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FLAT RATE GROUND LEASE

BETWEEN

THE CITY OF SAN DIEGO

and

WESTERRA COMMUNICATIONS, LTD.

(a California limited partnership)

Lessee

RR-277522
DOCUMENT NO. _____
FILED MAR 19 1991
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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Table of Contents

I.	SECTION 1	1
	A. PREMISES/USE/CONDITION OF SITE	1
	1. Premises	1
	2. Lot Split and PID Amendment	1
	3. Related Council Actions	2
	4. Use of Premises	2
	5. Quiet Possession	3
	6. Easements and Reservations	3
	7. Competent Management	4
	8. Condition of Premises	4
	9. Preservation of Open Space Easement	5
	10. Waste Management	5
	11. Water Reclamation	6
II.	SECTION 2	6
	A. TERM/RENT/FUTURE EXPANSION	6
	1. Commencement	6
	2. Holdover	6
	3. Surrender of Premises	6
	4. Prepaid Rent	6
	5. Good Faith Deposit	7
	6. Future Expansion	8
III.	SECTION 3	10
	A. ESCROW/ACCESS/TITLE INSURANCE	10
	1. Escrow	10
	2. Preliminary Work By LESSEE	13
	3. Title Insurance	13
IV.	SECTION 4	14
	A. ASSIGNMENT/ENCUMBRANCE//DEFAULT/EMINENT DOMAIN/ARBITRATION	14
	1. Time is of Essence; Provisions Binding on Successors	14
	2. Assignment and Subletting	14
	3. Control by Specified Individuals or Entities	16

4. Encumbrance
5. Defaults and Remedies
6. Eminent Domain
7. Arbitration
8. Arbitration Under the Sublease

V.

SECTION 5

A. INDEMNITY/INSURANCE RISKS/ DAMAGE

1. Indemnity
2. Insurance
3. Waste, Damage, or Destruction

VI.

SECTION 6

A. ACCEPTANCE/INSPECTION/IMPROVEMENTS/
REPAIRS

1. Acceptance of Premises
2. Entry and Inspection
3. Maintenance
4. Improvements/Alterations
5. Utilities
6. Construction Bond
7. Liens
8. Taxes
9. Unavoidable Delay
10. Development Plan
11. Hazardous/Toxic Waste
12. Development of the Premises

VII.

SECTION 7

A. GENERAL PROVISIONS

1. Notices
2. Compliance with Law
3. CITY Approval
4. Nondiscrimination
5. Equal Opportunity
6. Partial Invalidity
7. Legal Fees
8. Number and Gender
9. Captions
10. Entire Understanding
11. CITY Employee Participation Policy
12. Corporate Authority
13. CITY'S First Right of Refusal

14. LESSEE'S First Right of Refusal .	
15. City Participation Upon Transfer .	
16. Eastgate Child Care Center	
17. Planting Strips	
18. Standard of Employees	
19. Relocation Payments	
20. Occupancy	
21. NAS Miramar	
22. LESSEE	

VIII. SECTION 8

A. SIGNATURES

1. Signature Page	
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CITY OF SAN DIEGO
FLAT RATE GROUND LEASE

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and WESTERRA COMMUNICATIONS, LTD., a California limited partnership (Developer) hereinafter called "LESSEE."

SECTION 1: PREMISES/USE/CONDITION OF SITE

- 1.01 Premises. The permanent Premises (Premises) shall be a portion of Lot 4, Eastgate Technology Park consisting of approximately 3.4 acres of useable pad area (17.288 gross acres) of the Westerly end of Lot 4 configured substantially as shown in Exhibit "A" attached hereto and made a part hereof. Exhibit "A" shows a proposed minor subdivision ("Lot Split") of Lot 4 into 4 parcels, with Parcel 1 shown thereon as the ultimate intended permanent Premises. The interim Premises ("Interim Premises") shall be all of Lot 4 until such time as a final parcel map can be recorded generally consistent with Exhibit "A" resulting in a legal Lot Split creating Parcel 1 shown thereon. At such time as the Premises comes into legal existence by recording a final parcel map, LESSEE shall quitclaim and release to CITY all interest to the Interim Premises except as to Parcel 1. Until such time as the final parcel map is recorded, the Interim Premises shall constitute the Premises for all purposes under this lease and shall be construed to be the Premises for all such purposes. Upon recordation of the final parcel map and the concurrent quitclaim and release of all parcels except Parcel 1, Parcel 1 shall become the Premises for all purposes under this Lease.
- 1.02 Lot Split and PID Amendment. LESSEE, on a diligent reasonable efforts basis, shall proceed with the application and processing of the subdivision of the Interim Premises into four (4) parcels substantially consistent with Exhibit "A". Such division of land shall be obtained subject to the requirements of the Subdivision Map Act and the required approval process of the City of San Diego for the creation of the four separate legal parcels. Except for the costs of the required on-site and off-site improvements, which are the subject of a separate agreement executed concurrent herewith between CITY and LESSEE in the form attached hereto as Exhibit

"B" ("Parcel Map Improvement Agreement"), LESSEE shall assume all costs and expense in obtaining the required Lot Split. Subject to the CITY payment obligations set forth in Parcel Map Improvement Agreement by CITY, LESSEE shall cause to be constructed the necessary road improvements for the extension of Towne Center Drive and for any additional on-site and off-site improvements required by the CITY to finalize the Lot Split and record the final parcel map. Upon approval of this Lease by City Council, CITY shall proceed diligently to amend the Eastgate Technology Park Planned Industrial Development ("PID") for the allocation of a floor area ratio ("FAR") to permit the construction of 50,000 square feet of building improvements on Parcel 1 for use in accordance with Section 1.04. Notwithstanding anything that may be construed to the contrary, LESSEE shall have no obligation to conduct an environmental audit on Lot 4 or remove, neutralize, or otherwise mitigate against any hazardous/toxic waste problem that may exist anywhere on Lot 4 as a condition to either obtaining any tentative or final parcel map required under this Section 1.02. Any hazardous/toxic waste environmental audit requirement, or any requirement to remove, neutralize or mitigate against any hazardous/toxic waste imposed as a condition of any tentative map approval, or the recordation of a final parcel map, shall be at the sole cost and expense of CITY.

- 1.03 Related Council Actions. By the granting of this lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes, but is not limited to rezonings, variances, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the leased Premises.
- 1.04 Use of Premises. The Premises may be used for any purpose in conformance with applicable zoning; except that the original use of the Premises shall be for development of a two-story building of not less than 29,000 square feet and related improvements under a build-to-suit sublease between LESSEE and the Institute For Defense Analyses ("IDA") as approved by CITY in escrow (Section 3.01) with a stated Term of at least thirty (30) years,

with extension options for an additional 24 years (not to exceed the term of this lease as established under Section 2.01), for use by IDA for communications, computer, scientific research and related purposes. It is a material consideration for CITY to enter into this lease with LESSEE to induce IDA to establish its west coast operations in the CITY of San Diego and to occupy the Premises under such a long-term sublease. LESSEE shall develop the Premises and construct thereon building improvements substantially consistent with the preliminary drawings as approved by CITY in escrow (Section 3.01). Any subsequent changes or revisions to the development plans or building improvements required by any City agency shall be deemed approved by City under the terms of this Lease.

- 1.05 Quiet Possession. LESSEE, having fully paid all Rent and in performing the covenants and agreements herein, shall at all times during the Term peaceably and quietly have, hold and enjoy the Premises. As provided in Section 3.03, CITY shall provide to LESSEE a CLTA policy of title insurance from First American Title Insurance Company which LESSEE may upgrade to an ALTA Policy at LESSEE'S sole additional cost insuring the leasehold estate for the full amount of the Prepaid Rent (Section 2.04), which policy shall be in lieu of any recourse LESSEE may have against CITY for any claim by any third person of any title superior to CITY'S and any loss or damage to LESSEE resulting therefrom. In the event a final parcel map has not been recorded creating Parcel 1 as the permanent Premises before close of escrow (Section 3.01), CITY shall cause the Title Company to provide LESSEE with an interim title policy binder covering the Interim Premises with the actual title policy to issue covering the permanent Premises.

1.06 Easements and Reservations.

- a. CITY hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water rights, that are at least 500 feet below the surface of the Premises. CITY shall have the right to extract all minerals, oil, gas and water that is five hundred (500) feet or more below the surface of the Premises (determined from the lowest point of the premises) provided such extraction will not cause subsidence or otherwise adversely affect the use or occupancy of the Premises by

Developer or its tenant(s) consistent with Section 1.04. This reservation shall not be construed as reserving any surface easement or rights, or to permit CITY access to the Premises for the purpose of exploiting the subsurface rights.

- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along and across the Premises for utilities, or access as it deems advisable for the public good, so long as such rights of way and easements do not materially interfere with LESSEE'S full use and enjoyment of the Premises, or violate any federal security regulations or requirements.
- c. CITY has the right to enter the Premises for the purpose of making repairs to any CITY facilities located on the Premises, so long as CITY'S entry does not materially interfere with LESSEE'S full use and enjoyment of the Premises or violate any federal security regulations or requirements.

Notwithstanding any of the above, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the Premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the leased Premises resulting from CITY exercising the rights reserved in this section; and CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

- 1.07 Competent Management. Throughout the Term of this Lease Agreement, LESSEE shall provide competent management of the leased Premises to the satisfaction of the City Manager.
- 1.08 Condition of Premises. The Premises and any portion thereof shall be leased in an "as is" condition, with no warranty, expressed or implied as to the condition of the soil, its geology, any prior excavations by CITY or others, or the presence of known or unknown faults. Subject to the provisions of Section 1.02, and this Section 1.08, it shall be the sole responsibility of LESSEE, at LESSEE'S expense, to investigate and determine the soil conditions of the Premises site and the suitability of the Premises for the proposed improvements.

LESSEE acknowledges that CITY has provided LESSEE with an environmental audit prepared by an established, reputable, financially responsible and independent registered environmental consultant acceptable to LESSEE showing that there are no signs of any hazardous/toxic wastes found on the area designated as Parcel 1 on Exhibit "A" attached hereto using the same criteria as specified for the protection of CITY in Section 6.11 of this agreement for "Hazardous/Toxic Waste".

At the end of the term or upon early termination of this lease for any reason and upon vacation of the Premises by IDA, LESSEE shall provide to CITY an environmental audit showing that there are no signs of any hazardous/toxic wastes found on the Premises using the same criteria as specified for the protection of CITY under Section 6.11 of this Agreement. Furnishing such an audit as required in this paragraph shall not be construed to relieve LESSEE of any of its obligations under Section 6.11.

- 1.09 Preservation of Open Space Easement. LESSEE shall not make or construct any improvements in the area designated as an Open Space Easement ("Open Space") as shown on Exhibit "A" attached hereto other than a chain link fence not to exceed eight feet high acceptable to IDA located in the Open Space approximately thirty feet from the perimeter of the net buildable area, approximately as shown on Exhibit "A". Said chain link fence shall be designed and constructed in a manner approved by the CITY's Planning Department. LESSEE shall not scarify the Open Space, other than as reasonably required to install the authorized fence, and shall during the full lease term maintain the entire Open Space consistent with all governmental requirements applicable to open space easements and consistent with the maintenance criteria of any applicable brush management ordinance. Exhibit "A" identifies the brush management line outside the perimeter of the building pad, that LESSEE shall be obligated to clear and maintain on the Premises under this Lease, consistent with the maintenance criteria applicable under any applicable brush maintenance ordinance. CITY acknowledges that the Open Space is not a designated public open space easement under the recorded map, as CITY retains fee title to the Premises, transfer of which is a condition of the creation of such a public open space easement pursuant to the recorded map for the Eastgate Technology Park Subdivision.

- 1.10 Waste Management. LESSEE agrees to comply with the CITY's Waste Management-Ordinance No. O-17620

adopted March 18, 1991 entitled "City Wide Storage Standards for Trash and Recyclable Waste Materials" and to provide the required storage area for non-residential use and to incorporate the same in LESSEE's construction plans and specifications.

- 1.11 Water Reclamation. LESSEE agrees to comply with CITY's Ordinance Number O-17327 adopted July 24, 1989 relating to the establishment of a water reclamation master plan and implementing procedures, and to utilize reclaimed water on the Premises for landscape purposes and such other purposes required in accordance with said ordinance, as and when such reclaimed water is made available to the Premises.

SECTION 2: TERM/RENT/FUTURE EXPANSION

- 2.01 Commencement. The Term of this lease shall be 55 years commencing on the first day of the calendar month following close of escrow (Section 3.01). "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the close of escrow.
- 2.02 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the Premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in Rent to bring the Rent to fair market value and to terminate the holdover tenancy at will.
- 2.03 Surrender of Premises. At termination of this lease for any reason, LESSEE shall execute, acknowledge and deliver to CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the Premises. The Premises shall be delivered free and clear of all liens and encumbrances, and in a decent, safe and sanitary condition. If LESSEE fails or refuses to deliver the required deed, the CITY may prepare and record a notice reciting LESSEE'S failure to execute this lease provision and the notice will be conclusive evidence of the termination of this lease and all LESSEE'S rights to the Premises.
- 2.04 Prepaid Rent. LESSEE shall pay to CITY \$1,200,000.00 as prepaid Rent ("Rent") for the full 55-year Term in advance. Said Rent is the amount of the fair market value of Parcel 1 of Lot 4 appraised as fee simple title assuming a maximum allowable

3581.08

Floor Area Ratio ("FAR") of only 40,000 square feet for building improvement purposes and the Premises being only Parcel 1 as shown on the approved tentative map (Section 3.01) assuming Parcel 1 to be a separately created legal parcel. Said appraisal has been performed by an MAI appraiser selected by CITY and approved by LESSEE. The Rent shall be deposited in escrow and paid to CITY at close of escrow as provided in Section 3.01 below. Payment for the rental value of the additional available FAR shall be deferred until future expansion as provided under Section 2.06.

2.05 Good Faith Deposit. LESSEE shall deliver to CITY with the executed copies of this agreement a good faith deposit of \$24,000.00. Said amount shall be security for the performance of those obligations of the LESSEE to be performed hereunder as set out in Section 3.01 and shall be deposited with CITY pursuant to the following:

- b. The good faith deposit may be in the form of:
1) cash or 2) cashier's or certified check.
- c. CITY may deposit said good faith deposit funds with other CITY general funds at interest (but without guaranteeing any particular rate of return), which interest, when received by CITY, shall be retained by CITY, unless this agreement is terminated through no fault of LESSEE, in which case, it shall be payable to LESSEE.
- d. If this agreement has not been terminated and LESSEE'S deposit has not been previously disposed of as set forth herein, then, upon written request of LESSEE, the good faith deposit shall be either applied as part of the basic Rent for the site, or returned to LESSEE upon receipt by CITY of the basic Rent as appropriate. In the event CITY fails to perform any of its obligations hereunder to allow LESSEE to proceed to utilize the Premises for the proposed purposes provided herein, or in the event of any condition or circumstance beyond the control of LESSEE that prevents LESSEE from proceeding to utilize the Premises for the proposed purposes provided herein, then in any such event LESSEE'S good faith deposit shall be returned to LESSEE without penalty or offset.
- e. IN THE EVENT THAT LESSEE DOES NOT PERFORM AS HEREIN PROVIDED BECAUSE OF A FAILURE BY LESSEE TO PERFORM ANY OF ITS OBLIGATIONS HEREUNDER,

THEN CITY MAY RETAIN LESSEE'S GOOD FAITH DEPOSIT. CITY AND LESSEE, BY THIS AGREEMENT, MUTUALLY AGREE THAT LIQUIDATED DAMAGES MAY BE PAID TO CITY IN THE AMOUNT OF THE LESSEE'S GOOD FAITH DEPOSIT AS A RESULT OF THE FAILURE OF LESSEE TO PERFORM ITS ACTS AND OBLIGATIONS TO LEASE THE SITE AS SET FORTH IN THIS AGREEMENT. CITY AND LESSEE HAVE CONFERRED ON THE SUBJECT AND MUTUALLY AGREE THAT IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES TO CITY IN CASE OF SUCH FAILURES BY LESSEE, AND THAT THE AMOUNT SET FORTH IN THIS SECTION AS THE LESSEE'S DEPOSIT IS A REASONABLE ESTIMATE OF THE DAMAGES THAT CITY WOULD SUFFER, IN LIGHT OF ALL RELEVANT FACTORS, INCLUDING, WITHOUT LIMITATION, ADMINISTRATIVE EXPENSES, LOSS OF INTEREST TO CITY, AND DELAY IN COMPLETION OF A PROJECT THAT WILL PRODUCE EMPLOYMENT, TAXES, AND OTHER BENEFITS TO CITY AND ITS INHABITANTS. THE RETENTION BY CITY OF SAID GOOD FAITH DEPOSIT AS LIQUIDATED DAMAGES SHALL BE CITY'S SOLE AND EXCLUSIVE REMEDY AGAINST LESSEE IN SUCH EVENTS AND SUCH GOOD FAITH DEPOSIT RETAINED BY CITY, INCLUDING INTEREST EARNED THEREON, SHALL THEREAFTER BE CITY'S PROPERTY WITHOUT ANY DEDUCTION, OFFSET, OR RECOUPMENT OR ANY RIGHT THEREOF WHATEVER.

CITY INITIALS:

LESSEE INITIALS:

f. LESSEE specifically agrees that Section 53079 of the Government Code of the State of California does not apply to the interest earned by CITY on the above-specified deposit. Subject to Section 2.05 c., LESSEE hereby further waives any right to claim interest on the said deposit. It is agreed that interest earned by the CITY on the deposit shall be considered a fee to the CITY as partial consideration for this agreement.

2.06 Future Expansion. Subject to compliance with Section 6.04 and 6.10 and any other applicable provisions of this Lease, LESSEE shall have the right to build up to 40,000 square feet of building area on the Premises, with the right to build it in two phases of approximately 30,000 square feet initially with the balance to be constructed in the second phase. In addition LESSEE may acquire the right to utilize an additional 10,000 square feet of FAR at any time during the lease Term bringing the total FAR to 50,000 square feet. At the time LESSEE elects to acquire such right, LESSEE shall

give written notice to CITY of its election. CITY shall then have the market value of Premises reappraised as of the date of LESSEE'S notice of election by an MAI approved by LESSEE, which approval shall not be unreasonably withheld. Said appraiser shall determine the amount of the additional Rent to be paid for the additional 10,000 square feet of FAR permitting expansion of the existing building improvements up to 50,000 square feet ("Additional Rent"). Said Additional Rent shall be only in the amount of any increase in the market value of the Premises over and above its then present market value that is solely and directly based on the ability of LESSEE to expand the existing building improvements to the extent permissible with the increased FAR; except that, in no event shall the Additional Rent be more than thirty (\$30.00) dollars per square feet of FAR (by which the prepaid rent for the initial 40,000 square feet of FAR was determined) increased by no more than five (5%) percent per lease year for the first ten (10) years of the term and seven (7%) percent per lease year thereafter, with said percentage increase to be prorated to the date of LESSEE'S election for the lease year in which LESSEE elects to acquire the additional FAR. LESSEE shall have ninety (90) days from the date of notice by CITY of the amount of Additional Rent to be paid by LESSEE to pay CITY by cash, cashier's check or wire transfer the amount of the Additional Rent as determined under this Section.

If at the time LESSEE elects to acquire the additional 10,000 square feet of FAR and CITY at that time has less than 250 Average Daily Trips ("ADTs") available for Eastgate Technology Park under Section H of CITY Policy number 600-36, then in that event CITY may, but shall not be required to, provide the required ADTs for development of the expansion space for which the additional FAR is required until CITY is allocated further ADTs; and, if CITY elects not to provide the required ADTs under this limitation, LESSEE's right to acquire the additional 10,000 square feet of FAR shall continue as if not yet exercised.

If LESSEE does not elect to acquire the additional FAR rights within the first ten (10) years of the lease Term, at such time thereafter as the total available FAR in Eastgate Technology Park is reduced to 250,000 square feet or less (excluding the 10,000 square feet of additional FAR which LESSEE has the right to acquire) CITY may seek to amend the PID to cause a reallocation and transfer of the 10,000 square feet of unused FAR from the Premises to

another parcel in said park; except that, CITY shall first provide written notice to LESSEE of City's need to reallocate the unused FAR and LESSEE shall have ninety (90) days from receipt of said notice to elect to acquire the additional FAR rights pursuant to this Section 2.06, and upon such notice by LESSEE, CITY'S election to reallocate the FAR from the Premises shall be defeated provided LESSEE pays CITY for the Additional Rent for using the additional available FAR. Notwithstanding the above, if LESSEE timely exercises its right to acquire the additional 10,000 square feet of FAR for building expansion under this Section 2.06 and CITY is then unable, or is not then required, to provide the necessary ADT's as is provided in this Section 2.06, then in any such event the Additional Rent shall, nevertheless, then be determined, and LESSEE shall not later be deprived of its right to require and utilize the additional 10,000 square feet of FAR until ninety (90) days after CITY gives notice of the availability of the necessary ADT's and to pay the pre-determined Additional Rent, and within said 90 days LESSEE does not pay said Additional Rent and thereby shall be deemed to have abandoned its right to acquire and utilize the additional 10,000 square feet of FAR.

SECTION 3: ESCROW/ACCESS/TITLE INSURANCE

3.01 Escrow. Within 10 days of the City Council approval of this lease, escrow shall be opened at First American Title Insurance Company, 411 Ivy Street, San Diego, California 92101. Upon Opening of escrow, two executed copies of this lease agreement shall be deposited in escrow along with a fully executed memorandum of lease prepared for recording in the form attached hereto as Exhibit "C" in the official records of the County of San Diego. Close of escrow shall occur when all of the following conditions are met:

- a. LESSEE shall have obtained Tentative Map approval from the CITY of San Diego for division of Lot 4 into four separate legal parcels substantially consistent with the division shown on Exhibit "A" attached hereto as provided in Section 1.02. Escrow shall be notified by joint instruction of the parties that this condition has been met.
- b. CITY and LESSEE have executed and deposited in escrow two copies of the Parcel Map Improvement Agreement substantially in the form attached hereto as Exhibit B.

- c. CITY has caused to be made available for the purchase by LESSEE for the development of Parcel 1 the required number of "Average Daily Trips ("ADTs"), pursuant to Section "H. City Property" of Council Policy 600-36 as amended by Resolution R - 273823 by the City Council on June 20, 1989, to enable LESSEE to proceed with the construction, and occupancy by IDA, of the building improvements, in accordance with LESSEE'S Preliminary Plans. LESSEE shall advise escrow in writing when LESSEE is satisfied that the required ADT's have been made available by CITY.
- d. LESSEE has provided CITY with a fully executed copy of a build-to-suit sublease between LESSEE and IDA for a primary Term of thirty (30) years with extension options in favor of IDA for an additional twenty-four (24) years, and providing for the construction of the building improvements as approved by CITY as herein below required, and providing for the intended use as specified in Section 1.04. The form of said sublease shall be subject to the approval of CITY which approval shall not be unreasonably withheld. CITY shall advise escrow in writing when it has approved said sublease.
- e. LESSEE has provided CITY with Preliminary Plans (Section 6.10), acceptable to CITY. CITY shall not unreasonably withhold its approval of the Preliminary Plans, and CITY shall advise escrow in writing when it has approved said plans.
- f. CITY has obtained the amendment to the Eastgate Technology Park PID as required under Section 1.02 provided LESSEE has not waived this requirement.
- g. LESSEE shall have obtained the required approvals of the Planning Department of CITY and such other CITY agencies as are required pursuant to Section 6.04, and Lessee shall have obtained the approval of the City Planning Department for the design and installation of a chain link fence acceptable to IDA as provided for in Section 1.09. LESSEE shall advise escrow in writing when it has obtained all of the required approvals.
- h. The title company is in condition to issue its

interim ALTA title policy binder consistent with the condition of title specified by LESSEE in approving the preliminary title report (Section 3.03).

- i. LESSEE has deposited all funds required of LESSEE to close by cash, cashier's check or wire transfer, which funds shall not be required earlier than thirty (30) days after all other conditions have been met for the close of escrow.
- j. LESSEE has delivered to CITY a binder for a policy of public liability insurance in the coverage amount of \$1,000,000.00 in the form required in Section 5.02, from a carrier approved by CITY, which approval shall not be unreasonably withheld. CITY shall advise escrow in writing when it has received and approved said binder.

Close of Escrow shall be defined for all purposes to mean when the documents have been filed for record in the official records of the County Recorder.

When escrow is fully in condition to close, it shall record the Memorandum of Lease, distribute One Million, Seventy-Three Thousand, Eight Hundred and Sixty-Three (\$1,073,863.00) Dollars of the prepaid Rent into the Parcel Map Improvement Agreement Payment Escrow (Para. 5.5 of Exhibit "B"), with the balance (less CITY's share of title insurance and escrow costs) to CITY, and cause the title company to issue its ALTA policy of title insurance, and distribute one copy to CITY and one copy to LESSEE of: (i) the executed lease agreement and (ii) the executed Parcel Map Improvement Agreement.

Notwithstanding any implication to the contrary, CITY shall be responsible to pay for only the amount of the title policy premium that would be charged for a CLTA policy and LESSEE shall be responsible to pay for any additional premium charge for on ALTA policy. CITY and LESSEE shall each pay one-half (½) the cost of the escrow and LESSEE shall pay the recordation costs for recording the Memorandum of Lease. Any other charges in escrow shall be charged and paid as is customary and usual between buyers and sellers through escrow in San Diego County.

Notwithstanding any other provision hereof, if this escrow has not closed on or before one hundred and twenty (120) days from the date the City executes this Lease Agreement, this Lease Agreement and the

escrow shall terminate unless further extended by a writing signed jointly by CITY and LESSEE and provided to escrow; except that if CITY has not, before expiration of said 120 days, obtained the PID amendment as required in Section 1.02 this outside closing date may be extended, at the election of LESSEE, for up to six (6) consecutive thirty (30) day increments as necessary until CITY has obtained the amendment to the Eastgate Technology Park PID as required under Section 1.02 hereof.

CITY and LESSEE shall jointly execute the escrow's standard form escrow instructions to implement the escrow.

The Memorandum of Lease shall be the lease document recorded by the escrow to evidence the existence of this lease agreement in the official records of the County of San Diego. Neither this document, nor any other document provided to CITY by LESSEE, shall be recorded in the official records of the County of San Diego by the escrow or CITY without the prior written consent of both parties to this agreement.

3.02 Preliminary Work By LESSEE. Upon execution of this Lease Agreement and payment of the Good Faith Deposit by LESSEE, representatives of LESSEE shall have the right of access to, and entry upon the Premises, at all reasonable times, for the purpose of obtaining data and making surveys and tests necessary to carry out this agreement and the Site Improvement Agreement. LESSEE agrees to defend and hold the CITY and its officers, employees and consultants, harmless from any damages or costs related to any work or activity of LESSEE, its agents, or its employees, permitted pursuant to this Section 3.02. CITY agrees to provide, or cause to be provided to LESSEE all data and information pertaining to the Premises and available to CITY when and as reasonably requested by LESSEE. In the event escrow does not close, LESSEE agrees to provide CITY with copies of all such data, surveys and test results without cost.

3.03 Title Insurance. Immediately following close of escrow LESSEE shall be provided the interim title policy binder for the leasehold estate created by this Lease covering the Interim Premises in the full amount of the entire Prepaid Rent, with the title company to issue an ALTA leasehold policy of title insurance in the same amount covering only Parcel 1 at the time the final parcel map is recorded and LESSEE quitclaims the balance of the Interim Premises back to CITY. Said binder and policy shall

be provided at the expense of CITY except for the additional fees and charges incurred for upgrading the policy from CLTA policy coverage to ALTA policy coverage. Said binder and policy shall be subject only to the following 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 Lessee, and;
- c. exceptions, including printed matters, disclosed by a standard Preliminary Title Report with respect to the Premises as approved by LESSEE.

A preliminary title report shall be obtained from the title company and provided to LESSEE within ten (10) days of the opening of escrow (Section 3.01). The condition of title shall be subject to the approval of LESSEE, which approval shall not be unreasonably withheld. LESSEE shall advise CITY within five (5) business days of receipt of such report of any objections to the condition of title or the exceptions thereto and CITY shall, within ten (10) business days of receipt of such notice, either assume the obligation of curing the cause for the title objection prior to close of escrow, or give notice to LESSEE that CITY will not, or can not, cure the objection to title. If CITY gives notice that it elects not to cure the objection to title, LESSEE shall have the right to terminate this lease and be reimbursed in full for the good faith deposit, plus all earned interest thereon, and CITY shall pay all escrow and title insurance charges.

SECTION 4: ASSIGNMENT/ENCUMBRANCE//DEFAULT/EMINENT DOMAIN/ARBITRATION.

- 4.01 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all the terms, covenants and conditions of this lease and, except as otherwise provided herein, all of the terms, covenants and conditions of this lease shall apply to, benefit and bind the successors and assigns of the respective parties, jointly and individually.
- 4.02 Assignment and Subletting. LESSEE shall not assign this lease, or any interest therein, and shall not sublet the Premises or any part thereof, or any

right or privilege appurtenant thereto, or suffer any other person, except employees, agents and guests of LESSEE, to use or occupy the Premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without such consent shall be void, and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable, as to the interest of LESSEE, by operation of law, without the written consent of the City Manager.

"Assignment," for the purposes of this clause shall include a transfer of the ownership interest in this lease by Lessee or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners or principals other than as permitted in Section 4.03.

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

Notwithstanding any provision herein that may be construed to the contrary, the CITY shall not unreasonably withhold its consent to any assignment or subletting. The CITY'S primary concern for the test of reasonableness shall be the reputation and character of the assignee or sublessee, that the assignee or sublessee be financially responsible, that the use of the Premises to be made by the assignee or sublessee be consistent with the zoning.

CITY shall either approve or reject any assignment or sublease proposed by LESSEE within thirty (30) days of the submittal of the same by LESSEE to CITY for consideration, or such assignment or subletting shall be deemed approved; except that, any assignment which falls under CITY'S First Right of Refusal (Section 7.13) shall be subject to the provisions of that Section which shall control to the full extent applicable.

CITY hereby expressly approves the sublease of the Premises by LESSEE to IDA as hereinbefore provided in Section 1.04 and 3.01 d. CITY agrees that IDA shall have the right to assign its sublease, or to further sublease all or part of its premises under its sublease subject to CITY'S participation as provided under Section 7.15, and subject to the prior approval of CITY which shall not be unreasonably withheld (applying the same primary concern test of reasonableness to be utilized by CITY as above provided in connection with any assignment or subletting of this Lease by LESSEE).

- 4.03 Control by Specified Individuals or Entities. The limited partnership named herein as LESSEE shall be comprised of individuals, corporations, partnerships and trusts which are collectively owned and controlled by Edward B. Romanow, Jr. ("Romanow") as to at least fifty-one (51%) percent of the equity ownership of LESSEE limited partnership, and the sole general partner of the LESSEE limited partnership shall be a corporation which is owned and controlled by Romanow as to at least fifty-one (51%) percent of the issued stock of said corporation. Any sale, assignment or transfer of the partnership interest, or of the interests in the entities comprising the partners of the partnership, or of the stock of the general partner corporation, that result in the direct and/or indirect ownership and control of Romanow in the partnership, or of the general partner of the partnership dropping below fifty-one (51%) percent, shall be considered an assignment of this lease within the meaning and subject to the conditions and limitations prescribed in this Section 4.02; provided, however, that Romanow may assign all or part of his partnership interest, or of his stock in the general partner corporation, to his spouse or lineal heirs, or to a family trust or family partnership for the benefit of himself and or his spouse and/or lineal heirs, upon notification in writing to the CITY.

Notwithstanding anything that may be construed to the contrary, the death, mental incapacity or physical disability of Romanow, which results in his inability to own a majority of or effectively control the partnership or any of the entities comprising the partnership, shall not be construed as a transfer or assignment of his interest as to constitute an assignment of this lease in violation of Section 4.02 or be a basis for any rights in CITY under Section 7.13.

4.04 Encumbrance. Subject to prior consent by CITY, which shall not be unreasonably withheld, LESSEE may from time to time encumber this lease, its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security instrument to assure the payment of a promissory note or notes of LESSEE.

During the first five (5) years of the Term, LESSEE shall not encumber this lease beyond the cost to acquire the leasehold from CITY and construct the project to be developed on the Premises ("Development Costs"). Thereafter, LESSEE shall not encumber the leasehold estate for more than eighty-five (85%) percent of the appraised market value of the leasehold estate as determined by a MAI appraiser selected by LESSEE and approved by CITY, which approval shall not be unreasonably withheld; except that, during the last ten (10) years of the lease term, no lien shall be placed against the leasehold estate and improvements which, when combined with all other liens thereon (except non-delinquent real estate taxes and assessments) exceeds seventy (70%) percent of the market value of the leasehold Estate.

For purposes of this section, the Development Costs incurred in connection with the project shall be defined to include: (1) the amount of the Rent and Additional Rent paid under the terms of this Lease Agreement plus all other costs incurred to acquire the leasehold; (2) the actual cost of all construction contracts, including all labor, materials, construction supervision, overhead and contractors' profit and all other direct costs of construction; (3) all insurance and taxes and all architectural, design, engineering, special consulting, accounting and legal fees and charges, and all other professional and incidental charges and costs fairly attributable to development of the Premises; (4) all costs and charges incurred to obtain the Lot Split, the PID amendment, the building permits, the ADTs, and all other charges for any applicable permits, authorizations or approvals required to develop the Premises; (5) all costs and charges incurred in connection with financing the project for both construction, interim and permanent financing; (6) all other costs, charges and expenditures paid or incurred by LESSEE as necessary and appropriate to divide, develop, improve and finance the Premises, and (7) a developer's overhead, administration and supervision charge and a developer's profit, which in

combination shall not exceed ten (10%) percent of the total other costs as set forth above. Development Costs shall not include any public improvement costs paid or reimbursed by CITY as provided under the Parcel Map Improvement Agreement.

Any subsequent encumbrances on the Premises or on any permanent improvements thereon, must first have the approval in writing of City Manager, which approval shall not be unreasonably withheld and shall be subject to the limitations set forth in this Section 4.04.

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

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

4.05 Defaults and Remedies.

a. Default and Right to Terminate. In the event that:

- (1) LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, and LESSEE shall fail to commence to cure the defaults(s) within said thirty-day period

and diligently pursue such cure to completion; or

- (2) LESSEE shall voluntarily file, any petition under Chapter 7 of the Bankruptcy Code (Title 11 United States Code) or any such involuntary filing is made against LESSEE which is not dismissed within ninety (90) days of such involuntary filing; or.
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors;

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

b. Lender's Right On Default. In the event of any default not cured by Lessee and there exists a deed of trust or mortgage against the leasehold:

- (1) CITY shall give the mortgagee or beneficiary (hereinafter "Lender") written notice of the default(s) complained of at the expiration of the thirty (30) day notice performance period for LESSEE as provided in a.(1) above, and the Lender shall have thirty (30) days additional to those provided LESSEE from such notice to cure the default(s), or, if any such default is not curable within said thirty (30) days, to commence to cure the default(s) within said period and diligently pursue such cure to completion. The thirty-day period may be

extended during such time as Lender pursues said cure with reasonable diligence.

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

c. Additional Requirements of Lender. Notwithstanding anything that may be contained herein to the contrary, CITY and LESSEE acknowledge that a Lender may require additional provisions and protections to accommodate its requirements, and CITY agrees to work with LESSEE and LESSEE'S proposed Lenders to amend and modify Sections 4.04 and 4.05 of this lease to provide any such Lender reasonable adequate protections to induce Lender to finance the proposed development of the Premises and/or to provide interim or permanent financing or any subsequent refinancing, of the Premises.

d. Sublessee IDA's Rights on Default. IDA shall be provided a copy of any Written Notice of Default given LESSEE by CITY. In the event neither Lessee nor any Lender cures any Lessee default under this lease within the time limits of the cure periods provided for each of them, then CITY shall, before terminating this Lease, provide IDA the opportunity for a like period provided to any Lender hereunder to cure

Lessee's default. If IDA elects to cure said default, it shall give notice in writing of its election to cure said default, and IDA shall be substituted as the Lessee under this Lease under the conditional assignment provisions contained in IDA's Sublease with Lessee. In the event LESSEE'S default is of the type that cannot be cured by IDA then IDA shall have the right to be substituted in as the LESSEE under this Lease. Upon such substitution, IDA shall, as the substitute Lessee, undertake to cure any default to the extent the same can be cured, and shall perform as the Lessee under this Lease; and, in such event this Lease shall not be terminated by CITY and shall continue in full force and effect as if no default had occurred.

e. Remedies. If any Lender or IDA shall be required to exercise its right to cure said default(s) through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that the default(s) may be expeditiously corrected:

- (1) CITY may correct said default(s) and charge the costs thereof to the account of LESSEE, which charge shall be due and payable thirty (30) days after presentation by CITY to LESSEE, Lender and IDA, of a statement of said costs.
- (2) CITY may correct default(s) and may pay the costs thereof from the proceeds of any insurance fund held by CITY, CITY and LESSEE or by CITY and Lender and/or IDA, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default(s) or to pay the costs of correction performed by or at the direction of CITY.
- (3) CITY may terminate this lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage and agreeing to the continuation of IDA in possession under the same terms and conditions as set forth in the IDA sublease with LESSEE. LESSEE agrees to assume and pay any and all penalties or bonuses required by the

beneficiaries, trustees or mortgagees as a condition for early payoff of the related obligations by CITY.

- f. Abandonment by LESSEE. Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder.
- g. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the CITY Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or rights under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY and LESSEE specifically agree that the property constituting the Premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.
- h. CITY and LESSEE agree that it is their intent with regard to the fact that the entire Rent for the full term of this lease has been fully prepaid, that this Lease Agreement and the required performance hereunder by LESSEE be construed so as to not work a forfeiture or termination except only when no reasonable or practicable remedy or alternative is available, or the breach of LESSEE is of such a willful or intentional or continuing nature as to reasonably require or justify termination.

4.06 Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, including the City of San Diego, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

- a. In the event the entire Premises are taken, such taking shall constitute a taking of the leasehold estate created by this Lease Agreement.
- b. In the event of a partial taking, if, the remaining part of the Premises is unsuitable for the then existing use, such partial taking shall constitute a taking of the entire leasehold estate created by this Lease Agreement.
- c. In the event of a partial taking, if the remainder of the Premises is suitable for continued lease operation for the then existing use of the Premises, such partial taking shall constitute a taking of a portion of the leasehold estate as created by this Lease Agreement, and this lease shall continue for the portion not taken.
- d. Any award made for any taking shall be allocated between CITY and LESSEE as their interests may appear, giving due regard to the fact that (i) LESSEE has fully prepaid the Rent for the entire 55-year Term of the leasehold estate based on the fair market value of the property in fee simple (Section 2.04) and owns all of the improvements thereon, and (ii) that CITY holds only the right of reversion for the Premises and the right to the improvements thereon at the end of said Term.
- e. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

4.07 Arbitration. Any dispute that arises between LESSEE and CITY as to the interpretation enforcement or application of, or as to any consent or approval required under, this lease or any provision hereof, shall be resolved by arbitration conducted pursuant to the Commercial Rules of the American Arbitration

Association with the cost of arbitration to be fully paid by the party that does not prevail as is determined by the arbitrator(s). The arbitrator(s) shall be empowered to make any decision or award and decide any factual or legal issue and decide on the entry of any order, to the same extent that the parties could obtain any of the same from the courts of the State of California, other than as to such powers as are specifically reserved by law to said courts. After the award or decision of the arbitrator(s) the prevailing party may obtain from a court of competent jurisdiction, a judgment or order as appropriate to enforce the award or decision of the arbitrator(s). Notwithstanding anything that may be construed to the contrary, no power, right or responsibility of CITY involving the exercise of its police powers or as to its powers of eminent domain shall be the subject of arbitration.

- 4.08 Arbitration Under the Sublease. In the event of any dispute between LESSEE and IDA under their sublease, which dispute involves any right or duty of City under this Lease and which dispute is submitted to arbitration under the Commercial Rules of the American Arbitration Association by LESSEE and IDA, then CITY consents to being made a party to any such arbitration and being bound by the decision of the arbitrator(s) to the extent required to resolve the issue involving the right or duty of CITY under this Lease that needs to be resolved in order to permit the arbitrator(s) to resolve the dispute between LESSEE and IDA under the sublease between them.

SECTION 5: INDEMNITY/INSURANCE RISKS/ DAMAGE

- 5.01 Indemnity. LESSEE shall at all times assume the defense of, relieve, indemnify, protect, and save CITY and any and all of its boards, officers, agents, and employees harmless from any and all claims and demands, actions, proceedings, losses, liens, costs, judgments, civil fines, and penalties of any nature whatsoever (hereinafter "Claims") in regard to or resulting from the use of the Premises, including but not limited to expenses incurred in legal actions, death, injury, or damage that may be caused directly or indirectly by:

- a. any unsafe or defective condition in or on the Premises of any nature whatsoever which may

exist by reason of any act, omission, neglect, or any use or occupation of the premises;

- b. any operation, use, or occupation conducted on the Premises;
- c. any act, omission, or negligence on the part of LESSEE, its employees, agents, sublessees, invitees, licensees; or
- d. any failure by LESSEE to comply or secure compliance with any of the lease terms or conditions.

Notwithstanding any provision of this Lease that may be construed to the contrary, LESSEE shall have no obligation to indemnify or defend CITY against any claims resulting from any act or omission of CITY or of any employee, contractor, agent, or representative of CITY (except LESSEE or any assignee of LESSEE, or any employee, agent or representative of LESSEE or of any assignee of LESSEE).

5.02 Insurance.

- a. LESSEE shall take out and maintain at all times during the Term of this lease the following insurance at its sole expense;

- (1) Public liability and property damage insurance in the amount of not less than ONE MILLION DOLLARS (\$1,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the Premises.

- (2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the Premises in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in

accordance with Section 4.04, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the Premises.

Notwithstanding anything herein to the contrary: (a) in the event the cost to repair or replace any improvements on the Premises, damaged by any event not required to be covered by insurance under this Lease, exceeds \$100,000.00; or (b) in the event the cost to repair or replace any improvements within the last five (5) years of the lease Term exceeds the proceeds of any insurance available by more than \$100,000.00 or cannot be restored to substantially the same condition it was in immediately before the destruction, within 180 days from the date of the damage, LESSEE shall have the option of terminating the lease and assigning any insurance proceeds that may exist to CITY. The \$100,000.00 amounts set forth in this Subsection 5.02 a.(2) shall be increased by the same percentage as any increase in the Consumer Price Index, all Urban Consumers, as published by the United States Department of Labor, Bureau of Labor Statistics for the San Diego area for the period commencing with the commencement of this Lease as established under Section 2.01 and the date of the damage.

b. LESSEE'S responsibility to maintain said insurance also includes the following:

- (1) Additional Insured. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. All insurance companies must be rated AAA+ or better in Bests Insurance Guide and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction

fire insurance" shall be in force on commencement of all authorized construction on the Premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire Term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.

- (2) Modification. CITY, at its discretion, may require the reasonable revision of amounts and coverages at any time during the Term but not more frequently than every three (3) years by giving LESSEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Premises as well as to adjust for inflation during the lease term. LESSEE also agrees to obtain any additional insurance reasonably required by CITY for new improvements, in order to meet the requirements of this lease. Notwithstanding the above, LESSEE shall not be required to provide earthquake insurance except at its own discretion and shall not be required to rebuild or restore the improvements on Premises for damage caused by earthquake, if the cost to do so exceeds \$100,000.00.
- (3) Accident Reports. LESSEE shall report to CITY any accident causing more than TEN THOUSAND DOLLARS (\$10,000) worth of real property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.
- (4) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right

to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection (4), if LESSEE fails or refuses to take out or maintain insurance as required in this lease, or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE and CITY shall be entitled to exercise all legal remedies in the event of such default; except that LESSEE shall not be in default if any insurance of the type required by this lease is not reasonably obtainable on the Premises and similar properties for the purposes required.

- c. Any dollar amount set forth in this Subsection 5.02 shall be increased by the same percentage as any increase in the Consumer Price Index, all Urban Consumers, as published by the United States Department of Labor, Bureau of Labor Statistics for the San Diego area for the period commencing with the commencement of this Lease as established under Section 2.01 and the date of the event for which the dollar figure would apply.

- 5.03 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased Premises within ten (10) days of any such fire or damage requiring more than \$10,000 to repair. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner reasonably satisfactory to CITY. Subject to the provisions of Section 5.02, if the leased Premises shall be damaged by any cause for which insurance coverage is required and which puts the Premises into a condition which is not sound,

decent, safe, healthy and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition which existed prior to said damage, or to rebuild the same as may be necessary, to the extent insurance proceeds are available under any insurance policy required under Section 5.02; or, at CITY'S option, LESSEE agrees to clear and remove from the leased Premises all debris resulting from said damage.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the Premises shall be commenced by LESSEE within sixty (60) days, or as soon thereafter as insurance proceeds are made available under any applicable insurance policy in effect at the time of any damage covered by such insurance occurs, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter.

SECTION 6: ACCEPTANCE/INSPECTION/IMPROVEMENTS/ REPAIRS

6.01 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this lease. LESSEE further acknowledges that the Premises are in the condition called for by this lease, that CITY has performed all work with respect to the Premises, and that LESSEE does not hold CITY responsible for any defects in the Premises. Notwithstanding the above, this section shall not be construed as relieving CITY of its obligation to provide an acceptable environmental audit to LESSEE as provided in section 1.08 of this lease.

6.02 Entry and Inspection. Subject to the limitations hereinafter provided in this Section 6.02, CITY reserves and shall always have the right to enter said Premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said Premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, to

require LESSEE, by written notice, to make the required repairs or corrections, and if such repairs or corrections are not completed within thirty (30) days of such notice, or promptly commenced and completed as soon thereafter as is practicable assuming they cannot reasonably be completed in such thirty (30) day period, then CITY shall have the right to undertake or complete the required repairs or corrections at the expense of LESSEE; and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary repairs or corrections made, in order to keep said Premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said Premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.

Notwithstanding anything herein to the contrary, any inspection of the Premises by CITY shall be subject to federal government security regulations that may apply to any of the facilities or activities located or conducted on the Premises; and CITY agrees that no rights reserved in this Lease Agreement may be exercised in a manner that violates any federal security regulations or requirements imposed on tenant, subtenant or any occupant. CITY further agrees that absent exigent circumstances, no rights reserved herein by CITY to go on the Premises may be exercised without prior written notice provided at least ten (10) days in advance of the exercise of any such right. In the event of exigent circumstances requiring immediate access to the Premises, CITY shall access the Premises only through appropriate security gate entrances under the supervision of the security guards then in charge or as otherwise authorized by said security guards.

- 6.03 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the Premises throughout the Term. LESSEE will make all repairs and replacements

necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition reasonably satisfactory to CITY.

- 6.04 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Premises without prior written approval by the City Manager which approval shall not be unreasonably withheld. CITY'S approval of the preliminary drawings in escrow, as required under Section 3.01, shall constitute this required approval for the initial improvements to be constructed on the Premises. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this lease to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.

In addition to the City Manager's approval, LESSEE must obtain approval of all construction/improvement plans from the following City offices:

Building Inspection Department

Plan Review Services
Permit Service

Engineering & Development Department

Permits Section
Facilities Financing Section
Transportation & Traffic Division

Fire Department

Fire Prevention Bureau

Park & Recreation Department

Open Space Division District 45
Landscape Maintenance Division

Planning Department

Zoning Division
DEP
Community Planning Division

Property Department

Industrial Contract Compliance

Utility Department

Sewer
Water

In addition, a review of the development is required by the University Community Planning Group (UCPG).

LESSEE shall also obtain approval from other departments or agencies as may from time to time be required by applicable laws, rules, regulations and ordinances.

- 6.05 Utilities. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the leased Premises. All utilities will be installed underground.
- 6.06 Construction Bond. Whenever there is any construction to be performed on the Premises, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.
- 6.07 Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises, and the costs of defending against such

claims, including reasonable attorney's fees. LESSEE shall give CITY not less than ten (10) days' notice prior to the commencement of any work in the Premises, and CITY shall have the right to post notices on non-responsibility in or on the Premises as provided by law.

If improvements, alterations, or repairs are made to the Premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within fifteen (15) days of such filing either:

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

6.08 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments, facility benefits, and other fees assessed or levied upon LESSEE or the Premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased Premises, including any licenses or permits. LESSEE recognizes and agrees that this lease may create a possessory interest subject to property taxation, and the LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any Rent paid to CITY.

As between CITY and LESSEE, LESSEE shall be deemed to be the owner of all improvements constructed on the Premises through the full Term of the lease, and title thereto shall pass to CITY upon termination of this lease.

The parties acknowledge that LESSEE is initially taking technical possession of the entire Lot 4 as the Interim Premises only for the period required to obtain the parcel map to create Lot 1 which is the intended Premises under this Lease; and, LESSEE does not intend, nor shall be permitted, to use the balance of Lot 4 for any purpose other than

constructing the improvements thereon required to obtain a final Parcel Map as specified in Section 1.02 hereof.

6.09 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.

6.10 Development Plan. CITY retains and maintains a pedestrian right-of-way easement within Eastgate Technology Park which is a 25-foot setback from street curb line. LESSEE agrees to submit acceptable preliminary development plans ("Preliminary Plans") to develop the premises, which shall be approved by CITY as a condition of close of escrow (3.01). Said Preliminary Plans shall include a site plan showing access, parking, landscaping and footprint of the building, as well as preliminary building improvement plans showing the floor plan, elevations and building surface materials to be utilized. LESSEE shall also submit a landscaping and irrigation plan to the Park and Recreation Department and obtain their approval of the same. Such submission shall be made to:

Park & Recreation Department
Open Space Division
3770 Highland Avenue
San Diego, CA 92105

Phone (619) 236-6051

One set of the Preliminary Plans will be kept on file in the Property Department. The City Manager of his/her designee shall have the authority to authorize changes to the Preliminary Plans provided that the basic concept may not be modified without City Council approval, and a document evidencing any approved changes shall be filed in the Office of the City Clerk. Failure by LESSEE to substantially comply with the Preliminary Plans shall constitute

a major default and subject this lease to termination by CITY.

Note that in some cases, trees, shrubs, and other existing landscaping may extend beyond said 25-foot easement. Such landscaping may be retained and maintained by LESSEE, or removed under direction and subject to inspection of the aforesaid Park and Recreation Department, Open Space Division. Any removal, relocation or rearrangement shall be at no cost to CITY.

- 6.11 Hazardous/Toxic Waste. LESSEE will not allow the installation of underground storage tanks or release of hazardous substances in, on, or under or from the Premises. For the purposes of this provision, a release shall include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the City Clerk's Office as City Clerk Document 769704.

In the event of any release of a hazardous substance, LESSEE shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

LESSEE agrees to assume the defense of, indemnify and hold the CITY harmless from any and all claims, costs and expenses related to environmental liabilities resulting from LESSEE'S operations on the Premises, including, but not limited to, costs of environmental assessments, costs of remediation and removal, any necessary response costs, damage for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If LESSEE knows or has reasonable cause to believe, that any hazardous substance has been released on or beneath the Premises, LESSEE shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided however, if LESSEE knows, or has reasonable

cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environment actions or private suits relative to the Premises. In addition, LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of the CITY.

At any time within the twelve (12) months before the expiration or earlier termination of this lease, LESSEE at the CITY'S sole option shall cause an environmental audit of the Premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Said environmental assessment shall be obtained at the sole cost and expense of LESSEE and shall establish what, if any, hazardous substances exist on, in or under the Premises, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, County, State or Federal laws, statutes, ordinances, or regulations, then said environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. LESSEE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all cost and expense incurred.

Notwithstanding any provision herein that may be construed to the contrary, LESSEE shall have no obligations under this Lease to indemnify CITY for, or to remove, neutralize or mitigate, any hazardous/toxic waste created on the site by the activities of CITY or anyone authorized by CITY other than by LESSEE under this Lease or LESSEE'S Assignee or any contractor, employee, agent or representative of LESSEE or Assignee.

- 6.12 Development of the Premises. Following close of escrow (Section 3.01) LESSEE shall use diligent reasonable efforts to (a) obtain all required

building permits and approvals for construction of the proposed building improvements and (b) to finalize the Lot Split (Section 1.02) and cause the recordation of the Final Parcel Map for the subdivision of Lot 4 consistent with the prior approved Tentative Map. LESSEE shall complete the building improvements and obtain a certificate of occupancy for IDA to occupy the Premises within two (2) years of the issuance of all required building permits. LESSEE shall have the right to obtain all required building permits and to proceed with development and construction of the project on the Interim Premises prior to the recordation of a Final Parcel Map.

SECTION 7: GENERAL PROVISIONS

7.01 Notices

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE or CITY as appropriate at the following addresses:

To CITY:

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

To LESSEE:

WestTerra Communications, Ltd.
Attn: WestTerra Viewridge
Property Corp.,
General Partner
c/o WestTerra Development Corp.
5514 Oberlin Drive, Suite 242
San Diego, California 92121

To IDA:

Institute of Defense Analysis
c/o Center for Communications
Research La Jolla
4350 Executive Drive, Suite 135
San Diego, California 92121

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

- b. Any notice sent certified mail shall be deemed received two business days after the same has been deposited in the United States mails. Any party entitled or required to receive notice under this lease may by like notice designate a different address to which notices shall be sent.

7.02 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, County, State, and Federal Governments, at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.

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

7.04 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age, or physical handicap in LESSEE'S use of the Premises, including, but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment. CITY acknowledges that any issue of discrimination must be considered with regard to national security in light of the sensitive activities of IDA and its government sponsor.

7.05 Equal Opportunity. LESSEE agrees to abide by CITY'S Equal Opportunity Program for LESSEES as it exists or is amended to the extent that the program is applicable to this lease when LESSEE employs 15 or more persons on the Premises. LESSEE shall further provide in the sublease with IDA that IDA shall be required to abide by said Equal Opportunity Program and this Section 7.05 to the extent applicable to IDA. A copy of the program effective as of the date

of this lease is on file in the City Clerk's Office as document RR262633 and by this reference is part hereof. The program's goal is the attainment of employment for minorities and women in all areas of employment, in a total percentage as established by CITY for its Equal Opportunity Program each year. LESSEE agrees to respond to CITY'S requests for information concerning said Equal Opportunity Program within thirty (30) days from the date of each such request. CITY acknowledges that such program must be implemented with due regard to federal government security regulations that may apply to LESSEE, any subtenant or occupant and to any facilities on the Premises.

- 7.06 Partial Invalidity. If any term, covenant, condition, or provision of this lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.07 Legal Fees. In the event of any litigation or arbitration regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court or arbitration, and attorney's fees.
- 7.08 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.09 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the leased Premises except for such other written agreements that are specifically referenced herein. Except as to the subject matter of the toxic waste report being furnished by CITY under Section 1.08, each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties,

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representations, and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this lease.

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

7.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements or leases with consultants, vendors or LESSEES shall include a condition that the contract, agreement or lease may at the option of CITY be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who within the twelve months immediately preceding such employment did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.

7.12 Corporate Authority. Each individual executing this lease on behalf of the general partner corporation of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this lease on behalf of said corporation as the general partner of LESSEE, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this lease is binding upon LESSEE partnership in accordance with its terms and that LESSEE is a duly established limited partnership and that its general partner is a qualified corporation and all steps have been taken prior to the date hereof to qualify LESSEE and its general partner to do business in the state where the Premises are situated.

7.13 CITY'S First Right of Refusal. In the event LESSEE receives an offer for the interest of LESSEE in this lease acceptable to LESSEE, LESSEE shall, before accepting said offer, first submit said offer

concurrently to both IDA and to CITY and both IDA and CITY shall have the first right to acquire LESSEE'S interest in this LEASE on the same terms and conditions as contained in the offer; except that in the event both CITY and IDA timely elect to exercise said right then the right of IDA to require LESSEE'S interest shall be superior and prior to the right of CITY regardless of which entity first exercises said right. Both IDA and CITY shall have thirty (30) days from the date said offer is submitted to each of them by LESSEE to exercise the first right to acquire LESSEE'S interest in the LEASE which right will expire if not timely exercised by either IDA or CITY, and LESSEE shall be free to accept the offer. Should any material term of the proposed transaction embodied in the offer change from the offer tendered hereunder by LESSEE under this provision, then both IDA and CITY shall be provided an additional fifteen (15) days to reconsider the transaction from the date they are advised of said change. This First Right of Refusal will be applicable each time LESSEE receives an offer acceptable to LESSEE to assign or transfer its interests under this Lease Agreement. Said submittal or resubmittal to CITY shall also constitute LESSEE'S notice to CITY of LESSEE'S intent to assign and transfer LESSEE'S interests under this lease under the terms of the offer submitted, and the failure of CITY to raise any reasonable objections thereto by notice in writing within the First Right of Refusal period shall be deemed as consent by CITY to such assignment and transfer under Section 4.02 hereof to offeror pursuant to the terms of the offer submitted.

- 7.14 LESSEE'S First Right of Refusal. In the event CITY should place its interest in the Premises on the market for sale or receive an acceptance offer acceptable to CITY to purchase its interest at any time during the Term of this lease, CITY shall first offer the Premises for sale concurrently to both LESSEE and IDA for the same price, terms and conditions, and if not accepted by either LESSEE or IDA within thirty (30) days thereof, the CITY may sell the property at the same price, terms and conditions to anyone within the next ninety (90) days. Should CITY thereafter offer its interest in the site for sale or accept an offer for the site at a different price or different terms and conditions, both LESSEE and IDA shall have thirty (30) days to accept the offer or CITY may sell to anyone else within the next ninety (90) days on the same price

and terms. This First Right of Refusal will be applicable each time the CITY decides to sell its interest in the property. In the event both LESSEE and IDA timely elect to exercise their first refusal rights hereunder then in such event LESSEE'S right shall be superior and prior to the right of IDA regardless of who was first to exercise such right.

- 7.15 City Participation Upon Transfer. Upon a transfer, sale or assignment ("Transfer") of the leasehold estate held by LESSEE, CITY shall be entitled to receive fifteen (15%) percent of any gain realized therefrom by LESSEE, which gain shall be the amount of the net proceeds actually received by LESSEE (after paying all of LESSEE's costs of the Transfer paid or incurred, including but not limited to any real estate commission) less the greater of: (a) LESSEE's Development Costs as that term is defined in Section 4.04 that have been incurred in connection with the project, including any repair(s) or restoration(s), expansion(s), additions(s), alteration(s) and/or modification(s) of the improvements constructed on the Premises; or, (b) in the case of any successor LESSEE the total amount for which such successor LESSEE acquired the leasehold estate in connection with any prior transfer plus any additional Development Costs as defined in (a) above incurred by the successor LESSEE. Provided the Transfer is consented to by CITY pursuant to Section 4.02 hereof and the transferee fully assumes the Lease, upon receipt by CITY of its appropriate share of the gain realized by LESSEE, the assigning LESSEE shall be deemed to be fully released from any further duty, obligation or liability under this Lease Agreement except as to duties, obligations and liabilities that arose prior to the Transfer. Upon any refinancing of any deed of trust loan recorded against the leasehold estate, CITY shall be entitled to receive fifteen (15%) of all net loan proceeds (after deducting all costs of obtaining and funding the refinancing, including but not limited to, any brokerage commission(s) and loan points and fees charged to, or incurred by, LESSEE) that exceed the greater of (1) LESSEE's Development Costs as defined in (a) above; or, (2) the amount required to satisfy and discharge any existing deed of trust loan(s) recorded against LESSEE's leasehold estate plus an amount required for any additional Development Costs as defined in (a) above to be incurred by LESSEE in connection with the refinancing; or, (3) in the case of a successor Lessee, the amount paid by such successor to the Assigning Lessee. LESSEE shall pay said percentage to CITY within thirty (30) days of the consummation

of any such Transfer or refinancing. Any participation paid to CITY resulting from any gain realized from refinancing shall be credited against any participation to be paid to CITY from any gain realized from a concurrent or subsequent transfer. The following example demonstrates the application of this refinancing credit to be applied in the case of a Transfer of the leasehold estate by LESSEE following an earlier refinancing by LESSEE:

First Assume: \$200,000 gain realized by LESSEE upon refinancing during the Lease Term. \$30,000 (15% of gain) would then be payable to CITY out of refinancing proceeds.

Then Assume: \$400,000 gain realized by LESSEE upon a subsequent Transfer sometime later in the lease term. The \$60,000 (15% of gain) payable to CITY would be reduced by the \$30,000 amount previously paid out of the earlier refinancing proceeds, resulting in only \$30,000 payable to CITY out of Transfer proceeds, after application of the required refinancing credit.

Upon any transfer, sale, or assignment "Transfer") of the leasehold interest held by any sublessee of the LESSEE ("Sublessee"), CITY shall be entitled to receive fifteen (15%) percent of any gain realized therefrom by the Sublessee, which gain shall be the amount of the net proceeds actually received by the Sublessee, (after paying all of the Sublessee's costs of the Transfer paid or incurred, including but not limited to any real estate commission) the cost of any and all rent, charges or obligations paid by the Sublessee under this sublease with LESSEE after the date of such Transfer. City's share of such net proceeds realized from such a transfer by Sublease shall be paid in cash to CITY within thirty days after receipt of any such net proceeds by the Sublessee making the Transfer. In the event the Sublessee is contractually required to pay and in fact pays any rent, charges or obligations under its sublease with LESSEE after the Transfer and the 15% payment to CITY has been paid, then CITY shall reimburse Sublessee for 15% of any such rent, charges or obligations subsequently paid by Sublessee under its sublease with LESSEE not to exceed the total amount previously paid to CITY resulting from the gain.

If any Sublessee in turn subleases all or part of the Premises ["Junior Sublease(s)"], CITY shall be

entitled to receive from Sublessee fifteen (15%) per cent of any increase differential in the total of the periodic rent(s) and other charges actually paid to or for the benefit of the Sublessee under the Junior Sublease(s) over and above the rent and other charges required to be paid by the Sublessee to or for the benefit of the LESSEE; except that, (i) said 15% to be paid to CITY shall not accrue until after Sublessee has recaptured from any such periodic rent differential, all of its actual costs incurred or paid by Sublessee in entering into the Junior Sublease(s) (including but not limited to any real estate commission(s)) and (ii) shall be paid by Sublessee annually within thirty (30) days after the expiration of each lease year of the sublease existing between Sublessee and LESSEE.

Subject to prior consent by CITY, which shall not be unreasonably withheld, Sublessee may from time to time encumber its Sublease and Sublessee's leasehold estate by deed of trust, mortgage, chattel mortgage or other security instrument to assure the payment of a promissory note or notes of Sublessee. In the event of any financing by deed of trust loan against the Sublessee's estate, CITY shall be entitled to received fifteen (15%) of all net loan proceeds (after deducting all costs of obtaining and funding the financing, including, but not limited to, any brokerage commission(s) and loan points and fees charged or incurred by Sublessee) that exceed the total of (i) any expenditures made by Sublessee from proceeds of such financing to improve, repair or restore the Premises, including, but not limited to, any expansion(s), addition(s), alteration(s) and/or modification(s) of the improvements constructed on the Premises; and (ii) the amount required to satisfy or discharge any existing deed of trust loan recorded against Sublessee's leasehold estate.

7.16 Eastgate Child Care Center. LESSEE hereby agrees to contribute to the CITY, or to the CITY'S designee, to benefit the Eastgate Child Care Center, an annual payment of ten cents (\$0.10) per square foot of building area measured on a rentable basis under BOMA standards ("Contribution"). Said contribution shall be adjusted on the fifth anniversary date of the commencement of this Lease and each five years thereafter ("Adjustment Date") by any increase or decrease in the Consumer Price Index "all urban consumers", Greater Los Angeles, California area (1982-84 Base) published by the United States Department of Labor, Bureau of Labor Statistics ("Index"). The "Beginning Index" shall be the Index

published for the month preceding the commencement of this lease and the "Adjustment Index" shall be the Index published for the month preceding each Adjustment Date. The amount per square foot to be paid shall be adjusted upwards or downwards in the same ratio as the Adjustment Index increases or decreases from the Beginning Index. Said annual contribution shall be paid on the third month following the commencement of this Lease and at the same time each year thereafter.

- 7.17 Planting Strips. LESSEE shall, at its sole cost, landscape and maintain all areas shown on the attached plat adjoining the leased Premises as approved by the Park and Recreation Department, Open Space Division, Maintenance Team.
- 7.18 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the leased Premises in a creditable manner that will not bring discredit on CITY.
- 7.19 Relocation Payments. LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this lease.
- 7.20 Occupancy. In the event IDA cancels its sublease for lack of adequate funding for its San Diego based operations as provided under the terms of the Sublease between LESSEE and IDA, then in such event LESSEE shall use diligent, reasonable efforts to obtain a new tenant or tenants to occupy the Premises that is/are reasonably acceptable to LESSEE and CITY. CITY acknowledges that should IDA terminate its sublease, LESSEE will likely need to make major revisions and alterations to the improvements and possibly need to totally reconfigure and redevelop the Premises for new or prospective tenants to replace IDA; and, CITY agrees to cooperate with LESSEE to permit such revisions, alterations, or reconfiguration and redevelopment as may require to allow LESSEE to realize the highest and best use of the Premises consistent with the uses permitted by this Lease Agreement.
- 7.21 NAS Miramar. LESSEE acknowledges that this site is subject to Comprehensive Land Use Plan, Naval Air Station Miramar, and may be subject to Community Noise Equivalent Level Impacts (CNEL) and Accident Potential Zone effects (APZ) as set out within said plan.

7.22 LESSEE. The term LESSEE as that term is utilized in this Lease, shall include the named LESSEE and any successor in interest who acquires the Leasehold estate.

SECTION 8: SIGNATURES

8.01 Signature Page

IN WITNESS WHEREOF, this Lease Agreement is executed by CITY, acting by and under a duly adopted resolution of the City Council, and by LESSEE, acting by and through its corporate General Partner as provided in Section 7.12 .

SECTION 600-36

THE CITY OF SAN DIEGO

Date

3/29/91

By

[Signature]
Deputy City Manager

LESSEE:

WestTerra Communications, Ltd.,
a California Limited Partnership

by

WestTerra Viewridge Property
Corp., its General Partner

Date

3/11/91

By

[Signature]
Edward B. Romanow, Jr.,
President

APPROVED as to form and legality this 29 day of March, 1991.

JOHN W. WITT, City Attorney

By

[Signature]
Deputy City Attorney

G DATA

WESTERRA COURT
EASTGATE TECHNOLOGY PARK PID
B-2
V-N SPRINKLERED
17.280 ACRES (753,065 SF)
FIRST FLOOR 18,607 SF
SECOND FLOOR 11,391 SF
TOTAL 29,998 SF
4%
2 PER 1,000 SF OF BLDG = 60 CARS
84 CARS
35 COMPACT = 40%
49 STANDARD = 56%
4 HANDICAPPED = 4%
BEING A DIVISION OF LOT 4 OF
EASTGATE TECHNOLOGY PARK UNIT
NO. 1, IN THE CITY OF SAN DIEGO,
COUNTY OF SAN DIEGO, STATE OF
CALIFORNIA, ACCORDING TO MAP
THEREOF NO. 10830, FILED IN THE OFFICE
OF THE COUNTY RECORDER OF SAN
DIEGO COUNTY, JANUARY 30, 1984.

2631 STATE STREET
SUITE A
SAN DIEGO, CA
92101
(619) 238-2017

DUNCAN
ASSOCIATES
ARCHITECTS

EXHIBIT A

$1^{\circ} = 400'$

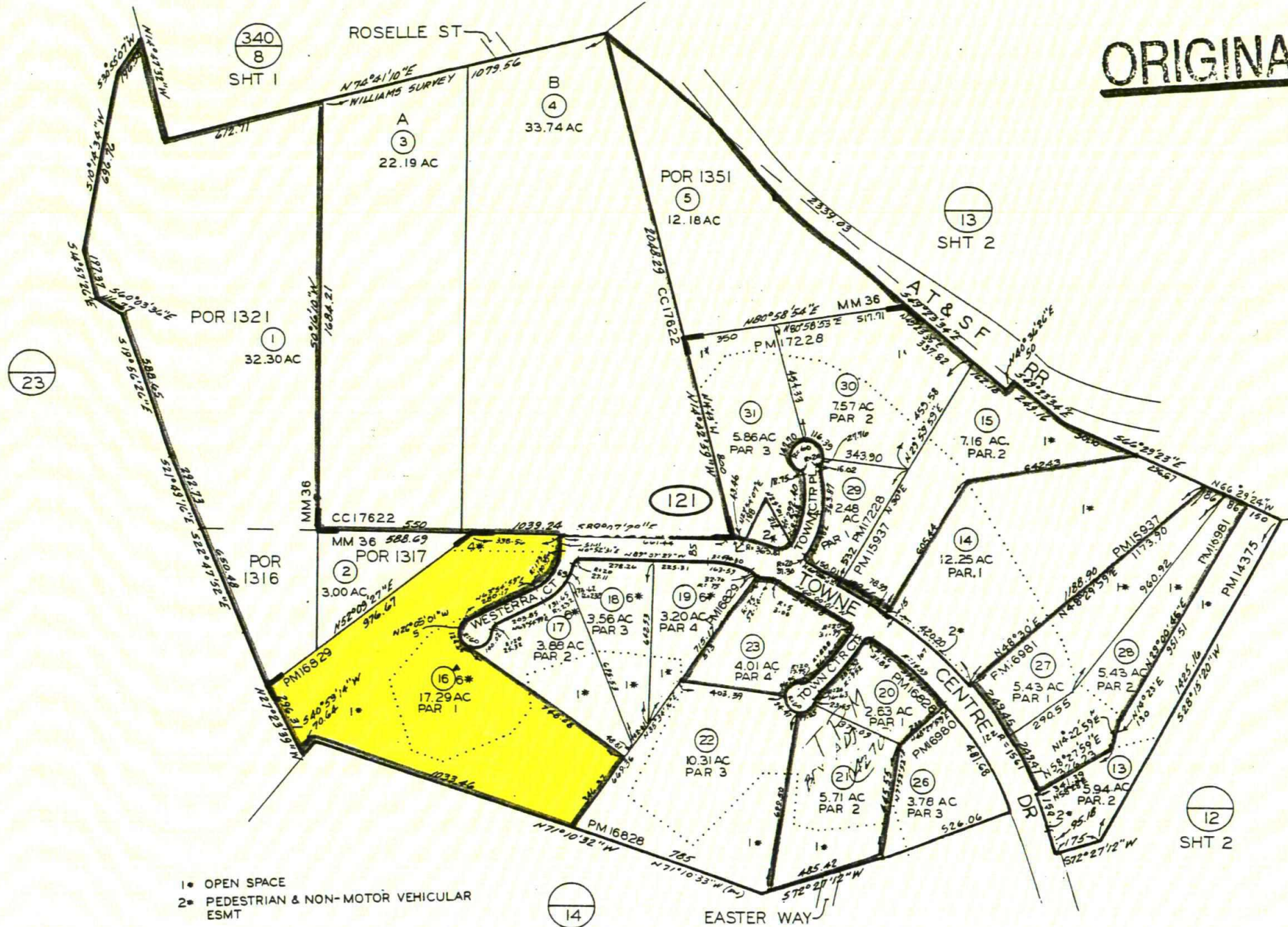
[illegible]

EXHIBIT "A"
SUBSTITUTE

- 1 * OPEN SPACE
2 * PEDESTRIAN & NON-MOTOR VEHICULAR
ESMT
4 * RES FOR FUT ST
6 * 760-146-33 POR

Leasehold

PARCEL MAP IMPROVEMENT AGREEMENT

This Parcel Map Improvement Agreement (hereafter "Agreement") made this 29 day of March, 1991 by and between The City of San Diego, a California municipal corporation (hereafter "City") and WestTerra Communications, Ltd., a California limited partnership (hereafter "Developer") is entered into with regard to the following:

R E C I T A L S

A. City and Developer have entered into a 55 year lease agreement (hereafter "Lease") for a portion of Lot 4 of Eastgate Technology Park owned by City to be created through the minor subdivision process by the recordation of a Parcel Map (hereafter "Parcel Map"), which portion consists of approximately 17.288 gross acres identified as Parcel 1 on Tentative Parcel Map No. 90-0450 adopted by the Subdivision Board of San Diego on October 8, 1990 by Resolution No. 5542 (hereafter "Property");

B. Subdivision resolution 5542 governing the minor subdivision requires providing for the construction of certain road improvements, utilities, water, sewer, fire hydrants and other improvements (hereafter "Map Improvements") as a condition of recording the final Parcel Map;

C. Developer has agreed under the terms of the Lease to process and finalize the Parcel Map creating Parcel 1 as being the Property and the permanent premises under said Lease at Developer's cost and expense and to construct and install the Map Improvements required to record the final Parcel Map on the basis of full and timely periodic payment by City to Developer for the cost to construct and install the Map Improvements.

D. The Lease Agreement is being consummated through an escrow established at First American Title Company located at 411 Ivy Street, San Diego, CA 92101 (hereafter "Lease Escrow"). The parties hereto have agreed that the proceeds required to pay for the Map Improvements shall be disbursed from the Lease Escrow into a separate escrow at the same title company for the purpose of disbursing construction payments to Developer as authorized by City as herein provided (hereafter "Payment Escrow").

NOW THEREFORE, based on the above recitals, which the parties hereto acknowledge, it is agreed between the parties as follows:

1. Plans and Specifications. Developer has provided to City the following Plans and Specifications (hereafter "Plans")

for the Map Improvements to be installed to comply with the conditions of the Parcel Map:

(a) Road, curb, gutter, sidewalk, storm drain, street light, sewer, water line and all related improvements as designed and shown on Nolte and Associates Plans for Improvement under their Job No. 8034-90-06 bearing City control Certification No. 260-1703 for Pages 2600-1-D through 2600-4-D of said Plans;

(b) San Diego Gas and Electric Engineering plans and specifications for Construction Nos. 1440790 and 2390730 and MOPAC No. 014253-020 and 014253-010 and their work letter dated December 28, 1990 under their File No. PLA580, Project No. 014253 and Work Order No. 2390730 for the construction and installation of the required underground gas and electric utility lines in the road right of way;

(c) Pacific Bell plans and specifications under its BIC No. 062 M2(60) 8599T for the construction and installation of the underground telephone lines in the road right of way.

2. Solicitation of Bids. At such time as the City approves the Plans, and the bid documents to be used, Developer shall, by publication in a newspaper of general circulation, solicit and receive sealed bids for the construction of the Map Improvements. Bids shall be solicited from at least three general contractors that are duly licensed and qualified and acceptable to both City and Developer. The sealed bids shall be opened by Developer in the presence of the City's authorized representative. The bidding contractors need not be present at the bid opening. Contract for the construction of the Map Improvements shall be awarded to the licensed contractor submitting the lowest qualified and responsible bid, as mutually determined by Developer and the City's authorized representative.

3. Non-Discrimination. Developer agrees that it shall not discriminate against any contractor, subcontractor, material supplier, or employee, agent or representative in connection with any of the work or activities involved in the construction of the Map Improvements as provided for herein on the basis of any race, creed, religion, ethnic background, country of origin, sex, age or handicap; and Developer agrees to contractually require any contractor who performs any work in connection with the Map Improvements to fully comply with this provision.

4. Total Project Cost.

4.1 Definition. The total cost of the Map Improvements ("Total Cost") is defined to be all direct and indirect costs necessary to complete the same to the City's satisfaction. Direct costs shall include the actual costs of grading, construction and installation including, but not limited

to, all labor, materials and equipment. Indirect construction costs shall include, but not be limited to, the costs associated with the Project's engineering, design, soils testing, surveying, construction, administration, insurance premiums and bonds, based on City approved fees and charges (e.g. permit fees, inspection fees, etc.) for the construction and installation of the Map Improvements.

4.2 Estimated Cost. The Total Cost of the construction of the Map Improvements is currently estimated at Nine Hundred and Seventy-Three Thousand, Eight Hundred and Sixty-Three (\$973,863.00) Dollars (hereafter "Estimated Cost") all of which represents the amount for which Developer shall be paid hereunder. This amount includes up to ten percent (10%) for contingencies and has been itemized by Developer in a line-item budget provided to City. This amount has been reviewed and approved by the City's Engineering and Development Department as being in substantial conformance with the City's total budget for the Map Improvements and as being at a cost that is less than that which the City would expend were it to construct the said improvements itself. It is acknowledged by the parties hereto that the Estimated Cost is based only upon preliminary cost estimates, and is not the result of competitive bids, and is, therefore, subject to change. In the event the competitive bids result in the Total Cost to likely exceed the Estimated Cost set forth in this Paragraph 4.2 by more than ten (10%) per cent, then City Council approval shall be required for the increase, which approval shall not be unreasonably withheld. Upon approval of the increase, the Estimated Cost shall be revised in this Paragraph 4.2 for all purposes of this Agreement to the amount as approved by City Council.

4.3 Maximum Cost. The total cost of the Map Improvements shall not exceed One Million, Seventy-Three Thousand, Eight Hundred and Sixty Three (\$1,073,863.00) Dollars; except that, the Maximum Cost stated herein shall be increased for all purposes of this Agreement by the amount that the Total Cost is increased in excess of the stated Maximum Cost as a result of any Force Majeure as defined in Paragraph 4.5 hereof.

4.4 Change Orders. A "Change Order" is a written order from Developer and the City to the contractor constructing the Map Improvements authorizing a change in the work to be performed after the construction bids are obtained and which would likely increase the Total Cost above the Estimated Cost. A Change Order may be needed where any change in the work to be performed is made necessary due to any Force Majeure (as defined in Paragraph 4.5 hereof) occurring or which becomes known to Developer after the construction bids are obtained. Any such Change Order must be approved in writing by Developer and City. Developer shall notify City of the need for a Change Order and the amount of any increase above the Estimated Cost resulting from implementing such Change Order and City shall either approve

or reject said Change Order within five (5) working days of receiving Developer's written notice. Any Change Order increase in the Estimated Total Cost which will not, cumulative with other Change Order increases, result in an increase in the Estimated Cost by more than the Maximum Cost, may be approved by City staff without requiring any additional approval from City Council. City's approval of any required Change Order increase in the Total Cost above the Estimated Cost up to the amount of the Maximum Cost and which is based on any Force Majeure shall not be unreasonably withheld. In the event that a requested Change Order would, in combination with all other Change Order increases, result in a cumulative increase in the Estimated Cost above the Maximum Cost, then City Council approval of the Change Order shall be required. City shall promptly and in good faith determine such approval. Notwithstanding the above, Developer shall have authority, without City's consent, to order minor changes in the work to be performed which do not involve an increase in the Estimated Cost, or significantly increase the construction period as set forth in Paragraph 9 below.

4.5 Force Majeure. "Force Majeure," shall broadly mean for all purposes of this contract, any act, event, condition or situation, or any failure or omission thereof, involving the construction of the Map Improvement which is beyond the reasonable anticipation or control of Developer and which either increases the Total Cost thereof beyond the Maximum Cost or delays construction. By way of example and not by way of limitation, of the types of acts, events, conditions or situations to be considered as Force Majeure shall include: (a) adverse or inclement weather conditions, the elements, flood, earthquake, or other acts of God; (b) war, insurrection, act of terrorism, vandalism or arson; (c) shortages in material, equipment labor, or service or in the availability of any skilled construction trades, required to construct the Map Improvements; (d) strikes, slowdowns or other labor disputes adversely affecting the construction of the Map Improvements; (e) failure of any subcontractor or material supplier to perform requiring the substitution of another; (f) error or omission of any engineer, architect or other professional retained to work on the project; (g) existence of any underground condition or hazardous waste or material not reasonably ascertainable upon customary and usual site and soil condition evaluations; (h) any change required by City in the Plans; (i) any exercise of governmental authority or police power, moratorium or restriction not resulting from any wrongful action of Developer or failure of developer to comply with any applicable law or regulation; or (j) any legal action commenced by any person resulting in any restraining order, injunction or stay affecting the project not precipitated by any wrongful action of Developer or failure of Developer to comply with any applicable law or regulation.

5. Payment for Construction of Map Improvements.

5.1 Payment to Developer. The amount to be paid by City to Developer for construction and installation of the Map Improvements shall be the Total Cost not in excess of the Maximum Cost; and, to the extent the Total Cost exceeds the Estimated Cost then only to the extent of any increase resulting from any Change Order as provided pursuant to Paragraph 4.4 hereof.

5.2 Right to Payment. The Total Cost of constructing the Map Improvements shall be paid by City to Developer through the Payment Escrow in the manner provided in Paragraphs 5.3 through 5.5 below; except that, in the event the actual Total Cost exceeds the stated Maximum Cost set forth in Paragraph 4.3, which increase results from any Force Majeure under Paragraph 4.5 and approved Change Order(s) under Paragraph 4.4 resulting from such Force Majeure, then City shall pay Developer any additional amount required outside of the Payment Escrow from other available funds.

5.3 Method of Payment. On or before the 25th day of each month following commencement of the construction of the Map Improvements, Developer shall submit to City a payment request with respect to all eligible work performed for which Developer was not previously paid. The amount requested for payment shall be for all direct and indirect construction costs incurred during the period in question. The request shall detail all eligible costs incurred by specific budget categories for the required period and the Developer shall provide supporting documentation (invoices, certified payrolls, etc.) to the Property Director of the City of San Diego for the amounts requested for payment. The City may immediately cause its inspector to verify whether or not the materials and work for which payment is being requested have been installed and performed as represented in the payment request, and if so, will authorize the payment to be made by the Payment Escrow, subject to the provisions of Paragraph 5.4 relating to retainages, on or before the tenth (10th) day of the following months, or as soon thereafter as practical. If the inspector finds a defect, City shall notify Developer, who shall immediately respond to City and immediately perform any remedial work. City acknowledges that the Estimated Cost does not include any charge for financing, on the basis that City will promptly authorize Developer's payment requests to enable Developer to timely pay all contractors, material suppliers and all other costs and charges properly incurred to design, construct and install the Map Improvements, and City agrees to promptly process Developer's requests for payment authorization pursuant to the terms of this Agreement to enable Developer to timely meet its obligations to such contractors and suppliers.

5.4 Retainages. Each monthly payment authorized by the City to Developer will be subject to a ten percent (10%)

retainage. To the extent it is feasible and prudent to do so, Developer shall use reasonable efforts to schedule the delivery of materials to the project site to coincide with their installation. City shall authorize the 10% retainage specified above to be released by the Escrow to Developer thirty-five (35) days after completion of the Map Improvements as provided in paragraph 9.

5.5 Payment Escrow. The Payment Escrow shall be funded directly from the Lease Escrow in the amount of One Million, Seventy-Three Thousand, Eight Hundred and Sixty Three (\$1,073,863.00) Dollars which shall be held in the Payment Escrow and disbursed in the amounts authorized by City in the form attached hereto as "Attachment 1". Upon receipt of each Payment Authorization executed by City, the Payment Escrow shall forthwith disburse by its check made payable to Developer the full amount specified in the Payment Authorization. Upon joint written instruction of both City and Developer, after completion of construction of the Map Improvements and acceptance thereof by City and expiration of the 35 day retainage period, the Payment Escrow shall disburse the remaining balance of funds in the Payment Escrow, less the agreed escrow charges, in the manner directed in the joint written instruction. In the event of any conflicting instruction from City and Developer with respect to the disbursement of the remaining balance, the Payment Escrow shall continue to retain such funds until joint or consistent written instructions are received or a court order is obtained directing the disbursement of the remaining balance of the funds in the Payment Escrow. The Payment Escrow shall be absolved of any requirement to make any enquiry of either party hereto regarding the disbursement of any funds for which it has a Payment Authorization or written joint instructions from both parties hereto, and the Payment Escrow shall have no duty whatsoever to perform any functions normally performed by any construction fund control other than to comply with the disbursement instructions contained in any Payment Authorization provided by City or in any written joint instructions provided by both parties hereto. The parties agree to the terms and conditions of the escrow's General Provisions, a copy of which is attached hereto as "Attachment 2". First American Title Company has evidenced their acceptance of the Payment Escrow as provided herein in their separate signature block shown at the end of this Agreement.

6. Reallocation of Savings; Costs in Excess of Budget. With the consent of the City, which consent shall not be unreasonably withheld, Developer may reallocate savings realized with respect to particular line items on the proposed budget for the Estimated Cost to pay for cost overruns, if any, in other line items on the proposed budget so long as there is no increase in the Estimated Cost.

7. Recordkeeping. Developer shall keep an accurate record of the actual cost of the construction of the Map Improvements in accordance with generally accepted accounting principles. Developer shall allow the City's authorized representatives to examine and duplicate any records relevant to the verification of the actual cost of constructing the Map Improvements including, without limitation, all contract bids, invoices, subcontracts, cancelled checks and any other contract documents.

8. City's Right to Assume Construction of the Project. City shall have the right to construct or to cause others to construct the Map Improvements without any further participation by Developer in the event that Developer breaches its obligations under this Agreement and is unable to cure such breach within a reasonable time after receiving notice of the breach from City. In such event, the City shall have the right to all work performed or caused to be performed in connection with the Map Improvements by Developer or its successors in interest through the date the City assumes control of the construction of the same, including without limitation, the Plans and all materials on the construction site and in process. In return, Developer shall be entitled to payment pursuant to this Agreement for the reasonable costs incurred through such date by Developer. Upon City's election to proceed under this paragraph without further participation of Developer, City and Developer shall jointly instruct the Payment Escrow to disburse the remaining funds in said escrow in an amount sufficient to pay Developer for the unpaid reasonable costs incurred to be paid under this Agreement with the balance of the funds to be disbursed to City.

9. Construction Period. Developer shall commence construction of the Map Improvements no later than 90 days from the recordation of the final Parcel Map or the close of escrow as provided in the Lease, whichever shall last occur, and shall complete construction within 450 days of the commencement date.

10. Construction Delay Caused by Force Majeure. If delays occur in the construction of the Map Improvements, caused by any Force Majeure (as defined in Paragraph 4.5). Developer will not be considered to be in default of its obligations to construct the same if the construction is completed within the time allowed in Paragraph 9 plus the duration of any such delays. Developer shall timely notify City of each incident claimed to be an excusable delay hereunder and the duration of the delay.

11. City Right of Inspection. City, upon reasonable notice shall have the right to inspect all books and records of Developer relating to the Map Improvements and may perform such audits as may be required on matters relating to the cost of construction during the construction period and for a period of three (3) years following its acceptance of the Map

Improvements. Developer shall retain all such records for said three (3) year period.

12. Insurance. Developer or its assignee shall, at its sole cost and expense, at all times during the term of this Agreement, maintain in full force and effect for the joint benefit of Developer or its assignees and City as co-insureds a broad form comprehensive coverage policy of public liability insurance by the terms of which Developer or its assignees and City are named as insureds and are indemnified against liability for damages or injury to the property or person (including death) of any agent employee, licensee or invitee or Developer or any other person entering upon or using the Property or any part thereof, and arising from the use thereof. Such insurance policy or policies shall be maintained on the minimum basis of \$1,000,000 for damage to property or bodily injury to or death of any person. Such insurance policy or policies shall be in addition to the indemnification provisions of Paragraph 15, and shall also be stated to be primary and non-contributing with any insurance which may be carried by City. Developer shall deliver to City the certificate of each insurance carrier as to each such insurance policy seven (7) days prior to commencement of any work pursuant to the terms of this Agreement. Such insurance shall be kept in full force and effect until twelve (12) months after acceptance of the project by City.

13. Attorneys Fees. In the event any dispute arises under this agreement, with regard to the interpretation of its terms, its breach by any party, or otherwise, which dispute results in litigation or arbitration initiated by either party, then the prevailing party shall be entitled to recover, as part of any judgment or award, the full amount of its attorneys' fees and all litigation costs or arbitration costs and fees of every type (including but not limited to expert witness fees, if any) as the court or arbitrator(s) shall determine are reasonable, give all the facts and circumstances of the litigation or arbitration.

14. Severability. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby, if the remainder would then continue to conform to applicable law.

15. Indemnity. Developer or its assignee agree to defend, indemnify, protect and hold City and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to Developer's or its assignees' employees, agents or officers which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of Developer or its assignees, and its agents, officers or employees, in constructing the improvements, and all expenses incurred in investigating and defending against the same;

provided, however, that Developer or its assignees' duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of City, its agents, officers or employees. This provision shall remain in full force and effect until twelve (12) months after acceptance of the project by City.

16. Assignment. Developer may assign its rights and obligations under this Agreement to any third party without the prior written consent of the City, provided however that the assignee must assume and perform all duties and obligations under this Agreement and Developer continues to be obligated hereunder for all purposes. Developer must notify the City in the event that an assignment is executed within sixty (60) days following such assignment.

17. Termination. This Agreement shall terminate at such time as the Project is finally inspected and accepted by the City and payment as set forth in Paragraph 5 has been made to Developer for the Total Cost. However, Developer or its assignee shall continue to be obligated under Section 12 and 15 herein.

18. Notice. Any notice from one party to the other pertaining to this Agreement shall be in writing sent certified mail, postage prepaid, return receipt requested, or personally delivered, and shall be deemed received upon personal delivery or three business days after it is posted in the United States mails. All notices shall be delivered or mailed to the following addresses:

To Developer:

WestTerra Communications, Ltd.
5414 Oberlin Drive
San Diego, CA 92121
Attention: Edward B. Romanow, Jr.

With a Copy to:

Robbins & Keehn
530 B Street, Suite 1700
San Diego, CA 92101
Attention: A.R. Robbins

To City:

Either party may change its address for notice purposes at any time by giving notice thereof in accordance with this Notice provision.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego acting by and through its City Manager pursuant to Resolution No. R-277522 and by WestTerra Communication, Ltd.

DATED this 29 day of MAR, 1991.

THE CITY OF SAN DIEGO

By: [Signature]
Deputy City Attorney

By: [Signature]
City Manager

APPROVED as
to form by JOHN W. WITT, City Attorney

By: [Signature]
Deputy City Attorney

WESTERRA COMMUNICATIONS, LTD.
a California Limited Partnership
by

WESTERRRA VIEWRIDGE PROPERTY
CORP., its General Partner

By: [Signature]
Edward B. Romanow, Jr.
President

The Payment Escrow Referenced in Paragraph 5.5 hereof is accepted, by the undersigned title company and the undersigned title company agrees to act as the escrow in the manner and for the purposes provided in said Paragraph and the General Provisions incorporated therein by reference and attached herto as Exhibit "B".

First American Title Company

By: _____
(Escrow Officer)

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss.

On _____ before me, the undersigned a Notary Public in and for said State, personally appeared and personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as the President of WestTerra Viewridge Property Corp. as the General Partner on behalf of WestTerra Communications Ltd., a California limited partnership therein named, and acknowledged to me that he executed the within instrument in accordance with the by-laws of WestTerra Viewridge Property Corp. which was properly acting as the General Partner of WestTerra Communications, Ltd.

Notary Public

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

YEAS: _____

NAYS: _____

NOT PRESENT: _____

AUTHENTICATED BY:

Mayor of The City of San Diego California

City Clerk of The City of San Diego California

(SEAL)

By: _____, Deputy

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

City Clerk of The City of San Diego, California

(SEAL)

By: _____, Deputy

PARCEL MAP IMPROVEMENT AGREEMENT
ATTACHMENT I

IDA/WESTERRA INDUSTRIAL LEASE

I. LEASE ESCROW:

- A. Open at 1st American Title Insurance when lease is signed by CM
- B. Escrow shall close when Parcel Map creates site 4A.
- C. \$1,073,863 shall be placed into new escrow called "Improvement Payment Escrow" \$126,137 less escrow charges and less "Good Faith Deposit" of \$24,000, shall be deposited into the IDF - Police account 302481.

II. IMPROVEMENT PAYMENT ESCROW:

- A. Developer shall prepare bid documents for City approval.
- B. Developer shall advertise.
- C. Bidder shall be selected by Developer and City and then notify escrow of the selection.
- D. Work to start
- E. By 25th of Month in which work begins and each following month of construction, a Request for Payment (Sec. 5.3 of Improvement Agreement) shall be delivered to Property Agent.
- F. By the 10th of following month a Payment Authorization shall be delivered to Escrow for payment.
- G. Each such payment will hold back 10%.
- H. 35 days after all work complete, final Payment Authorization may include all held portions from G above.

III. PAYMENT REQUEST:

Submit by 25th of Month to Property Agent

- A. Agent will inspect job.
- B. Agent will present request to City Attorney and E & D (Design Division, Project Management) for approval of construction increment payment.
- C. Agent will present copy of the payment request with payment authorization to escrow.
- D. Said payment shall be made by escrow no latter than the 10th of the following month.
- E. Each such payment shall be 90% of the request with 10% held in escrow to be paid with the last payment for improvements.

IV. PAYMENT AUTHORIZATION:

- A. Each payment request will trigger steps for issuing the incremental payment authorization, endorsed by E & D, City Attorney and Property Agent.

V.

CLOSE OF IMPROVEMENT PAYMENT ESCROW:

- A. Upon City's acceptance of the public improvements, the 35 days retention period shall begin.
- B. The City Attorney, Auditor, Engineer and Property Director shall agree on payment of the final retention payment to developer.
- C. Escrow shall disburse the final retention payment to Developer.
- D. Escrow shall disburse all remaining funds to City and close the escrow.

ATTACHMENT 2
PARCEL MAP IMPROVEMENT AGMT.
GENERAL PROVISIONS

1. Deposit of Funds & Disbursements

All funds received in this escrow shall be deposited in one or more of your general escrow accounts with any bank doing business in the State of California and may be transferred to any other general escrow account or accounts. All disbursements shall be made by your check. You are authorized not to close or disburse until good funds have been confirmed in escrow.

2. Prorations and Adjustments

The expression "close of escrow" used in this escrow means the date of which instruments referred to herein are recorded and relates only to prorations and/or adjustments unless otherwise specified.

All prorations and/or adjustments are to be made on the basis of a 30-day month unless otherwise instructed in writing.

3. Recordation of Instruments

You are authorized to record any documents delivered through this escrow, the recording of which is necessary or proper in the issuance of the requested policy of title insurance.

4. Authorization to Execute Assignment of Insurance Policies

You are to execute on behalf of the parties hereto form assignments of interest in any insurance policies (other than title insurance) called for in this escrow; forward assignments and policies upon close of escrow to the agent with the request, first, that insurer consent to such transfer and/or attach a loss-payable clause and/or make such other additions or corrections as may have been specifically required herein, and second, that the agent thereafter forward such policies to the parties entitled to them.

In all acts in this escrow relating to insurance, including adjustments, if any, you shall be fully protected in assuming that each policy is in force and that the necessary premium therefor has been paid.

5. Authorization to Furnish Copies

You are to furnish a copy of these instructions, amendments thereto, closing statements and/or any other documents deposited in this escrow to the lender or lenders, the real estate broker or brokers and/or the attorney or attorneys involved in this transaction upon request of the lenders, brokers or attorneys.

6. Personal Property Taxes

No examination or insurance as to the amount or payment of personal property taxes is required unless specifically requested.

7. Right of Cancellation

Any party instructing you to cancel this escrow shall file notice of cancellation in your office, in writing. You shall within a reasonable time thereafter mail, by certified mail, one copy of the notice to each of the other parties at the addresses stated in this escrow. Unless written objection to cancellation is filed in your office by a party within ten (10) days after date of mailing, you are authorized at your option to comply with the notice and demand payment of your cancellation charges as provided in this agreement. If written objection is filed, you are authorized at your option to hold all money and instruments in this escrow and take no further action until otherwise directed, either by the parties' mutual written instructions, or final order of a court of competent jurisdiction.

8. Action in Interpleader

The parties hereto expressly agree that you, as escrow holder, have the absolute right at your election to file an action in interpleader requiring the parties to answer and litigate their several claims and rights among themselves and you are authorized to deposit with the clerk of the court all documents and funds held in this escrow. In the event such action is filed, the parties jointly and severally agree to pay your cancellation charges and costs, expenses and reasonable attorney's fees which you are required to expend or incur in the interpleader action, the amount thereof to be fixed and judgment therefor to be rendered by the court. Upon the filing of the action, you shall thereupon be fully released and discharged from all obligations to further perform any duties or obligations otherwise imposed by the terms of this escrow.

9. Termination of Agency Obligations

If there is no action taken on this escrow within six (6) months after the "time limit date" as set forth in the escrow instructions or written extension thereof, your agency obligation shall terminate at your option and all documents, monies or other items held by you shall be returned to the parties depositing same.

In the event of cancellation of this escrow, whether it be at the request of any of the parties or otherwise, the fees and charges due First American Title Insurance Company, including expenditures incurred and/or authorized shall be borne equally by the parties hereto (unless otherwise agreed to specifically).

EXHIBIT C

MEMORANDUM OF LEASE

(Eastgate Technology Park
City of San Diego)

The City of San Diego, a municipal corporation ("Lessor") agrees to lease to WestTerra Communications Ltd., a California limited partnership ("Lessee") that certain real property identified as Parcel 1 on the certain Parcel Map No. _____ recorded on _____ in the official records of the County of San Diego as document number _____, and Lessee agrees to lease said property from Lessor. Said lease shall be for a term of fifty five (55) years, commencing _____ and ending _____ and shall be in accordance with the terms and conditions of that certain Flat Rate Ground Lease Agreement approved by the City Council of Lessor on _____ by Resolution No. _____, executed by both Lessor and Lessee.

In witness whereof this Memorandum of Lease is executed this ____ day of _____, 1991 and has been prepared for recording in the official records of the County of San Diego.

THE CITY OF SAN DIEGO

Date

3/29/91

By

[Signature]
Deputy City Manager

LESSEE:

WestTerra Communications, Ltd.,
a California Limited Partnership

by

WestTerra Viewridge Property
Corp., its General Partner

Date

By

Edward B. Romanow, Jr.,
President

APPROVED as to form and legality this 29 day of March, 1991.

JOHN W. WITT, City Attorney

By

[Signature]
Deputy City Attorney

(R-91-1485 REV.1)

RESOLUTION NUMBER R-277522

ADOPTED ON MARCH 19, 1991

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a 55-year Flat Rate Ground Lease (Lease) of Lot 4A, Eastgate Technology Park, to WESTERRA COMMUNICATIONS, LTD., with a fully prepaid rent in the amount of \$1.2 million which is the appraised fair market value of the property, a copy of which Lease is on file in the office of the City Clerk as Document No. RR- 277522.

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized to execute a Parcel Map Improvement Agreement in the form attached as Exhibit B to the Lease, and to establish a payment escrow in accordance with the Parcel Map Improvement Agreement.

BE IT FURTHER RESOLVED, that the payment of appropriate costs of the Lease and Parcel Map Improvement Agreement is hereby authorized to be paid from the proceeds of the lease payment, including a credit or reimbursement to the Lessee for actual costs incurred for public street improvements and related costs for Towne Centre Drive in accordance with the terms and conditions of the Lease and Parcel Map Improvement Agreement.

BE IT FURTHER RESOLVED, that this approval is contingent upon language acceptable to the City Manager being added to the lease to:

1. provide for deferred landscaping or a landscaping plan consistent with the presently existing drought problem; and
2. provide for a recycling program.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
03/06/91
03/22/91 REV.1
Or.Dept:Prop.
Job:920925
R-91-1485
Form=r-t

MAR 19 1991

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

Council Members	Yeas	Nays	Not Present	Ineligible
Abbe Wolfsheimer	☒	☐	☐	☐
Ron Roberts	☐	☐	☒	☐
John Hartley	☒	☐	☐	☐
H. Wes Pratt	☐	☐	☒	☐
Linda Bernhardt	☒	☐	☐	☐
J. Bruce Henderson	☒	☐	☐	☐
Judy McCarty	☒	☐	☐	☐
Bob Filner	☒	☐	☐	☐
Mayor Maureen O'Connor	☐	☐	☒	☐

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California.

(Seal)

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

By *Linda Lugano* Deputy.

Office of the City Clerk, San Diego, California

Resolution Number *C 277522*

MAR 19 1991

Adopted.....

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 0.00

RECORDING REQUESTED BY:)

WHEN RECORDED MAIL TO:)

City of San Diego)
1200 Third Ave. #1700)
San Diego, CA 92101)

Attn: Christian Anderson)

764



No Documentary Tax Due - R&T 11922(amended)
Presented for record by the City of San Diego

**FIRST AMENDMENT TO MEMORANDUM OF LEASE
EASTGATE TECHNOLOGY PARK - CITY OF SAN DIEGO**

This First Amendment to Memorandum of Lease is entered into by the undersigned in order to amend that certain Memorandum of Lease dated September 25, 1991 and recorded in the official records of San Diego County on August 21, 1992 at File No. 1992-0531228 ("Memorandum of Lease").

The Lease referred to in the Memorandum of Lease shall pertain only to that certain property described in Exhibit "A" attached hereto.

Dated: August 22, 1997

CITY OF SAN DIEGO
a municipal corporation

By: Jane E. Vickers

Its: Deputy Director

Dated: July 30, 1997

INSTITUTE FOR DEFENSE ANALYSES
a Delaware corporation

By: Ruth L. Greenstein

Its: VICE PRESIDENT

Exhibit "A"

765

Legal Description

Parcel 1 of Parcel Map 16829 in the City of San Diego, County of San Diego, State of California, according to map thereof filed in the Office of the County Recorder of San Diego April 23, 1992 as File No. 1992-239395 of Official Records.

State of Virginia,
 County of Alexandria
 City

on July 30, 1997 before me, a notary public in and for said
 state, personally appeared Ruth Greenstein, Vice President

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

WITNESS my hand and official seal.

Signature Barbara Leah Karaglin
 My Commission Expires August 31, 1998

CAPACITY CLAIMED BY SIGNER:

<u> </u> INDIVIDUAL <u>✓</u>	CORPORATE <u>VICE PRESIDENT</u> (TITLE)
<u> </u> PARTNER(S)	OFFICER(S) <u> </u> (TITLE)
<u> </u> ATTORNEY-IN-FACT <u> </u>	TRUSTEE(S)
<u> </u> SUBSCRIBING WITNESS <u> </u>	GUARDIAN/CONSERVATOR
<u> </u> OTHER: <u> </u>	

SIGNER IS REPRESENTING: (NAME OF PERSONS(S) OR
 ENTITY(S)) INSTITUTE FOR DEFENSE ANALYSES

Title or Type of Document First Amendment to Memorandum of Lease
 Number of Pages 2 Date of Document
 Signer(s) Other Than Named Above City of San Diego

State of CALIFORNIA
County of SAN DIEGO

767

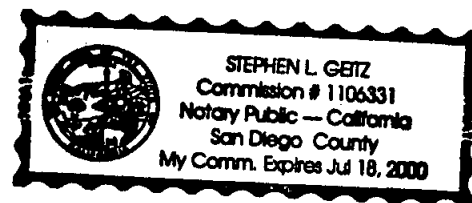
On AUGUST 22, 1997 before me, a notary public in and for said state, personally appeared JANE E. VICKORY

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

WITNESS my hand and official seal.

Signature

Stephen L. Getz



CAPACITY CLAIMED BY SIGNER:

_____ INDIVIDUAL	<u> X </u>	CORPORATE <u>Deputy Director</u> (TITLE)
_____ PARTNER(S)		OFFICER(S) _____ (TITLE)
_____ ATTORNEY-IN-FACT	_____	TRUSTEE(S)
_____ SUBSCRIBING WITNESS	_____	GUARDIAN/CONSERVATOR
_____ OTHER: _____		

SIGNER IS REPRESENTING: (NAME OF PERSONS(S) OR ENTITY(S)) CITY OF SAN DIEGO

Title or Type of Document FIRST AMENDMENT TO MEMORANDUM OF LEASE
Number of Pages 2 Date of Document _____
Signer(s) Other Than Named Above Institute for Defense Analyses

RECORDING REQUESTED BY:)

WHEN RECORDED MAIL TO:)

Institute of Defense
Analyses)

1801 N. Beauregard Street)
Alexandria, VA 22311)

*A fully executed/recorded
copy of this Memorandum
of Lease was not found in
the Lease file of F. d. Beale
7/19/2008.*

Space Above For Recorder's Use

MEMORANDUM OF LEASE

(Eastgate Technology Park - City of San Diego)

The City of San Diego, a municipal corporation ("Lessor") agrees to lease to the Institute of Defense Analyses, a Delaware Corporation ("Lessee") that certain real property described in Exhibit A attached hereto and Lessee agrees to lease said property from Lessor. Said lease shall be for a term of fifty five (55) years and shall be in accordance with the terms and conditions of that certain Flat Rate Ground Lease Agreement approved by the City Council of Lessor on March 19, 1991 by Resolution No. R-277522, originally executed by Lessor and WestTerra Communications, Ltd., a California limited partnership ("WestTerra") and subsequently assigned by WestTerra to Lessee.

Dated: SEPTEMBER 25, 1991

THE CITY OF SAN DIEGO

By: *Jack Mc Grory*

JACK MC GRORY
CITY MANAGER

LESSEE:

INSTITUTE OF DEFENSE ANALYSES
A Delaware Corporation

By: _____

Its: _____

September, 1991. Approved as to form and legality this 25 day of

JOHN W. WITT, City Attorney

By: *John W. Witt*

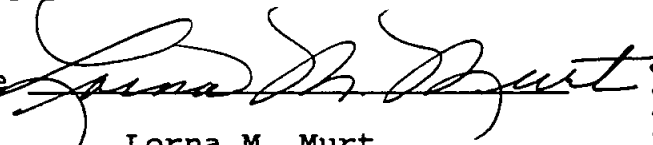
Deputy City Attorney

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On SEPTEMBER 25, 1991 before me, the undersigned, a Notary Public
in and for said State, personally appeared JACK McGRORY
known to me to be the CITY MANAGER OF THE CITY OF SAN DIEGO
and known to me to be the person who executed the within instru-
ment on behalf of said public corporation, agency or political
subdivision, and acknowledged to me that such public corpora-
tion, agency, or political subdivision executed the same.

WITNESS my hand and official seal.

Signature



Lorna M. Murt

Name (Typed or Printed)



STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

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

WITNESS my hand and official seal.

Signature _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

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

WITNESS my hand and official seal.

Signature _____

EXHIBIT A

DESCRIPTION OF PREMISES

Approximately 17.288 acres of Lot 4 of Eastgate Technology Park, Unit No. 1, in the City of San Diego, County of San Diego, State of California, according to Map Thereof No. 10830 filed in the Office of the County Recorder of San Diego County, January 30, 1984, as more particularly identified as Parcel 1 on Tentative Parcel Map No. 90-0450 adopted by the Subdivision Board of the City of San Diego on October 8, 1990 by Resolution No. 5542.