coverage of the contractual liability imposed by this agreement and stipulating that the insurance company shall not terminate, cancel or limit said policy in any manner without at least thirty (30) days' prior written notice thereof to Landlord. If the operation under this agreement results in an increased or decreased risk in the opinion of Landlord's City Manager, then Tenant agrees that the minimum limits hereinabove designated shall be changed accordingly upon request by Landlord's City Manager. Tenant agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Tenant may be held responsible for the payment of damages to persons or property resulting from Tenant's activities, the activities of its sublessees or the activities of any person or persons for which Tenant is otherwise responsible.

8.2 Fire and Extended Coverage.

Tenant also agrees to procure and maintain during the entire Term of this Lease, a policy of fire, extended coverage and vandalism insurance on all permanent property of an insurable nature located upon the Premises. Said policy shall name the Landlord as an additional insured and shall be written by an insurance company satisfactory to Landlord licensed to transact business in the State of California

and shall be in an amount sufficient to cover at least 90% of the replacement costs of said property. Tenant agrees to submit a certificate of said policy to the Landlord on or before the effective date of this Lease. Said policy shall contain a condition that it is not to be terminated or cancelled without at least thirty (30) days prior written notice to Landlord by the insurance company. Tenant agrees to pay the premium for such insurance and shall require that any insurance proceeds resulting from a loss under said policy are payable jointly to Landlord and Tenant and said proceeds shall constitute a trust fund to be reinvested in rebuilding or repairing the damaged property; provided, however, that within the period during which there is in existence a mortgage or deed of trust upon the leasehold, then and for that period all policies of fire insurance, extended coverage and vandalism shall be made payable jointly to the mortgagee or beneficiary, the named insured, and Landlord and shall be disposed of jointly by said payees for the following purposes:

(a) As a trust fund to be retained by said mortgagee or beneficiary and applied in reduction of the debt secured by such mortgage or deed of trust with the excess remaining after full payment of such debt to be paid over to Tenant and Landlord to pay for reconstruction, repair, or replacement of the damaged or destroyed improvements in progress payments as the work is performed. The balance of said proceeds shall be paid to Tenant.

Provided further, however, nothing herein shall prevent Tenant, at its option and with the approval of said mortgagee or beneficiary, from filing a faithful performance bond in favor of said mortgagee or beneficiary and Landlord in an amount equivalent to said insurance proceeds in lieu of surrendering said insurance proceeds to said mortgagee or beneficiary and Landlord.

(b) In the event that this Lease is terminated by mutual agreement and said improvements are not reconstructed, repaired or replaced, the insurance proceeds shall be jointly retained by Landlord and said mortgagee or beneficiary to the extent necessary to first discharge the debt secured by said mortgage or deed of trust and then to restore the Premises in a neat and clean condition. Said mortgagee or beneficiary shall hold the balance of said proceeds for Landlord and Tenant as their interests may appear.

Tenant agrees to increase the limits of liability when, in the reasonable exercise of Landlord's discretion, the value of the improvements covered is increased, subject to the availability of such insurance at the increased limits. Tenant agrees, at its sole expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of reasonable fire and public liability insurance covering said Premises, buildings and appurtenances.

ARTICLE IX

CONDEMNATION

9.1 Taking. In the event the Premises or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, then the interests of Landlord and Tenant (or Beneficiary or Mortgagee if there is a Trust Deed or Mortgage then in effect), in the award and the effect of the taking upon this Lease Agreement shall be as follows:

9.1.1 Partial Taking. In the event of such taking of only a part of the Premises, leaving the remainder of said Premises in such location and in such form, shape and size as to be used effectively and practicably in the opinion of Landlord and Tenant for the conduct thereon of the operations permitted hereunder, this Lease shall terminate and end as to the portion of the Premises so taken as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the Premises not so taken.

9.1.2 Substantial Taking. In the event of the taking of only a part of the Premises, leaving the remainder of Premises in such location, or in such form, shape or reduced size as to render the same not effectively and practicably usable in the opinion of Landlord and Tenant for the conduct thereon of the operations permitted hereunder, this Lease and all right, title and interest thereunder shall cease on the date title to said Premises or the portion thereof so taken vests in the condemning authority.

9.1.3 Total Taking. In the event the entire Premises are so taken, this Lease and all of the right, title and interest thereunder shall cease on the date title to said Premises so taken vests in the condemning authority.

9.1.4 Apportionment, Distribution of Award Pursuant to 9.1.2 and 9.1.3 for Total or Substantial Taking. On a total or substantial taking, all sums, including damages and interest, awarded for the fee or the leasehold or both shall be paid to Landlord to be distributed and disbursed in the following order of priority:

First, all real and personal property taxes constituting a lien on Tenant's interest in the Premises and/or improvements thereon.

Second, the balance due under any note and mortgage encumbering the Tenant's interest in the Premises and/or any improvements thereon.

Third, to Landlord a sum equal to the value of the land taken (as opposed to the Improvements thereon) comprising the Premises, valued as unimproved land, subject to this Lease.

Fourth, to Landlord, any expenses or disbursements reasonably paid or incurred by or on behalf of Landlord for or in connection with the condemnation proceedings.

Fifth, to Landlord the value of the reversionary interest in the Improvements.

Sixth, to Tenant the balance of the award. In determining all apportionments hereunder, it shall be understood that Tenant has paid the Minimum Rent at the Commencement Date in lieu of the periodic rent payments throughout the term of the Lease.

9.1.5 Apportionment, Distribution of Award for Partial Taking. On a partial taking, all sums, including damages and interest, awarded for the fee title or the leasehold or both, shall be paid to Landlord and shall be distributed and disbursed in the following order of priority:

First, to the cost of restoring any improvements located on the Premises.

Second, to Landlord a sum equal to the value of the land taken (as opposed to the Improvements thereon) valued as unimproved land subject to this Lease.

Third, to Landlord the value of the reversionary interest in the Improvements taken.

Fourth, to Landlord any expenses or disbursements reasonably and necessarily incurred or paid by or on behalf of Landlord for or in connection with the condemnation proceedings.

Fifth, to Tenant any expenses or disbursements reasonably and necessarily incurred or paid by or on behalf of Tenant for or in connection with the condemnation proceedings.

Sixth, to Tenant any residue. In determining all apportionments hereunder, it shall be understood that Tenant has paid the Minimum Rent at the Commencement Date in lieu of periodic rent throughout the term of the Lease.

9.1.6 Transfer of Rights. Notwithstanding the foregoing provisions of this section, Landlord may, in its discretion and without affecting the validity and existence of this Lease, transfer its interests in said Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. In the event of such transfer by Landlord, Tenant shall

retain whatever rights it may have hereunder to recover from the said authority the fair market value of Tenant's interests in accordance with the provisions of this Lease.

ARTICLE X

DEFAULT: REMEDIES

10.1 Tenant's Default.

10.1.1 Events of Default. Each of the following events shall be a default by Tenant and a breach of this Lease:

(a) Failure to Perform Lease Covenants. Abandonment or surrender of the Premises or of the leasehold estate, or failure or refusal to pay when due any sum required by this Lease to be paid by Tenant, or to perform as required or conditioned by any other covenant or condition of this Lease;

(b) Attachment or Other Levy. The subjection of any right or interest of Tenant to attachment, execution, or other levy, or to seizure under legal process, if not released within ninety (90) days;

(c) Appointment of a Receiver. The appointment of a receiver to take possession of the Premises or improvements or of Tenant's interest in the leasehold estate or of Tenant's operations on the Premises for any reason, including but not limited to, assignment for benefit of creditors or voluntary or involuntary bankruptcy proceedings, but not including receivership (i) (if Tenant at such time is an individual) pursuant to administration of the estate of any deceased or incompetent Tenant or of any deceased or incompetent individual member of any Tenant, (ii) pursuant to any mortgage permitted by provisions of this Lease relating to purchase or construction of improvements, or (iii) instituted by Landlord, the event of default being not the appointment of a receiver at Landlord's instance but the event justifying the receivership, if any;

(d) Insolvency, Bankruptcy. An assignment by Tenant for the benefit of creditors or the filing of a voluntary or involuntary petition by or against Tenant under any law for the purpose of adjudicating Tenant a bankrupt; or for extending time for payment, adjustment, or satisfaction of Tenant's liabilities; or for reorganization, dissolution, or arrangement on account of or to prevent bankruptcy or insolvency; unless the assignment or proceeding, and all consequent orders, adjudications, custodies, and supervisions are dismissed, vacated, or otherwise permanently stayed or terminated within 90 days after the assignment, filing, or other initial event; or

10.1.2 Tenant's Right To Cure Defaults. If the alleged default is nonpayment of rent, other than the Minimum Net Rent, which shall be paid immediately when due as provided herein above, taxes, or other sums to be paid by Tenant as provided in the Article on rent, or elsewhere in this Lease directed to be paid as rent, Tenant shall have 15 days after notice is given to cure the default. For the cure of any other default, other than the failure to commence construction, as provided herein, which has independent notice and cure periods, Tenant shall promptly and diligently after the notice commence curing the default and shall have sixty (60) days after notice is given, to complete the cure; provided, however, that Tenant shall have such additional time to cure such default as is reasonably necessary if such default cannot be cured with said sixty (60) day period and Tenant has taken all reasonable steps to effect a cure within said sixty (60) day period.

10.1.3 Landlord's Right To Cure Tenant's Defaults. After expiration of the applicable time for curing a particular default, or before the expiration of that time in the event of emergency, Landlord may at Landlord's election, but is not obligated to, make any payment required of Tenant under this Lease or under any note or other document pertaining to the financing of improvements fixtures or other property on the Premises, or perform or comply with any covenant or condition imposed on Tenant under this Lease or any such note or document, and the amount so paid plus the reasonable cost of any such performance or compliance, plus interest on such sum at the rate of 10% per year or the Prime Rate charged by the Bank of America, whichever is higher, from the date of payment, performance, or compliance (herein "Act"), shall be deemed to be additional rent payable by Tenant with the next succeeding installment of rent. No such Act shall constitute a waiver of default or of any remedy for default or render Landlord liable for any loss or damage resulting from any such Act.

10.2 Landlord's Remedies.

If any default by Tenant shall continue uncured, following notice of default as required by this Lease, for the period applicable to the default under the applicable provision of this Lease, Landlord has the following remedies in addition to all other rights and remedies provided by law or equity, to which Landlord may resort cumulatively or in the alternative:

10.2.1 Nonmonetary Remedies.

(a) Re-entry. Landlord may at Landlord's election re-enter the Premises, and, without terminating this Lease, at any time and from time to time relet the Premises and improvements or any part or parts of them for the account and in the name of Tenant or otherwise. Landlord may at Landlord's

election eject all persons or eject some and not others or eject none. Landlord shall apply all rents from reletting to the accrued obligations of Tenant under this Lease after deducting Landlord's expenses. Any reletting may be for the remainder of the Term or for a longer or shorter period. Landlord may execute any leases made under this provision either in Landlord's name or in Tenant's name and shall be entitled to all rents from the use, operation, or occupancy of the Premises or improvements or both. Tenant shall nevertheless pay to Landlord on the due dates specified in this Lease the equivalent of all sums required of Tenant under this Lease, plus Landlord's expenses, less the avails of any reletting or attornment to which Tenant is entitled. No act by or on behalf of Landlord under this provision shall constitute a termination of this Lease unless Landlord gives Tenant notice of termination.

10.3 Notice of Landlord's Default; Tenant's Waiver.

Landlord shall not be considered to be in default under this Lease unless (1) Tenant has given notice specifying the default and (2) Landlord has a reasonable period of time to cure the default, if it is curable, or to institute and diligently pursue reasonable corrective or ameliorative acts for noncurable defaults. Tenant hereby waives the provisions of Civil Code Sections 1932 and 1933.4.

10.4 Provisions Applicable to Both Parties.

10.4.1 Unavoidable Default or Delay. Any prevention, delay, nonperformance, or stoppage due to any of the following causes shall excuse nonperformance for a period equal to any such prevention, delay, nonperformance, or stoppage, except the obligations imposed by this Lease for the payment of rent, taxes, insurance, or obligations to pay money that are treated as rent. The causes referred to above are: strikes, lockouts, labor disputes, failure of power, acts of God, acts of public enemies of this state or of the United States, riots, insurrections, civil commotion, governmental restrictions or regulations or controls (except those reasonably foreseeable in connection with the uses contemplated by this Lease). The Tenant understands and agrees that abnormally high interest rates shall not be an excused delay hereunder.

10.4.2 Attorneys' Fees. If either party brings any action or proceeding to enforce, protect or establish any right or remedy, the prevailing party shall be entitled to recover reasonable attorneys' fees plus costs of suit.

ARTICLE XI

GENERAL CONDITIONS; MISCELLANEOUS PROVISIONS

11.1 Transactions Between Parties

11.1.1 Notice.

(a) Definition of notice; application of provision. As used in this Lease, notice includes but is not limited to the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver and appointment. Unless the provisions of this Lease on rent direct otherwise, rent shall be sent in the manner provided for giving notice.

(b) Writing. All notices must be in writing; provided that no writing other than the check or other instrument representing the rent payment itself need accompany the payment of rent.

(c) Delivery. Notice must be either delivered in person to the recipient named as below, or deposited in the United States mail in a sealed envelope or container, either registered or certified mail, return receipt requested, postage and postal charges prepaid, addressed by name and address to the party or person intended as follows:

Notice to Tenant: NISSAN DESIGN INTERNATIONAL, INC.
 18510 South Figueroa
 Carson, California 90248
 Attention: Mr. Kazumi Yotsumoto

with a copy (deposited in regular U. S. mail without return receipt being requested) to:

 NISSAN DESIGN INTERNATIONAL, INC.
 18510 South Figueroa
 Carson, California 90248
 Attention: Michael Cornelius, Esq.

 Allen, Matkins, Leck, Gamble & Mallory
 707 Wilshire Boulevard, Suite 5400
 Los Angeles, California 90017
 Attention: Frederick L. Allen, Esq.

Notice to Landlord: CITY OF SAN DIEGO
 202 "C" Street
 San Diego, California 92101
 Attention: City Manager

with copies (deposited in regular U. S. mail without return receipt being requested) to:

City of San Diego
202 "C" Street
San Diego, California 92101
Attention: Property Director

and

City of San Diego
202 "C" Street
San Diego, California 92101
Attention: City Clerk

(d) Change of recipient or address. Either party may, by notice given at any time or from time to time, in the manner provided herein, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

11.1.2 Performance of Tenant's Covenants by Others. Tenant may at Tenant's election delegate performance of any or all covenants to any one or more subtenants whose subtenancy is permitted hereunder, and the performance so delegated shall be deemed Tenant's performance.

11.1.3 Estoppel Certificates. At any time and from time to time, within fifteen (15) business days after notice of request by Tenant, Landlord shall execute, acknowledge, and deliver to Tenant, or to such other recipient as the notice shall direct, a statement certifying that this Lease is unmodified and in full force and effect, or, if there have been modifications, that it is in full force and effect as modified in the manner specified in the statement. The statement shall also state the dates to which the rent and any other charges have been paid in advance. The statement shall be such that it can be relied on by any auditor, creditor, commercial banker, and investment banker and by any prospective purchaser or encumbrancer of the Premises or improvements or both or of all or any part or parts of Tenant's or Landlord's interests under this Lease. Any such proposed statement shall be prepared by Tenant and submitted to Landlord for review and execution.

11.1.4 Joint and Several Obligations. If either Landlord or Tenant consists of more than one person, the obligation of all such persons is joint and several.

11.2 Interpretation of Lease.

11.2.1 Definitions.

(a) Person means person or persons or other entity or entities or any combination of persons and entities.

(b) Individual person means a human being.

(c) Landlord means the person who is the owner at the time in question of the Premises, whether singular or plural in number, and whether named in this Lease as Landlord or having become the successor in interest of the named Landlord, or the successor of a successor, whether by assignment, foreclosure, or other transfer, and whether intentional or inadvertent or by operation of law.

(d) Tenant means the person named as Tenant in this Lease, whether singular or plural in number, or the person who at the time in question is the successor in interest of Tenant, or the successor of a successor, whether by assignment, foreclosure, or other transfer, and whether intentional or inadvertent or by operation of law.

(e) Mortgage means mortgage, deed of trust, or other encumbrance recognized in California at the time it attaches as a contractual security interest in the real property.

(f) Mortgagee means mortgagee, beneficiary, or other obligee of an indebtedness secured by a mortgage.

(g) Leasehold mortgagee means a mortgagee holding a mortgage encumbering Tenant's leasehold estate as permitted by this Lease.

(h) Chattel means personal property that has not become affixed to the Premises or to the improvements on the Premises.

(i) Trade fixtures are chattels.

(j) Premises are defined in Article II.

(k) Foreclosure includes judicial foreclosure, sale under a power of sale given in the mortgage, and all other remedies provided by law or equity or set out in the mortgage and enforceable in California at the time of the foreclosure for divesting the obligee of title in the event of the obligee's default.

11.2.2 Captions, Table of Contents. The table of contents of the Lease and the captions of the various Articles and Paragraphs of this Lease are for convenience and ease of reference only and do not define, limit, augment, or describe the scope, content, or intent of this Lease or any part or parts of this Lease.

11.2.3 Gender. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, partnership, or other legal entity when the context so requires.

11.2.4 Singular and Plural. The singular number includes the plural whenever the context so requires.

11.2.5 Exhibits. All Exhibits to which reference is made in this Lease are incorporated in the Lease by the respective references to them, whether or not they are actually attached, provided they have been signed or initialed by the parties. Reference to this "Lease" includes matters incorporated by reference.

11.2.6 Entire Agreement. This Lease contains the entire agreement between the parties. No promise, representation, warranty, or covenant not included in this Lease has been or is relied on by either party. Each party has relied on such party's own examination of this Lease, the counsel of such party's own attorneys, and the warranties, representations, and covenants in the Lease itself. The failure or refusal of either party to inspect the Premises or improvements, to read the Lease or other documents, or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection or advice.

11.2.7 Severability. The invalidity or illegality of any provision of this Lease shall not affect the remainder of the Lease.

11.2.8 Successors. Each and all of the covenants and conditions of this Lease shall be binding on and shall inure to the benefit of the heirs, successors, executors, administrators, assigns, and personal representatives of the respective parties.

11.3 Right of Early Entry.

Upon execution of this Lease, Landlord hereby grants to Tenant and its representatives (i) a right of entry onto the Premises for the purpose of conducting a feasibility study which feasibility study shall be performed by Tenant at Tenant's sole cost and expense, and (ii) a right of entry onto the Premises, subject to the prior written consent of Landlord, for the purpose

of commencing grading and site preparation, which work shall be done at the sole cost of Tenant. Such feasibility study may include land use studies and soil tests. In the event the Premises prove unsuitable for the purposes for which they are leased, including but not by way of limitation, that the soil or geological structure is incapable of properly supporting the Design Facility, or the costs to make the condition of the soil satisfactory and/or required structural or foundation modifications to the Design Facility to accommodate the soil and geologic conditions are prohibitive, then Tenant may terminate the Lease and any amounts deposited by it for the payment of rent shall be refunded. Tenant shall return the Premises to a substantially equivalent condition existing prior to the execution of the Lease. Tenant hereby agrees to indemnify Landlord from and against any and all costs, expenses and damages of any kind or nature relating to or arising out of such entry by Tenant or its agents or representatives.

ARTICLE XII

EXPIRATION; TERMINATION

12.1 Tenant's Duty to Surrender. At the expiration or earlier termination of the Term, Tenant shall surrender to Landlord the possession of the Premises. Surrender or removal of fixtures, trade fixtures, and improvements shall be as directed in the provisions of this Lease on ownership of improvements at termination. Tenant shall leave the surrendered improvements, Premises and any property left therein in good and broom-clean condition except as provided to the contrary in provisions of this Lease on maintenance and repair of improvements. All property that Tenant is required to surrender shall become Landlord's property at termination of the Lease. All property that Tenant is not required to surrender but that Tenant does abandon shall, at Landlord's election, become Landlord's property at termination. If Tenant fails to surrender the Premises at the expiration or sooner termination of this Lease, Tenant shall defend and indemnify Landlord from all liability and expense resulting from the delay or failure to surrender, including, without limitation, claims made by any succeeding tenant founded on or resulting from Tenant's failure to surrender.

12.2 Holding Over. This Lease shall terminate without further notice at the expiration of the Term. Any holding over by Tenant after expiration shall not constitute a renewal of extension or give Tenant any rights in or to the Premises except as otherwise expressly provided in this Lease.

ARTICLE XIII

TRANSFER RESTRICTIONS

Assignment Within the First Ten Years of Term.

Notwithstanding anything contained herein to the contrary, if during the first ten (10) years of the Primary Term of this Lease, Tenant assigns its rights and obligations hereunder. Landlord shall be entitled to participate in that portion of the proceeds from such assignment attributable to an increase ("Increase"), if any, in the value of the land assigned over the Minimum Net Rent. Landlord's participation shall be limited to eighty percent (80%) of said Increase, if any, during years 1 through 5, inclusive, of the Primary Term of the Lease and fifty percent (50%) during years 6 through 10, inclusive, of the Primary Term of the Lease. After the expiration of the first ten (10) years of the Primary Term of this Lease, Landlord shall not be entitled to participate in the proceeds of any assignment by Tenant and this Article XIII shall be of no further force or effect. In the event of an assignment for other than a lump sum payment of rent, Landlord's share of the proceeds from the Increase pursuant to this Article XIII shall be payable from the rental payments when received from the assignee. The amount of Increase shall therefore be allocated and paid over the balance of the term of the Lease. If the parties hereto cannot agree on the value of the land assigned, an appraisal thereof shall be conducted by a professional Independent Real Estate Appraiser selected and retained by mutual consent of the parties to this Lease from the list of appraisers approved by the City Council of Landlord. Such appraisal shall be conducted immediately preceding or concurrently with such assignment. In the event the parties cannot agree upon the selection of a mutually acceptable appraiser, then Landlord and Tenant will each appoint a professional Independent Real Estate Appraiser, who in turn will select a third Independent Real Estate Appraiser which third appraiser will be employed to determine the value of the land as assigned or sold. Each party shall pay the cost of its own selected appraiser and both Landlord and Tenant shall share equally the cost of the mutually appointed third appraiser. Landlord and Tenant agree that the instructions to the appraiser selected shall be that the land is to be appraised as if vacant, without regard to the value of Tenant's improvements thereon.

ARTICLE XV

RIGHT OF FIRST REFUSAL

Grant of Right of First Refusal. If, at any time during the Term of this Lease or following the expiration or termination of this Lease, the Landlord desires to relet, sell, transfer or otherwise convey (collectively referred to herein as a "Conveyance") all or any part of the Premises, the Landlord shall give written notice to Tenant of such proposed Conveyance. The notice shall

identify the proposed new tenant, purchaser or other transferee (collectively referred to herein as the "Transferee") and the terms on which all or part of the Premises is to be conveyed to the Transferee. For thirty (30) days after such notice is given, Tenant shall have the right to enter into a lease (only following the termination of the Lease), purchase and sale agreement and escrow instructions or such other appropriate agreement with respect to a Conveyance of the Premises as is identified in such notice on the same terms and conditions as stated in such notice. If, at the end of the Primary Term, Tenant has not received such Notice, Tenant shall have the right to continue to occupy the Premises for five (5) successive one year terms with a monthly rental rate to be agreed to by the Landlord and Tenant. If Landlord and Tenant are unable to agree, they each shall appoint a representative of a licensed real estate brokerage company which representatives shall fix the monthly rental rate. If these representatives are unable to agree on the monthly rental rate they shall designate another representative of a licensed real estate brokerage company whose determination of the monthly fixed rental rate shall be binding and conclusive on Landlord and Tenant. During such successive one year periods the right of first refusal contained herein shall be in full force and effect.

If Tenant does not exercise this right of first refusal, the Landlord may, within thirty (30) days from the date the Tenant's right hereunder expires and on the same terms and conditions stated in such notice, enter into a Conveyance of such portion of the Premises as is identified in such notice to the Transferee. Not later than ten (10) days following the finalization of a Conveyance, Landlord shall deliver a copy of all such agreements with respect to the Conveyance to Tenant to evidence compliance with the provisions of this Article.

Notwithstanding anything to the contrary contained herein, if Landlord has given tenant a notice for the sale of all of Landlord's fee interest in the Premises ("Fee Sale") during the term of the Lease, the purchase price for the Fee Sale shall be adjusted as follows. There shall be deducted from the purchase price in the notice the total Minimum Net Rent compounded at an annual percentage rate of seven percent (7%) to the date the balance of the purchase price in the notice, as adjusted herein, is paid to Landlord pursuant to the terms and provisions of the notice or such purchase and sale agreement or escrow instructions which may be contemplated by such notice. In no event shall the Landlord, following such adjustment, be obligated to pay Tenant any funds if the purchase price in the notice was less than the amount of the adjustment calculated herein. Additionally, at the time of the Fee Sale, the Tenant for a one-year period shall employ on the Premises not less than one hundred sixty (160) full-time employees. A full-time employee shall be defined as any person employed by Tenant on the Premises for at least seven hours per day for a period of three months. If Tenant does not accept the right of first

refusal referenced in any notice with respect to the Fee Sale, such right shall remain in full force and effect and such Transferee purchasing the fee interest shall be subject to the right of first refusal.

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

NISSAN DESIGN INTERNATIONAL,
INC., a Delaware corporation

By K. Yotsumoto
Its president

By Shigem Magata
Its Secretary & Treasurer

THE CITY OF SAN DIEGO,
a Municipal Corporation

By J. P. Fowler
Its Deputy City Mgr

By _____
Its _____

Approved as to form and legality

this 12 day of August, 1980

JOHN W. WITT, City
Attorney

By [Signature]
Deputy City Attorney

R-252454

LEGAL DESCRIPTION OF PREMISES

(The description of the Premises shall be attached to this Lease as Exhibit "B" when the Parcel Map legally creating the Premises is filed of record with the County Record of San Diego County, California. The parties shall each initial copies of said Exhibit "B" and attach a fully initialed copy to each copy of the Lease held by each party.)

EXHIBIT "B"

K.Y.

S.N.

STANDARDS FOR PERMITTED ASSIGNEES

The following shall be a Permitted Assignee in accordance with Article VII of the Lease:

1. All those assignees or sublessees whose businesses and related use of the Premises are consistent with the zoning and use restrictions of the City of San Diego in effect at the time of such proposed assignment or subletting.
2. All those assignees or sublessees whose businesses and related use of the Premises are consistent with any recorded covenant, condition or restriction affecting the Premises at the time of such proposed assignment or subletting.

If Tenant subleases twenty percent (20%) or less of the total improvements to the Premises during the first ten (10) years of the Primary Term, Tenant shall have no additional payments to Landlord under Article XIII of the Lease.

Property
503

RESOLUTION No. R-252454

(R- 81-180)

Adopted on AUG 11 1980

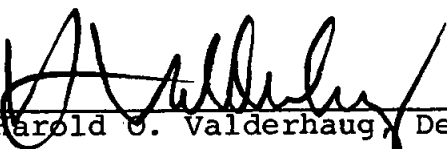
BE IT RESOLVED, by the Council of The City of San Diego as follows:

That the City Manager is hereby authorized and empowered to execute a lease of an approximate six (6) acre parcel of City-owned property known as Parcel 2 of subdivided Lot 3, Campus Point, Map 9303, to NISSAN DESIGN INTERNATIONAL, INC., which lease has a 55-year term and provides for payment in advance of \$1,185,000.00 for the lease term, for the purpose of construction and operation of an automobile design facility, under the terms and conditions set forth in that lease on file in the office of the City Clerk as Document No. RR-252454.

BE IT FURTHER RESOLVED, that payment of a broker's commission from the proceeds of the lease payment is hereby authorized.

APPROVED: JOHN W. WITT, City Attorney

By


Harold C. Valderhaug, Deputy

HOV:ps:755
7/29/80
Or.Dept. Property
Job: 915914

Passed and adopted by the Council of The City of San Diego
on August 11, 1980, by the following vote:

YEAS: Cleator, Lowery, Stirling, Killea, Wilson.

NAYS: Schnaubelt

NOT PRESENT: Mitchell, Williams, Gotch

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-252454
passed and adopted by the Council of The City of San Diego,
California, on AUG 11 1980.

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

(SEAL)

By Ellen Bovard, Deputy.

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

74R - 7-24-80
Item #18

1. CERTIFICATE NUMBER:

TO: CITY ATTORNEY	2. FROM: (ORIGINATOR) PROPERTY DEPARTMENT	3. DATE July 10, 1980
-----------------------------	---	---------------------------------

4. SUBJECT: **Negotiated 55-year Lease with option to purchase of City-owned Parcel 2 of subdivided Lot 3, Campus Point, Map 9303**

5. PREPARATION OF: ☒ RESOLUTION(S) ☐ ORDINANCE(S) ☐ AGREEMENT(S) ☐ DEED(S)
1. Authorizing the City Manager to execute a 55-year Lease with option to purchase, a copy of which is filed in the office of the City Clerk as Document No. _____, with Nissan Design International, Inc., covering the agreement to use Parcel 2 of Lot 3, Campus Point, Map 9303.
 2. Authorizing the Mayor and City Clerk to execute a deed to Parcel 2, Lot 3, Campus Point, when all conditions of option to purchase are fulfilled to the City Manager's satisfaction.
 3. Authorizing the payment of a real estate broker's commission of not more than 3% of minimum net rent (Fair Market Value) to Grubb & Ellis Real Estate in accordance with Municipal Code Section 22.0905.

(over)

6. SUPPORTING INFORMATION: (INCLUDE ONLY INFORMATION NOT COVERED ON FORM 1472A, "DOCKET SUPPORTING INFORMATION".)

DISPOSITION OF FUNDS: Capital Outlay Fund 30248.

ACTION REQUESTED BY: Property Director.

LOCATION, SIZE, SHAPE, ZONING: 6-acre pad at the Northwest area of Genesee Avenue and Campus Point Drive, just east of I-5 Freeway, on the Southerly portion of Lot 3, Campus Point. Lot 3 is being parcelled into two parcels, with Parcel 2 being 6.6 acres of irregular shape fronting on Genesee Avenue and Campus Point Drive. Zoning is SR.

ENVIRONMENTAL IMPACT: This action is exempt from the provisions of CEQA in accordance with Section V, Part K, Class 12, as amended in February 1974, City Guidelines for implementation of CEQA.

CODE PROCEDURE - (San Diego Municipal Code, Sec. 22.0901 and 22.0902):

a) Reason for leasing/selling: To expand research and headquarters activity in San Diego.

b) Description: Parcel 2 of Lot 3, Campus Point.

c) Value of Property: \$1,185,000 per appraisal by

G. S. Kibbey, Date of Value, July 1, 1980. (over)

CHECK IF ITEM IS TO BE LISTED ON CONSENT AGENDA ☐

7. FOR INFORMATION CONTACT: (NAME & MAIL STA.) PARKIS:BB 503	8. TELEPHONE NO. 6264	9. CHECK IF "DOCKET SUPPORTING INFORMATION" ATTACHED ☐
--	---------------------------------	---

10. COMPLETE FOR ACCOUNTING PURPOSES:			11. ROUTING AND APPROVALS			
FUND	BUDGETED	UNBUDGETED	ROUTE (✓)	APPROVING AUTHORITY	APPROVAL	DATE SIGNED
DEPT. & FUNCTION		30248		DEPARTMENT DIRECTOR		
OBJECT ACCOUNT		07090	✓	CLEARING AUTH.		
COST ACCOUNT		78335	X	EQD		
WORK ORDER NO.			X	CLEARING AUTH.		
C.I.P. NO.			X	CIP		
AMOUNT	Net Proceeds \$1,149,903.72		X	DEPUTY CITY MANAGER		
			X	AUDITOR		
			✓	CITY ATTORNEY		
			✓	ORIGINATING DEPARTMENT		
			X	CITY MANAGER		
			✓	CITY CLERK		

12. ESTIMATED COST: (over)

Job: #915914

Dwg: Miscellaneous

cc: Docket w/dwg. ✓

County Assessor w/dwg.

REDI BOOK PAGE NO. 302

COUNCIL DISTRICT NO. 1

at

5. PREPARATION OF: (cont'd)

4. Authorizing the payment of all related expenses in connection with the lease or sale by option from the proceeds thereof.

*5, 6, and 7 (see below)

6. SUPPORTING INFORMATION:

CODE PROCEDURE (cont'd):

d. Statement of Payment of Broker's Commission - Authorizing payment of a broker's commission in the amount not to exceed 3% of Prepaid Fair Market Value.

e. This is a prepaid 55-year lease with option to purchase at Current Fair Market Value, less amount paid.

COMMENTS: See Report to Council.

HANDLING: DO NOT RECORD. Deliver document to Property Department, Attention: Bud Bass, M.S. 503, for further handling.

ESTIMATED COST (cont'd):

Estimated Proceeds		\$1,185,000.00
One-half Escrow Fees	\$ 106.65	- 35,096.28
Title Policy	2,486.13	
Transfer Tax	1,303.50	
Broker's Commission	31,200.00	
		<u>\$1,149,903.72</u>

c) 7/1/66 to 12/31/66 \$35,096.28

d) 1/1/67 to 12/31/67 \$35,096.28

1/1/68

e) 1/1/69 to 12/31/69 \$35,096.28

*5. Approving the Parcel Map of Lot 3 of Campus Point.

1/1/68 to 12/31/68

*6. Authorizing the Mayor and City Clerk to sign the map for the City of San Diego.

1/1/69 to 12/31/69

*7. Transferring \$200 from the Industrial Development Fund, CIP No. 39-033 Campus

Point, to Account #78920 Park District 11.483 for park fees.

1/1/69 to 12/31/69

1/1/70 to 12/31/70

1/1/71 to 12/31/71

1/1/72 to 12/31/72

1/1/73 to 12/31/73

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1/1/92 to 12/31/92

1/1/93 to 12/31/93

1/1/94 to 12/31/94

1/1/95 to 12/31/95

DATE ISSUED:

REPORT NO.

ATTENTION: PR&R Committee, Agenda of

SUBJECT: Negotiated 55-year Lease with Option to Purchase City-owned Parcel 2 of Subdivided Lot 3, Campus Point, Map 9303

REFERENCE: Council Policy 900-3 and 700-10

SUMMARY

Issue - Should the City Council authorize the City Manager to execute a 55-year prepaid Lease Agreement for \$1,185,000 with Nissan Design International (NDI) and to pay a commission in the amount of \$37,000.

Manager's Recommendation - Authorize the City Manager to execute the lease and to pay the real estate commission.

Other Recommendation - The Economic Development Corporation (EDC) strongly endorses the lease of the subject property to NDI.

Fiscal Impact - \$1,185,000 less costs, to be deposited in the Industrial Development Fund.

BACKGROUND

The City, primarily through EDC, is actively trying to attract prestigious new industries to locate in San Diego. NDI was first contacted through the 1979 Trade Fair in Japan. NDI is a multi-national corporation, and the 29th largest company in the world according to the 1980 Forbes ranking.

NDI wishes to establish its new design headquarters facility on this six-acre site. However, it will employ relatively few (35 to 40) engineers, designers, technicians, and staff members, which meant that the City's normal requirements of at least 30 employees per acre cannot be met. Accordingly, a 55-year lease has been proposed. The prepaid minimum net rent is equal to the current Fair Market Value of the property as established by an independent fee appraiser. A formula based on the then current Fair Market Value will be used should the option be exercised.

PROPOSAL

Major points of this agreement are:

Term: 55 years

Prepaid Rent: \$1,185,000

Option to Purchase: Any time that the number of full-time employees reaches or exceeds 160 person, NDI may purchase for the then current Fair Market Value, less the prepaid rent, plus 7% per anual as earned value of the prepaid rent.

Use: For the construction and operation of a full service automotive and multidimensional transportation design facility.

Improvements: Commence construction within 180 days of not less than 25,000 square foot building for Design Facilities.

Ownership of Improvements: Improvements owned by NDI until expiration of the term or sooner termination of the lease.

ALTERNATIVES

1. Sell the site without regard to employment quotas.
2. Reject the offer to lease and seek another user for the site.

Respectfully submitted,

John P. Fowler
Deputy City Manager

SPOTS/BB

RESOLUTION NO. R- 252456 (R.81-186)

AUG 11 1980

WHEREAS, The City of San Diego, a municipal corporation, is the owner of a parcel of land in the City of San Diego, County of San Diego, State of California, being a division of Lot 3 of Campus Point Subdivision, Map No. 9303, on file in the office of the County Recorder of said County; and

WHEREAS, said City proposes to file a 2-lot parcel map of Lot 3 of Campus Point Subdivision; and

WHEREAS, it is necessary for THE CITY OF SAN DIEGO, as a property owner, to consent to the preparation and recordation of a parcel map thereof; NOW, THEREFORE,

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

That the Mayor and City Clerk be, and they are hereby authorized and empowered to execute, for and on behalf of THE CITY OF SAN DIEGO, the certificate of ownership on said parcel map, consenting to the preparation and recordation of said map.

APPROVED: JOHN W. WITT, City Attorney

By 
Harold O. Valderhaug, Deputy

HOV:ps:755
7/29/80
Or.Dept. Property
Job: 915914

Item 114 June 8

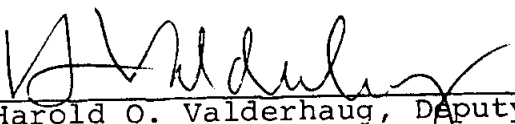
RESOLUTION No. _____ (R-81-2245)

Adopted on _____

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

That a broker's commission in the amount of \$31,200 is hereby authorized from the proceeds of the \$1,185,000 prepaid lease amount paid by NISSAN DESIGN INTERNATIONAL, INC. for Parcel 2 of Lot 3, Campus Point, as more specifically described in Resolution No. 252454 of the City Council, adopted August 11, 1980.

APPROVED: JOHN W. WITT, City Attorney

By 
Harold O. Valderhaug, Deputy

HOV:ps:755
5/27/81
Or.Dept. Atty.

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

Councilmen	Yeas	Nays	Not Present	Ineligible
Bill Mitchell	☐	☐	☐	☐
Bill Cleator	☐	☐	☐	☐
Susan Golding	☐	☐	☐	☐
Leon L. Williams	☐	☐	☐	☐
Fred Schnaubelt	☐	☐	☐	☐
Mike Gotch	☐	☐	☐	☐
Dick Murphy	☐	☐	☐	☐
Lucy Killea	☐	☐	☐	☐
Mayor Pete Wilson	☐	☐	☐	☐

AUTHENTICATED BY:

PETE WILSON

Mayor of The City of San Diego, California.

(Seal)

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

By _____, Deputy.

Office of the City Clerk, San Diego, California	
Resolution Number	Adopted

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO				1. CERTIFICATE NUMBER:		
TO: CITY ATTORNEY		2. FROM: (ORIGINATOR) <i>City Attorney</i>		3. DATE May 28, 1981		
4. SUBJECT: Payment of \$31,200 broker's fee - Parcel 2 of Lot 3, Campus Point						
5. PREPARATION OF: ☒ RESOLUTION(S) ☐ ORDINANCE(S) ☐ AGREEMENT(S) ☐ DEED(S)						
Authorizing the payment of \$31,200 broker's commission in connection with the 55-year prepaid lease of City property to Nissan Design International, Inc.						
<u>CITY ATTORNEY REPORT:</u>						
6. SUPPORTING INFORMATION: (INCLUDE ONLY INFORMATION <u>NOT</u> COVERED ON FORM 1472A, "DOCKET SUPPORTING INFORMATION". In connection with the lease for 55 year term of Parcel 2 of Lot 3, Campus Point, to Nissan Design International, Inc. (NDI), the 1472 supporting information specified a broker's commission of \$31,200. The total appraised value of \$1,185,000 was required to be prepaid under the terms of the lease and the City Manager, therefore, recommended a broker's fee equal to a broker's fee which would be paid in the event of a sale of City property. The lease agreement also provided for a brokerage fee in an amount not to exceed \$31,200. The resolution approving the lease merely authorized a broker's commission to be paid from the proceeds of the lease payment, and it did not specify the amount as \$31,200. The City Auditor has indicated C						
				CHECK IF ITEM IS TO BE LISTED ON CONSENT AGENDA ☐		
7. FOR INFORMATION CONTACT: (NAME & MAIL STA.)			8. TELEPHONE NO.		9. CHECK IF "DOCKET SUPPORTING INFORMATION" ATTACHED ☐	
10. COMPLETE FOR ACCOUNTING PURPOSES:			11. ROUTING AND APPROVALS			
FUND	BUDGETED	UNBUDGETED	ROUTE (/)	APPROVING AUTHORITY	APPROVAL	DATE SIGNED
DEPT. & FUNCTION			✓	DEPARTMENT DIRECTOR		
OBJECT ACCOUNT				CLEARING AUTH.		
COST ACCOUNT				CLEARING AUTH.		
WORK ORDER NO.						
C.I.P. NO.						
AMOUNT						
12. ESTIMATED COST:				DEPUTY CITY MANAGER		
				AUDITOR		
			✓	CITY ATTORNEY	<i>[Signature]</i>	5/28/81
			✓	ORIGINATING DEPARTMENT		
				CITY MANAGER		
			✓	CITY CLERK		

1472a
B88

Docket supporting information cont'd.

an unwillingness to pay a broker's commission in the amount of \$31,200 since the City, on March 12, 1979, by Resolution No. 223040, provided for a lease brokerage commission schedule for long term leases based upon 2% of the total rental for the first 5 years, 1% of total rental for the second 5 years, and a .75% of the total rental for the period from 5-25 years of the term, and the Auditor has indicated that since in this case all the rent is paid during the first 5 years, only a 2%, or \$23,700, broker's commission should be paid. On the other hand, if this were a 1-year prepaid lease, the lease brokerage commission schedule would require a commission in the amount of \$35,550. The Auditor has requested this subsequent resolution to allow payment of a broker's commission in the amount of \$31,200.

RESOLUTION No.

223040

(R- 79-1689

(REV.)

Adopted on MAR 12 1979

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

That Council Resolution Nos. 212958 and 218125, adopted April 4, 1975 and April 12, 1977, respectively, are hereby rescinded in their entireties and the following provisions for payment of Real Estate Broker's Commissions are adopted:

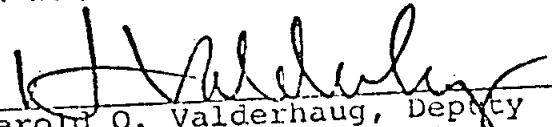
Unless otherwise directed by the Council in specific instances, the City can be expected to pay Real Estate Broker's Commissions for both negotiated and auction sales and leases of City-owned real estate in accordance with the following schedules, subject to the requirements of Section 22.0905 of the Municipal Code entitled "BROKER'S FEE AND REGISTRATION."

I. SALE COMMISSION. The amount of the broker's commission on sales shall be as follows:

<u>Gross Sale Price</u>	<u>Commission Percent of Sale Price</u>
Properties sold for \$50,000 or less	3% - 6% (at the sole discretion of the City Manager)
Up to \$500,000 inc.	3%
Next \$500,000 up to \$1,000,000 inc.	2.5%
Next \$500,000 up to \$1,500,000 inc.	2%
Next \$500,000 up to \$2,000,000 inc.	1.5%
All over \$2,000,000	1%

II. LEASE COMMISSION. The amount of the broker's commission on leases shall be as shown on Exhibit A hereto which is by this reference incorporated herein.

APPROVED: JOHN W. WITT, City Attorney

By 
Harold O. Valderhaug, Deputy

HOV:dm

3/1/79 Rev. 3/20/79

Or. Dept. PF&R

LEASE BROKERAGE COMMISSION SCHEDULE**A. Gross or Net Leases****1. Term of Less than five (5) years.**

- 3% of the total rental for the 1st 12 months
- 2.5% of the total rental for the 2nd 12 months
- 2% of the total rental for the 3rd 12 months
- 1.5% of the total rental for the 4th 12 months
- 1% of the total rental for the remaining months

2. Term of five (5) years through twenty-five (25) years or more

- 2% of the total rental for the 1st 5 years
- 1% of the total rental for the 2nd 5 years
- .75% of the total rental for the remainder of the term up to 25 years

B. Month to Month Tenancy:

The commission rate in this instance shall be 25% of the first month's rent.

C. Percentage Rental:

As to any leases which contain a percentage rent clause, City shall pay a commission on the percentage rent at the same rate as applicable for the minimum guaranteed rent as above provided. This commission shall be due and payable within thirty (30) days after the Lessee's final payment and accounting of percentage rental for the preceding lease year. At the end of the third full lease year there shall be a settlement as to any commission due on percentage rental for the remainder of the original term, not to exceed twenty-five (25) years, of the lease calculated upon the assumption that the percentage rental for each year of the remainder of the term will be the same as the percentage rental for the third full lease year.

D. Payment of Lease Commission:

Commission shall be due upon execution of a lease and all lease revenue from the new contract received by City shall be paid within thirty (30) days after receipt by City to Broker's commission until such time as the commission is paid in full.

E. Extension of Lease or Additional Space Taken:

An additional lease commission will not be paid should the term of the lease be extended, renewed, or amended.

Notwithstanding any of the foregoing, in no event shall the amount of any commission exceed 3% of the fair market value of the lease property as appraised in accordance with Municipal Code Section 22.0901, LEASES OF REAL PROPERTY, prior to City's execution of the lease agreement.



from

JAMES JACOBS, P.E.

MEMO

PROJECT MANAGER
ENGINEERING DESIGN DIVISION
ENGINEERING & DEVELOPMENT DEPARTMENT
PHONE: 533-3766 M.S. 611

CIP 52373

Bob

Here is a xerox copy of my
work up plan for this area
showing the proposed improvements
of Genesee Ave. The proposed
new curb line is shown, which
could change, but I feel in the
area north of Genesee and west
of Campus point ~~is~~ is very
unlikely to change.

I hope this will be
of some help.

Jim

3-30-92

Printed on recycled paper

Existing & to Ch = 41
Needed & to Ch
30 11 = 33
10 5 = 5
10 6 = 6
44

30 11 = 33
10 5 = 5

38'

30 11 = 33
10 5 = 5

