

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Kim H. Peterson
Baltimore Drive, LLC
Post Office Box 676237
Rancho Santa Fe, California 92067

MEMORANDUM OF LEASE

This Memorandum of Lease ("**Memorandum**") is effective as of September 28, 2004, by and between THE CITY OF SAN DIEGO, a municipal corporation ("**Lessor**"), and BALTIMORE DRIVE, LLC, a California limited liability company ("**Lessee**").

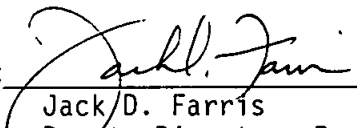
NOW, THEREFORE, the parties hereto agree as follows:

1. Lease of Premises. Pursuant to that certain Ground Lease dated September 28, 2004, City Clerk Document No. RR-299703 ("**Lease**"), Lessor has leased to Lessee for a term commencing on the commencement date as defined in the Lease and expiring forty (40) years hereafter, those certain premises more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference.

2. Purpose of this Memorandum. This Memorandum is executed for the purpose of giving notice of record of the Lease. This Memorandum is not a complete summary of the terms and conditions of the Lease, which are incorporated herein by this reference.

"LESSOR"

THE CITY OF SAN DIEGO,
a municipal corporation

By: 
Jack D. Farris
Title: Deputy Director, Real Estate
Assets Department
Date: 12-20-04

"LESSEE"

BALTIMORE DRIVE, LLC,
a California limited liability company

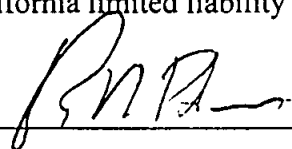
By: 
Title: Manager
Date: December 14, 2004

Exhibit "A"

All that certain real property situated in the County of San Diego, State of California, described as follows:

A portion of the land in the City of San Diego, County of San Diego, State of California, relinquished to the City of San Diego by the California Transportation Commission on October 8, 1981 recorded as File/Page No. 81-320297 of Official Records in the Office of the County Recorder of San Diego County, being more particularly described as follows:

Beginning at the most Southerly corner of Parcel Map No. 18494 as recorded on June 23, 2000 as File/Page No. 2000-333382; thence North $61^{\circ}19'53''$ East along the Southerly line of said Parcel Map, a distance of 60.00 feet to a point at the corner of the Westerly right of way line of Interstate Highway 15, said point lying on a curve, concave Southwesterly with a radius of 1,030 feet, a radial line to said curve bearing North $61^{\circ}19'53''$ East; thence Southerly along said curve and right of way through a central angle $12^{\circ}40'20''$ a distance of 227.81 feet to a point of compound curvature with a curve, concave Southwesterly having a radius of 610 feet, a radial line to said point bearing North $74^{\circ}00'13''$ East; thence Southeasterly along said curve and right of way through a central angle of $11^{\circ}12'03''$ a distance of 119.25 feet; thence South $04^{\circ}47'44''$ East along said right of way a distance of 332.22 feet; thence leaving said right of way South $85^{\circ}12'16''$ West a distance of 14.50 feet to a point on a curve, concave Southwesterly with a radius of 546 feet being concentric with and 92.00 feet measured perpendicularly from the Easterly line of Lots 8 and 10 of Map No. 13072 as recorded on November 23, 1993 as File/Page No. 1993-0792013, a radial line to said point bearing North $63^{\circ}30'02''$ East; thence Northwesterly along said curve (this and the next two calls being concentric with and 92.00 feet measured perpendicularly from the Easterly lines of said Lots 8 and 10) through a central angle of $05^{\circ}41'59''$ a distance of 54.32 feet to a point of reverse curvature with a curve, concave Northeasterly having a radius of 554 feet, a radial line to said point bearing South $57^{\circ}48'03''$ West; thence Northwesterly along said curve through an angle of through a central angle $15^{\circ}22'42''$ a distance of 148.70 feet to a point of reverse curvature with a curve, concave Southwesterly having a radius of 746 feet, a radial to said point bearing North $73^{\circ}11'03''$ East; thence Northwesterly along said curve through a central angle of $02^{\circ}50'35''$ a distance of 37.02 feet to a point on the Northwesterly line of Lot 4 of said Map No. 13072, said point lying on a curve, concave Northeasterly having a radius of 5,039.97 feet, a radial line to said point bearing South $83^{\circ}54'34''$ West; thence Northwesterly along said curve and the Northeasterly line of Lots 4 and 16 of said Map No. 13072 through a central angle $03^{\circ}28'37''$ a distance of 305.85 feet to a point on a curve, concave Southwesterly having a radius of 970 feet, a radial line to said point bearing North $68^{\circ}25'17''$ East; thence Northwesterly along said curve and the Northeasterly line of said Lot 16 through a central angle of $7^{\circ}05'24''$ a distance of 120.03 feet to the Point of Beginning.

Stuart Peace



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

State of California

County of San Diego

On December 14, 2004 before me, Anna Goldby, Notary Public

DATE

NAME, TITLE OF OFFICER - E.G., "JANE DOE (NOTARY PUBLIC)"

personally appeared Kim Peterson

NAME(S) OF SIGNER(S)

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



WITNESS my hand and official seal.

Anna Goldby
SIGNATURE OF NOTARY

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL
☒ CORPORATE OFFICER (LLC)
MANAGER

TITLE(S)

☐ PARTNER(S) ☐ LIMITED
☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY (IES)

Baltimore Drive, LLC

DESCRIPTION OF ATTACHED DOCUMENT

Memorandum of Lease
TITLE OR TYPE OF DOCUMENT

2
NUMBER OF PAGES

EFFECTIVE 9/28/04
DATE OF DOCUMENT

N/A
SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of San Diego } ss.

On December 21, 2004 before me, Stephen L. Geitz, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Jack D. Fornis
Name(s) of Signer(s)

☒ personally known to me
☐ 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.

Stephen L. Geitz
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Memorandum of Lease

Document Date: 09/28/2004 Number of Pages: 2

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer

Signer's Name: _____

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

Signer Is Representing: _____

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

COPY

DUPLICATE



THE CITY OF SAN DIEGO

BALTIMORE DRIVE, LLC

Ground Lease

DOCUMENT NO. RR-299703

FILED SEP 28 2004

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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**CITY OF SAN DIEGO
GROUND LEASE**

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and BALTIMORE DRIVE, LLC, a California limited liability company, hereinafter called "LESSEE."

SECTION 1: USES

- 1.1 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, described in Section 9.1, Legal Description, hereof. Said real property is hereinafter called the "premises" or "leased premises."
- 1.2 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of construction, operation, and maintenance of a neighborhood retail/commercial center, in accordance with the General Development Plan referenced in Section 6.12 hereof, and for such 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 said purposes throughout the term hereof. Failure to continuously use the premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

- 1.3 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.

LESSEE shall be solely responsible for processing all land use, development, and construction approvals required for the use and occupancy of the premises. This lease shall not be interpreted by any decision maker on any CITY-issued permit or approval to override or dictate the outcome of any findings required for any permit or development approval.

- 1.4 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold, and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable 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 hereby 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 leased 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.
- d. CITY grants to LESSEE during the entire term of this lease the nonexclusive right to use the easement for ingress and egress granted to CITY on Subdivision Map No. 13072, Stonecrest Plaza, described in Section 9.2, Access Easement, hereof.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY exercising the rights reserved in this section. Such 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 term of this lease agreement, LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this section, "competent management" shall mean demonstrated ability in the management and operation of a neighborhood retail/commercial center and related activities in a fiscally responsible manner.

SECTION 2: TERM

- 2.1 Commencement. The term of this lease shall be forty (40) years commencing on the first day of the calendar month following execution by the City Manager or designee. "Lease year" as used in this lease shall mean the twelve (12)-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager or designee.
- 2.2 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 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 increase the rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 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. Flat-rate rent is due monthly in advance on or before the first day of each calendar month. All monthly rents will be prorated during the first and final months of any rental period in order to achieve payment on the first day of each calendar month. Percentage rent, if any, is due within thirty (30) days following the date the percentage rent is due according to the terms and conditions

of any sublease agreements between LESSEE and third parties. Checks should 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 delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, Suite 100, San Diego, California.

The place and time of payment may be changed at any time by CITY upon thirty (30) days written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. 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. Construction Rent. Commencing on the effective date of this lease and continuing until the first day of the calendar month following LESSEE'S receipt of a certificate of occupancy for its improvements on the premises or until the expiration of one (1) year, whichever event occurs first, the rent shall be Five Hundred Dollars (\$500) per month.
- b. Regular Rent. The rent immediately following the construction rent in Section 3.2a. above shall be Two Thousand Three Hundred Thirty-four (\$2,334) per month. Said rent is subject to adjustments based on annual increases in the Consumer Price Index (CPI), subject to a five percent (5%) minimum, and in the fair market value of the leased premises as hereinafter provided.
- c. (1) CPI Index Adjustments. At the end of the second year following the effective date of the lease and annually thereafter during the lease term, the rent shall be adjusted to reflect either the increase in the CPI or an increase of five percent (5%) over the prior year's rent, whichever is greater.

The index used will be the CPI for "All Urban Consumers" for Los Angeles/Riverside/Orange County, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index. If a rental adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the base figure used will first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

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

Regardless of the index publication dates, the effective date of the rent adjustment is as specified in this Subsection c.(1). Until the rent adjustment can be reasonably determined by the index method, LESSEE shall continue to make payments at the existing rental rate. When the adjustment is determined, the balance of rents due at the adjusted rate will be paid to CITY within thirty (30) days. In no event shall the adjusted rent as established by the CPI be less than five percent (5%) more than the rent in existence immediately prior to the adjustment date.

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

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

The "base figure" for the first such adjustment shall be a three (3)-month average of index figures published by said CPI using the fourth, fifth, and sixth full months preceding the effective date of this lease.

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

The "current index" shall be a three (3)-month average of index figures published by said CPI. The three (3) months to be used to establish said average shall be the fourth, fifth, and sixth full months preceding the adjustment date.

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

However, if the adjustment figure computed using the foregoing method is less than 1.05, then an adjustment figure of 1.05 shall be used.

Example 1

Current Index 121

Base Figure 110 = 1.10 (Adjustment Figure)

Effective Rent x 1.10 = Adjusted Rent

Example 2

Current Index 138

Base Figure 121 = 1.14 (Adjustment Figure)

Effective Rent x 1.14 = Adjusted Rent

The adjustment figure is then multiplied by the monthly rent from the preceding adjustment period to determine the new rent. Using the foregoing examples, if the rent is now \$1,000 per month, after the first adjustment it will be \$1,100 per month (\$1,000 x 1.10). In the second adjustment it will be \$1,254 per month (\$1,100 x 1.14). In both examples, the Adjustment Figure was greater than the five percent (5%) annual minimum increase in the rent.

- d. Market Value Adjustments. In addition to said CPI adjustments, at the end of the twentieth and thirtieth years following the effective date of this agreement, the rent for the ensuing ten (10)-year periods, subject to the aforesaid CPI adjustments, shall be determined by multiplying the capitalization rate of ten percent (10%) by the fair market value of the leased premises as of the adjustment date. The fair market value of the leased premises shall be determined by an appraisal made by a professional independent real estate appraiser selected by mutual consent of the parties from the list of appraisers approved by CITY. In the event the parties cannot reach agreement upon selection of a mutually acceptable appraiser, then CITY and LESSEE shall each select a professional independent real estate appraiser who in turn will select a third

independent real estate appraiser, which third appraiser will be employed to make the appraisal of the fair market value of the premises and which value will be utilized to determine the adjusted rent previously described herein. In the event that the two selected appraisers fail to mutually select a third appraiser within thirty (30) days, then the third appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his or her individual capacity, on prompt application by either CITY or LESSEE with notice thereupon to the other party. In the event that the Superior Court judge declines to make the appointment, the parties hereto agree that the third appraiser shall be promptly determined in accordance with the rules of the American Arbitration Association. Said third appraiser shall complete the assignment within sixty (60) days of appointment. Each party shall pay the cost of its own selected appraiser, and both CITY and LESSEE agree to equally share the cost of the mutually selected or court appointed third appraiser. CITY and LESSEE agree to accept and be bound by the valuation determined by the selected or appointed appraiser.

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

The date of value of the appraisal shall be the date of rental adjustment as hereinabove established. In the event the appraisal is not completed in time to permit the adjustment to be made upon the date specified, LESSEE agrees to continue to pay rent in accordance with the then-existing lease rates, and the adjustment, when determined, will be retroactive to said effective date of rental adjustment. Any deficiency shall be paid by LESSEE to CITY within thirty (30) days after determination of the new rental rate. In no event shall the adjusted rent, as established by periodic appraisals as provided for herein, be less than the rent in existence immediately prior to the adjustment date. Notwithstanding the foregoing, the City Manager, in his sole discretion, may determine that no market value adjustment is necessary and waive the requirement for the appraisal process for any specific adjustment period.

- e. Percentage Rent. In the event that LESSEE subleases any portion of the premises to third parties and LESSEE'S agreement with such third parties provides for rent to be determined as a percentage of such party's business activities conducted on the premises, then CITY shall be entitled to twenty-five percent (25%) of the amount such percentage rent exceeds the sublessee's annual adjusted minimum rent. Percentage rents due CITY

shall be calculated on a lease year basis pursuant to Section 2.1, Commencement, hereof.

- 3.3 Delinquent Rent. If LESSEE fails to pay the rent when due, LESSEE shall pay, in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)], which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payments of rent be less than Twenty-five Dollars (\$25).

In the event that the CITY audit, if applicable, discloses that the rent for the audited period has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit plus ten percent (10%) per year on the amount by which said rent was underpaid, in addition to the unpaid rents as shown to be due CITY, as compensation to CITY for administrative costs and loss of interest as previously described herein. LESSEE agrees to pay such amount and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this lease.

- 3.4 Inspection of Records. LESSEE agrees to make any and all records and accounts available to CITY for inspection at all reasonable times so that CITY can determine LESSEE'S compliance with this lease. These records and accounts will be made available by LESSEE at the leased premises and will be complete and accurate showing all income and receipts from use of the premises. LESSEE'S failure to keep and maintain such records and make them available for inspection by CITY is a breach of this lease and cause for termination. LESSEE shall maintain all such records and accounts for a minimum period of five (5) years. This section shall survive expiration or earlier termination of this lease.

- 3.5 Unauthorized Use Charge. LESSEE shall pay CITY twenty percent (20%) of the gross receipts for any service or use by LESSEE or its sublessees that is not permitted by this lease. This payment is subject to the due date provided in this lease for rental payments and the provision for delinquent rent. The existence of the twenty percent (20%) charge in this clause and the payment of this charge or any part of it, does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default

LESSEE for participating in or allowing any unauthorized use of the leased premises.

SECTION 4: ASSIGNMENT/DEFAULT

- 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 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 assignment or subletting without CITY'S 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 section shall include any transfer of any 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.

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 lease which are applicable to the rights acquired. The City Manager may 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, hereof, 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, with the exception of rent provisions, to comply with standard CITY lease requirements that are then current. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have an interest in this lease as a sublessee or assignee, which approval shall not be unreasonably withheld.

CITY hereby covenants that, so long as a sublessee is not in default in the payment of rentals or otherwise in default under the sublease beyond any applicable cure period, its interest under the sublease and possession of the subleased premises shall not be terminated in the event of a termination of this lease (except as herein provided in the event of damage, destruction, condemnation, or the expiration of the term of this lease), provided that the sublessee pays all rent under the sublease to CITY and continues to perform all of sublessee's obligations under the sublease.

- 4.3 Encumbrance. Subject to prior consent by CITY, which shall not be unreasonably withheld, LESSEE may encumber this lease, its leasehold estate, and its improvements thereon by deed of trust, mortgage, chattel mortgage, or other security instrument to assure the payment of a promissory note or notes of LESSEE, upon the express condition that the proceeds of such loan or loans be devoted exclusively to the purpose of developing the leased premises in accordance with Section 6.12, General Development Plan, hereof. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the premises; on-site improvements; escrow charges; premiums for hazard insurance or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest, and commissions; and architectural, engineering, and attorneys' fees and other normal expenses incidental to such construction.

Any subsequent encumbrances on the premises or on any permanent improvements thereon must first have the approval in writing of the City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the premises. Provided, however, after the premises are fully developed in accordance with said General Development Plan to the satisfaction of the City Manager, proceeds from refinancing or from such subsequent encumbrances may be used to reduce LESSEE'S equity so long as LESSEE pays additional consideration to CITY as set forth in Section 4.6, Additional Consideration to CITY, hereof, and further that LESSEE understands and specifically agrees that the City Manager shall have the sole and absolute discretion to approve or disapprove such proposed subsequent encumbrance.

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, CITY will accept the approved mortgagee or beneficiary thereof as its new tenant under this lease with all the rights, privileges, and duties granted and imposed in this lease.

Upon prior written approval by CITY, said mortgagee or beneficiary may assign this lease to its nominee, if nominee is a reputable, qualified, and financially responsible person or entity in the opinion of CITY. Any deed of trust, mortgage, or other security instrument shall be subject to all of the terms, covenants, and conditions of this lease and shall not be deemed to amend or alter any of the terms, covenants, or conditions hereof. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have a financial interest in this lease, which approval shall not be unreasonably withheld.

4.4 Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, and LESSEE shall fail to commence to cure the default(s) within said thirty (30)-day period and diligently pursue such cure to completion; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming 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 Subsection 4.4a.(1) above is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary shall

have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty (30)-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

- b. Remedies of Lender. 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, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty (30)-day period after receiving written notice by CITY of the default, and the default, if curable, is cured by such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges, and obligations of 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 premises, 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 such defaults are discovered or when and as the City Council directs the City Manager

to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

- 4.5 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 (or beneficiary or mortgagee) will be as follows:
- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - b. In the event of a partial taking, 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, if, 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 such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled but limited 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 after the permanent improvements have been constructed, pursuant to the General Development Plan as described in Section 6.12 hereof, 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 encumbrance needed to finance the improvements. The amount upon which the two percent (2%) shall be based shall be the total consideration, exclusive of rent, resulting from the transaction including total cash payments and the market value of noncash consideration, including but not limited to stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. 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 section, 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 section shall be void. The provisions of this section 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. Such 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, employees, agents, and representatives 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, employees, agents, and representatives.

5.2 Insurance.

1. 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 Two Million Dollars (\$2,000,000) 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. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.3, 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.
2. LESSEE'S responsibility to maintain said insurance also includes the following:
 - (1) Additional Insureds. All insurance policies will name "The City of San Diego, its elected officials, officers, employees, agents, and representatives" as additional insureds, protect them 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 must be provided prior to CITY'S execution of the lease and 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 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. 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 b.(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.

- 5.3 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 such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage; or, at CITY'S option, LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, hereof.

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

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1 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 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, 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 thereon. In the event that such entry or inspection by CITY discloses that the premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, but not the obligation, 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 such 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. 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.

- 6.3 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation, maintenance, and repair of the premises throughout the term. LESSEE shall make all 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 the General Development Plan described in Section 6.12, General Development Plan, hereof and with all applicable laws. All applicable codes and standards of CITY and other government 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. 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.
- 6.5 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 shall 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 said

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 such 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 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.

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

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

6.10 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 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 such 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-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
- d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage at its expense.
- e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.
- f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said premises upon expiration or termination of this lease, then CITY shall have the first right to acquire or purchase said personal property.

- 6.11 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period

equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. 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.

6.12 General Development Plan. LESSEE agrees to develop the leased premises in accordance with the General Development Plan approved by the City Manager, which plan is attached hereto and by this reference made part of this lease. The general contents and provisions of the General Development Plan are described in Section 9.3 hereof. The City Manager or his designee shall have the authority to authorize changes to said plan provided that the basic concept may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk. Failure by LESSEE to comply with the General Development Plan shall constitute a major default and subject this lease to termination by CITY. The City Manager, in his sole discretion, may approve an extension to the date specified for construction completion in the General Development Plan of up to one (1) year without further City Council approval.

6.13 Hazardous/Toxic Waste. LESSEE will not allow the installation of additional underground storage tanks or 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 769704-1 and by this reference is incorporated herein.

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 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 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 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 the expiration or earlier termination of this lease, 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. 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 costs and expenses incurred.

- 6.14 Best Management Practices. CITY and LESSEE are committed to the implementation of programs to manage activities on the leased premises in a manner which aids in the protection of San Diego's precious water resources. LESSEE shall comply with the Best Management Practices ("BMP") including the Stormwater Pollution Prevention Plan ("SPPP") approved by CITY'S Stormwater Management Program. LESSEE shall submit for review and approval by the City Manager or designee, within ninety (90) days of the effective date of this lease, BMP and SPPP that will control erosion and reduce the amount of pollutants and other sediments discharged from the leased premises. The BMP and SPPP will be reviewed periodically by CITY. Upon written notice from the City Manager requesting an update of the BMP, LESSEE shall submit updated BMP and SPPP for City Manager review and approval within ninety (90) days of receipt of notice. LESSEE shall implement any necessary changes to the BMP

and SPPP as a result of any review by CITY to ensure compliance with any changes in laws or regulations.

When the BMP and SPPP have been developed and implemented by LESSEE, it is crucial that the practices be enforced and maintained. It is LESSEE'S responsibility to inform employees, contractors, subcontractors, agents, and vendors of the BMP and SPPP.

SECTION 7: GENERAL PROVISIONS

7.1 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 as follows:

Baltimore Drive Two, LLC
c/o Kim H. Peterson
P.O. Box 676237
Rancho Santa Fe, CA 92067;

with copies to:

Bruce R. Wallace, Esq.
Sullivan, Wertz, McDade, & Wallace
945 Fourth Avenue
San Diego, CA 92101;

and

F. Sigmund Luther, Esq.
401 West "A" Street, Suite 1625
San Diego, CA 92101;

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;

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

- b. Any party entitled or required to receive notice under this lease may by like notice designate a different address to which notices shall be sent.
- c. Notice served pursuant to the terms of this Section 7.1 shall be effective upon personal service or two (2) days after service by mail.

7.2 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.

7.3 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 designee 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. 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 agreement so that such 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.

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 agreement 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. 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 lease, agrees that there is no other written or oral understanding between the parties with respect to the leased 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 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 sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who, within the twelve (12) 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 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) 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.

- 7.13 Disabled Access Compliance. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with the 1990 Americans with Disabilities Act and Title 24 of the California Code of Regulations (Building Code) as defined in Section 18910 of the California Health and Safety Code and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.
- 7.14 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.
- 7.15 Estoppel Certificates. CITY and LESSEE shall at any time during the term of this lease, within thirty (30) days of written notice from the other party, execute and deliver to the requesting party a statement in a form certifying that this lease is unmodified and in full force and effect or, if modified, stating the nature of such modification, the current rent, the date to which rent is paid, whether such party has any knowledge of a breach of this lease by either party, and such other information regarding this lease as may be reasonably requested. Any such statement may be relied upon conclusively by any prospective assignee, sublessee, or encumbrancer of the premises, or of LESSEE'S or CITY'S interest in this lease.
- 7.16 Memorandum of Lease. At the written request of LESSEE, the parties shall execute, acknowledge, and record a Memorandum of Lease in the form shown in Section 9.4 hereof. Promptly after the expiration or earlier termination of this lease, LESSEE agrees to execute, acknowledge, and deliver to CITY a document sufficient to cancel the Memorandum of Lease.
- 7.17 Survival. Any obligation which accrues under this lease prior to its expiration or termination shall survive the expiration or termination of the lease.

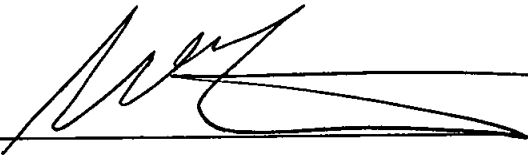
SECTION 8: SIGNATURES

8.1 Signature Page.

IN WITNESS WHEREOF, this lease agreement is executed by CITY, acting by and through its City Manager, pursuant to City Council Resolution No. R-299703, and by LESSEE, acting by and through its lawfully authorized officers.

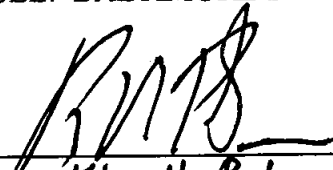
THE CITY OF SAN DIEGO

Date OCT 5 2004

By 

LESSEE: BALTIMORE DRIVE, LLC

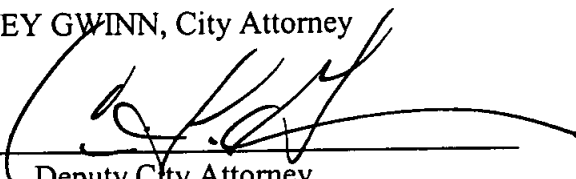
Date April 27, 2004

By 
Kim H. Peterson, Manager

By _____

APPROVED as to form and legality this 7th day of October, 2004.

CASEY GWINN, City Attorney

By 
Deputy City Attorney

PTC/cdj

4/14/04

I:\WPO\2003\CRAWFORDLEASE-BALTIMORE DRIVE TWO.wpd

SECTION 9: EXHIBITS

9.1 Legal Description.

See Pages 29a, b, c, and d.

EXHIBIT "A"
LEGAL DESCRIPTION
LEASE PLAT

A PORTION OF THE LAND IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, RELINQUISHED TO THE CITY OF SAN DIEGO BY THE CALIFORNIA TRANSPORTATION COMMISSION ON OCTOBER 8, 1981, RECORDED AS FILE/PAGE NO. 81-320297 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, INCLUDING 60 FOOT WIDE MURPHY CANYON ROAD VACATED, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF PARCEL MAP NO. 18494 AS RECORDED ON JUNE 23, 2000 PER FILE NO. 2000-333382; THENCE NORTH 61°19'53" EAST ALONG THE SOUTHERLY LINE OF SAID PARCEL MAP A DISTANCE OF 60.00 FEET TO A POINT AT THE CORNER OF THE WESTERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY 15, SAID POINT LYING ON A CURVE CONCAVE SOUTHWESTERLY WITH A RADIUS OF 1,030.00 FEET, A RADIAL LINE TO SAID CURVE BEARING NORTH 61°19'53" EAST; THENCE SOUTHERLY ALONG SAID CURVE AND RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 12°40'20" A DISTANCE OF 227.81 FEET TO A POINT OF COMPOUND CURVATURE WITH A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 610.00 FEET, A RADIAL LINE TO SAID POINT BEARING NORTH 74°00'13" EAST; THENCE SOUTHERLY ALONG SAID CURVE AND RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 11°12'03" A DISTANCE OF 119.25 FEET; THENCE SOUTH 04°47'44" EAST ALONG SAID RIGHT-OF-WAY A DISTANCE OF 332.22 FEET; THENCE LEAVING SAID RIGHT-OF-WAY SOUTH 85°12'16" WEST A DISTANCE OF 14.50 FEET TO A POINT ON A CURVE CONCAVE SOUTHWESTERLY WITH A RADIUS OF 546.00 FEET BEING CONCENTRIC WITH AND 92.00 FEET MEASURED PERPENDICULARLY FROM THE EASTERLY LINE OF LOT 10 OF MAP NO. 13072 AS RECORDED ON NOVEMBER 23, 1993 PER FILE NO. 1993-0792013, A RADIAL LINE TO SAID POINT BEARING NORTH 63°30'02" EAST; THENCE NORTHWESTERLY ALONG SAID CURVE (THIS AND THE NEXT TWO CALLS BEING CONCENTRIC WITH AND 92.00 FEET MEASURED PERPENDICULARLY FROM THE EASTERLY LINES OF LOTS 8 AND 10 OF SAID MAP NO. 13072) THROUGH A CENTRAL ANGLE OF 05°41'59" A DISTANCE OF 54.32 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 554.00 FEET, A RADIAL LINE TO SAID POINT BEARING SOUTH 57°48'03" WEST; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15°22'42" A DISTANCE OF 148.70 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 746.00 FEET, A RADIAL LINE TO SAID POINT BEARING NORTH 73°11'03" EAST; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 02°50'35" A DISTANCE OF 37.02 FEET TO A POINT ON THE NORTHWESTERLY LINE OF LOT 4 OF SAID MAP NO. 13072, SAID POINT LYING ON A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 5,039.97 FEET, A RADIAL LINE TO SAID POINT BEARING SOUTH

83°54'34" WEST; THENCE NORTHWESTERLY ALONG SAID CURVE AND THE NORTHEASTERLY LINE OF LOTS 4 AND 16 OF SAID MAP NO. 13072 THROUGH A CENTRAL ANGLE OF 03°28'37" A DISTANCE OF 305.85 FEET TO A POINT ON A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 970.00 FEET, A RADIAL LINE TO SAID POINT BEARING NORTH 68°25'17" EAST; THENCE NORTHWESTERLY ALONG SAID CURVE AND THE NORTHEASTERLY LINE OF SAID LOT 16 THROUGH A CENTRAL ANGLE OF 7°05'24" A DISTANCE OF 120.03 FEET TO THE POINT OF BEGINNING; CONTAINING 1.123 ACRES, MORE OR LESS.


THOMAS M. HENRY
MY REGISTRATION EXPIRES 12-31-05



835-03-07
April 30, 2004
F:\ADMIN\835\LD501.DOC

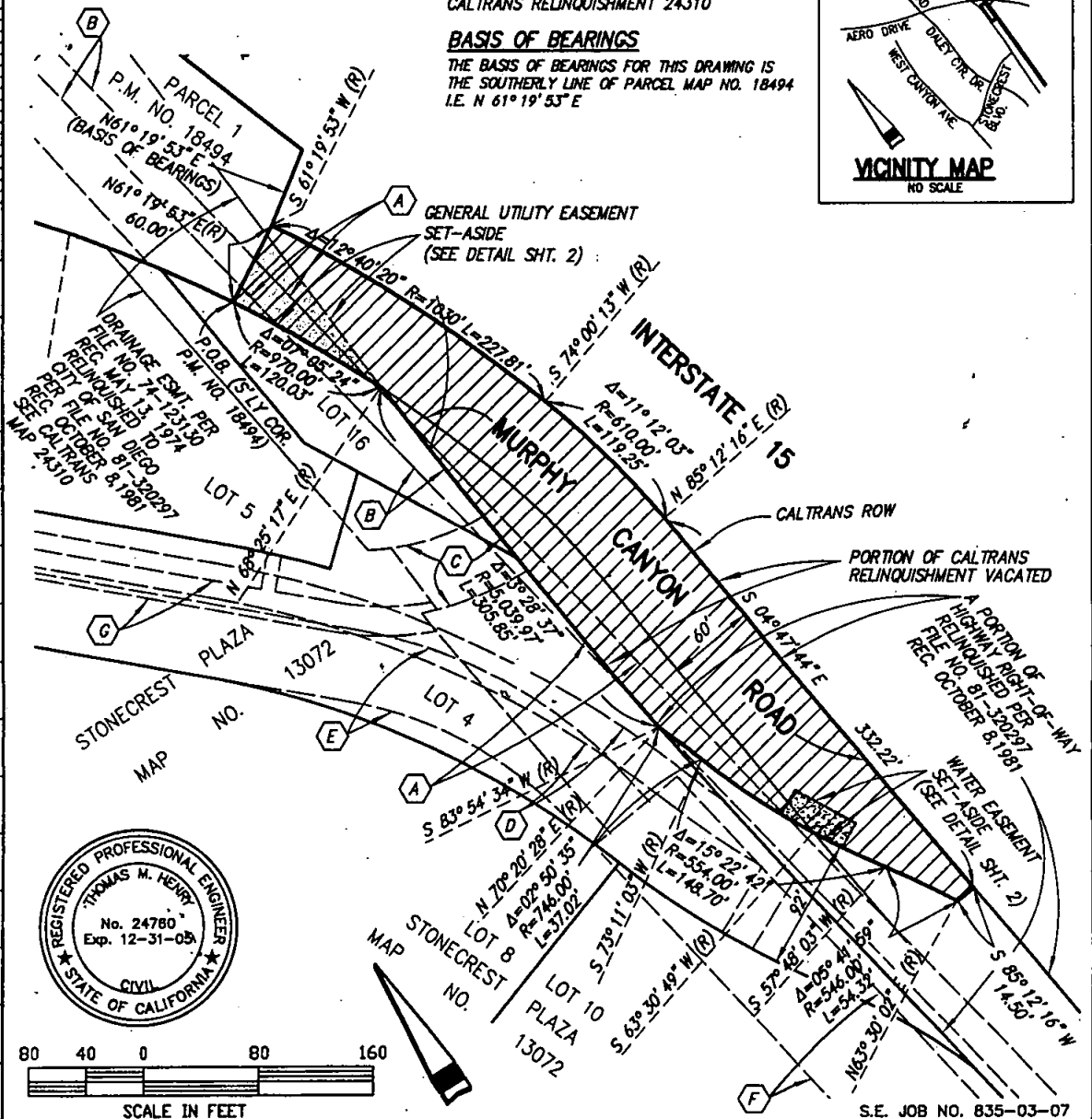
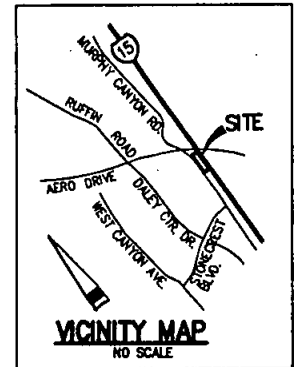
SEE LEGEND SHEET 2

REFERENCE DRAWINGS

29544-D 27254-D 12488-D 12396-D
10841-B 20029-B MAP 826 MAP 13072
MAP 825 R/W 55539
CALTRANS RELINQUISHMENT 24310

BASIS OF BEARINGS

THE BASIS OF BEARINGS FOR THIS DRAWING IS
THE SOUTHERLY LINE OF PARCEL MAP NO. 18494
I.E. N 61° 19' 53" E



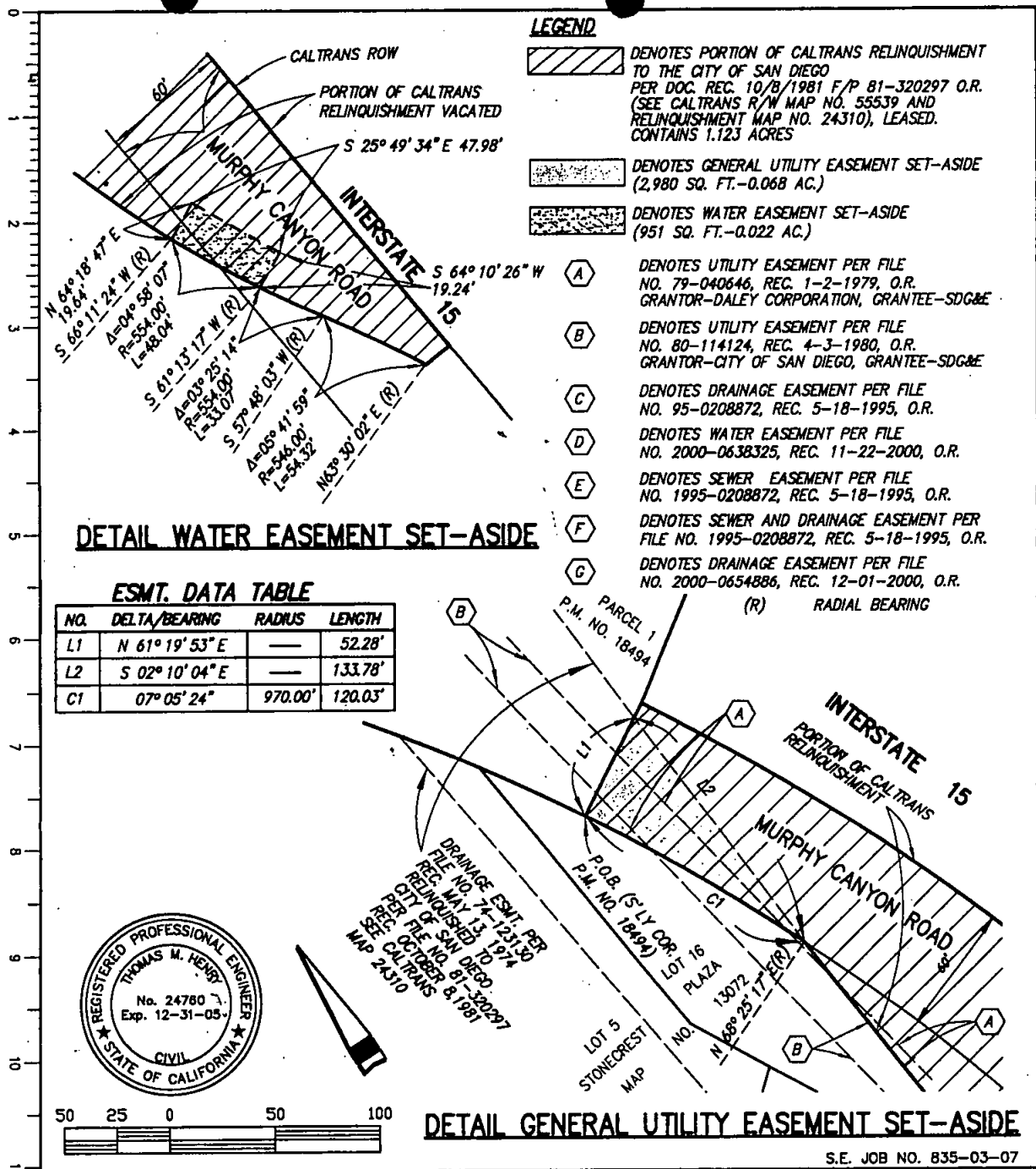
CIVIL ENGINEERING/SURVEYING/PLANNING
STUART ENGINEERING
7525 METROPOLITAN DR., STE. 308
SAN DIEGO, CALIFORNIA 92108
(619) 296-1010
FAX (619) 296-9276

Thomas M. Henry 6/2/04
THOMAS M. HENRY R.C.E. 24760 DATE
REGISTRATION EXPIRES: 12-31-05

LEASE PLAT

INCLUDING A PORTION OF 60 FOOT WIDE MURPHY CANYON ROAD VACATED

DESCRIPTION	BY	APPROVED	DATE	FILED	CITY OF SAN DIEGO, CALIFORNIA	W.O. NO.
ORIGINAL	SE				SHEET 1 OF 2 SHEETS	
					<i>Stuart Engineering</i> 6/2/04	1874-1694
					FOR CITY ENGINEER DATE	CCS83
						234-1734
						LAMBERT COORDINATES
						SHEET 1 OF 2



SE CIVIL ENGINEERING/SURVEYING/PLANNING
STUART ENGINEERING
 7525 METROPOLITAN DR., STE. 308
 SAN DIEGO, CALIFORNIA 92108
 (619) 296-1010
 FAX (619) 296-9276
Thomas M. Henry 6/2/09
 THOMAS M. HENRY R.G.E. 24780 DATE
 REGISTRATION EXPIRES: 12-31-05

LEASE PLAT					INCLUDING A PORTION OF 60 FOOT WIDE MURPHY CANYON ROAD VACATED	
DESCRIPTION	BY	APPROVED	DATE	FILED	CITY OF SAN DIEGO, CALIFORNIA	W.O. NO.
ORIGINAL	SE				SHEET 2 OF 2 SHEETS	1874-1694
					<i>Lee Henry</i> 6/2/04 FOR CITY ENGINEER DATE	CCS83
						234-1734
						LAMBERT COORDINATES
						SHEET 2 OF 2
STATUS						

9.2 Access Easement.

Those certain strips of land designated "Access Easement Granted Hereon" over all of Lot 4 and a portion of Lot 5 of Stonecrest Plaza, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 13072 filed in the Office of the San Diego County Recorder, November 23, 1993.

9.3 General Development Plan Outline.

The General Development Plan consists of:

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

and is attached hereto and made part of this lease.

EINSTEIN'S
STARBUCKS
SUPERCUTS

EXIST. ACCESS/EXIT PER MAP 13072

EXIST. 12' WALKWAY/DRIVEWAY

EXIST. 12' WALKWAY/DRIVEWAY

EXIST. 12' WALKWAY/DRIVEWAY

I-15 S BOUND ON-RAMP

GENERAL DEVELOPMENT PLAN

1 of 8



STUART ENGINEERING
200 KENNEDY BLVD. STE. 200
SAN DIEGO, CA 92108 (619) 594-0000

DATE: 12/15/07
BY: [Signature]
CHECKED: [Signature]
IN CHARGE: [Signature]

PRIVATE CONTRACT									
GRADING AND IMPROVEMENT PLAN FOR									
AERO DRIVE THREE									
CITY OF SAN DIEGO, CALIFORNIA									
DEVELOPMENT SERVICES AGREEMENT									
SHEET 1 OF 2 SHEETS									
NO.	DATE	BY	CHKD.	APP'D.	REV.	DATE	BY	CHKD.	APP'D.
1	12/15/07	[Signature]	[Signature]	[Signature]					
2	12/15/07	[Signature]	[Signature]	[Signature]					
3	12/15/07	[Signature]	[Signature]	[Signature]					
4	12/15/07	[Signature]	[Signature]	[Signature]					
5	12/15/07	[Signature]	[Signature]	[Signature]					
6	12/15/07	[Signature]	[Signature]	[Signature]					
7	12/15/07	[Signature]	[Signature]	[Signature]					
8	12/15/07	[Signature]	[Signature]	[Signature]					
9	12/15/07	[Signature]	[Signature]	[Signature]					
10	12/15/07	[Signature]	[Signature]	[Signature]					

DEVELOPMENT SCHEDULE

The following schedule is subject to the City Council approval of the Land Lease and the Vacation of Old Murphy Canyon Road on or before 9/1/04.

5/1/04 Civil engineering and construction plans submitted to City for permitting.

9/1/04 Permits issued.

9/1/04 Site work begins to create a building pad.

11/1/04 Site work complete.

11/1/04 Building construction begins.

4/1/05 Building construction completed.

4/1/05 Tenant begins tenant improvement work.

5/1/05 Tenant improvement work complete.

ESTIMATED CONSTRUCTION COSTS
(INCLUDING SOFT COSTS)

Site Costs	\$950,000
Building	432,000
Parking/Lighting	80,000
Landscaping	30,000
Architect/Eng.	50,000
Processing	75,000
T.I. Allowance	26,000
Permits	33,000
Lease Commissions	100,000
Points/Interest	72,000
Development Fee	50,000
 TOTAL COSTS	 \$1,934,000

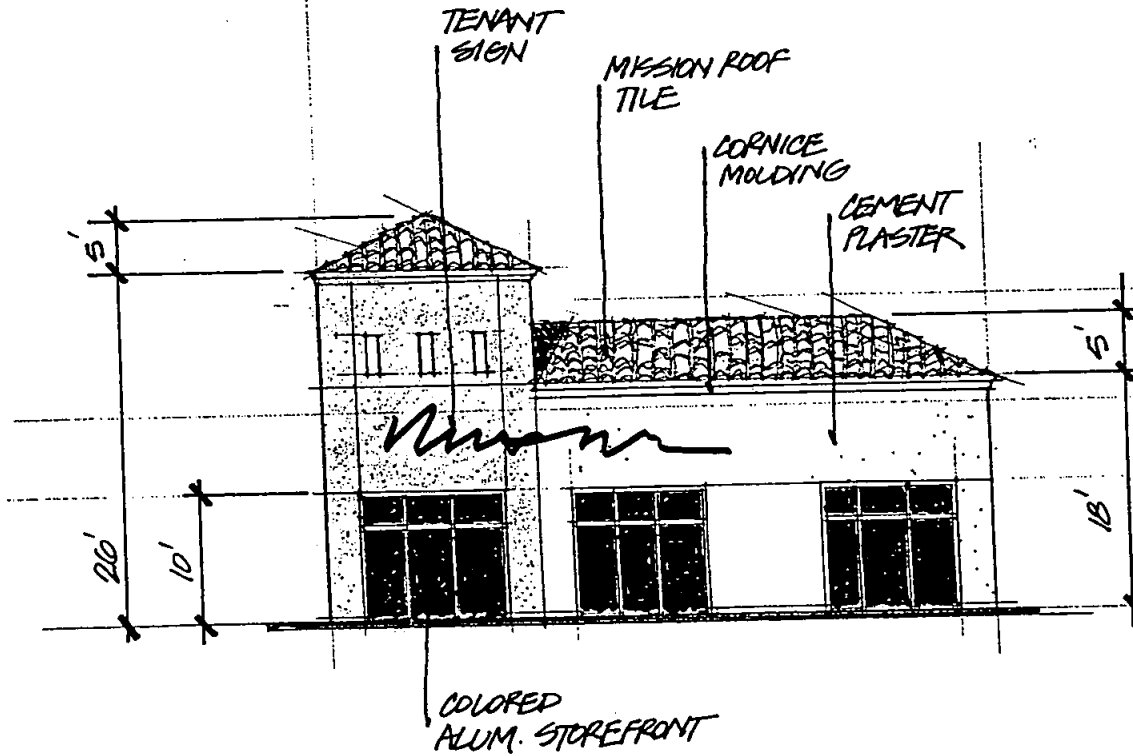
FINANCIAL PLAN

During the last five years, the principals of Baltimore Drive LLC ("LLC"), have obtained their construction loans and some permanent loans, from Rancho Santa Fe National Bank, now First National Bank.

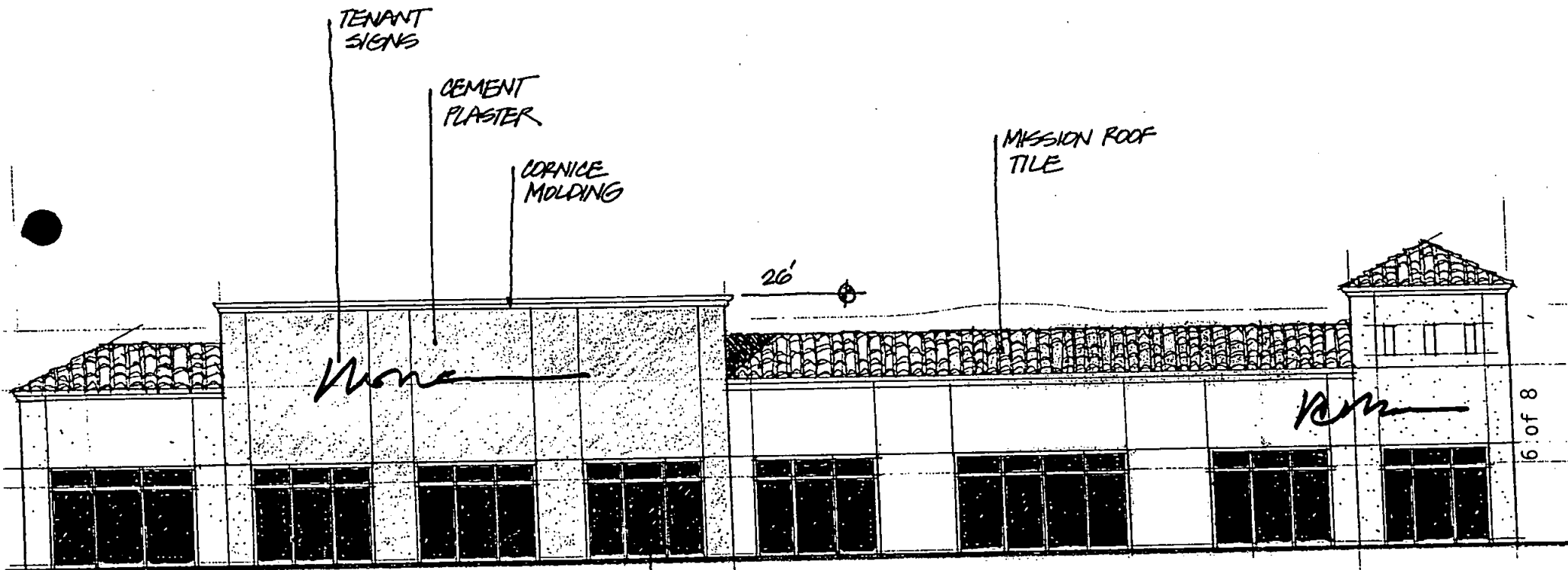
The project has been reviewed by them and they are prepared to provide a construction loan/permanent loan in the amount of approximately \$1,400,000 to \$1,500,000. The balance of the funds will be provided by the principals of the LLC.

AERO III

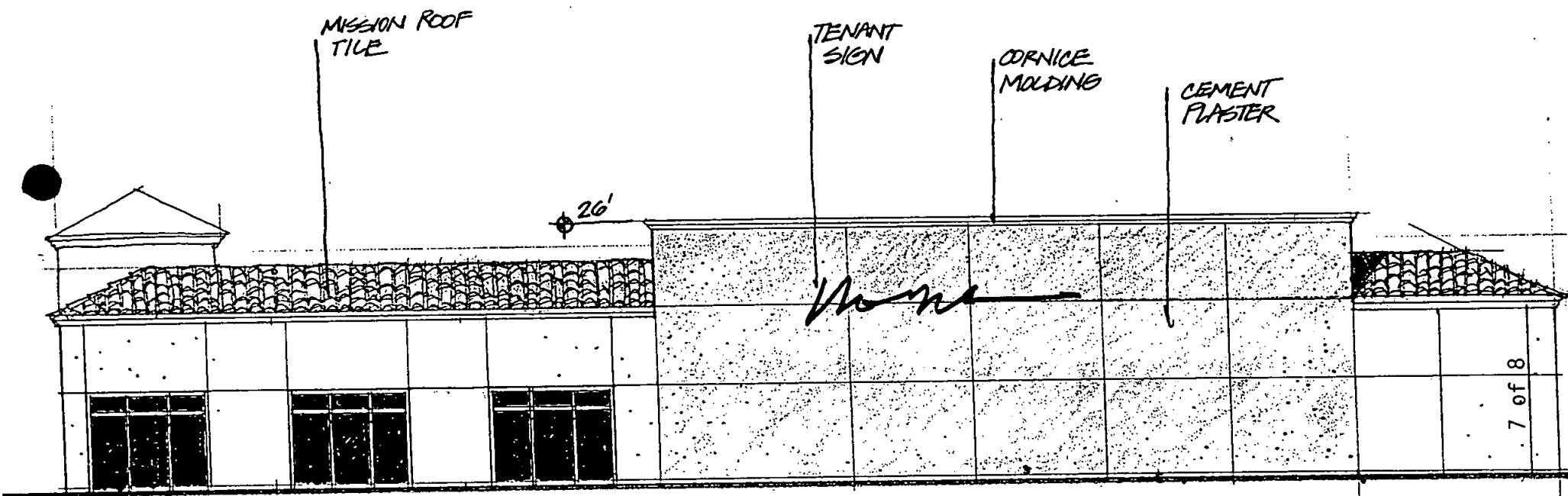
1-22-09



SOUTH ELEVATION



WEST ELEVATION



EAST ELEVATION

9.4 Memorandum of Lease Form.

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

MEMORANDUM OF LEASE

This Memorandum of Lease ("Memorandum") is effective as of _____, 2004, by and between THE CITY OF SAN DIEGO, a municipal corporation ("Lessor"), and BALTIMORE DRIVE, LLC, a California limited liability company ("Lessee").

NOW, THEREFORE, the parties hereto agree as follows:

1. Lease of Premises. Pursuant to that certain Ground Lease dated _____, 2004, City Clerk Document No. _____ ("Lease"), Lessor has leased to Lessee for a term commencing on the commencement date as defined in the Lease and expiring forty (40) years thereafter, those certain premises more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference.

2. Purpose of this Memorandum. This Memorandum is executed for the purpose of giving notice of record of the Lease. This Memorandum is not a complete summary of the terms and conditions of the Lease, which are incorporated herein by this reference.

"LESSOR"

THE CITY OF SAN DIEGO,
a municipal corporation

By: _____

Title: _____

Date: _____

"LESSEE"

BALTIMORE DRIVE, LLC,
a California limited liability company

By: _____

Title: _____

Date: _____

EXHIBIT "A"

(Legal Description)

RESOLUTION NUMBER R- 299703

ADOPTED ON SEP 28 2004

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING THE CITY MANAGER
TO EXECUTE A FORTY-YEAR LEASE AGREEMENT
WITH BALTIMORE DRIVE, LLC TO DEVELOP,
OPERATE, AND MAINTAIN A COMMERCIAL
BUILDING ON 1.12 ACRES OF CITY-OWNED
PROPERTY ON OLD MURPHY CANYON ROAD.

WHEREAS, in February 2002, the Land Use and Housing Committee authorized the City Manager to enter into exclusive negotiations with Baltimore Drive, LLC [Lessee] for a ground lease and development of a commercial retail building on 1.12 acres of City-owned unused Old Murphy Canyon Road right-of-way at the southwest corner of Aero Drive and Interstate 15 [the Property]; and

WHEREAS, the City and the Lessee, have negotiated a forty-year ground lease at an initial rent, during the construction period (not to exceed one year), of \$500 per month, and thereafter at \$2,334 per month, increased annually by at least five per cent; and

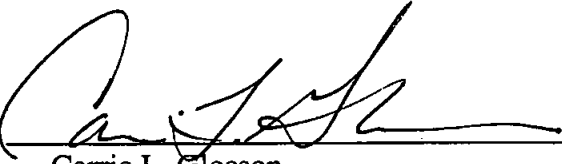
WHEREAS, the City's valuation staff has determined the fair market value of the property in its "as-is" condition to be \$280,000; and

WHEREAS, the property is located on unused right-of-way left over from the realignment of Murphy Canyon Road, and the proposed lease is predicated upon vacation of the right-of-way; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is hereby authorized to execute, for and on behalf of the City of San Diego, a forty-year lease agreement with Baltimore Drive, LLC to develop, operate, and maintain a retail commercial building on 1.12 acres of City-owned property at an annual rental of \$28,000, following a one-year construction period rental of \$6,000, under substantially the terms and conditions set forth in that certain lease agreement on file in the office of the City Clerk as Document No.

RR- 299703.

APPROVED: CASEY GWINN, City Attorney

By 
Carrie L. Gleeson
Deputy City Attorney

CG:mm
07/15/04
Or.Dept:READ
Job Order: 923118
R-2005-50

Passed and adopted by the Council of San Diego on September 28, 2004 by the following vote:

YEAS: PETERS, ATKINS, LEWIS, MAIENSCHIN, FRYE, MADAFFER, INZUNZA, MAYOR MURPHY.

NAYS: NONE.

NOT PRESENT: ZUCCHET.

VACANT: DISTRICT FOUR.

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- 299703, passed and adopted by the
Council of The City of San Diego, California on September 28, 2004.

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

(SEAL)

By: Esther Ramos, Deputy
Esther Ramos

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

COPY CERTIFICATION NUMBER READ#74

TO: CITY ATTORNEY	2. FROM (ORIGINATING DEPARTMENT): Real Estate Assets Department	3. DATE: May 3, 2004
-------------------	---	----------------------

4. SUBJECT: Lease Approval – Baltimore Drive, LLC.

5. FOR INFORMATION, CONTACT (NAME & MAIL STA.) GIBSON/Crawford	MS 51A	6. TELEPHONE NO. 66727/65952	7. CHECK HERE IF BOX 1472A "DOCKET" SUPPORTING INFORMATION HAS BEEN COMPLETED ON PAGE 2: ☒
---	--------	---------------------------------	--

8. COMPLETE FOR ACCOUNTING PURPOSES						9. ADDITIONAL INFORMATION / ESTIMATED COST:
FUND						Cost: None Fiscal Impact: \$28,000 annual rent Job: 923118 cc: Dept Docket Clerk REDI Book Page: 356 Thomas Guide Page: 1249 F4
DEPT.						
ORGANIZATION						
OBJECT ACCOUNT						
JOB ORDER						
C.I.P. NUMBER						
AMOUNT						

10. ROUTING AND APPROVALS							
ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
X	DEPARTMENT DIRECTOR		5/7/04	X	CITY MANAGER HERRING		5/21/04
X	DSD/EAS		5/11/04		AUDITOR		
X	EOCP		5/10/04	X	CITY ATTORNEY		7/15/04
X	FINANCIAL MGMT.		5/20/04	X	ORIGINATING DEPARTMENT	Paul J. Crawford	7-15-04
				☒ MGR. DOCKET COORD: _____ COUNCIL REP. RULES COMMITTEE ☐ CONSENT ☐ ADOPTION			

11. PREPARATION OF:	☒ RESOLUTIONS	☐ ORDINANCE(S)	☐ AGREEMENT(S)	☐ DEED(S)
---------------------	---	---------------------------------------	---------------------------------------	----------------------------------

1. Authorizing the City Manager to execute a 40-year lease agreement with Baltimore Drive, LLC., a California limited liability company, to develop, operate, and maintain a commercial building on 1.12 acres of City-owned Old Murphy Canyon Road right-of-way at an annual rental of \$28,000 after a one-year construction period rental of \$6,000.
2. Certifying that the information contained in PTS File No. 6729 has been completed in compliance with the California Environmental Quality Act and State CEQA Guidelines, and that said Mitigated Negative Declaration reflects the independent judgment of the City of San Diego as Lead Agency.
3. Stating for the record that the final Mitigated Negative Declaration has been reviewed and considered prior to approving the project.
4. Adopting the Mitigation, Monitoring, and Reporting Program.

11A. MANAGER'S RECOMMENDATIONS: Adopt the resolutions.

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): 6

COMMUNITY AREA(S): Kearny Mesa

ACTION REQUESTED BY: Real Estate Assets Department Director

DESCRIPTIVE LOCATION: Southwest corner of Aero Drive and Interstate 15.

ENVIRONMENTAL IMPACT: The City of San Diego as Lead Agency under CEQA has prepared and completed a Mitigated Negative Declaration, PTS File No. 6729, dated April 22, 2004, and Mitigation, Monitoring, and Reporting Program covering this activity.

CITY CLERK INSTRUCTIONS: Return two duplicate originals of lease to Real Estate Assets Department, Attention: Paul T. Crawford, M.S. 51A, for further handling.

DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO

DATE:
May 3, 2004

SUBJECT:

Lease Approval – Baltimore Drive, LLC.

BACKGROUND:

In February 2002, the LU&H Committee approved exclusive negotiations with Baltimore Drive, LLC., to ground lease and develop a portion of City-owned Old Murphy Canyon Road right-of-way. Located at the southwest corner of Aero Drive and Interstate 15, this 1.12-acre commercially zoned vacant land will be improved by the lessee with a 7,200-square-foot retail building. Baltimore Drive, LLC., owns the commercial development adjacent to the City's property and has spent the past two years in securing the entitlements to develop this proposed project, estimated to cost \$1.9 million.

Proposed for approval is a 40-year ground lease with Baltimore Drive, LLC. Initial rent during the construction period is \$500 per month, not to exceed one year. Upon completion of the improvements, the monthly rent will start at \$2,334 and be subject to annual increases based on the Consumer Price Index or 5 percent of the previous rent, whichever is greater. All costs of entitlement processing, construction, and future maintenance are being borne by the lessee. The City's property is valued at \$280,000 in its "as-is" condition based on an independent fee appraisal done in March 2004, which has been reviewed and approved by City staff.

Lease of this portion of the Old Murphy Canyon Road necessitates approval by the City Council of a street vacation, which is being presented to Council as a companion item. Murphy Canyon Road was relocated about 10 years ago, leaving this old right-of-way that is no longer needed for street use.

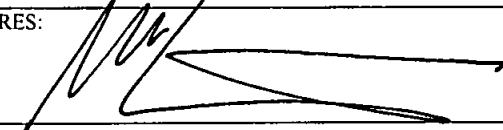
FISCAL IMPACT: \$6,000 the first year and \$28,000 the second year will be deposited into General Fund 100.

BY LINE: (CITY MANAGER / DEPT. HEAD / AUTHOR INITIALS)

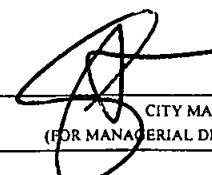
HERRING:Griffith:PTC

Job: 923118

SIGNATURES:



ORIGINATING DEPT. HEAD



CITY MANAGER
(FOR MANAGERIAL DEPARTMENTS ONLY)

EQUAL OPPORTUNITY AGREEMENT

NON-DISCRIMINATION CLAUSE: Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Contractor shall ensure that its subcontractors comply with the City of San Diego's Equal Employment Opportunity Program.

EQUAL EMPLOYMENT OPPORTUNITY (EEO): Contractor has received, read, understands and agrees to be bound by the City of San Diego *Municipal Code*, Chapter II, Article 2, Division 27 (Equal Employment Opportunity Program) provided with the proposal package.

Contractor has submitted either a *Work Force Report* or an *Equal Employment Opportunity Plan* as required by Section 22.2705 of the City of San Diego *Municipal Code*.

City and Contractor agree that compliance with EEO provisions will be implemented, monitored, and reviewed by the City's Equal Opportunity Contracting Program (EOCP) staff.

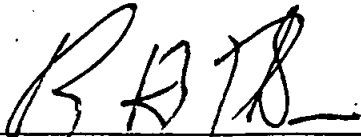
EQUAL OPPORTUNITY CONTRACTING: Contractor has received, read, understands and agrees to be bound by the Equal Opportunity Contracting Program requirements described in the proposal package.

Contractor agrees to provide updated reports as requested by the City.

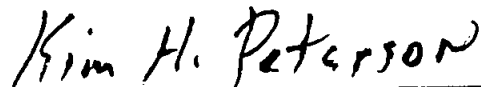
Contractor agrees to insert equal opportunity compliance language in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor.

Project Name: _____ Bid No.: _____

Company Name: Baltimore Drive, LLC Date: 4/27/04



Authorized Signature



Print Authorized Signature Name



City of San Diego

EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)

1010 Second Avenue • Suite 500 • San Diego, CA 92101

Phone: (619) 533-4464 • Fax: (619) 533-4474

WORK FORCE REPORT

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report*.

CONTRACTOR IDENTIFICATION

Type of Contractor: ☐ Construction ☐ Vendor/Supplier ☐ Financial Institution ☒ Lessee/Lessor
☐ Consultant ☐ Grant Recipient ☐ Insurance Company ☐ Other

Name of Company: Baltimore Drive LLC

AKA/DBA: _____

Address (Corporate Headquarters, where applicable): Box 676237
City Rancho Santa Fe County San Diego State CA Zip 92067
Telephone Number 858) 481-3539 FAX Number 858) 481-3943
Name of Company CEO: Kim H. Peterson

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):
Address: _____
City _____ County _____ State _____ Zip _____
Telephone Number: () _____ FAX Number: () _____
Type of Business: Real Estate Development Type of License: _____
The Company has appointed: Kim H. Peterson
as its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate, and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:
Address: Box 676237 Rancho Santa Fe, CA 92067
Telephone Number 858) 481-3539 FAX Number 858) 481-3943

For Firm's: ☐ San Diego Work Force and/or ☐ Managing Office Work Force

I, the undersigned representative of Baltimore Drive LLC
San Diego CA (Firm Name)
(County) (State) hereby certify that information provided

herein is true and correct. This document was executed on this day of April 27, 2008.

[Signature]
(Authorized Signature)

Kim H. Peterson
(Print Authorized Signature Name)

WORK FORCE REPORT - Page 2

NAME OF FIRM:

Baltimore Drive LLC

DATE:

4/27/04

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- | | |
|--|--|
| (1) Black American | (5) Filipino |
| (2) Latino, Hispanic, Mexican-American, Puerto Rican | (6) Caucasian |
| (3) Asian, Pacific Islander | (7) Other ethnicity; not falling into other groups |
| (4) American Indian, Eskimo | |

OCCUPATIONAL CATEGORY	(1) Black American		(2) Latino		(3) Asian		(4) American Indian		(5) Filipino		(6) Caucasian		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Executive, Administrative, Managerial											1			
Professional Specialty														
Engineers/Architects														
Technicians and Related Support														
Sales														
Administrative Support/Clerical														
Services														
Precision Production, Craft and Repair														
Machine Operators, Assemblers, Inspectors														
Transportation and Material Moving														
Handlers, Equipment Cleaners, Helpers and Non-construction Laborers*														

*Construction laborers and other field employees are not to be included on this page

TOTALS EACH COLUMN											1			
--------------------	--	--	--	--	--	--	--	--	--	--	---	--	--	--

GRAND TOTAL ALL EMPLOYEES

INDICATE BY GENDER AND ETHNICITY THE NUMBER OF ABOVE EMPLOYEES WHO ARE DISABLED:

DISABLED	NONE													
----------	------	--	--	--	--	--	--	--	--	--	--	--	--	--

NON-PROFIT ORGANIZATIONS ONLY:

BOARD OF DIRECTORS														
VOLUNTEERS														
ARTISTS														

RESOLUTION NUMBER R- 299704

ADOPTED ON SEP 28 2004

WHEREAS, the City and Baltimore Drive, LLC propose to enter into a ground lease for an unimproved 1.12 acre portion of City-owned right-of-way on Old Murphy Canyon Road for the development, operation, and maintenance of a retail commercial building [the Project]; and

WHEREAS, the matter was set for a public hearing to be conducted by the Council of the City of San Diego; and

WHEREAS, the matter was heard by the City Council on SEP 28 2004; and

WHEREAS, the City Council considered the issues discussed in Mitigated Negative Declaration LDR No. 6729; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it is certified that Mitigated Negative Declaration LDR No. 6729, on file in the office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code section 21000 et seq.), as amended, and the State guidelines thereto (California Code of Regulations section 15000 et seq.), that the declaration reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in the report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of a 40-year lease agreement with Baltimore Drive, LLC.

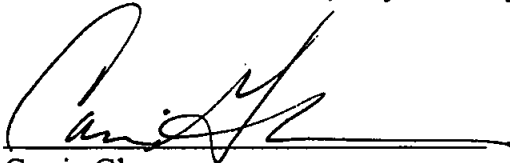
BE IT FURTHER RESOLVED, that the City Council finds that project revisions now mitigate potentially significant effects on the environment previously identified in the Initial Study and therefore, that the Mitigated Negative Declaration, a copy of which is on file in the office of the City Clerk and incorporated by reference, is approved.

BE IT FURTHER RESOLVED, that pursuant to California Public Resources Code section 21081.6, the City Council adopts the Mitigation Monitoring and Reporting Program (as set forth in the Mitigated Negative Declaration), or alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment, a copy of which is attached hereto and incorporated herein by reference.

BE IT FURTHER RESOLVED, that the City Clerk is directed to file a Notice of Determination [NOD] with the Clerk of the Board of Supervisors for the County of San Diego regarding the above project.

APPROVED: CASEY GWINN, City Attorney

By



Carrie Gleeson
Deputy City Attorney

CLG:mm
07/14/04
Or.Dept:READ
Job Order No.923118
R-2005-53

NOTICE OF DETERMINATION

TO: X Recorder/County Clerk
P.O. Box 1750, MS A-33
1600 Pacific Hwy, Room 260
San Diego, CA 92101-2422

FROM: City of San Diego
Development Services Department
1222 First Avenue, MS 501
San Diego, CA 92101

X Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

Project Number: 6729

State Clearinghouse Number: 2004031102

Project Title: Aero Drive Three

Project Location: The site is located south of Aero Drive and bounded on the east by Interstate 15 and on the west and south side by Murphy Canyon Road, City and County of San Diego, California.

Project Description: SITE DEVELOPMENT PERMIT, PLANNED DEVELOPMENT PERMIT and RIGHT-OF-WAY VACATION (Process 5) to vacate an unimproved 1.12 acre portion of Old Murphy Canyon Road right-of-way, create a lease area, and develop a 7,200-square-foot retail building. The site is located east of Murphy Canyon Road, south of Aero Drive, and west of I-15, within the CC-1-3 zone, Airport Environs Overlay Zone, Kearny Mesa Community Plan area (Lot 4 of Map 13072 & Lot 16 of Map 13072). Applicant: Aero Drive, LLC., 12520 High Bluff Drive, Suite 170, San Diego, CA 92103. Contact: Kim H. Peterson, (858) 481-3539.

This is to advise that the City of San Diego, City Council on _____ approved the above described project and made the following determinations:

1. The project in its approved form ___ will, X will not, have a significant effect on the environment.
2. ___ An Environmental Impact Report was considered by the City as a Responsible Agency for this project and certified pursuant to the provisions of CEQA by the Lead Agency, the University of California, San Diego.
X A Mitigated Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
___ An addendum to Mitigated Negative Declaration was prepared for this project pursuant to the provisions of CEQA.

Record of project approval may be examined at the address above.

3. Mitigation measures X were, ___ were not, made a condition of the approval of the project.

It is hereby certified that the final environmental report, including comments and responses, is available to the general public at the office of the Land Development Review, Development Services Department, 1222 First Avenue, Fifth Floor, San Diego, CA 92101.

Analyst: P. Schlitt

Telephone: (619) 446-5181

Filed by: 

Signature

Title

Reference: California Public Resources Code, Sections 21108 and 21152.



Land Development
Review Division
(619) 446-5460

Mitigated Negative Declaration

Project No. 6729
SCH No. 2004031102

SUBJECT: Aero Drive Three; SITE DEVELOPMENT PERMIT, PLANNED DEVELOPMENT PERMIT and RIGHT-OF-WAY VACATION (Process 5) to vacate an unimproved 1.12 acre portion of Old Murphy Canyon Road right-of-way, create a lease area, and develop a 7,200-square-foot retail building. The site is located east of Murphy Canyon Road, south of Aero Drive, and west of I-15, within the CC-1-3 zone, Airport Environs Overlay Zone, Kearny Mesa Community Plan area (Lot 4 of Map 13072 & Lot 16 of Map 13072). Applicant: Aero Three, LLC.

- I. PROJECT DESCRIPTION: See attached Initial Study.
- II. ENVIRONMENTAL SETTING: See attached Initial Study.
- III. DETERMINATION:

The City of San Diego conducted an Initial Study which determined that the proposed project could have a significant environmental effect in the following area(s): *Biological Resources*. Subsequent revisions in the project proposal create the specific mitigation identified in Section V of this Mitigated Negative Declaration. The project as revised now avoids or mitigates the potentially significant environmental effects previously identified, and the preparation of an Environmental Impact Report will not be required.

- IV. DOCUMENTATION:

The attached Initial Study documents the reasons to support the above Determination.

- V. MITIGATION, MONITORING AND REPORTING PROGRAM:

To ensure that site development would avoid significant environmental impacts, a Mitigation, Monitoring, and Reporting Program (MMRP) is required. Compliance with the mitigation measures would be the responsibility of the applicant. The basis for the MMRP can be found in the Initial Study. The mitigation measures are described below.

General

- 1. Prior to the issuance of any construction permit, the applicant shall pay the Long Term Monitoring Fee in accordance with the Development Services Department Fee Schedule to cover the City's cost associated with implementation of the Mitigation, Monitoring and Reporting Program (MMRP).

2. Prior to the issuance of a Notice to Proceed (NTP) or any permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits, the Assisted Deputy Director (ADD) of the City's Land Development Review Division (LDR) shall verify that the following statement is shown on the grading and/or construction plans as a note under the heading *Environmental Requirements*: "Aero Drive Three Project is subject to a Mitigation, Monitoring and Reporting Program and shall conform to the mitigation conditions as contained in the Mitigated Negative Declaration 6729."

Biology

1. Prior to the issuance of a Notice to Proceed (NTP) or any permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits, direct impacts to 0.23 acres of Tier II coastal sage scrub habitat shall be mitigated to the satisfaction of the City Manager, through one of the following: (a) off-site land acquisition within the MHPA; (b) payment into the City's Habitat Acquisition Fund as described below, or (c) a combination of a and b above:
 - a. Prior to issuance of the first grading permit, the owner/permittee shall acquire and dedicate to the City of San Diego, interest in property necessary to maintain the land in its existing condition in perpetuity, a total of 0.23-acres of Tier II or better habitat located off-site, in the City of San Diego's MHPA. This 0.23-acres would satisfy the 1:1 mitigation acreage ratio requirements for impacts outside the MHPA that would be mitigated inside the MHPA; or
 - b. Prior to issuance of the first grading permit, the owner/permittee shall pay into the City's Habitat Acquisition Fund the amount necessary to purchase 0.23-acres of habitat. The current per-acre contribution amount for the Habitat Acquisition Fund is \$25,000. In order to achieve the required 1:1 ratio, \$5,750 (\$25,000 x 0.23 acre) must be paid into the fund.
 - c. A combination of a and b as referenced above.

VI. PUBLIC REVIEW DISTRIBUTION:

Draft copies or notice of this Mitigated Negative Declaration were distributed to:

City of San Diego:

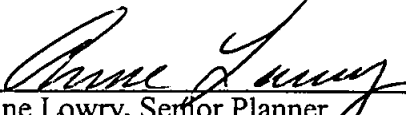
Council District 6, Councilmember Frye
Development Services Department
Planning Department/Multiple Species Conservation Program
State Clearinghouse (46)
Aero Three, LLC. c/o Kim Peterson (Applicant)
Graham Architects (Agent)
U.S. Fish & Wildlife Service (23)
California Department of Fish & Game (32A)
California Regional Water Quality Control Board (44)
Sierra Club (165)
Audubon Society (167)
California Native Plant Society (170)
Center for Biological Diversity (176)
Endangered Habitats League (182)
Kearny Mesa Town Council (263)

Serra Mesa Planning Group (263A)
Mary Johnson (263B)
Serra Mesa Community Council (264)
Kearny Mesa Community Planning Group (265)
Mission Village Homeowners Association (266)

VII. RESULTS OF PUBLIC REVIEW:

- () No comments were received during the public input period.
- () Comments were received but did not address the draft Mitigated Negative Declaration finding or the accuracy/completeness of the Initial Study. No response is necessary. The letters are attached.
- (X) Comments addressing the findings of the draft Mitigated Negative Declaration and/or accuracy or completeness of the Initial Study were received during the public input period. The letters and responses follow.

Copies of the draft **Mitigated Negative Declaration**, the Mitigation, Monitoring and Reporting Program and any Initial Study material are available in the office of the Land Development Review Division for review, or for purchase at the cost of reproduction.



Anne Lowry, Senior Planner
Development Services Department

March 19, 2004
Date of Draft Report

April 22, 2004
Date of Final Report

Analyst: P. Schlitt

332c
Dup

(R-2005-138)

RESOLUTION NUMBER R- 299702

ADOPTED ON SEP 28 2004

WHEREAS, California Streets and Highways Code section 8330 et seq. provides a procedure for the summary vacation of public street easements by City Council resolution where the easement is no longer required; and

WHEREAS, the affected property owner has requested the vacation of a portion of Murphy Canyon Road, to unencumber this property and facilitate development of the site as conditioned in approved Planned Development Permit No. 56270 and Site Development Permit No. 56271; and

WHEREAS, the City Council finds that:

- (a) there is no present or prospective use for the purpose for which it was originally acquired, or for any other public use of a like nature that can be anticipated; and
- (b) the public will benefit from the vacation through improved utilization of land; and
- (c) the vacation is consistent with the General Plan or an approved Community Plan; and
- (d) the public street system for which the right-of-way was originally acquired will not be detrimentally affected by this vacation; NOW, THEREFORE,

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

1. That the street vacation easement located within Kearny Mesa Community Plan area in connection with Planned Development Permit No. 56270 and Site Development Permit No. 56271, as more particularly described in the legal description marked as Exhibit "A," and shown

on Drawing No. 20029-B, marked as Exhibit "B," and on file in the office of the City Clerk as Document Nos. RR- 299702-1, and RR-299702-2, which are by this reference incorporated herein and made a part hereof, is ordered vacated reserving therefrom a street easement for site development together with ingress and egress for that purpose.

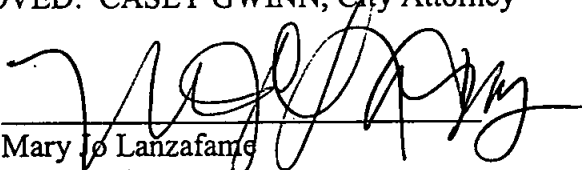
2. That said street vacation is conditioned upon approval and issuance of Planned Development Permit No. 52670/Site Development Permit No. 56277. In the event this condition is not completed within two years following the adoption of this resolution, then this resolution shall become void and be of no further force or effect.

3. That the City Engineer shall advise the City Clerk of the completion of the aforementioned condition and the City Clerk shall cause a certified copy of this resolution, with attached exhibits, attested by him under seal, to be recorded in the office of the County Recorder.

4. That the City Clerk shall cause a certified copy of this resolution, with attached exhibits, attested by him under seal, to be recorded in the office of the County Recorder.

APPROVED: CASEY GWINN, City Attorney

By


Mary Jo Lanzafame
Deputy City Attorney

MJL:cfq
07/27/2004
Or.Dept:DSD
R-2005-138

EXHIBIT "A"
LEGAL DESCRIPTION
STREET VACATION

A PORTION OF THE LAND IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, RELINQUISHED TO THE CITY OF SAN DIEGO BY THE CALIFORNIA TRANSPORTATION COMMISSION ON OCTOBER 8, 1981, RECORDED AS FILE/PAGE NO. 81-320297 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, INCLUDING 60 FOOT WIDE MURPHY CANYON ROAD VACATED, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF PARCEL MAP NO. 18494 AS RECORDED ON JUNE 23, 2000 PER FILE NO. 2000-333382; THENCE NORTH 61°19'53" EAST ALONG THE SOUTHERLY LINE OF SAID PARCEL MAP A DISTANCE OF 60.00 FEET TO A POINT AT THE CORNER OF THE WESTERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY 15, SAID POINT LYING ON A CURVE CONCAVE SOUTHWESTERLY WITH A RADIUS OF 1,030.00 FEET, A RADIAL LINE TO SAID CURVE BEARING NORTH 61°19'53" EAST; THENCE SOUTHERLY ALONG SAID CURVE AND RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 12°40'20" A DISTANCE OF 227.81 FEET TO A POINT OF COMPOUND CURVATURE WITH A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 610.00 FEET, A RADIAL LINE TO SAID POINT BEARING NORTH 74°00'13" EAST; THENCE SOUTHERLY ALONG SAID CURVE AND RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 11°12'03" A DISTANCE OF 119.25 FEET; THENCE SOUTH 04°47'44" EAST ALONG SAID RIGHT-OF-WAY A DISTANCE OF 332.22 FEET; THENCE LEAVING SAID RIGHT-OF-WAY SOUTH 85°12'16" WEST A DISTANCE OF 14.50 FEET TO A POINT ON A CURVE CONCAVE SOUTHWESTERLY WITH A RADIUS OF 546.00 FEET BEING CONCENTRIC WITH AND 92.00 FEET MEASURED PERPENDICULARLY FROM THE EASTERLY LINE OF LOT 10 OF MAP NO. 13072 AS RECORDED ON NOVEMBER 23, 1993 PER FILE NO. 1993-0792013, A RADIAL LINE TO SAID POINT BEARING NORTH 63°30'02" EAST; THENCE NORTHWESTERLY ALONG SAID CURVE (THIS AND THE NEXT TWO CALLS BEING CONCENTRIC WITH AND 92.00 FEET MEASURED PERPENDICULARLY FROM THE EASTERLY LINES OF LOTS 8 AND 10 OF SAID MAP NO. 13072) THROUGH A CENTRAL ANGLE OF 05°41'59" A DISTANCE OF 54.32 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 554.00 FEET, A RADIAL LINE TO SAID POINT BEARING SOUTH 57°48'03" WEST; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15°22'42" A DISTANCE OF 148.70 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 746.00 FEET, A RADIAL LINE TO SAID POINT BEARING NORTH 73°11'03" EAST; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 02°50'35" A DISTANCE OF 37.02 FEET TO A POINT ON

THE NORTHWESTERLY LINE OF LOT 4 OF SAID MAP NO. 13072, SAID POINT LYING ON A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 5,039.97 FEET, A RADIAL LINE TO SAID POINT BEARING SOUTH 83°54'34" WEST; THENCE NORTHWESTERLY ALONG SAID CURVE AND THE NORTHEASTERLY LINE OF LOTS 4 AND 16 OF SAID MAP NO. 13072 THROUGH A CENTRAL ANGLE OF 03°28'37" A DISTANCE OF 305.85 FEET TO A POINT ON A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 970.00 FEET, A RADIAL LINE TO SAID POINT BEARING NORTH 68°25'17" EAST; THENCE NORTHWESTERLY ALONG SAID CURVE AND THE NORTHEASTERLY LINE OF SAID LOT 16 THROUGH A CENTRAL ANGLE OF 7°05'24" A DISTANCE OF 120.03 FEET TO THE POINT OF BEGINNING; CONTAINING 1.123 ACRES, MORE OR LESS

GENERAL UTILITY EASEMENT SET-ASIDE

BEGINNING AT THE MOST SOUTHERLY CORNER OF PARCEL MAP NO. 18494 AS RECORDED ON JUNE 23, 2000 PER FILE NO. 2000-333382; THENCE NORTH 61°19'53" EAST ALONG THE SOUTHERLY LINE OF SAID PARCEL MAP A DISTANCE OF 52.28 FEET TO A POINT OF INTERSECTION WITH THE EASTERLY LINE OF AN EXISTING DRAINAGE EASEMENT RECORDED ON MAY 31, 1974 AS FILE NO. 74-123130 OF OFFICIAL RECORDS; THENCE SOUTH 2°10'04" EAST ALONG SAID EASTERLY LINE A DISTANCE OF 133.78 FEET TO A POINT AT THE CORNER OF THE EASTERLY LINE OF LOT 16 PER MAP NO. 13072, SAID POINT LYING ON A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 970.00 FEET; A RADIAL LINE TO SAID POINT BEARING NORTH 68°25'17" EAST; THENCE NORTHWESTERLY ALONG SAID EASTERLY LINE OF LOT 16 THROUGH A CENTRAL ANGLE OF 07°05'24" A DISTANCE OF 120.03 FEET TO THE POINT OF BEGINNING; CONTAINING 0.068 ACRES, MORE OR LESS.

WATER EASEMENT SET-ASIDE

BEGINNING AT THE MOST SOUTHERLY CORNER OF PARCEL MAP NO. 18494 AS RECORDED ON JUNE 23, 2000 PER FILE NO. 2000-333382; THENCE NORTH 61°19'53" EAST ALONG THE SOUTHERLY LINE OF SAID PARCEL MAP A DISTANCE OF 60.00 FEET TO A POINT AT THE CORNER OF THE WESTERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY 15, SAID POINT LYING ON A CURVE CONCAVE SOUTHWESTERLY WITH A RADIUS OF 1,030.00 FEET, A RADIAL LINE TO SAID CURVE BEARING NORTH 61°19'53" EAST; THENCE SOUTHERLY ALONG SAID CURVE AND RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 12°40'20" A DISTANCE OF 227.81 FEET TO A POINT OF COMPOUND CURVATURE WITH A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 610.00 FEET, A RADIAL LINE TO SAID POINT BEARING NORTH 74°00'13" EAST; THENCE SOUTHERLY ALONG SAID CURVE AND RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 11°12'03" A DISTANCE OF 119.25

FEET; THENCE SOUTH 04°47'44" EAST ALONG SAID RIGHT-OF-WAY A DISTANCE OF 332.22 FEET; THENCE LEAVING SAID RIGHT-OF-WAY SOUTH 85°12'16" WEST A DISTANCE OF 14.50 FEET TO A POINT ON A CURVE CONCAVE SOUTHWESTERLY WITH A RADIUS OF 546.00 FEET BEING CONCENTRIC WITH AND 92.00 FEET MEASURED PERPENDICULARLY FROM THE EASTERLY LINE OF LOT 10 OF MAP NO. 13072 AS RECORDED ON NOVEMBER 23, 1993 PER FILE NO. 1993-0792013, A RADIAL LINE TO SAID POINT BEARING NORTH 63°30'02" EAST; THENCE NORTHWESTERLY ALONG SAID CURVE (THIS AND THE NEXT TWO CALLS BEING CONCENTRIC WITH AND 92.00 FEET MEASURED PERPENDICULARLY FROM THE EASTERLY LINE OF LOT 10 OF SAID MAP NO. 13072) THROUGH A CENTRAL ANGLE OF 05°41'59" A DISTANCE OF 54.32 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 554.00 FEET, A RADIAL LINE TO SAID POINT BEARING SOUTH 57°48'03" WEST; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°25'14" A DISTANCE OF 33.07 FEET TO THE TRUE POINT OF BEGINNING, A RADIAL LINE TO SAID POINT BEARING SOUTH 61°13'17" WEST; THENCE CONTINUING ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04°58'07" A DISTANCE OF 48.04 FEET; THENCE NORTH 64°18'47" EAST A DISTANCE OF 19.64 FEET; THENCE SOUTH 25°49'34" EAST A DISTANCE OF 47.98 FEET; THENCE SOUTH 64°10'26" WEST A DISTANCE OF 19.24 FEET TO THE TRUE POINT OF BEGINNING; CONTAINING 0.022 ACRES, MORE OR LESS.

Thomas M. Henry 6/2/04
THOMAS M. HENRY, RCE 24760 DATE
REGISTRATION EXPIRES DECEMBER 31, 2005

W.O. # 120102
DWG. # 20029-B



835-03-07
April 30, 2004
F:\ADMIN\835\LDS49r.DOC

DESCRIPTION	BY	APPROVED	DATE	FILED	CITY OF SAN DIEGO, CALIFORNIA		W.O. NO
ORIGINAL	SE				SHEET 1 OF 2 SHEETS		422206
					<i>Lee Klemes</i> FOR CITY ENGINEER		1874-1694 CCS83
					6/2/04 DATE		234-1734 LAMBERT COORDINATES
STATUS							20029-1-B

DOCUMENT NO. 00-299702-2
FILED SEP 28 2004
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

LEGEND



DENOTES PORTION OF CALTRANS RELINQUISHMENT TO THE CITY OF SAN DIEGO PER DOC. REC. 10/8/1981 F/P 81-320297 O.R. (SEE CALTRANS R/W MAP NO. 55539 AND RELINQUISHMENT MAP NO. 24310), VACATED. CONTAINS 1.123 ACRES



DENOTES GENERAL UTILITY EASEMENT SET-ASIDE (2,980 SQ. FT.-0.068 AC.)



DENOTES WATER EASEMENT SET-ASIDE (951 SQ. FT.-0.022 AC.)

(A)

DENOTES UTILITY EASEMENT PER FILE NO. 79-040846, REC. 1-2-1979, O.R. GRANTOR-DALEY CORPORATION, GRANTEE-SDG&E

(B)

DENOTES UTILITY EASEMENT PER FILE NO. 80-114124, REC. 4-3-1980, O.R. GRANTOR-CITY OF SAN DIEGO, GRANTEE-SDG&E

(C)

DENOTES DRAINAGE EASEMENT PER FILE NO. 95-0208872, REC. 5-18-1995, O.R.

(D)

DENOTES WATER EASEMENT PER FILE NO. 2000-0638325, REC. 11-22-2000, O.R.

(E)

DENOTES SEWER EASEMENT PER FILE NO. 1995-0208872, REC. 5-18-1995, O.R.

(F)

DENOTES SEWER AND DRAINAGE EASEMENT PER FILE NO. 1995-0208872, REC. 5-18-1995, O.R.

(G)

DENOTES DRAINAGE EASEMENT PER FILE

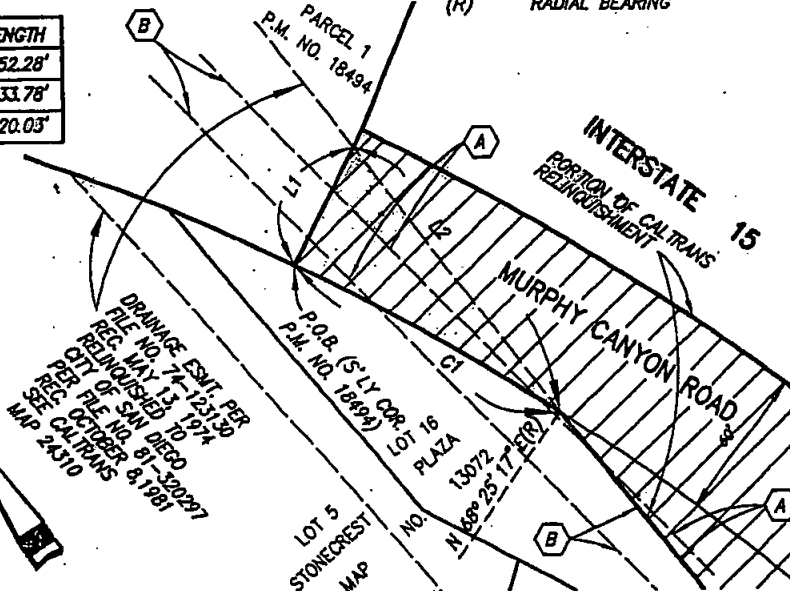
(R)

RADIAL BEARING

DETAIL WATER EASEMENT SET-ASIDE

ESMT. DATA TABLE

NO.	DELTA/BEARING	RADIUS	LENGTH
L1	N 61° 19' 53" E	—	52.28'
L2	S 02° 10' 04" E	—	133.78'
C1	07° 05' 24"	970.00'	120.03'



DETAIL GENERAL UTILITY EASEMENT SET-ASIDE

S.E. JOB NO. 835-03-07



CIVIL ENGINEERING/SURVEYING/PLANNING
STUART ENGINEERING
7525 METROPOLITAN DR., STE. 308
SAN DIEGO, CALIFORNIA 92108
(619) 296-1010
FAX (619) 296-9276

Thomas M. Henry 6/2/04
THOMAS M. HENRY R.C.E. 24780 DATE
REGISTRATION EXPIRES: 12-31-05

STREET VACATION - PORTION OF CALTRANS RELINQUISHMENT INCLUDING A PORTION OF "MURPHY CANYON ROAD" SOUTH OF AERO DRIVE

DESCRIPTION	BY	APPROVED	DATE	FILED	CITY OF SAN DIEGO, CALIFORNIA	W.G. NO.
ORIGINAL	SE				SHEET 2 OF 2 SHEETS	422206
					<i>Lee Barnes</i> 6/2/04 FOR CITY ENGINEER DATE	1874-1694 CCS83
						234-1734 LAMBERT COORDINATES
						20029-2-B
STATUS						

SEP 28 2004

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

Council Members	Yeas	Nays	Not Present	Ineligible
Scott Peters	☒	☐	☐	☐
Michael Zucchet	☒	☐	☐	☐
Toni Atkins	☒	☐	☐	☐
District 4- Vacant	☐	☐	☐	☐
Brian Maienschein	☒	☐	☐	☐
Donna Frye	☒	☐	☐	☐
Jim Madaffer	☒	☐	☐	☐
Ralph Inzunza	☒	☐	☐	☐
Mayor Dick Murphy	☒	☐	☐	☐

AUTHENTICATED BY:

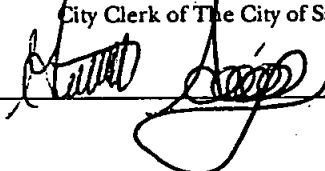
(Seal)

DICK MURPHY

Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

By  Deputy.

Office of the City Clerk, San Diego, California

Resolution R-299702 Adopted SEP 28 2004
Number _____