

COPY



CITY OF SAN DIEGO
and
IRMGARD B. VALENTA

Lease Agreement

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OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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CITY OF SAN DIEGO LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is executed between the CITY OF SAN DIEGO, a municipal corporation ("CITY"), and IRMGARD B. VALENTA, an individual ("LESSEE").

SECTION 1: USES

- 1.1 Premises. CITY leases to LESSEE and LESSEE leases from CITY all of that City-owned real property located at 720 Silver Street in La Jolla, consisting of approximately 3,375 square feet, situated in the City of San Diego, County of San Diego, State of California, as set forth in Exhibit "A" attached to this Lease and by this reference made part of this Lease. The real property shall be called the "Premises."

- 1.2 Uses. It is expressly agreed that the Premises are leased to LESSEE solely and exclusively for the purposes of providing a parking facility for the United States Post Office, and for other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

The use of the Premises for any unauthorized purpose shall constitute a substantial default and subject this Lease to termination at the sole option of CITY.

LESSEE covenants and agrees to use the Premises for the above-specified purposes and to diligently pursue the purposes throughout the term of this Lease. Failure to continuously use the Premises for the purposes, or the use of the Premises for purposes not expressly authorized in this Lease, shall be grounds for termination by CITY.

- 1.3 Related Council Actions. By entering into 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 Premises.

- 1.4 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements in this Lease, shall at all times during the Lease Term (defined in Section 2.1) peaceably and quietly have, hold, and enjoy the Premises. If during

the Lease Term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of the events, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the Premises.

1.5 Easements and Reservations.

- a. CITY reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
- 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, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the Premises for the purpose of making repairs to or developing municipal resources and services.

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

- 1.6 Competent Management. Throughout the Lease Term, LESSEE shall provide competent management of the Premises for the intended uses to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a parking area and related activities in a fiscally responsible manner.

SECTION 2: TERM

- 2.1 Term. The term of this Lease shall be six (6) years ("Term"). The Term of this Lease is effective following execution by the City Manager and approval by the City Attorney ("Commencement Date"). If the Commencement Date is not the first day of a calendar month, then the Term shall include the partial calendar month from and including the Commencement Date through the last day of the full Term, so that the Term shall expire on the last day of a calendar month.

"Lease Year" as used in this Lease shall mean the 12-month period commencing on the first day of the calendar month following execution of this Lease by the City Manager and approval by the City Attorney.

- 2.2 Holdover. Any holding over by LESSEE after Lease expiration or Lease 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 Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease 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 with thirty (30) days prior written notice.
- 2.3 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, 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.

SECTION 3: RENT

- 3.1 Time and Place of Payment. Rent is due annually in advance on or before the first day of each Lease Year. All rents required by this Lease must be made payable to the City Treasurer and mailed to:

The Office of the City Treasurer
City of San Diego
P.O. Box 122289
San Diego, California 92112-4165

or hand delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California.

The time and place of payment may be changed at any time by CITY upon thirty (30) days written notice to LESSEE. Mailed rental payments shall be deemed

paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

3.2 Rent.

- a. Rent Amount. LESSEE shall pay CITY an initial rent of Seven Thousand Dollars (\$7,000) per annum. The rent is subject to adjustments based on fixed rate increases and in the fair market value of the Premises as provided in this Lease.
- b. Rent Adjustment. At the beginning of the second Lease Year and at the beginning of each Lease Year thereafter during the Lease term, the annual rent shall be adjusted as follows:

<u>Lease Year</u>	<u>Annual Rent</u>
Lease Year Two	\$7,250
Lease Year Three	\$7,500
Lease Year Four	\$7,750
Lease Year Five	\$8,000
Lease Year Six	\$8,250

The above rent schedule reflects an annual rent escalation equal to Two Hundred Fifty Dollars (\$250) over the prior year annual rental rate.

SECTION 4: ASSIGNMENT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants, and conditions of this Lease, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this Lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 4.2 Assignment and Subletting. LESSEE shall not assign this Lease or any interest in this Lease and shall not sublet the Premises or any part of the Premises, or any right or privilege appurtenant to the Premises, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the Premises or any part of the Premises, 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 assignment or subletting

without 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.

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 assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this Lease, which are applicable to the rights acquired. The City Manager shall require, as a condition to approval of any sublease of the majority portion of the leasehold or any assignment, that LESSEE pay additional consideration to CITY, as set forth in Section 4.6, Additional Consideration to CITY, of this Lease, commencing on the effective date of such proposed sublease of the majority portion of the leasehold or assignment, and may further require that this Lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current. Pursuant to City Charter Section 225, which is incorporated into this Lease by reference, the City Manager must review and approve every person or entity which will have an interest in this Lease as a sublessee or assignee. The City Manager's approval will not be unreasonably withheld provided all such persons and entities are of good character and reputation in the community.

4.3 Encumbrance. LESSEE may not encumber this Lease, its leasehold estate, and its improvements thereon by deed of trust, mortgage, chattel mortgage, or other security instrument.

4.4 Defaults and Remedies.

- a. Default. On the occurrence of a default by LESSEE, CITY shall have the right to pursue any one or more of the remedies listed in this section in addition to any other remedies now or later available to CITY in law or in equity. These remedies are not exclusive but cumulative:
 - (1) LESSEE'S failure to make any payment required under this Lease when due if the failure continues for five (5) days following written notice of the failure from CITY; or
 - (2) LESSEE defaults in the performance of any covenant or condition required by this Lease, other than those requiring payment to CITY, to be performed by LESSEE and shall fails to cure the default within thirty (30) days following written notice from CITY; or if any default, other than those not requiring payment to CITY, is not curable within thirty (30) days, and LESSEE fails to commence to cure the default(s) within thirty days and diligently

pursue cure to completion; or

- (3) LESSEE voluntarily files any bankruptcy or insolvency act or law; or
- (4) LESSEE has involuntarily filed against it any petition under any bankruptcy or insolvency act or law and the matter is not dismissed by a court of competent jurisdiction within ninety (90) days of filing; or
- (5) LESSEE is adjudicated a bankrupt; or
- (6) LESSEE makes a general assignment for the benefit of creditors; or
- (7) LESSEE encumbers this Lease, the leasehold, or estate, or any improvements, or uses the Premises for any unauthorized purpose.

b. Remedies.

- (1) For Default Based Upon Nonpayment. Upon default by LESSEE for nonpayment under Section 4.4(a)(1) above, CITY may, at its option, give LESSEE or any person claiming rights through LESSEE, a written Three-Day Notice to Pay or Quit or may terminate this Lease and all right of LESSEE and of all persons claiming right through LESSEE to the Premises or to possession of the Premises, and CITY may enter and take possession of the Premises, and may recover the sums set forth below.
- (2) For Any Other Default. Upon default by LESSEE based upon Sections 4.4(a)(2-7) above, CITY may, at its option, terminate this Lease and all right of LESSEE and of all persons claiming right through LESSEE to the Premises or to possession of the Premises, and CITY may enter and take possession of the Premises, and may recover the sums set forth below. However, in the event that any default described in Sections 4.4(a)(2-7) is not curable within thirty (30) days after notice to LESSEE, CITY will not terminate this Lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues the cure to completion.
- (3) Upon termination of this Lease due to default, CITY may recover the sum of:
 - (a) the worth at the time of award of any unpaid rent that had

been due at the time of termination;

- (b) the worth at the time of award of the amount by which (i) the unpaid rent that would have been earned after termination until the time of award exceeds (ii) the amount of rental loss, if any, and LESSEE affirmatively proves could have been reasonably avoided;
 - (c) the worth at the time of award of the amount by which (i) the unpaid rent for the balance of the term after the time of the award exceeds (ii) the amount of rental loss, if any, as LESSEE affirmatively proves could be reasonably avoided;
 - (d) any other amount necessary to compensate CITY for the detriment proximately caused by LESSEE'S failure to perform LESSEE'S obligations or that, in the ordinary course of things, would be likely to result; and
 - (e) all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law. As used in clauses (a) and (b) of this Section, the "worth at time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (c) of this Section, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this Section, the term "rent" shall include Base Rent, Percentage Rent and any other payments required by LESSEE.
- (4) If there is a deed of trust or mortgage on the leasehold interest, and LESSEE has provided CITY with an address where notice can be sent to the respective mortgagee or beneficiary, CITY will give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary will have thirty (30) days from notice to cure the default(s) or, if any default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue a cure to completion. The thirty (30) day period may be extended during such time as mortgagee or beneficiary pursues a cure with reasonable diligence.

If the mortgagee or beneficiary will be required to exercise its right to cure the default(s) through litigation or through foreclosure, then

CITY will have the option of the following courses of action in order that the default(s) may be expeditiously corrected:

- (a) CITY may correct the default(s) and charge the costs thereof to the account of LESSEE, which charge will be due and payable on the date that the rent is next due after presentation by CITY to LESSEE and mortgagee or beneficiary of a statement of the costs.
- (b) CITY may correct the default(s) and may recover the costs thereof from the proceeds of any insurance fund held by CITY, CITY and LESSEE or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default(s) or to pay the cost of correction performed by or at the direction of CITY.
- (c) CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE agrees to assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute for the terminated LESSEE a new tenant reasonably satisfactory to the mortgagee or beneficiary. Any reasonable costs incurred by CITY in re-leasing to a new tenant will be the responsibility of the terminated LESSEE, and LESSEE hereby agrees to reimburse CITY for any costs.

Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, will have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this Lease. If the mortgagee or beneficiary will give notice in writing of its election to so substitute itself within the thirty (30) day period after receiving written notice by CITY of the default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Lease will not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease all the

rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.

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

4.5 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, the interests of CITY and LESSEE will be as follows:

- a. If the entire Premises is taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. In the event of a partial taking of the Premises, if, in the opinion of CITY, the remaining part of the Premises is unsuitable for the lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

- c. In the event of a partial taking of the Premises, and in the opinion of CITY, the remaining part of the Premises is suitable for continued lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the Premises taken.
- d. Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- e. Transfer. CITY has the right to transfer CITY'S interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this Lease.
- f. No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

4.6 Additional Consideration to CITY. LESSEE and CITY agree that in the event of an assignment, in the event of a subletting of the majority portion of the leasehold, or in the event of a refinancing creating an encumbrance against the leasehold, LESSEE shall pay to CITY two percent (2%) of the gross amount paid for the leasehold in connection with an approved assignment of the Lease, two percent (2%) of any amount paid LESSEE in consideration of a sublease of all or a majority portion of the leasehold, or two percent (2%) of the amount of any increased loan or encumbrance against the property over and above the amount of the then existing balance(s) of the existing encumbrance(s). The amount upon which the two percent (2%) shall be based will be a proration in the current value of the Premises over the original equity in the Premises as determined by an independent MAI appraisal. Prior to CITY'S consent to any assignment, majority subletting, or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this paragraph, together with an acknowledgment from the proposed assignee, sublessee, or refinancing agency as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction, be it an assignment, a sublease, or a refinancing. Any assignment, subletting, or

refinancing in violation of the terms and conditions of this paragraph shall be void. The provisions of this paragraph shall not apply to:

- a. An assignment or transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession, or by operation of law for the benefit of the spouse or descendants (i) of LESSEE (if an individual) or (ii) of LESSEE'S principal owner or chief executive officer (if LESSEE is other than an individual);
- b. Any other assignment for which the City Manager determines that the legal and equitable ownership interests in the leasehold have remained unchanged, such as a change in the legal or fictitious name of LESSEE without any other change in the equity in beneficial use of, or legal title to, the leasehold as an asset or the income produced thereby.

SECTION 5: INSURANCE RISKS/SECURITY

5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold CITY, its elected officials, officers, representatives, agents 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 LESSEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the leasehold or the work and operations to be performed under this Lease, and all expenses of investigating and defending against same; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents and employees.

5.2 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) Liability Insurance. 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 one hundred percent (100%) 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.
- b. LESSEE'S responsibility to maintain the insurance also includes the following:
- (1) Additional Insured. All insurance policies, by separate endorsement, will name CITY, its elected officials, officers, representatives, agents and employees as additional insureds, 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 satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the Lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the Premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. 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 revision of amounts and coverages at any time during the Term by giving LESSEE sixty (60) days prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Lease.
- (3) Accident Reports. LESSEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the Premises. This report 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. The 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 the default.

- 5.3 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the Premises within ten (10) days of the fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of the damage and to restore the Premises to the condition which existed prior to the damage; or, at CITY'S option, LESSEE agrees to clear and remove from the Premises all debris resulting from the damage in order to replace in kind and scope the operation which existed prior to the damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, of this Lease.

LESSEE agrees that preliminary steps toward performing repairs and restoration of the Premises shall be commenced by LESSEE within thirty (30) days, and the required repairs and restoration shall be completed within a reasonable time. CITY may determine an equitable deduction in the minimum annual rent requirement for the period or periods that the Premises are untenable by reason of the damage.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1 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 the 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 whether apparent or latent, in the Premises, including the presence of any hazardous wastes.

- 6.2 Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, to enter the 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 on the Premises. If entry or inspection by CITY discloses that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having the necessary maintenance work done, in order to keep the Premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that the 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. The bond shall be in an amount adequate in the opinion of CITY to correct the unsatisfactory condition. LESSEE shall pay the cost of the bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Lease imposed on CITY.
- 6.3 Maintenance. LESSEE shall assume full responsibility and cost for the operation and maintenance of the Premises throughout the Lease Term. LESSEE will perform all the repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws. All applicable codes and standards of CITY, state, and federal agencies shall be observed in all maintenance, repairs, and replacements on the Premises.
- 6.4 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by LESSEE without prior written approval by the City Manager. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.
- 6.5 Utilities. LESSEE shall order, obtain, and pay for all utilities and service and installation charges in connection with the operation of the Premises. All utilities will be installed underground.

6.6 Construction Bond. Whenever there is any construction to be performed on the Premises, LESSEE shall deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) 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.

6.7 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 the claims, including reasonable attorneys' fees.

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

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

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

6.10 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, the party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this Lease. If LESSEE or CITY claims the existence of a delay, the party claiming the delay shall notify the other party in writing of the fact within ten (10) days after the beginning of any claimed delay.

6.11 Ownership of Improvements and Personal Property.

- a. Any and all improvements, trade fixtures, structures, and installations or additions to the Premises now existing or constructed on the Premises by LESSEE shall at Lease expiration or Lease termination be deemed to be part of the Premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except as otherwise provided in this Lease.
- b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or one hundred eighty (180) days prior to expiration, and LESSEE shall remove all the improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before Lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.
- c. LESSEE shall remove LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property by the date of the expiration or termination of this Lease. Any items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove the items at LESSEE'S expense.
- d. If any removal of personal property by LESSEE results in damage to the remaining improvements on the Premises, LESSEE agrees to repair all damage.
- e. For necessary removal by either CITY or LESSEE which takes place beyond the expiration or Lease termination, LESSEE shall pay rent to CITY at the rate in effect immediately prior to Lease expiration or Lease termination.

- f. Notwithstanding any of the foregoing, if LESSEE desires to dispose of any of its personal property used in the operation of the Premises upon expiration or termination of this Lease, then CITY shall have the first right to acquire or purchase the personal property.

6.12 Hazardous/Toxic Waste. LESSEE shall not allow the release of hazardous substances in, on, 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 Office of the City Clerk as Document 769704 and by this reference is incorporated in this Lease.

If any release of a hazardous substance occurs, 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 shall defend, indemnify, and hold 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, damages 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 the knowledge or cause for belief. Provided, however, if LESSEE knows or has reasonable cause to believe that the 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 the danger. LESSEE shall notify the City Manager immediately of any notice of violation received or initiation of environmental 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 Premises without the prior written consent of CITY.

At any time within the twelve (12) months before Lease expiration or Lease termination, LESSEE, at CITY'S sole option, shall cause an environmental assessment 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. The 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 the 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 to ensure that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

SECTION 7: GENERAL PROVISIONS

7.1 Notices

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

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

Notices to LESSEE shall be mailed to:

Irmgard Valenta
P.O. Box 646
San Diego, CA 92038

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

- 7.2 Compliance with Law. LESSEE shall at all times in the 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.

- 7.3 CITY Approval. The approval or consent of CITY, wherever required in this Lease, shall mean the written approval or consent of the City Manager or his authorized representative unless otherwise specified, without need for further resolution by the City Council.
- 7.4 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE'S use of the Premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
- 7.5 Compliance with CITY'S Equal Opportunity Contracting Program.

- a. Equal Opportunity Contracting. LESSEE acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. LESSEE and all of its subcontractors are individually responsible to abide by its contents.

LESSEE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment on any basis prohibited by law.

LESSEE submitted and CITY acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that LESSEE will take to achieve CITY'S commitment to equal employment opportunities.

LESSEE agrees to insert the foregoing provisions in all subcontracts for any work covered by this Lease so that the provisions will be binding upon each subcontractor. LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by CITY'S Equal Opportunity Contracting Program staff.

- b. Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. LESSEE will, to the extent legally possible, solicit applications for employment, and bids and

proposals for subcontracts, for work associated with this Lease from local residents and firms as opportunities occur. LESSEE agrees to hire qualified local residents and firms whenever feasible.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.

- 7.6 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.
- 7.7 Legal Fees. In the event of any litigation regarding this Lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.
- 7.8 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.
- 7.9 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. The 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 Lease, agrees that there is no other written or oral understanding between the parties with respect to the Premises. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each of the parties in this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Lease.

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 Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing

a policy to maintain a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The LESSEE'S policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs.
 - (4) The penalties that may be imposed upon employees' for drug abuse violations.
- c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

7.12 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner.

7.13 Supersedure. It is mutually agreed that this Lease, upon commencement, supersedes and annuls that lease filed as Document No. RR-270040 with the Office of the City Clerk on January 4, 1998, as amended, with Irmgard B. Valenta, which is hereafter void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under the agreement.

SECTION 8: SIGNATURES

8.1 Signature Page.

IN WITNESS WHEREOF, this Lease is executed by CITY, acting by and through its City Manager, and by LESSEE.

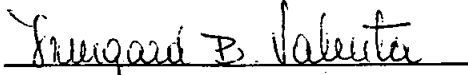
CITY OF SAN DIEGO

Date _____, 2005

By 
William T. Griffith
Real Estate Assets Director

LESSEE:

Date January 24th, 2005

By 
Irmgard B. Valenta

APPROVED as to form and legality this 26th day of April, 2005.

MICHAEL J. AGUIRRE, CITY ATTORNEY

By 
Deputy City Attorney

SECTION 9: EXHIBITS

9.1 Legal Description

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO, AND IS DESCRIBED AS FOLLOWS:

THAT PORTION OF THE NORTHERLY HALF OF RAVINA STREET, AS CLOSED TO PUBLIC USE LYING WESTERLY OF THE SOUTHERLY PROLONGATION OF THE CENTER LINE OF THE ALLEY IN BLOCK 20 OF LA JOLLA PARK, ACCORDING TO MAP THEREOF NO. 352, FILED IN THE OFFICE OF COUNTY RECORDER OF SAN DIEGO COUNTY, AND LYING EASTERLY OF THE EASTERLY LINE OF DRAPER AVENUE AS SHOWN ON SAID MAP NO. 352, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA,

EXCEPTING THAT PORTION LYING NORTHERLY OF A LINE DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF SAID RAVINA STREET WITH THE EASTERLY LINE OF SAID DRAPER AVENUE, THENCE EASTERLY IN A STRAIGHT LINE TO AN INTERSECTION OF THE NORTHERLY LINE OF SAID RAVINA STREET WITH THE CENTER LINE OF SAID ALLEY IN BLOCK 20.

As depicted on Exhibit "B," attached to this Lease and by this reference made part of this Lease, as approximately 3,375 square feet.

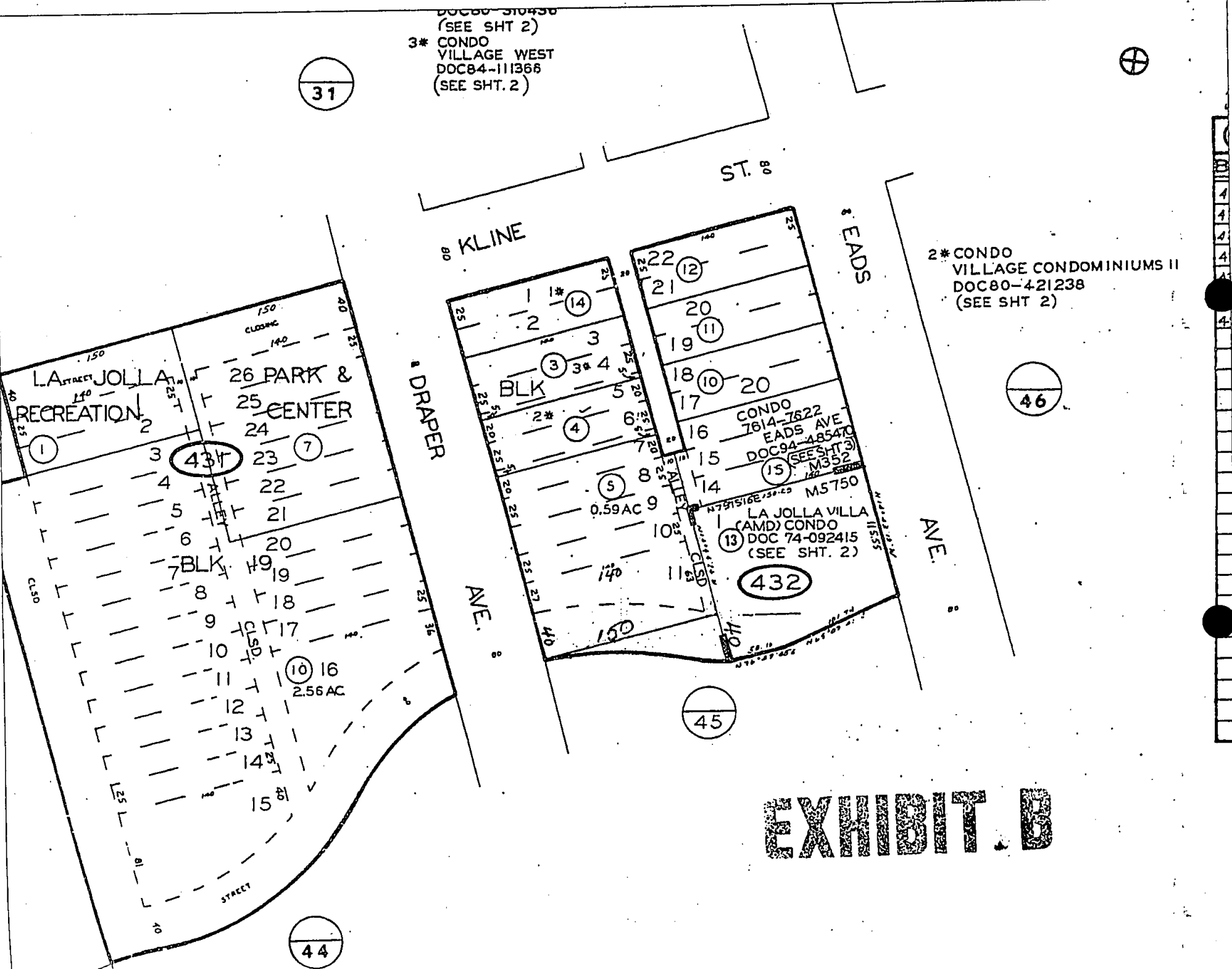
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[illegible]

LAND COVERED IN LEASE
TO IRMGARD VALENTA

EXPLOIT

MAP 5750 - LA JOLLA VILLA
MAP 352 - LA JOLLA PARK - BLK 19 & POR BLK 20



RESOLUTION NUMBER R- 300324

ADOPTED ON APR 18 2005

WHEREAS, the City owns a triangular-shaped parcel consisting of approximately 3,375 square feet at 720 Silver Street in the City of San Diego; and

WHEREAS, the parcel cannot be independently marketed or developed because of its substandard size, location and shape; and

WHEREAS, the City has leased this parcel to Irmgard B. Valenta since 1987 for parking for the United States Post Office [Post Office]; and

WHEREAS, the lease has expired and is currently on holdover; and

WHEREAS, the City and Ms. Valenta have negotiated a new lease for the continued use of the parcel for parking for the Post Office for a term of six years at a rental rate of \$7,000 per year with annual rent adjustments of \$250; and

WHEREAS, the fair market value of the site is \$118, 200 as determined by the City's Real Estate Assets staff; NOW, THEREFORE,

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

1. That the City Manager is authorized to execute, for and on behalf of the City of San Diego, a 6-year lease agreement with Irmgard B. Valenta, for City-owned property located at 720 Silver Street in La Jolla for the purposes of providing a parking facility for the United States Post Office, for \$7,000 per year with annual rent adjustments of \$250 per year, on the terms and conditions set forth in the Lease Agreement on file in the office of the City Clerk as

Document No. RR- 300324

2. That the Council waives Council Policy 700-41 regarding the use of the RFP process for the lease of City-owned land.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Elisa A. Cusato
Deputy City Attorney

EAC:nda
03/29/05
Or.Dept:READ
R-2005-1019
MMS#1635

Passed and adopted by the Council of San Diego on April 18, 2005 by the following vote:

YEAS: **PETERS, ZUCCHET, YOUNG, MAIENSCHIN, FRYE,
MADAFER, INZUNZA, MAYOR MURPHY.**

NAYS: **ATKINS.**

NOT PRESENT: **NONE.**

AUTHENTICATED BY:

DICK MURPHY
Mayor of The City of San Diego, California

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

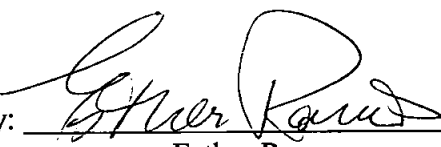
(SEAL)

By: Esther Ramos, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. **R- 300324** passed and adopted by the Council of The City of San Diego,
California on April 18, 2005.

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

(SEAL)

By: , Deputy
Esther Ramos

DOCUMENT RR-270040 RESOLUTION NO. RR-88-896 ORDINANCE NO. _____

TERM: 8 years (eight) BEGINNING 08/01/87

LEGAL DESCRIPTION: La Jolla 720 Silverado Street
Por Bk 20 La Jolla Park

PROPERTY FILE CODE: M118RS/003

SIZE: 3375 sq.ft. land

DRAWING NO. _____

PURPOSE: Lease. Parking lot.

REMARKS: Renewed lease: See terminated file for prior documents.

Annual Rent: year I,II=\$2,400; year III,IV=\$2,600; year V,VI=\$2,800
year VII,VIII=\$3,00.

RENT: \$2400.00 PER ~~MO/MYR~~ MO/MYR

CREDIT FUND 100 ACCOUNT 75799

BILLED ON 1st FOR PERIOD IN ADV/ARRS. PENALTY: 5% AFTER 2nd 10% AFTER 16th DAYS

CONTACT Irmgard Valenta

ADDRESS P0 Box 646
La Jolla, Ca ZIP 92038 PHONE (619) 459-0783

(NAME OF LESSEE)

(BRIEF LEGAL)

(EXPIRATION DATE)

VALENTA, IRMGARD

720 Silverado Street

07/31/1995

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE OF REAL PROPERTY is made and entered into this 21st day of July, 1999 between the CITY OF SAN DIEGO, a California municipal corporation ("Lessor"), and IRMGARD B. VALENTA, as an Individual ("Lessee").

RECITALS

A. The parties entered into a lease agreement dated January 4, 1988 and First Amendment to Lease dated August 15, 1996 ("the Lease"), wherein Lessor leased to Irmgard B. Valenta that certain real property known as 720 Silverado Street, La Jolla, California 92038 (the "Premises") consisting of approximately 3,375 square feet of land.

B. The Lease is in full force and effect, and neither Lessee nor Lessor has actual knowledge of any default or breach by the other under the Lease.

C. The parties now desire to amend the Lease dated January 4, 1988 and First Lease Amendment dated August 15, 1996 as provided in this Second Lease Amendment.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Lessor and Lessee hereby agree as follows:

ARTICLE ONE - AMENDMENTS

1.1 Term: The lease term as set forth in Paragraph 1.1 of the First Lease Amendment is amended to extend the Term of the Lease to August 31, 2004.

1.2 Base Rent: The ^{ANNUAL} ~~monthly~~ installment of Base Rent as set forth in Paragraph 1.2 of the First Lease Amendment is amended to \$4,960 per year.

September 1, 1999 through August 31, 2004 - \$4,960.00 per year

ARTICLE TWO

2.1. The Lease, as hereby amended by this Second Amendment to Lease of Real Property, represents the complete and final understanding of the parties with respect to the subject matter of the Lease, as hereby amended. No further modification or amendment of the Lease shall be effective unless set forth in a written instrument executed by a duly authorized representative of the parties hereto. This is an integrated agreement.

2.2 The effective date of this Amendment will be September 1, 1999.

IN WITNESS WHEREOF, this Lease Amendment is executed by the City, acting by and through its City Manager, and by Lessee, acting by and through its lawfully authorized officers.

LESSOR:

CITY OF SAN DIEGO, a California municipal corporation

By: Jane E. Vickers
Jane E. Vickers, Deputy Director
Real Estate Assets Department

LESSEE:

IRMGARD B. VALENTA, as
an Individual

By: Irmgard B. Valenta
Irmgard B. Valenta

APPROVED AS TO FORM AND LEGALITY this _____ day of _____,
1999.

CASEY GWINN, City Attorney

By: _____
Prescilla Dugard, Deputy City Attorney

DML/Amendval.doc