

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is made with reference to that certain Construction, Maintenance and Joint Parking Agreement dated December 16, 2003 between the City of San Diego (the "City") and the Metropolitan Transit Development Board ("MTDB") (the "Agreement"). Pursuant to Section 2 of the Agreement, the commencement date of the term of the Agreement is the close of escrow under the Amended and Restated Disposition and Development Agreement dated January 14, 2003 between MTDB and CityLink Investment Corporation, or such earlier date as may be agreed upon in writing by the parties. The close of escrow under such Amended and Restated Disposition and Development Agreement has not yet occurred.

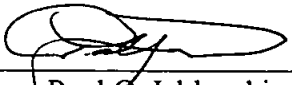
The City and MTDB hereby agree that the commencement date of the term of the Agreement shall be March 10, 2004. All other terms and conditions of the Agreement shall remain the same.

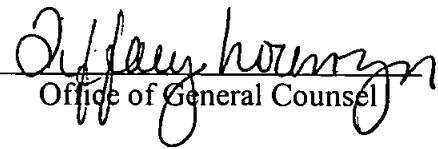
The City and MTDB also agree that this agreement will allow CityLink Investment Corporation to access the Site prior to the close of escrow under the Amended and Restated Disposition and Development Agreement, and as a condition of such early access, CityLink Investment Corporation will be required to execute the Early Construction Agreement with MTDB.

March 25, 2004

METROPOLITAN TRANSIT
DEVELOPMENT BOARD, a California
public Agency

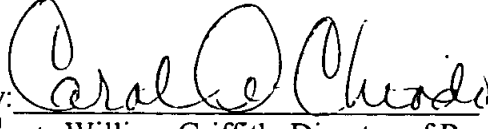
Approved as to form:

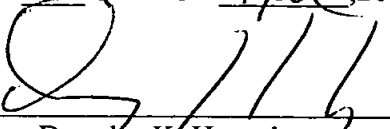
By: 
Paul C. Jablonski
CEO

By: 
Office of General Counsel

THE CITY OF SAN DIEGO

Approved as to form and Legality on
THIS 13 DAY OF April, 2004

By: 
for William Griffith, Director of Real
Estate Assets Department

By: 
Douglas K. Humphreys
Deputy City Attorney

CONSTRUCTION, MAINTENANCE AND JOINT PARKING AGREEMENT

This agreement for the construction, maintenance and joint parking [Agreement] is entered into as of 12/16, 2003 by and between the CITY OF SAN DIEGO [City], and the METROPOLITAN TRANSIT DEVELOPMENT BOARD, a California public City [MTDB], a public body corporate and politic of the State of California.

RECITALS

A. MTDB [Board] is a party to that certain Amended and Restated Disposition and Development Agreement, dated January 15, 2003, [DDA] with CITYLINK INVESTMENT CORPORATION, a California Corporation [Developer therein] which provides for the redevelopment of certain real property [Site], located within the North Bay Redevelopment Project area in the City of San Diego as shown on the map attached hereto as Exhibit A and more particularly described in Exhibit B. The redevelopment of the Site involves construction of a transit-oriented mixed use development with certain improvements specified in the DDA [Project].

B. Because the Project would reduce the number of parking spaces available on the Site for trolley patrons of the Morena Linda Vista Station, and advance the City objectives of promoting, encouraging the use of public transportation and convenient park and rides. MTDB and City desire to secure additional parking off-site.

C. City desires to supplement parking in the area to meet community recreational needs and to reduce the impact on neighboring businesses and residences during events at Qualcomm Stadium, downtown, and other locations along the trolley line.

D. City owns that certain real property adjacent to the Site as shown on the map attached hereto as Exhibit C and more particularly described in Exhibit D [Shared Parking Site].

E. MTDB, in consideration for using parking upon the Shared Parking Site to satisfy its parking requirements, proposes to undertake or cause improvements on the Shared Parking Site, including, without limitation, the construction of approximately 120 parking spaces which shall be available to park-and-ride patrons of the Morena/Linda Vista Trolley Station, as well as to the general public.

F. The development of the Shared Parking Site pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City of San Diego and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements.

NOW, THEREFORE, in consideration of the covenants and conditions hereafter contained, and subject to the following terms and conditions, City and MTDB hereby agree as follows:

1. Shared Parking: City grants to MTDB the non-exclusive right to construct, operate, maintain and replace as necessary parking and related improvements on the Shared Parking Site. City and MTDB, together with their respective residents, customers, employees, agents and contractors, shall have the non-exclusive right to use all parking spaces constructed on the Shared Parking Site
2. Term: The term of this Agreement is fifty-five years commencing on the date of the close of escrow under the DDA, or if earlier on the date agreed upon in writing by the parties. In either event, the term of this agreement shall be for fifty-five years after the close of escrow under the DDA.
3. Consideration: In consideration of City's grant of the parking rights on the Shared Parking Site, MTDB covenants and agrees to construct or cause to be constructed upon the Shared Parking Site and at all times operate and maintain at its own expense (a) approximately 120 parking spaces in Shared Parking Site to be used non-exclusively as a parking lot for trolley park-and-ride patrons of the Morena/Linda Vista Trolley Station during trolley hours (b) reasonable vehicular access from public streets to the Shared Parking Site, (c) pedestrian walkways from the Shared Parking Site to the Morena/Linda Vista Trolley Station, and (d) improvements and landscaping, including, but not limited to, paving, lighting, and striping of parking stalls, in accordance with the Scope of Development, Attachment No. 4 to the DDA .[collectively, the Improvements].
4. Scope of Development: MTDB shall construct or cause to be constructed the Improvements upon the Shared Parking Site substantially in accordance with the Agreement, including without limitation the Scope of Development (Attachment No. 4 to the DDA which is incorporated herein by this reference) and plans, drawings and specifications approved by the City and MTDB, and within the time and in accordance with the other terms, covenants and conditions of this Agreement, the DDA and the plans, drawings and specifications approved by City and MTDB pursuant thereto, at the times provided in the Schedule of Performance (Attachment No. 3 to the DDA which is incorporated herein by this reference), as the same may be amended from time to time.
5. Local, State and Federal Laws: MTDB shall carry out or cause the construction of the improvements on the Shared Parking Site in conformity with all applicable laws.
6. Notice of Completion: Upon substantial completion of the work of improvement during the term of this Agreement, MTDB shall record or cause to be recorded in the Official Records of San Diego County a notice of completion.

7. Indemnification: MTDB shall indemnify, defend, and hold City and its officers, agents, employees, representatives and attorneys harmless from and against any and all costs, expenses, claims, demands, damages, actions, causes of action, or liabilities of any kind which may arise at any time in connection with:
- (a) any unsafe or defective condition in or on the Shared Parking Site of any nature whatsoever which may exist by reason of any act, omission, neglect, or any use or occupation of the Shared Parking Site;
 - (b) any improvement work by MTDB, or its agents and contractors, including without limitation the design and installation of equipment and the development of Shared Parking Site;
 - (c) any maintenance of the Shared Parking Site or the Improvements; and
 - (d) any act, omission or negligence on the part of MTDB, its employees, agents, lessees, invitees, or licensees.

The foregoing indemnifications shall not be applicable to the extent of loss caused by negligence or intentional conduct of City, provided, however, that nothing in such exemption from indemnification shall be deemed to impose any obligation on City not otherwise required by this Agreement. Moreover, in the event of an indemnification by the MTDB of City pursuant to this Section, MTDB shall be permitted to provide a joint defense on the behalf of the MTDB and City with such defense being provided by legal counsel selected by MTDB. Moreover, all such defense costs shall be the sole responsibility of the MTDB.

MTDB shall report to City any accident causing more than \$10,000.00 worth of property damage or any serious injury to persons on the Shared Parking Site within a reasonable time after MTDB is notified of such damage or injury. This report shall contain, to the extent such information is reasonably available, 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.

MTDB further agrees to hold harmless City, and to indemnify City against all claims, liabilities, costs and expenses, for labor and materials in connection with all construction, repairs or alterations on the Shared Parking Site and Improvements, and the cost of defending against such claims, including reasonable attorney's fees.

8. Insurance: MTDB shall take out and maintain at all times during the Term of the Agreement public liability and property damage insurance in the amount of not less than \$3 million on 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 failure to act by MTDB or City or by authorized representatives of MTDB or City on or in connection with the use or operation of the Shared Parking Site. All insurance policies shall be endorsed to

name City and its officers, agents, employees, representatives and attorneys as an additional insured, protect City and its officers, agents, employees, representatives and attorneys against legal costs in defending claims, and to provide (by certificate or otherwise) that such insurance will not terminate without at least thirty days prior written notice to City. All insurance companies must be reasonably satisfactory to City and licensed to do business in California. A copy of the insurance policy shall remain on file with City during the Term of the Agreement. Should MTDB fail to take out and maintain the required insurance, City may do so invoice MTDB for the entire cost thereof. In the alternative, MTDB may provide evidence of satisfactory self-insurance meeting the aforementioned requirements, to be approved by the City.

9. Maintenance: MTDB covenants and agrees to maintain or cause to be maintained at its sole cost and expense the Shared Parking Site and the Improvements thereon in a good condition throughout the Term of the Agreement, and to make all repairs and replacements necessary to maintain and preserve the Shared Parking Site and the Improvements in a decent, safe, healthy and sanitary condition reasonably satisfactory to City, and in compliance with all applicable codes and standards of City, state and federal agencies.. In the event that an emergency unsafe condition occurs on the Shared Parking Site or Improvements, MTDB shall eliminate such condition as soon as reasonably possible. In the event such emergency unsafe condition is not corrected within a reasonable time by MTDB, City shall have the right to have any necessary maintenance work done, and invoice MTDB for the entire cost thereof.

All improvements on the Shared Parking Site shall be maintained in good condition in accordance with the custom and practice generally applicable to comparable trolley stations, and in conformance and compliance with the plans, drawings and related documents, if any approved by the City pursuant to this Agreement, the terms and conditions of the DDA, and the approvals, permits, authorizations from governmental and quasi-governmental agencies and other parties required for the development of the Shared Parking Site.

Clean-up maintenance shall include, without limitation where applicable, maintenance of all sidewalks, paths and other paved areas in a clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping; clearance and cleaning of all areas maintained prior to the end of each day on which maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

If the City gives written notice to MTDB that the maintenance or condition of the Shared Parking Site or any portion thereof or any improvements thereon does not comply with this Agreement and such notice describes the deficiencies, MTDB shall correct, remedy or cure the deficiency within thirty days following the submission of such notice,

unless the notice states that the deficiency is an urgent matter relating to public health and safety in which case MTDB shall cure the deficiency with all due diligence and shall complete the cure at the earliest possible time but in no even more than forty-eight hours following the submission of the notice. In the event MTDB fails to maintain the Shared Parking Site or any portion thereof or any improvements thereon in accordance with this Agreement and fails to cure any deficiencies within the applicable period described above, the City shall have, in addition to any other rights and remedies hereunder, the right to maintain the Shared Parking Site and the improvements thereon, or portion thereof, or to contract for the correction of any deficiencies, and MTDB shall be responsible for payment of all such costs actually and reasonably incurred by the City.

10. Operation: MTDB shall assume responsibility, subject to the provisions of this Agreement, for the operation and maintenance (including repair, restoration and reconstruction) of all of the improvements constructed on the Shared Parking Site and the costs thereof, and City shall have no liability for costs of such operation and maintenance by MTDB or for any claims arising from the operation and maintenance (including repair, restoration and reconstruction) of such improvements.
11. Security: MTDB shall provide such security services for the Shared Parking Site and any improvements thereon as the MTDB may from time to time provide at its other parking lots at or near similarly situated trolley stations. The parties acknowledge and agree that (a) provision of any security at any of MTDB's parking lots at or near similarly situated trolley stations is at MTDB's discretion and subject to its budget constraints (b) budget constraints may cause it to reduce or eliminate existing security, and (c) this Agreement does not impose on MTDB any obligation to provide security at any of its sites.
12. Entire Agreement: This Agreement and the attached Exhibits constitute the entire agreement between the parties relating to the Shared Parking Site. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by MTDB and City.
13. Notices: Any demand upon or notice required or permitted to be given by one party to the other party shall be in writing. Except as otherwise provided by law, any demand upon or notice required or permitted to be given by one party to the other party shall be effective: (a) on personal delivery; (b) on the second business day after mailing by certified or registered U.S. Mail, return receipt requested; or (c) on the succeeding business day after mailing by Express Mail or after deposit with a private delivery service of general use (e.g. Federal Express) postage or fee prepaid as appropriate, addressed to the party at the address shown below:

If to City:

City of San Diego
202 "C" Street
San Diego, CA 92101
Attention: City Manager

City Attorney
Civic Center Plaza
1200 Third Avenue, #1620
San Diego, California 92101-4155
Facsimile No. (619) 236-7215

If to MTDB:

General Manager
Metropolitan Transit Development Board
1255 Imperial Avenue, Suite 1000
San Diego, California 92101-7490

With a copy to:

General Counsel
Metropolitan Transit Development Board
1255 Imperial Avenue, Suite 1000
San Diego, California 92101-7490

Either Party may designate in writing pursuant to this Section a different address to which notices shall be sent.

14. City Approval: The approval or consent of City wherever required in this Agreement, shall mean the written approval or consent of the City Manager or his designee unless otherwise specified.
15. Prompt Performance: Time is of the essence of each covenant and condition set forth in this Agreement.
16. Captions: Captions in this Agreement are inserted for convenience of reference only and do not affect the construction or interpretation of this Agreement.
17. Attorneys' Fees and Costs: If either Party commences an action against the other Party based upon this Agreement, the prevailing Party in whose favor final judgment is entered will be entitled to recover from the other Party all reasonable costs and expenses of suit, including reasonable attorneys' fees.

18. Applicable Law: This Agreement shall be construed and enforced in accordance with the laws of the State of California.
19. Assignment: MTDB shall not assign this Agreement, in whole or in part, without the prior written consent of City; provided, however, that this agreement shall automatically enure to the benefit of and bind any successor entity which assumes the trolley operations of MTDB at the Morena Linda Vista Station.
20. Partial Invalidity: If any term, covenant, condition, or provision of this Agreement is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect, provided that the intent and purpose of this Agreement is still capable of being fulfilled.
21. Jurisdiction and Venue: The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California.
22. Drafting Ambiguities: The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.
23. Corporate Authority: Each individual executing this Agreement on behalf of MTDB represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of MTDB, in accordance with a duly adopted resolution of the Board of Directors of the MTDB. Each individual executing this Agreement on behalf of City represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of City in accordance with a duly adopted resolution of the city Council of the City.
24. Force Majeure: If the performance of any act required of one of the Parties is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. In the event one of the Parties claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten calendar days after the beginning of any such claimed delay.
25. Survival: All rights and obligations of the Parties which accrue prior to the expiration or termination of this Agreement shall survive any expiration or termination of this Agreement.

IN WITNESS WHEREOF, this Agreement is executed by the City, acting by and through its City Manager, and by the MTDB, acting by and through its lawfully authorized officers.

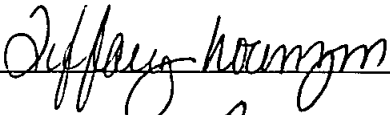
Dated this 12 day of December, 2003

METROPOLITAN TRANSIT
DEVELOPMENT BOARD, a California
public Agency

By: 
Jack Limber, Interim General Manager

Approved as to form:

OFFICE OF GENERAL COUNSEL FOR MTDB

By: 
THE CITY OF SAN DIEGO

By: 
William Griffith, Director of Real Estate Assets
Department

APPROVED AS TO FORM AND LEGALITY ON

THIS 16 DAY OF December, 2003

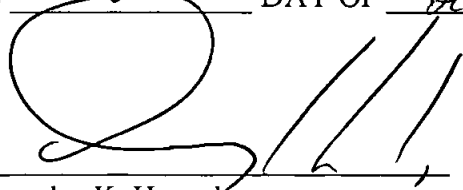
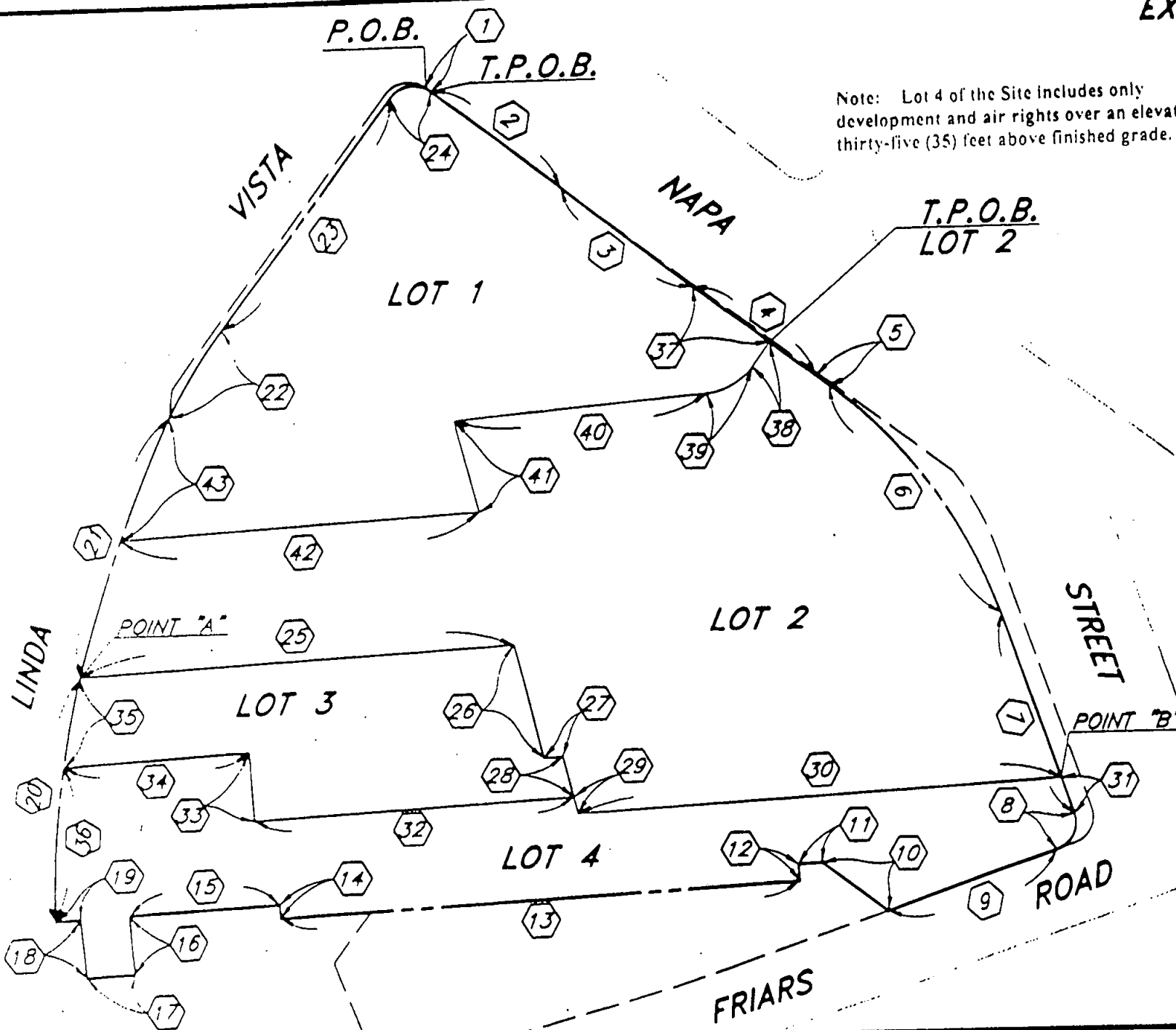
By: 
Douglas K. Humphreys
Deputy City Attorney

EXHIBIT "A"

Note: Lot 4 of the Site includes only development and air rights over an elevation of thirty-five (35) feet above finished grade.

SCALE: 1" = 100'



SB
&O

LEGAL DESCRIPTION
OFFSITE PARKING (MTDB PARCEL)

ALL THAT PORTION OF THE MTDB RIGHT OF WAY DESCRIBED IN DOCUMENT RECORDED JUNE 30, 1999 AS DOCUMENT NO. 1999-457570 OF OFFICIAL RECORDS IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS SHOWN ON EXHIBIT 'B' ATTACHED HERETO AND MADE A PART HEREOF DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF FRIARS ROAD AS SHOWN ON CITY OF SAN DIEGO AS-BUILT DRAWINGS 13352-14-D AND 13352-15-D ON FILE AT THE ENGINEERING MAPS AND RECORDS DEPARTMENT AT SAID CITY WITH THE SOUTHEASTERLY LINE OF MTDB RIGHT OF WAY DESCRIBED IN DOCUMENT RECORDED JUNE 30, 1999 AS DOCUMENT NO. 1999-457570 OF OFFICIAL RECORDS;

THENCE LEAVING SAID NORTHERLY LINE OF FRIARS ROAD, ALONG SAID MTDB RIGHT OF WAY NORTH 30°45'10" WEST, 6.62 FEET (NORTH 30°44'00" WEST, 6.74 FEET PER DOCUMENT 1999-457570 OFFICIAL RECORDS) TO A POINT ON A NON TANGENT 792.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY, A RADIAL TO SAID POINT BEARS NORTH 30°45'10" WEST (NORTH 30°44'00" WEST PER DOCUMENT NO. 1999-457570 OFFICIAL RECORDS);

THENCE NORTHEASTERLY ALONG SAID MTDB RIGHT OF WAY AND ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 04°45'00", A DISTANCE OF 65.66 FEET;

THENCE SOUTH 26°00'10" EAST, 10.00 FEET (SOUTH 25°59'10" EAST PER DOCUMENT NO. 1999-457570 OFFICIAL RECORDS) TO A POINT ON THE ARC OF A NON TANGENT 782.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY, A RADIAL TO SAID POINT BEARS NORTH 26°00'10" WEST (NORTH 25°59'00" WEST PER DOCUMENT NO. 1999-457570 OFFICIAL RECORDS);

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 03°10'00", A DISTANCE OF 43.22 FEET;

THENCE NORTH 22°50'10" WEST (NORTH 22°49'00" WEST PER DOCUMENT NO. 1999-457570 OFFICIAL RECORDS), 1.85 FEET;

THENCE LEAVING SAID MTDB RIGHT OF WAY SOUTH 85°14'30" WEST, 110.43 FEET;

THENCE SOUTH 03°52'58" EAST, 39.06 FEET TO THE NORTHERLY LINE OF SAID FRIARS ROAD;

THENCE ALONG SAID NORTHERLY LINE NORTH 86°13'40" EAST, 10.04 FEET (NORTH 86°14'13" EAST PER CITY OF SAN DIEGO DRAWING 13352-14-D) TO THE POINT OF BEGINNING.

CONTAINING 0.0426 ACRES MORE OR LESS.

THIS PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME,
OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE
PROFESSIONAL LAND SURVEYORS ACT.

 10/21/03

MICHAEL S. BUTCHER, PLS 6922 DATE

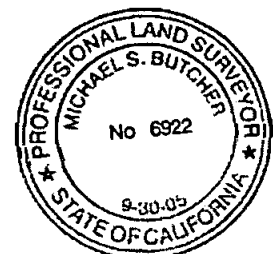


EXHIBIT "A"

LEGAL DESCRIPTION - OFFSITE PARKING

ALL THOSE PORTIONS OF BLOCKS 351, 352, 358 AND 359 AND THE UNDERLYING FEE OF PORTIONS OF PINE STREET, RILEY STREET, FORT STOCKTON DRIVE AND GREENWOOD STREET, ALL BEING A PART OF OLD SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 12, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 40, TOGETHER WITH THE UNDERLYING FEE OF PORTIONS OF MORGAN STREET (FORMERLY ADAMS AND FORMERLY ALLEN) AND CUSTER STREET (FORMERLY MONROE) AND THE UN-NAMED ALLEYS WITHIN BLOCK 1 AND PORTIONS OF BLOCK 1 OF VERNON PARK ACCORDING TO THE MAP THEREOF NO. 569 FILED ON MARCH 12, 1915 IN THE OFFICE OF COUNTY RECORDER IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA AND THE UNDERLYING FEE OF A PORTION OF OLD MORENA BOULEVARD AS SHOWN ON CITY OF SAN DIEGO DRAWING 10991-2-D, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS SHOWN ON EXHIBIT 'B' ATTACHED HERETO AND MADE A PART HEREOF DESCRIBED AS FOLLOWS:

BEGINNING AT THE EASTERLY TERMINUS OF COURSE 52 (NORTH 87°02'00" EAST, 365.10 FEET) OF THE MTDB RIGHT OF WAY DESCRIBED IN DOCUMENT RECORDED JUNE 30, 1999 AS DOCUMENT NO. 1999-457570 OF OFFICIAL RECORDS THENCE ALONG SAID MTDB RIGHT OF WAY SOUTH 87°02'00" WEST, 91.05 FEET (SOUTH 87°02'00" WEST PER DOCUMENT NO. 1999-457570 OFFICIAL RECORDS) TO THE TRUE POINT OF BEGINNING;
THENCE LEAVING SAID MTDB RIGHT OF WAY SOUTH 65°32'52" WEST, 49.62 FEET;
THENCE SOUTH 64°57'29" WEST, 54.44 FEET;
THENCE SOUTH 69°42'55" WEST, 31.19 FEET;
THENCE SOUTH 72°34'16" WEST, 106.63 FEET;
THENCE SOUTH 31°54'05" WEST, 34.10 FEET;
THENCE SOUTH 39°41'14" EAST, 2.41 FEET;
THENCE SOUTH 12°09'01" EAST, 14.08 FEET TO A POINT ON THE NORTHERLY LINE OF FRIARS ROAD AS SHOWN ON CITY OF SAN DIEGO AS-BUILT DRAWINGS 13352-14-D AND 13352-15-D ON FILE AT THE ENGINEERING MAPS AND RECORDS DEPARTMENT AT SAID CITY, SAID POINT LYING ON THE ARC OF A 2445.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY, A RADIAL TO SAID POINT BEARS SOUTH 11°41'42" EAST;
THENCE ALONG SAID NORTHERLY LINE, WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 04°27'16", A DISTANCE OF 190.09

FEET;

THENCE CONTINUING ALONG SAID NORTHERLY LINE, SOUTH 82°45'34" WEST, 432.14 FEET (SOUTH 82°46'33" WEST PER CITY OF SAN DIEGO DRAWING 13352-14-D) TO THE BEGINNING OF A TANGENT 4945.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY;

THENCE CONTINUING ALONG SAID NORTHERLY LINE, WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 03°28'06", A DISTANCE OF 299.34 FEET;

THENCE CONTINUING ALONG SAID NORTHERLY LINE, SOUTH 86°13'40" WEST, 45.14 FEET (SOUTH 86°14'39" WEST CITY OF SAN DIEGO DRAWING 13352-14-D) TO AN INTERSECTION WITH THE SOUTHEASTERLY LINE OF THE MTDB RIGHT OF WAY DESCRIBED IN DOCUMENT RECORDED JUNE 30, 1999 AS DOCUMENT NO. 1999-457570 OF OFFICIAL RECORDS;

THENCE LEAVING SAID NORTHERLY LINE OF FRIARS ROAD, ALONG SAID MTDB RIGHT OF WAY NORTH 30°45'10" WEST, 6.62 FEET (NORTH 30°44'00" WEST, 6.74 FEET PER DOCUMENT 1999-457570 OFFICIAL RECORDS) TO A POINT ON A NON TANGENT 792.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY, A RADIAL TO SAID POINT BEARS NORTH 30°45'10" WEST (NORTH 30°44'00" WEST PER DOCUMENT NO. 1999-457570 OFFICIAL RECORDS);

THENCE NORTHEASTERLY ALONG SAID MTDB RIGHT OF WAY AND ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 04°45'00", A DISTANCE OF 65.66 FEET;

THENCE SOUTH 26°00'10" EAST, 10.00 FEET (SOUTH 25°59'10" EAST PER DOCUMENT NO. 1999-457570 OFFICIAL RECORDS) TO A POINT ON THE ARC OF A NON TANGENT 782.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY, A RADIAL TO SAID POINT BEARS NORTH 26°00'10" WEST (NORTH 25°59'00" WEST PER DOCUMENT NO. 1999-457570 OFFICIAL RECORDS);

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 03°10'00", A DISTANCE OF 43.22 FEET;

THENCE NORTH 22°50'10" WEST (NORTH 22°49'00" WEST PER DOCUMENT NO. 1999-457570 OFFICIAL RECORDS), 1.85 FEET;

THENCE LEAVING SAID MTDB RIGHT OF WAY NORTH 85°14'30" EAST, 38.72 FEET;

THENCE NORTH 62°42'04" EAST, 18.25 FEET;

THENCE NORTH 84°19'08" EAST, 114.98 FEET;

THENCE NORTH 82°49'08" EAST, 287.31 FEET;

THENCE NORTH 82°31'20" EAST, 118.38 FEET;

THENCE NORTH 83°21'27" EAST, 81.83 FEET;

THENCE NORTH 82°06'19" EAST, 85.75 FEET;

THENCE NORTH 80°18'46" EAST, 98.71 FEET;

THENCE SOUTH 39°41'14" EAST, 18.72 FEET;

THENCE NORTH 31°54'05" EAST, 34.66 FEET;

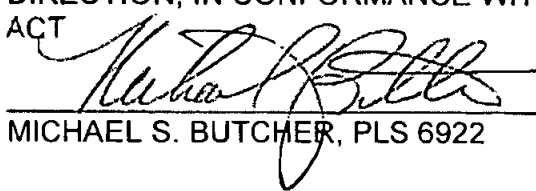
THENCE NORTH 72°34'16" EAST, 111.81 FEET;

THENCE NORTH 69°42'55" EAST, 30.20 FEET;

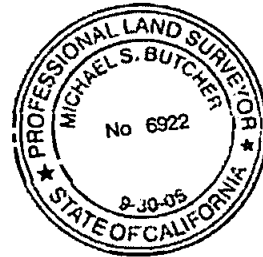
THENCE NORTH 64°57'29" EAST, 53.89 FEET;
THENCE NORTH 65°32'52" EAST, 11.56 FEET TO THE SOUTHERLY LINE OF SAID
MTDB RIGHT OF WAY;
THENCE NORTH 87°00'50" EAST, 40.99 FEET (NORTH 87°02'00" EAST PER
DOCUMENT NO. 1999-457570 OFFICIAL RECORDS) TO THE POINT OF
BEGINNING.

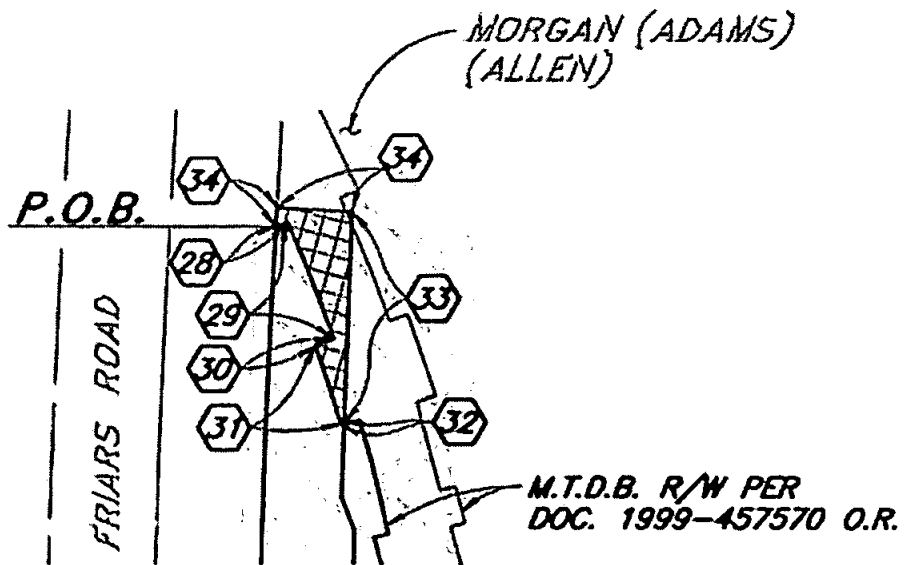
CONTAINING 1.0798 ACRES MORE OR LESS.

THIS PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY
DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS
ACT


MICHAEL S. BUTCHER, PLS 6922

10/21/03
DATE





DATA TABLE

△	BEARING	RADIUS	LENGTH
28	N30°45'10"W	—	6.62'
29	4°45'00"	792.00'	65.66'
30	S26°10'10"E	—	10.00'
31	3°10'00"	782.00'	43.22'
32	N22°50'10"W	—	1.85'
33	S85°14'30"W	—	110.43'
34	S3°52'58"E	—	39.06'
35	N86°13'40"E	—	10.04'

LEGEND



INDICATES OFFSITE PARKING AREA—
M.T.D.B. PROPERTY.

SHEET 1 OF 1 SHEETS

MORENA VISTA MIXED USED SITE
OFF-SITE PARKING ~ M.T.D.B. PROPERTY

S/B
&O

EXHIBIT "B"

DATA TABLE

○	△/BEARING	RADIUS	LENGTH
1	S87°00'50"W	——	91.05'
2	S65°32'52"W	——	49.62'
3	S64°57'29"W	——	54.44'
4	S69°42'55"W	——	31.19'
5	S72°34'16"W	——	106.63'
6	S31°54'05"W	——	34.10'
7	S39°41'14"E	——	2.41'
8	S12°09'01"E	——	14.08'
9	4°27'16"	2445.00'	190.09'
10	S86°13'40"W	——	45.14'
11	N30°45'10"W	——	6.62'
12	4°45'00"	792.00'	65.66'
13	S26°00'10"E	——	10.00'
14	3°10'00"	782.00'	43.22'
15	N22°50'10"W	——	1.85'
16	N85°14'30"E	——	38.72'
17	N62°42'04"E	——	18.25'
18	N83°21'27"E	——	81.83'
19	N82°06'19"E	——	85.75'
20	N80°18'46"E	——	98.71'
21	S39°41'14"E	——	18.72'
22	N31°54'05"E	——	34.66'
23	N72°34'16"E	——	111.81'
24	N69°42'55"E	——	30.20'
25	N64°57'29"E	——	53.89'
26	N65°32'52"E	——	11.56'
27	N87°00'50"E	——	40.99'

SHEET 2 OF 2 SHEETS

MORENA VISTA MIXED USED SITE
OFF-SITE PARKING ~ CITY OF SAN DIEGO PROPERTY

SB
&O

EXHIBIT "B"

LEGAL DESCRIPTION - LOTS 1-4

ALL THAT PORTION OF PARCELS 1 THROUGH 3, INCLUSIVE OF PARCEL MAP NO. 9229, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 10, 1979 AS FILE NO. 79-422984 OF OFFICIAL RECORDS, TOGETHER WITH PORTIONS OF BLOCKS 352, 357, 358 AND 386 AND A PORTION OF CHERRY STREET, WHICH IS VACATED AND CLOSED TO PUBLIC USE, AND THE UNDERLYING FEE OF PORTIONS OF CHERRY STREET AND GAINES STREET, ALL BEING A PART OF OLD SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 12, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 40, AS SHOWN ON EXHIBIT 'A' ATTACHED HERETO AND MADE A PART HEREOF DESCRIBED AS FOLLOWS:

BEGINNING AT THE EASTERLY TERMINUS OF THE 20.00' RADIUS CURVE IN THE NORTHERLY LINE OF PARCEL 1 OF SAID PARCEL MAP NO. 9229, THENCE ALONG THE NORTHEASTERLY LINE OF SAID PARCEL 1, SOUTH 52°13'26" EAST, 4.36 FEET (SOUTH 52°12'51" EAST PER PARCEL MAP 9229) TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE SOUTH 52°13'26" EAST, 114.33 FEET;

THENCE LEAVING SAID NORTHEASTERLY LINE SOUTH 51°29'25" EAST, 118.31 FEET;

THENCE SOUTH 52°49'01" EAST, 108.51 FEET;

THENCE SOUTH 53°24'56" EAST, 11.40 FEET TO THE NORTHWESTERLY PROLONGATION OF THAT CERTAIN STREET DEDICATION RECORDED FEBRUARY 25, 1998 AS FILE NO. 1998-0098254 OF OFFICIAL RECORDS AND THE BEGINNING OF A TANGENT 340.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY,

THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 34°49'04", A DISTANCE OF 206.61 FEET;

THENCE SOUTH 18°35'52" EAST, 156.52 FEET TO THE BEGINNING OF A TANGENT 20.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY,

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'33", A DISTANCE OF 31.42 TO THE

NORTHWESTERLY LINE OF FRIARS ROAD AS DEDICATED PER DEED RECORDED JANUARY 21, 1969 AS FILE NO. 12152 OF OFFICIAL RECORDS,

THENCE ALONG SAID NORTHWESTERLY LINE SOUTH 71°24'41" WEST, 128.01 FEET TO THE CENTERLINE OF CHERRY STREET ACCORDING TO SAID MISCELLANEOUS MAP NO. 40

THENCE ALONG SAID CENTERLINE NORTH 53°24'25" WEST 58.56 FEET TO THE SOUTHERLY LINE OF MTD&B RIGHT OF WAY DESCRIBED IN DOCUMENT RECORDED JUNE 30, 1999 AS FILE NO. 1999-0457570 OF OFFICIAL RECORDS

THENCE ALONG SAID SOUTHERLY LINE SOUTH 87°00'50" WEST (SOUTH 87°02'00" WEST PER DOCUMENT 1999-457570 OF OFFICIAL RECORDS), 16.95 FEET;
 THENCE SOUTH 02°59'10" EAST (SOUTH 02°58'00" EAST PER DOCUMENT 1999-457570 OF OFFICIAL RECORDS), 12.00 FEET;
 THENCE SOUTH 87°00'50" WEST (SOUTH 87°02'00" WEST PER DOCUMENT 1999-457570 OF OFFICIAL RECORDS), 365.10 FEET;
 THENCE NORTH 03°06'10" WEST (NORTH 03°05'00" WEST PER DOCUMENT 1999-457570 OF OFFICIAL RECORDS), 10.00 FEET;
 THENCE SOUTH 86°53'50" WEST (SOUTH 86°55'00" EAST PER DOCUMENT 1999-457570 OF OFFICIAL RECORDS), 107.01 FEET;
 THENCE SOUTH 03°06'10" EAST (SOUTH 03°05'00" EAST PER DOCUMENT 1999-457570 OF OFFICIAL RECORDS), 41.30 FEET;
 THENCE SOUTH 86°53'50" WEST (SOUTH 86°55'00" WEST PER DOCUMENT 1999-457570 OF OFFICIAL RECORDS), 33.50 FEET;
 THENCE NORTH 03°06'10" WEST (NORTH 03°05'00" WEST PER DOCUMENT 1999-457570 OF OFFICIAL RECORDS), 41.30 FEET;
 THENCE SOUTH 86°53'50" WEST (SOUTH 86°55'00" WEST PER DOCUMENT 1999-457570 OF OFFICIAL RECORDS), 16.93 FEET TO THE EASTERLY LINE OF THE SOUTHERLY PROLONGATION OF MORENA BOULEVARD DEDICATED PER CITY OF SAN DIEGO RESOLUTION RECORDED JUNE 24, 1963 AS FILE NO. 109614 OF OFFICIAL RECORDS, AND THE BEGINNING OF A NON-TANGENT 875.00 FOOT RADIUS CURVE, CONCAVE EASTERLY, A RADIAL TO SAID POINT BEARS NORTH 89°15'12" WEST;
 THENCE NORTHERLY ALONG SAID EASTERLY LINE AND THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 11°47'21", A DISTANCE OF 180.04 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT 'A';
 THENCE CONTINUING ALONG SAID 875.00 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 13°00'14", A DISTANCE OF 198.59 FEET TO THE BEGINNING OF A NON TANGENT 477.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY, A RADIAL TO SAID POINT BEARS NORTH 61°54'15" WEST;
 THENCE LEAVING SAID EASTERLY LINE AND NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 08°33'31", A DISTANCE OF 71.25 FEET;
 THENCE NORTH 36°39'16" EAST, 200.46 FEET TO THE BEGINNING OF A TANGENT 20.00 FOOT RADIUS CURVE, CONCAVE SOUTHERLY;
 THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 91°07'17", A DISTANCE OF 31.81 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 6.5575 ACRES MORE OR LESS

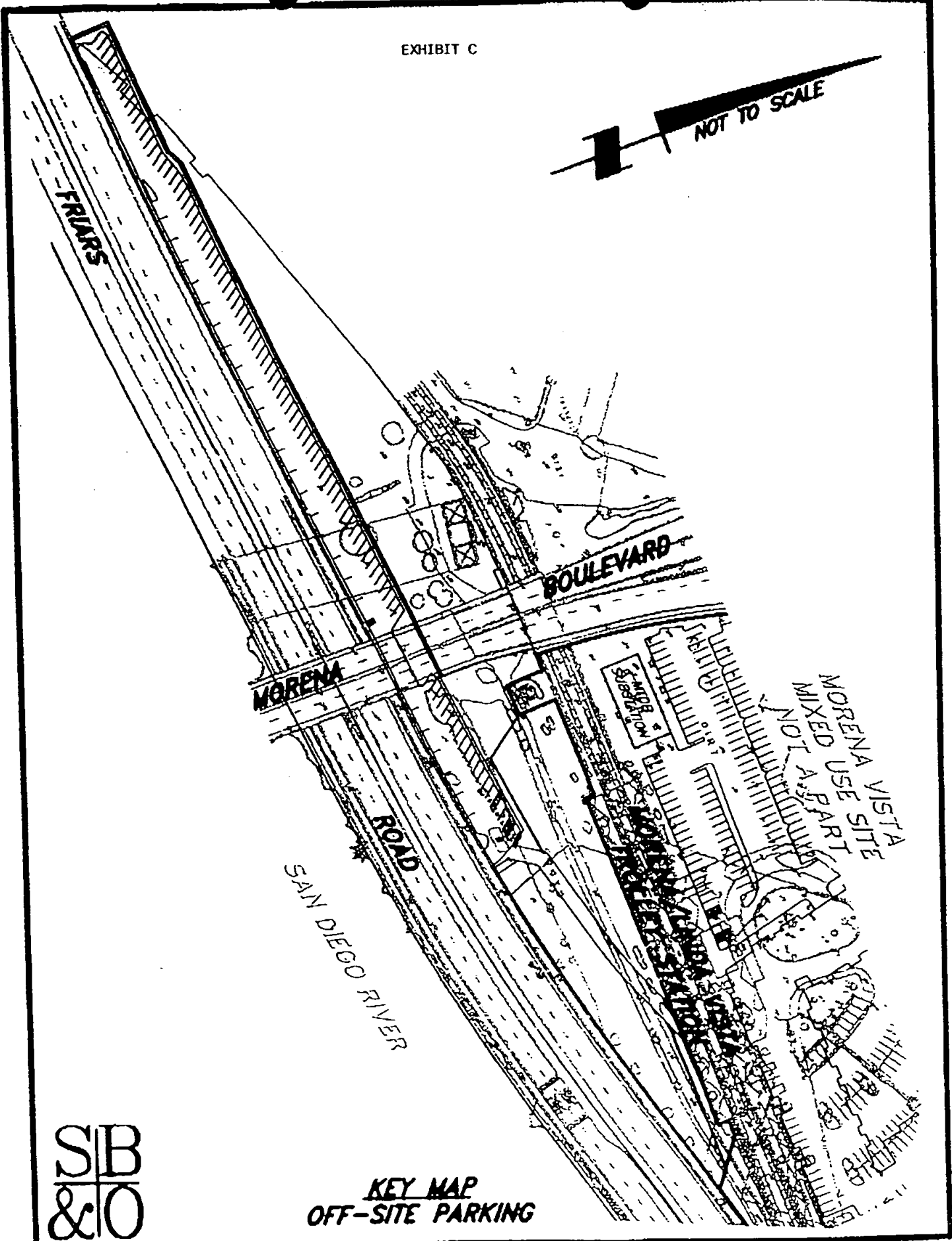
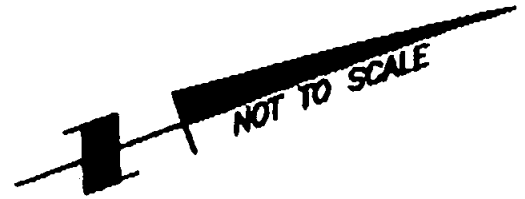
THIS PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME
 OR UNDER MY DIRECTION IN CONFORMANCE WITH THE
 PROFESSIONAL LAND SURVEYORS ACT

MICHAEL S. BUTCHER, PLS 6922

DATE



EXHIBIT C

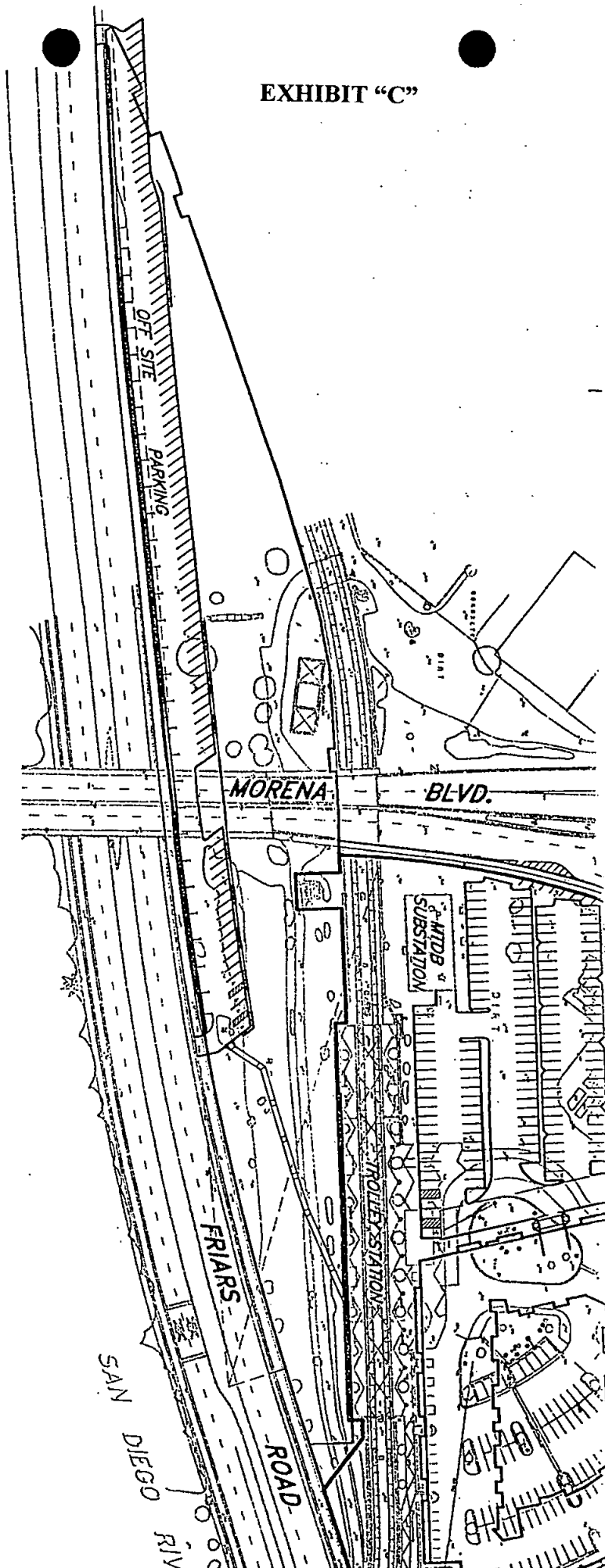


S/B
&O

KEY MAP
OFF-SITE PARKING

EXHIBIT "C"

KEY MAP
SCALE: 1" = 100'



DATA TABLE

○	△/BEARING	RADIUS	LENGTH
1	S87°00'50"W	—	160.04'
2	S65°32'50"W	—	22.30'
3	S64°57'29"W	—	54.44'
4	S69°42'55"W	—	31.19'
5	S72°34'16"W	—	106.63'
6	S31°54'05"W	—	22.42'
7	S12°09'01"E	—	24.66'
8	4°37'07"	2445.00'	197.09'
9	S86°13'20"W	—	45.14'
10	N30°45'10"W	—	6.62'
11	4°45'00"	782.00'	65.66'
12	S26°00'10"E	—	10.00'
13	5°10'00"	782.00'	43.22'
14	N22°50'10"W	—	4.83'
15	N85°14'30"E	—	39.08'
16	N62°42'04"E	—	18.22'
17	N83°21'26"E	—	85.28'
18	N0°11'59"W	—	40.50'
19	S3°06'10"E	—	41.30'
20	N86°53'50"E	—	33.50'
21	N80°18'46"E	—	111.03'
22	N31°54'05"E	—	3.85'
23	N72°34'16"E	—	111.81'
24	N69°42'55"E	—	30.20'
25	N64°57'29"E	—	53.89'
26	N65°32'52"E	—	11.56'
27	N87°00'50"E	—	132.04'
28	N2°59'10"W	—	12.00'
29	N87°00'50"E	—	16.95'
30	S53°24'25"E	—	34.53'

SHEET 2 OF 2 SHEETS

MORENA VISTA MIXED USED SITE
OFF-SITE PARKING ~ CITY OF SAN DIEGO PROPERTY

S/B
&O

MORENA VISTA REVISED OFFSITE LEGAL DESCRIPTIONS #59191.16 3/11/04 MSB

Point	Bearing	Distance	N	Coordinates	E
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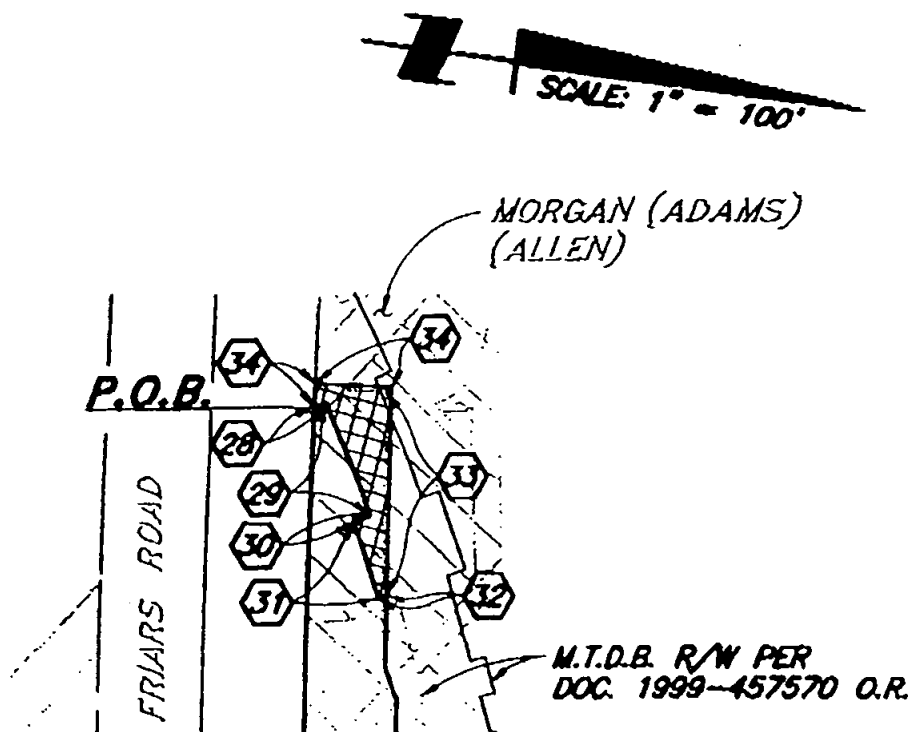
PROPOSED OFFSITE PARKING AREA - CITY OF SAN DIEGO

695			1858894.834	6270823.760	EAST END COURSE 52
	N 02/59/10 W	12.00			
696			1858906.818	6270823.135	
	N 87/00/50 E	16.95			
697			1858907.701	6270840.064	
	S 53/24/25 E	34.53			
920			1858887.117	6270867.787	
	S 87/00/50 W	160.04			
919			1858878.780	6270707.962	
	S 65/32/50 W	22.30			
703			1858869.550	6270687.664	
	S 64/57/29 W	54.44			
702			1858846.508	6270638.345	
	S 69/42/55 W	31.19			
701			1858835.694	6270609.086	
	S 72/34/16 W	106.63			
700			1858803.757	6270507.356	
	S 31/54/05 W	22.42			
923			1858784.720	6270495.506	
	S 12/09/01 E	24.66			
922			1858760.617	6270500.695	
	N 11/51/33 W	2445.00			
607	Arc center		1861153.430	6269998.234	
D=	4/37/07 L=	197.09	C=	197.03	ST= 98.60
	S 07/14/26 E	2445.00			
736			1858727.928	6270306.393	
	S 82/45/34 W	432.14			
735			1858673.463	6269877.700	
	N 07/14/26 W	4945.00			
734	Arc center		1863579.029	6269254.450	
D=	3/28/06 L=	299.34	C=	299.29	ST= 149.72
	S 03/46/20 E	4945.00			
733			1858644.743	6269579.787	
	S 86/13/20 W	45.14			
732			1858641.769	6269534.749	MTDB R/W
	N 30/45/10 W	6.62			
731			1858647.459	6269531.364	
	S 30/45/10 E	792.00			
726	Arc center		1857966.828	6269936.341	
D=	4/45/00 L=	65.66	C=	65.64	ST= 32.85
	N 26/00/10 W	792.00			
730			1858678.656	6269589.117	
	S 26/00/10 E	10.00			
729			1858669.669	6269593.501	
	S 26/00/10 E	782.00			
726	Arc center		1857966.828	6269936.341	
D=	3/10/00 L=	43.22	C=	43.21	ST= 21.62
	N 22/50/10 W	782.00			
728			1858687.534	6269632.350	
	N 22/50/10 W	4.83			
921			1858691.985	6269630.976	

MORENA VISTA REVISED OFFSITE LEGAL DESCRIPTIONS #59191.16 3/11/04 MSB

Point	Bearing	Distance	N	Coordinates	E
921	N 85/14/30 E	39.08			
908	N 62/42/04 E	18.22	1858695.226	6269669.918	
909	N 84/19/08 E	115.49	1858703.584	6269686.112	
910	N 82/49/08 E	287.27	1858715.017	6269801.033	
911	N 82/31/20 E	118.39	1858750.927	6270086.046	
912	N 83/21/26 E	85.28	1858766.334	6270203.428	
913	N 00/11/59 W	40.50	1858776.199	6270288.134	
914	N 05/30/00 E	60.44	1858816.699	6270287.993	
915	N 86/53/50 E	24.56	1858876.865	6270293.786	
689	S 03/06/10 E	41.30	1858878.195	6270318.310	
690	N 86/53/50 E	33.50	1858836.955	6270320.546	
916	S 35/53/50 E	54.71	1858838.768	6270353.997	
917	N 80/18/46 E	111.03	1858794.451	6270386.074	
918	N 31/54/05 E	3.85	1858813.134	6270495.525	
709	N 72/34/16 E	111.81	1858816.404	6270497.560	
708	N 69/42/55 E	30.20	1858849.893	6270604.237	
707	N 64/57/29 E	53.89	1858860.362	6270632.560	
706	N 65/32/52 E	11.56	1858883.173	6270681.385	
705	N 87/00/50 E	132.04	1858887.956	6270691.904	COURSE 52
695			1858894.834	6270823.760	
Closure:					
	S 14/13/15 E	0.009	-0.009	0.002	

Area = 57735.174 Sq Ft 1.3254 Acres



DATA TABLE

△	BEARING	RADIUS	LENGTH
28	N30°45'10"W	—	6.62'
29	4°45'00"	782.00'	65.66'
30	S26°10'10"E	—	10.00'
31	5°10'00"	782.00'	43.22'
32	N22°50'10"W	—	4.83'
33	S85°14'30"W	—	112.30'
34	S52°58"E	—	41.84'
35	N86°13'20"E	—	12.88'

LEGEND

INDICATES OFFSITE PARKING AREA - M.T.D.B. PROPERTY.

SHEET 1 OF 1 SHEETS

MORENA VISTA MIXED USED SITE
OFF-SITE PARKING ~ M.T.D.B. PROPERTY

SB
&O

MORENA VISTA REVISED OFFSITE LEGAL DESCRIPTIONS #59191.16 3/11/04 MSB

Point	Bearing	Distance	N	Coordinates	E
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PROPOSED OFFSITE PARKING AREA - MTDB

732			1858641.769	6269534.749	POB @ MTDB R/W @ FRIARS
	N 30/45/10 W	6.62			
731			1858647.459	6269531.364	
	S 30/45/10 E	792.00			
726	Arc center		1857966.928	6269936.341	
	D= 4/45/00 L=	65.66	C= 65.64	ST= 32.85	
	N 26/00/10 W	792.00			
730			1858678.656	6269589.117	
	S 26/00/10 E	10.00			
729			1858669.669	6269593.501	
	S 26/00/10 E	782.00			
726	Arc center		1857966.928	6269936.341	
	D= 3/10/00 L=	43.22	C= 43.21	ST= 21.62	
	N 22/50/10 W	782.00			
728			1858687.534	6269632.850	
	N 22/50/10 W	4.83			
921			1858691.985	6269630.976	
	S 85/14/30 W	112.30			
907			1858682.669	6269519.067	
	S 03/52/58 E	41.84			
906			1858640.921	6269521.901	FRIARS
	N 86/13/20 E	12.88			
732			1858641.769	6269534.749	POB
	Closure:				
	N 17/31/10 W	0.005	0.005	-0.002	

Area = 2287.420 Sq Ft 0.0525 Acres

EXHIBIT D

LEGAL DESCRIPTION - OFFSITE PARKING

ALL THOSE PORTIONS OF BLOCKS 351, 352, 358 AND 359 AND THE UNDERLYING FEE OF PORTIONS OF PINE STREET, RILEY STREET, FORT STOCKTON DRIVE, CHERRY STREET AND GREENWOOD STREET, ALL BEING A PART OF OLD SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 12, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 40, TOGETHER WITH THE UNDERLYING FEE OF PORTIONS OF MORGAN STREET (FORMERLY ADAMS AND FORMERLY ALLEN) AND CUSTER STREET (FORMERLY MONROE) AND THE UN-NAMED ALLEYS WITHIN BLOCK 1 AND PORTIONS OF BLOCK 1 OF VERNON PARK ACCORDING TO THE MAP THEREOF NO. 569 FILED ON MARCH 12, 1915 IN THE OFFICE OF COUNTY RECORDER IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA AND THE UNDERLYING FEE OF A PORTION OF OLD MORENA BOULEVARD AS SHOWN ON CITY OF SAN DIEGO DRAWING 10991-2-D, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS SHOWN ON EXHIBIT 'D-1' ATTACHED HERETO AND MADE A PART HEREOF DESCRIBED AS FOLLOWS:

BEGINNING AT THE EASTERLY TERMINUS OF COURSE 52 (NORTH 87°02'00" EAST, 365.10 FEET) OF THE MTDB RIGHT OF WAY DESCRIBED IN DOCUMENT RECORDED JUNE 30, 1999 AS DOCUMENT NO. 1999-457570 OF OFFICIAL RECORDS THENCE ALONG SAID MTDB RIGHT OF WAY, NORTH 02°59'10" WEST, 12.00 FEET (NORTH 02°58" WEST PER DOCUMENT 1999-457570 OFFICIAL RECORDS);

THENCE NORTH 87°00'50" EAST, 16.95 FEET (NORTH 87°02'00" EAST PER DOCUMENT 1999-457570 OFFICIAL RECORDS) TO THE CENTERLINE OF CHERRY STREET ACCORDING TO SAID MISCELLANEOUS MAP 40;

THENCE ALONG SAID CENTERLINE SOUTH 53°24'25" EAST, 34.53 FEET;

THENCE LEAVING SAID CENTERLINE SOUTH 87°00'50" WEST, 160.04 FEET;

THENCE SOUTH 65°32'50" WEST, 22.30 FEET;

THENCE SOUTH 64°57'29" WEST, 54.44 FEET;

THENCE SOUTH 69°42'55" WEST, 31.19 FEET;

THENCE SOUTH 72°34'16" WEST, 106.63 FEET;

THENCE SOUTH 31°54'05" WEST, 22.42 FEET,

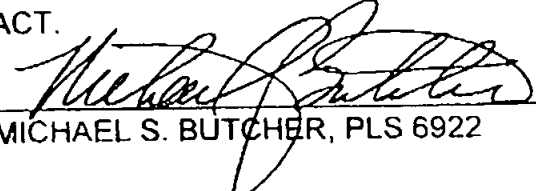
THENCE SOUTH 12°09'01" EAST, 24.66 FEET TO A POINT ON THE NORTHERLY LINE OF FRIARS ROAD AS SHOWN ON CITY OF SAN DIEGO AS-BUILT DRAWINGS 13352-14-D AND 13352-15-D ON FILE AT THE ENGINEERING MAPS AND RECORDS DEPARTMENT AT SAID CITY. SAID POINT LYING ON THE ARC OF A 2445.00 FOOT

RADIUS CURVE, CONCAVE NORTHERLY, A RADIAL TO SAID POINT BEARS SOUTH 11°51'33" EAST;
THENCE ALONG SAID NORTHERLY LINE, WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 04°37'07", A DISTANCE OF 197.09 FEET;
THENCE CONTINUING ALONG SAID NORTHERLY LINE, SOUTH 82°45'34" WEST, 432.14 FEET (SOUTH 82°46'33" WEST PER CITY OF SAN DIEGO DRAWING 13352-14-D) TO THE BEGINNING OF A TANGENT 4945.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY;
THENCE CONTINUING ALONG SAID NORTHERLY LINE, WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 03°28'06", A DISTANCE OF 299.34 FEET;
THENCE CONTINUING ALONG SAID NORTHERLY LINE, SOUTH 86°13'20" WEST, 45.14 FEET (SOUTH 86°14'39" WEST CITY OF SAN DIEGO DRAWING 13352-14-D) TO AN INTERSECTION WITH THE SOUTHEASTERLY LINE OF THE MTDB RIGHT OF WAY DESCRIBED IN DOCUMENT RECORDED JUNE 30, 1999 AS DOCUMENT NO. 1999-457570 OF OFFICIAL RECORDS;
THENCE LEAVING SAID NORTHERLY LINE OF FRIARS ROAD, ALONG SAID MTDB RIGHT OF WAY NORTH 30°45'10" WEST, 6.62 FEET (NORTH 30°44'00" WEST, 6.74 FEET PER DOCUMENT 1999-457570 OFFICIAL RECORDS) TO A POINT ON A NON TANGENT 792.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY, A RADIAL TO SAID POINT BEARS NORTH 30°45'10" WEST (NORTH 30°44'00" WEST PER DOCUMENT NO. 1999-457570 OFFICIAL RECORDS);
THENCE NORTHEASTERLY ALONG SAID MTDB RIGHT OF WAY AND ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 04°45'00", A DISTANCE OF 65.66 FEET;
THENCE SOUTH 26°00'10" EAST, 10.00 FEET (SOUTH 25°59'00" EAST PER DOCUMENT NO. 1999-457570 OFFICIAL RECORDS) TO A POINT ON THE ARC OF A NON TANGENT 782.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY, A RADIAL TO SAID POINT BEARS NORTH 26°00'10" WEST (NORTH 25°59'00" WEST PER DOCUMENT NO. 1999-457570 OFFICIAL RECORDS);
THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 03°10'00", A DISTANCE OF 43.22 FEET;
THENCE NORTH 22°50'10" WEST (NORTH 22°49'00" WEST PER DOCUMENT NO. 1999-457570 OFFICIAL RECORDS), 4.83 FEET;
THENCE LEAVING SAID MTDB RIGHT OF WAY NORTH 85°14'30" EAST, 39.08 FEET;
THENCE NORTH 62°42'04" EAST, 18.22 FEET;
THENCE NORTH 84°19'08" EAST, 115.49 FEET;
THENCE NORTH 82°49'08" EAST, 287.27 FEET;
THENCE NORTH 82°31'20" EAST, 118.39 FEET;
THENCE NORTH 83°21'26" EAST, 85.28 FEET;
THENCE NORTH 00°11'59" WEST, 40.50 FEET;
THENCE NORTH 05°30'00" EAST, 60.44 FEET TO THE SOUTHERLY LINE OF SAID MTDB RIGHT OF WAY;

THENCE ALONG SAID MTDB RIGHT OF WAY NORTH 86°53'50" EAST, 24.56 FEET
(NORTH 86°55'00" EAST PER DOCUMENT 1999-457570 OFFICIAL RECORDS);
THENCE SOUTH 03°06'10" EAST, 41.30 FEET (SOUTH 03°05'00" EAST PER
DOCUMENT 1999-457570 OFFICIAL RECORDS);
THENCE NORTH 86°53'50" EAST, 33.50 FEET (NORTH 86°55'00" EAST PER
DOCUMENT 1999-457570 OFFICIAL RECORDS);
THENCE LEAVING SAID MTDB RIGHT OF WAY SOUTH 35°53'50" EAST, 54.71 FEET;
THENCE NORTH 80°18'46" EAST, 111.03 FEET;
THENCE NORTH 31°54'05" EAST, 3.85 FEET;
THENCE NORTH 72°34'16" EAST, 111.81 FEET;
THENCE NORTH 69°42'55" EAST, 30.20 FEET;
THENCE NORTH 64°57'29" EAST, 53.89 FEET;
THENCE NORTH 65°32'52" EAST, 11.56 FEET TO THE SOUTHERLY LINE OF SAID
MTDB RIGHT OF WAY;
THENCE ALONG SAID MTDB RIGHT OF WAY NORTH 87°00'50" EAST, 132.04 FEET
(NORTH 87°02'00" EAST PER DOCUMENT NO. 1999-457570 OFFICIAL RECORDS)
TO THE POINT OF BEGINNING.

CONTAINING 1.3254 ACRES MORE OR LESS.

THIS PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY
DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS
ACT.


MICHAEL S. BUTCHER, PLS 6922

3/12/04
DATE



LEGAL DESCRIPTION
OFFSITE PARKING (MTDB PARCEL)

ALL THAT PORTION OF THE MTDB RIGHT OF WAY DESCRIBED IN DOCUMENT RECORDED JUNE 30, 1999 AS DOCUMENT NO. 1999-457570 OF OFFICIAL RECORDS IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS SHOWN ON EXHIBIT 'B' ATTACHED HERETO AND MADE A PART HEREOF DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF FRIARS ROAD AS SHOWN ON CITY OF SAN DIEGO AS-BUILT DRAWINGS 13352-14-D AND 13352-15-D ON FILE AT THE ENGINEERING MAPS AND RECORDS DEPARTMENT AT SAID CITY WITH THE SOUTHEASTERLY LINE OF MTDB RIGHT OF WAY DESCRIBED IN DOCUMENT RECORDED JUNE 30, 1999 AS DOCUMENT NO. 1999-457570 OF OFFICIAL RECORDS;

THENCE LEAVING SAID NORTHERLY LINE OF FRIARS ROAD, ALONG SAID MTDB RIGHT OF WAY NORTH 30°45'10" WEST, 6.62 FEET (NORTH 30°44'00" WEST, 6.74 FEET PER DOCUMENT 1999-457570 OFFICIAL RECORDS) TO A POINT ON A NON TANGENT 792.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY, A RADIAL TO SAID POINT BEARS NORTH 30°45'10" WEST (NORTH 30°44'00" WEST PER DOCUMENT NO. 1999-457570 OFFICIAL RECORDS);

THENCE NORTHEASTERLY ALONG SAID MTDB RIGHT OF WAY AND ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 04°45'00", A DISTANCE OF 65.66 FEET;

THENCE SOUTH 26°00'10" EAST, 10.00 FEET (SOUTH 25°59'00" EAST PER DOCUMENT NO. 1999-457570 OFFICIAL RECORDS) TO A POINT ON THE ARC OF A NON TANGENT 782.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY, A RADIAL TO SAID POINT BEARS NORTH 26°00'10" WEST (NORTH 25°59'00" WEST PER DOCUMENT NO. 1999-457570 OFFICIAL RECORDS);

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 03°10'00", A DISTANCE OF 43.22 FEET;

THENCE NORTH 22°50'10" WEST (NORTH 22°49'00" WEST PER DOCUMENT NO. 1999-457570 OFFICIAL RECORDS), 4.83 FEET;

THENCE LEAVING SAID MTDB RIGHT OF WAY SOUTH 85°14'30" WEST, 112.30 FEET;

THENCE SOUTH 03°52'58" EAST, 41.84 FEET TO THE NORTHERLY LINE OF SAID FRIARS ROAD;

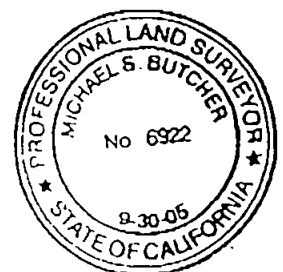
THENCE ALONG SAID NORTHERLY LINE NORTH 86°13'20" EAST, 12.88 FEET (NORTH 86°14'13" EAST PER CITY OF SAN DIEGO DRAWING 13352-14-D) TO THE POINT OF BEGINNING.

CONTAINING 0.0525 ACRES MORE OR LESS

THIS PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME,
 OR UNDER MY DIRECTION IN CONFORMANCE WITH THE
 PROFESSIONAL LAND SURVEYORS ACT

Michael S. Butcher
 MICHAEL S. BUTCHER, PLS 6922

3/11/04
 DATE



Construction, Maintenance, and Joint Parking Agreement

Updated Exhibits as follows:

Exhibit A – This is a map of the project as described in our DDA (no changes but this was not included in the original document).

Exhibit B – This is a legal description of the project as described in our DDA (no changes but this was not included in the original document).

Exhibit C – This is a map of the off-site portion of the project (please see below for a list of minor modifications).

Exhibit D – This is a legal description of the off-site portion of the project (please see below for a list of minor modifications).

The off-site map and legal descriptions were modified as follows:

- The overall boundary was moved slightly north (approximately 3' west of the Morena bridge and approximately 6' east of the Morena bridge) to accommodate landscaping and lighting along the northern perimeter in accordance with MTDB and City lighting requirements. This change was also required to accommodate access to the handicap parking area.
- An area was added just east of the Morena bridge in order to place the irrigation controller out of the floodway (this area will also provide conduit for electricity and potential future uses such as security cameras).
- An area east of the parking area was expanded slightly to accommodate a walkway from the sidewalk along Friars Rd. to the pedestrian ramp.
- An area east of the pedestrian ramp was expanded to accommodate a walkway from the bus stop along the north side of Friars Rd. to the south side of the trolley station (this area will also have lighting and electrical conduit).

REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CERTIFICATE NUMBER: READ54

P258575
298576

TO:

CITY ATTORNEY

2. FROM: (Originating Department)

REAL ESTATE ASSETS DEPARTMENT

3. DATE

October 16, 2003

4. SUBJECT:

Construction, Maintenance and Joint Parking Agreement - Morena /Linda Vista Trolley Station

5. FOR INFORMATION CONTACT: (NAME & MAIL STA.)

WIGGINS / Martens

51A

6. TELEPHONE NO.

66733/66066

7. CHECK HERE IF BOX 1472A, "DOCKET SUPPORTING INFORMATION," HAS BEEN COMPLETED ON PAGE 2:



8.

COMPLETE FOR ACCOUNTING PURPOSES

FUND

DEPT

ORGANIZATION

OBJECT

JOB ORDER

C.L.P. NO.

AMOUNT

9. ADDITIONAL INFORMATION / ESTIMATED COST:

Cost to City: None

Fiscal Impact: None

Job: 223360

cc: Dept. Docket Clerk

Thomas Guide Pages: 1268 F-3

11-3.03

I-207

NOTICE

Noticed

Hearing

10.

ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
X	Department Director	<i>CAC</i>	10/17/03	X	CITY MANAGER HERRING	<i>BA</i>	10-22-03
X	DSD/EAS	<i>[Signature]</i>	10/24/03		AUDITOR		
X	Financial Mgmt.	<i>[Signature]</i>	10/21/03	X	CITY ATTORNEY	<i>[Signature]</i>	10-21-03
X	Redevelopment Agency	<i>[Signature]</i>	10/20/03	X	ORIGINATING DEPARTMENT	<i>[Signature]</i>	10/22/03
	EOCP MEMO 5/3/96				MGR. DOCKET COORD. _____	COUNCIL REP. _____	
					RULES COMMITTEE	☐ CONSENT ☐ Refer to _____	☐ ADOPTION ☐ Date _____

11. PREPARATION OF:



RESOLUTION(S)



ORDINANCES(S)



AGREEMENT(S)



DEED(S)

1. Authorize the City Manager to execute a fifty-five year Construction, Maintenance and Joint Parking Agreement with the Metropolitan Transit Development Board (MTDB) for the development of approximately 120 parking spaces, access pedestrian ramp and landscaping for the park-and-ride patrons of the Morena/Linda Vista Trolley Station, and provide additional public parking for local amenities which include retail, commercial and recreational facilities.

2. Authorize that the City Manager or his designee be, and hereby is, authorized to execute the Construction, Maintenance and Joint Parking Agreement with the Metropolitan Transit Development Board, and to prepare and attach the final legal description for the Agreement prior to execution.

3. Authorize certifying that the information contained in Project No. 6137 has been completed in compliance with the California Environmental Quality Act and State CEQA Guidelines, and that said Mitigated Negative Declaration reflects the independent judgement of the City of San Diego as Lead Agency. Stating for the record that the final Mitigated Negative Declaration has been reviewed and considered prior to approving the project. Adopting the Mitigation, Monitoring and Reporting Program.

11a. MANAGER'S RECOMMENDATION:

Adopt the Resolution.

COUNCIL DISTRICTS: 06

COMMUNITY AREAS: Morena/Linda Vista

ACTION REQUESTED BY: Real Estate Assets Department Director

DOCUMENT SUBMITTED: Construction, Maintenance and Joint Parking Agreement

DESCRIPTIVE LOCATION: North side of Friars Road at Morena Blvd.

ENVIRONMENTAL: The City of San Diego as Lead Agency under CEQA has prepared and completed a Mitigated Negative Declaration, Project No. 6137, dated October 29, 2003, and Mitigation, Monitoring, and Reporting Program covering this activity.

HANDLING: DO NOT RECORD. Return the documents to Real Estate Assets Department, Attention: Dave Martens, M.S. 51A.

DOCKET SUPPORTING INFORMATION

CITY OF SAN DIEGO

DATE

October 16, 2003

SUBJECT

Construction, Maintenance and Joint Parking Agreement - Morena /Linda Vista Trolley Station

BACKGROUND:

The City owns approximately 3.21 acres consisting of seven parcels of property located on the north side of Friars Road from Napa Street on the east to west of Morena Boulevard. The property was purchased for the Mission Bay Project in 1950-51 and is now adjacent to the Morena/Linda Vista Trolley Station. In April 2000 the Metropolitan Transit Development Board (MTDB), in cooperation with the City, negotiated a lease agreement with CityLink Development Corporation for a transit-oriented commercial/residential development to generate revitalization of the surrounding area and to create an additional revenue stream for public transit. As a part of the development MTDB now desires to enter into a 55 year Construction, Maintenance and Joint Parking Agreement for the use of approximately 1.12 acres of the City property for the development of a parking area for approximately 120 vehicles, a pedestrian ramp for access from the parking area to the trolley station platform and area landscaping. The Morena Vista Project implements the goals of the Linda Vista Community Plan and the North Bay Redevelopment Area and will provide additional parking for Park and Ride patrons of the Morena/Linda Vista Trolley Station, and provide additional public parking for local amenities which include retail, commercial and recreational facilities.

TERM: Fifty-five years from the date of execution by the City Manager.

USE: Additional parking at Morena/Linda Vista trolley station.

SIZE: Approximately 1.12 acres.

RENT: In lieu of rent to the City, CityLink Development will install the improvements on the City property and MTDB will maintain, at their sole cost, the improvements on City property.

IMPROVEMENTS: Paving, pedestrian ramp, lighting, irrigation, and landscaping.

FISCAL IMPACT: None

BYLINE: (DEPUTY CITY MGR/DEPT. HEAD/Author Initials)

HERRING:GRIFFITH:dcn

Job: 223360

SIGNATURES:

ORIGINATING DEPT. HEAD

CITY MANAGER:

(FOR MANAGERIAL DEPARTMENTS ONLY)

NOTICE OF DETERMINATION

TO: ☒ 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

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

LDR Number: 6137

State Clearinghouse Number: 2003061131

Project Title: Morena Vista

Project Location: Linda Vista Road and Napa Street intersection, City and County of San Diego, California.

Project Description: PLANNED DEVELOPMENT PERMIT, SITE DEVELOPMENT PERMIT, VARIANCE, PUBLIC USE LEASE/JOINT USE AGREEMENT, TENTATIVE MAP, DEVIATION FROM THE ENVIRONMENTALLY SENSITIVE LANDS (ESL) REGULATIONS, STREET VACATION, STREET DEDICATION AND EASEMENT VACATION (Process 5), for the proposed development of a mixed-use, multi-family residential and commercial/retail center on an approximate 6.5-acre site owned by the Metropolitan Transit Development Board (MTDB). Project construction would include approximately 355,704 square feet of multi-family residential and commercial/retail uses within three multi-story buildings (including underground parking). The residential use would include approximately 184 units in the form of both apartments and lofts located on the upper floors, with commercial/retail uses on the ground floors. The project includes 18 affordable housing units. The approximate division of the site would be 4.70 acres of commercial/retail/residential uses, 1.1 acres for the Morena/Linda Vista trolley station (relocated), and 0.7 acres of onsite MTDB parking. In addition, the project proposes to include an approximate 0.87-acre area (non-contiguous) to be used for overflow trolley parking. The site is zoned CC-3-4 and IL-3-1 and lies within the Linda Vista Community Plan Area, North Bay Redevelopment Project Area, Community Plan Implementation Overlay Zone (Area A), and Campus Parking Impact Area. Applicant: City Link Investment Corporation, 2505 Congress Street, #110, San Diego, CA 92105, Contact: William Jones (619) 220-7094.

This is to advise that the City of San Diego, City Council on _____, 2003 approved the above described project and made the following determinations:

1. The project in its approved form ☐ will, ☒ 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.
☒ 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 ☒ 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.

CALIFORNIA DEPARTMENT OF FISH AND GAME
CERTIFICATE OF FEE EXEMPTION

*De Minimis Impact Finding or
One Fee Per Project Provision*

Project Title/Location (include county): Morena Vista. Project Location: Linda Vista Road and Napa Street intersection, City and County of San Diego, California.

Project No. 6137

SCH NO. 2003061131

Project Applicant: City Link Investment Corporation, 2505 Congress Street, #110, San Diego, CA 92110.
Contact: William Jones (619) 220-7094.

Project Description: PLANNED DEVELOPMENT PERMIT, SITE DEVELOPMENT PERMIT, VARIANCE, PUBLIC USE LEASE/JOINT USE AGREEMENT, TENTATIVE MAP, DEVIATION FROM THE ENVIRONMENTALLY SENSITIVE LANDS (ESL) REGULATIONS, STREET VACATION, STREET DEDICATION AND EASEMENT VACATION (Process 5), for the proposed development of a mixed-use, multi-family residential and commercial/retail center on an approximate 6.5-acre site owned by the Metropolitan Transit Development Board (MTDB). Project construction would include approximately 355,704 square feet of multi-family residential and commercial/retail uses within three multi-story buildings (including underground parking). The residential use would include approximately 184 units in the form of both apartments and lofts located on the upper floors, with commercial/retail uses on the ground floors. The project includes 18 affordable housing units. The approximate division of the site would be 4.70 acres of commercial/retail/residential uses, 1.1 acres for the Morena/Linda Vista trolley station (relocated), and 0.7 acres of onsite MTDB parking. In addition, the project proposes to include an approximate 0.87-acre area (non-contiguous) to be used for overflow trolley parking. The site is zoned CC-3-4 and IL-3-1 and lies within the Linda Vista Community Plan Area, North Bay Redevelopment Project Area, Community Plan Implementation Overlay Zone (Area A), and Campus Parking Impact Area.

Findings of Exemption (attach as necessary):

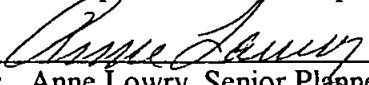
A Mitigated Negative Declaration and Initial Study have been prepared for the project. The report concludes that there is substantial evidence in the record that the project would result in a de minimis impact to wildlife resources as all of the following apply:

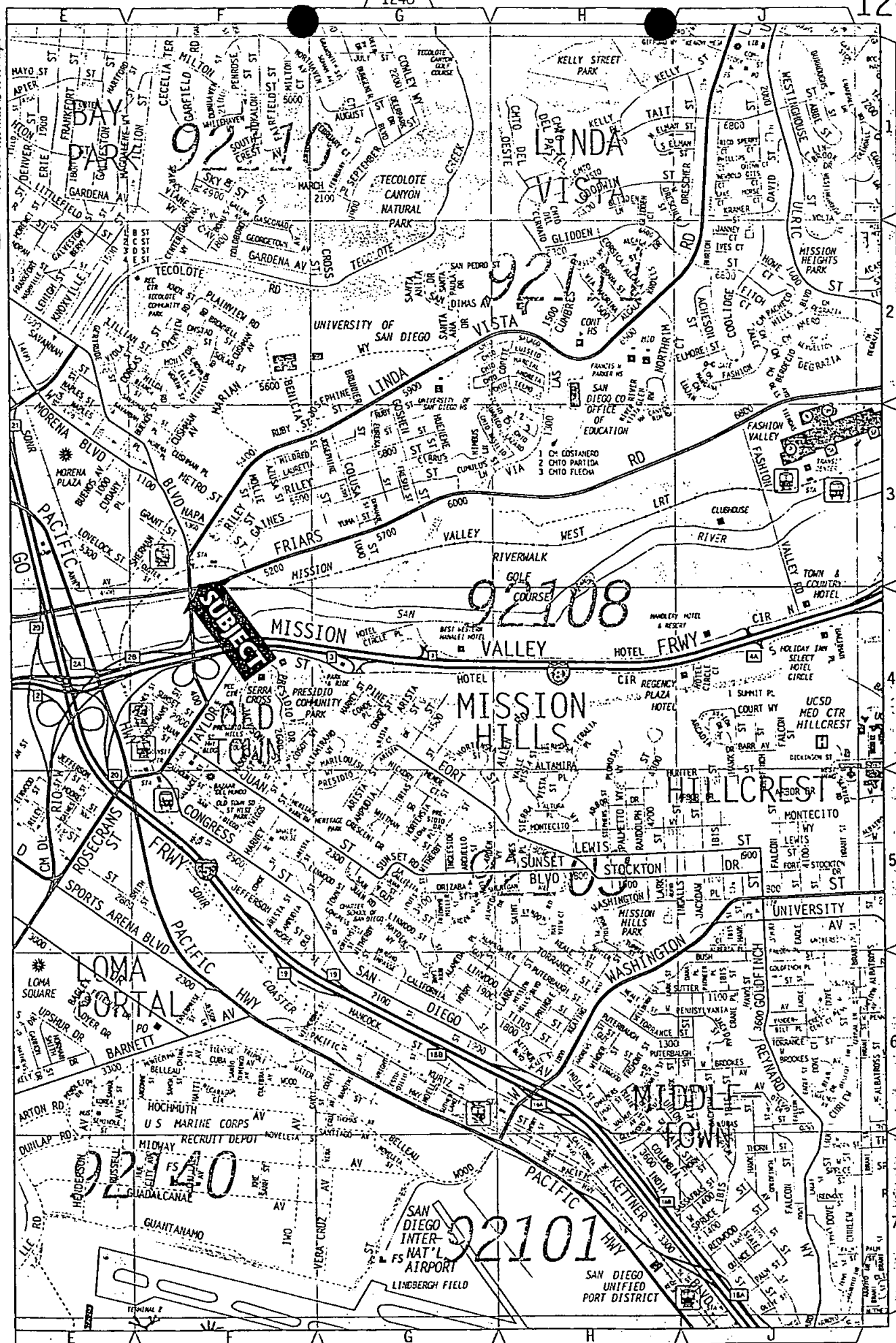
1. No significant biological resources exist on the project site.
2. No biological studies were requested for the project.
3. No mitigation measure are proposed to address impacts to biological resources on-site.
4. No conditions in any discretionary actions associated with the project address biological resource issues.

Certification:

I hereby certify that the lead agency has made the above findings of fact and that based upon the initial study and hearing record, the project involves no potential for adverse effect, either individually or cumulatively on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.

Tina Christiansen, Director
Development Services Department

By: 
Title: Anne Lowry, Senior Planner
Lead Agency: City of San Diego
Date: _____



RESOLUTION NUMBER R- 298575

ADOPTED ON NOV 03 2003

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE EXECUTION OF THE CONSTRUCTION, MAINTENANCE AND JOINT PARKING AGREEMENT BETWEEN THE METROPOLITAN TRANSIT DEVELOPMENT BOARD AND THE CITY OF SAN DIEGO

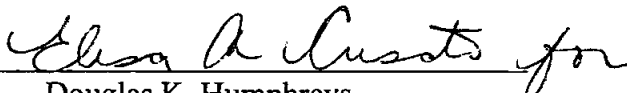
WHEREAS, the Metropolitan Development Transit Board [MTDB] has entered into a Disposition and Development Agreement [DDA] for the redevelopment of certain real property including construction of a transit-oriented mixed use development with certain improvements specified in the DDA; and

WHEREAS, the Project would reduce the number of parking spaces available on the Site for trolley patrons of the Morena Linda Vista Station, and advance the City objectives of promoting, encouraging the use of public transportation and convenient park and rides. MTDB and City desire to secure additional parking off-site; and

WHEREAS, MTDB, in consideration for using parking upon the Shared Parking Site to satisfy its parking requirements, proposes to undertake or cause improvements on the Shared Parking Site, including, without limitation, the construction of approximately 120 parking spaces which shall be available to park-and-ride patrons of the Morena/Linda Vista Trolley Station, as well as to the general public; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego that the City Manager or designee is authorized to execute the Construction, Maintenance and Joint Parking Agreement with the Metropolitan Transit Development Board, and to prepare and attach the final legal description for the Agreement prior to execution.

APPROVED: CASEY GWINN, City Attorney

By: 
Douglas K. Humphreys
Deputy City Attorney

DKH:ai
10/21/03
Or.Dept:CED
Aud.Cert:n/a
R-2004-468
Redev:n/a
Form=r&t-comp.frm

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

ITEM-207: Two actions related to Construction, Maintenance and Joint Parking Agreement – Morena/Linda Vista Trolley Station.

(Morena/Linda Vista Community Areas. District-6.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolutions:

Subitem-A: (R-2004-468)

Authorizing the execution of the Construction, Maintenance and Joint Parking Agreement between the Metropolitan Transit Development Board and the City of San Diego.

Subitem-B: (R-2004-471)

Certifying that the information contained in Mitigated Negative Declaration LDR-6137 has been completed in compliance with the California Environmental Quality Act of 1970, as amended, and State guidelines, 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 Council in connection with the approval of the Construction, Maintenance and Joint Parking Agreement – Morena/Linda Vista Trolley Station;

Adopting the Mitigation Monitoring and Reporting Program.

CITY MANAGER SUPPORTING INFORMATION:

The City owns approximately 3.21 acres consisting of seven parcels of property located on the north side of Friars Road from Napa Street on the east to west of Morena Boulevard. The property was purchased for the Mission Bay Project in 1950-51 and is now adjacent to the Morena/Linda Vista Trolley Station. In April 2000 the Metropolitan Transit Development Board (MTDB), in cooperation with the City, negotiated a lease agreement with CityLink Development Corporation for a transit-oriented commercial/residential development to generate revitalization of the surrounding area and to create an additional revenue stream for public transit.

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

ITEM-207:

CITY MANAGER SUPPORTING INFORMATION: (Continued)

As a part of the development MTDB now desires to enter into a 55 year Construction, Maintenance and Joint Parking Agreement for the use of approximately 1.12 acres of the City property for the development of a parking area for approximately 120 vehicles, a pedestrian ramp for access from the parking area to the trolley station platform and area landscaping. The Morena Vista Project implements the goals of the Linda Vista Community Plan and the North Bay Redevelopment Area and will provide additional parking for local amenities which include retail, commercial and recreation facilities.

TERM: Fifty-five years from the date of execution by the City Manager.

USE: Additional parking at Morena/Linda Vista trolley station.

SIZE: Approximately 1.12 acres.

RENT: In lieu of rent to the City, CityLink Development will install the improvements on the City property and MTDB will maintain, at their sole cost, the improvements on City property.

IMPROVEMENTS: Paving, pedestrian ramp, lighting, irrigation, and landscaping.

FISCAL IMPACT:

None.

Herring/Griffith/DCM

NOTE: See Item 206 on today's docket for a companion item.

MOTION BY PETERS TO ADOPT THE RESOLUTIONS IN SUBITEMS A, C, E, AND F; ADOPT THE RESOLUTION IN SUBITEM B TO GRANT THE PERMIT WITH THE MODIFICATION TO CONDITION 20 THAT WAS INDICATED IN THE MEMORANDUM; AND INTRODUCE THE ORDINANCE IN SUBITEM D. Second by Maienschein. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-S502: Morena Vista Mixed Use.

Matter of approving, conditionally approving, modifying or denying an application for a Tentative Map, Street Vacation, Street Dedication, Easement Vacation, Planned Development Permit, Site Development Permit, and Variance to the Inclusionary Housing Ordinance to allow development of 184 residential condominium apartment units, including 16 affordable units, and approximately 20,416 square feet of retail space in the Linda Vista Community Plan area. The 6.50 acre project site is located south of the intersection of Linda Vista Road and Napa Street, immediately north of Friars Road. The project site is in the following zones: CC-3-4; the North Bay Redevelopment area; Community Plan Implementation Overlay (Area A); and the Campus Parking Impact area. The project proposes to construct two (2) three-story mixed use retail/residential buildings and one (1) four-story apartment building over below grade parking. The Site Development Permit is requested to allow deviations in height and sidewalk width from the requirements of the Community Plan Implementation Overlay Zone (CPIOZ). The CPIOZ allows a maximum height of 45 feet with issuance of a discretionary permit, plus an additional 5 feet for architectural projections. The maximum height of the proposed apartment building is 57'- 10" (including architectural projections), and the maximum height of the proposed attached clock tower is 71'-5". The minimum sidewalk width required by CPIOZ is 7', and the project provides minimum 5' width. The project also includes off-site parking along Friars Road to be used for overflow trolley parking. The street segments proposed to be vacated with this project are all paper streets and have not been constructed nor used as streets (segments of : Cherry St., Gaines St., Riley St., Pine St., Fort Stockton St., Custer St., Greenwood St., unnamed alley, and Adams Street).

A Variance from the requirements of the Inclusionary Housing Ordinance is requested with this project to allow the provision of 16 affordable housing units at rates affordable to households earning no more than 80% of the area median income (AMI), where 18.4 affordable housing units at 65% AMI would be required by the Inclusionary Housing Ordinance.

(Linda Vista Community Plan area. District-6, Tentative Map No. 10197, Street Vacation No. 10207, Street Dedication No. 10206, Planned Development Permit No. 10198, Site Development Permit No. 25464, and Variance No. 29754).

CITY MANAGER'S RECOMMENDATION:

Adopt the resolutions in subitems: A, B, and C:

Subitem-A: (R-2004-270) CONTINUED TO MONDAY, NOVEMBER 3, 2003

Adoption of a Resolution granting Tentative Map No. 10197; that pursuant to California Government Code section 66434(g), portions of Riley Street, Cherry Street, and Gaines Street, located within the project boundaries as shown in Vesting Tentative Map No. 10197, shall be vacated, contingent upon the recordation of the approved final map for the project;

That pursuant to California Government Code section 66434(g), a portion of the water easement granted to the City of San Diego per document recorded October 10, 1963, as file No. 181658, a portion of the sewer, water, drainage, and public utility easement granted to the City of San Diego per document recorded March 4, 1964, as file No. 41221, a portion of the water main easement granted to the City of San Diego per document recorded July 8, 1970, as file No. 119526, a portion of the sewer easement granted to the City of San Diego per document recorded July 13, 1979, as file No. 79-245239, a portion of the sewer easement granted to the City of San Diego per document recorded September 23, 1997, as file No. 1997-046754, located within the project boundaries as shown in Vesting Tentative Map No. 7248, shall be vacated, contingent upon the recordation of the approved final map for the project;

That the recommendation of the Planning Commission is sustained, and Tentative Map No. 10197 is granted to City Link Investment Corporation, Applicant, and SB&O, Inc., Engineer, subject to the conditions attached hereto and made a part thereof.

DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

THE METROPOLITAN TRANSIT DEVELOPMENT BOARD,

"Board"

and

CITYLINK INVESTMENT CORPORATION,

"Developer"

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DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT ("**Agreement**"), dated for reference purposes only April 6, 2000, is entered into by and between **THE METROPOLITAN TRANSIT DEVELOPMENT BOARD**, a California public agency (the "**Board**"), and **CITYLINK INVESTMENT CORPORATION**, a California corporation ("**Developer**"). The Board and the Developer covenant and agree as follows:

I. [§ 100] SUBJECT OF AGREEMENT.

A. [§ 101] Purpose of the Agreement.

The Board and the Developer entered into an Exclusive Negotiation Agreement dated June 12, 1998 (the "**ENA**") regarding the possible lease of the "**Site**" (as defined in **Section 102** below) to the Developer for the development of the "**Project**" (as defined in **Section 103** below). Pursuant to the ENA, the parties have negotiated this Agreement.

The purpose of this Agreement is to provide for the terms and conditions for the lease of the Site to the Developer for the development of the Project by the Developer. The lease and development of the Site pursuant to this Agreement, and the fulfillment generally of this Agreement, are in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements.

B. [§ 102] The Site.

The "**Site**" is that certain real property consisting of approximately 5.3 acres in the Linda Vista area of the City of San Diego, California, generally described as the area bounded by Napa Street on the north and east, Morena Boulevard and Linda Vista Road on the north and west, and the Board's Morena/Linda Vista Trolley Station (the "**Morena Station**") and trolley right-of-way on the south, as illustrated and designated on the "**Site Map**" which is attached to this Agreement as **Attachment No. 1** and incorporated herein and as more precisely described in the legal description of the Site which is attached hereto as **Attachment No. 2** and incorporated herein.

C. [§ 103] The Project.

The "**Project**" shall consist of the design, development and construction by Developer, at its sole cost and expense, of a transit-oriented, moderate density, mixed-use project on the Site consisting of:

1. A residential component or components consisting of approximately one hundred twenty five (125) to one hundred forty (140) "for-rent" apartment units (the "**Residential Area**");

2. A commercial/mixed-use component or components consisting of ground-level retail space of approximately 25,000 gross square feet and approximately ten (10) to twenty (20) residential rental "loft" units (the "**Mixed Use Area**");

3. Parking facilities consisting of approximately five hundred (500) parking spaces on- and off-site, of which (a) approximately two hundred twenty two (222) parking spaces shall be provided in structured parking on site for the Residential Area, (b) approximately eighty seven (87) parking spaces shall be provided as surface parking on site for retail commercial customers of the Mixed Use Area, (c) a minimum of seventy three (73) parking spaces shall be provided on site for the exclusive use of trolley park-and-ride patrons of the Morena Station during trolley hours, (d) a minimum of nine (9) parking spaces shall be provided on site for the shared use of trolley park-and-ride patrons of the Morena Station and the Residents and guests of the Residential Area, and (e) approximately one hundred twenty (120) parking spaces shall be provided off site along Friars Road (on property under lease from the City of San Diego) for the exclusive use of trolley park-and-ride patrons of the Morena Station during trolley hours (collectively, the "**Parking Facilities**");

4. New bus stops on Friars Road to replace bus stops relocated from Riley Street.

5. All demolition, site preparation, and all other on-site and off-site improvements for the Project which are incidental to the Residential Area, Mixed Use Area, and Parking Facilities;

all as more particularly described in the "**Scope of Development**" which is attached to this Agreement as **Attachment No. 4** and incorporated herein. A "**Conceptual Site Plan**" for the Project is attached as **Exhibit A** to the Scope of Development.

D. [§ 104] **Parties to the Agreement.**

1. [§ 105] **The Board.**

The "**Board**" is a California public agency organized and existing under the laws of the State of California. The principal office of the Board is located at 1255 Imperial Avenue, Suite 1000, San Diego, California 92101-7490.

"Board" as used in this Agreement includes the Board and any assignee of or successor to its rights, powers and responsibilities.

2. [§ 106] **The Developer.**

The "**Developer**" is CITYLINK INVESTMENT CORPORATION, a California corporation, whose President and CEO is William D. Jones ("**Jones**"). The principal office of the Developer is 2505 Congress Street, Suite 110, San Diego, California 92110.

Wherever the term "Developer" is used herein, such term shall include any permitted assignee or successor in interest (including an entity approved by the Board formed by Developer for the purpose of obtaining equity financing as described in Subsection 5. of **Section 107** below) as herein provided.

E. **[§ 107] Prohibition Against Change in Ownership and Control of Developer.**

1. The Developer represents and agrees that its lease of the Site, and its other undertakings pursuant to this Agreement, are and shall be used for the purpose of timely redevelopment of the Site and not for speculation in landholding. The Developer further recognizes that, in view of:

 (a) The importance of the redevelopment of the Site to the general welfare of the community; and

 (b) The fact that a change in ownership or control of the Developer, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or with respect to the identity of the parties in control of the Developer or the degree thereof, is for practical purposes a transfer or disposition of the Site; and

 (c) The fact that the Site is not to be leased (except in connection with the rental of the Residential Area and the Mixed Use Area) or used for speculation, but only used for development and operation by the Developer in accordance with this Agreement; and

 (d) The importance to the Board and the community of the standards for the development and the use, operation and maintenance of the Site and the subsequent rental of the Residential Area and the Mixed Use Area;

that the qualifications and identity of the Developer are of particular concern to the community and the Board. The Developer further recognizes that it is because of such qualifications and identity that the Board is entering into this Agreement with the Developer. No voluntary or involuntary successor-in-interest of the Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein.

2. In light of the foregoing, and except as otherwise provided in this **Section 108** and **Section 324** of the Agreement, the Developer, without the prior written approval of the Board, which approval may be given or withheld in the Board's sole discretion, shall not (i) assign or delegate all or any part of its rights and obligations under this Agreement; or (ii) effect any transaction which would result in any person other than Jones (a) owning fifty percent (50%) or more of the voting stock of CityLink Investment Corporation, or (b) otherwise being in control of said corporation.

3. This Agreement may be terminated by the Board pursuant to **Section 510** if there is any voluntary or involuntary assignment or transfer described in Subsection 1(b) above (of this **Section 107**) prior to the Close of Escrow where the Board's approval is required but has not been obtained.

4. The Developer shall promptly notify the Board of any and all changes whatsoever in the identity or degree of ownership of Developer and its members, partners or shareholders, of which it or any of its members, partners or shareholders have been notified or otherwise have knowledge or information.

5. The Board acknowledges that the Developer may desire to obtain equity participation to assist in financing its activities under this Agreement. The Board hereby agrees to approve the inclusion of such equity participation by the Developer, whether by investment in the Developer entity, assignment of this Agreement to a new entity of which the equity participant is a part, or similar mechanism, provided that the Board determines that: (a) CityLink Investment Corporation, or an affiliate entity, remains the managing general partner or managing member of the Developer, with sufficient control for CityLink Investment Corporation, or such affiliate entity, as evidenced in the entity's governing documents, to assure that the design and construction of all elements of the Project will be completed in the manner and to the quality contemplated by this Agreement; (b) the new entity is at least comparable in all material respects (including experience, character and financial capability) to the Developer before the change; (c) the ownership structure of the new entity (including that of its constituent members, partners or shareholders) is not so complex or otherwise structured in a way as to make the provisions of the Ground Lease entitled "Additional Rent Payable on Transfer of Interests" unreasonably difficult or burdensome to administer or enforce, and (d) the change is otherwise consistent with this Agreement. Developer shall provide the Board such information about the entity as the Board may reasonably request in order to make such determination. The documents implementing any such change shall be satisfactory and subject to the prior written approval of the Board. If the Project is developed pursuant to two leases as described in **Section 201**, then the Developer may form two entities (one for each lease) each of which satisfy the criteria of this paragraph. After the assignment of the Developer's rights to an entity approved by the Board, a transfer of interests in or management of CityLink Investment Corporation and/or such entity which results from the death or incapacity of Jones shall not be deemed an assignment in violation of this Agreement, provided that such entity demonstrates to the Board that it is managed by a person with qualifications and experience at least reasonably comparable to those of Jones.

6. Absent an express signed written agreement between the parties to the contrary, no assignment of any of the rights or obligations of Developer under this Agreement shall result in a novation or in any other way release Developer from its obligations under this Agreement. No consent by the Board to any assignment by Developer shall constitute a consent to any other assignment or commit the Board to provide its consent to any future assignment.

F. [§ 108] Schedule of Performance.

Developer shall design, develop and construct the Project strictly in accordance with the "Schedule of Performance" attached hereto as Attachment No. 3 and incorporated herein.

II. [§ 200] SITE DISPOSITION.

A. [§ 201] Lease of Site.

1. The Board agrees to lease the Site to the Developer, and the Developer agrees to lease the Site from the Board, for development of the Project in accordance with and subject to all the terms, covenants and conditions of this Agreement and subject to the terms, covenants and conditions of the "Ground Lease" attached hereto as Attachment No. 5 and incorporated herein by this reference. The "Fundamental Business Terms" of the Ground Lease are attached hereto as Attachment No. 6 and incorporated herein by this reference.

2. The Commencement Date of the Ground Lease shall be the date that escrow closes and the Memorandum of Lease for the Ground Lease ("**Memorandum of Lease**") is recorded ("**Close of Escrow**"), and the parties shall insert that date, or authorize the Escrow Holder to insert that date, into the Ground Lease. The date scheduled for Close of Escrow (the "**Closing Date**") shall be a date mutually agreed by the parties, but shall not in any event be later than July 15, 2001.

3. If the Developer should so request, the Board will reasonably consider entering into not more than two (2) separate ground leases with the Developer, one primarily for the development of the Residential Area and one primarily for the development of the Mixed Use Area. The Developer shall request that the Board enter into two (2) separate ground leases as soon as is reasonably possible, but in any event not later than ninety (90) days before the Closing Date. The Board will not unreasonably withhold its consent to such a request, provided that: (1) this Agreement, the form of Ground Lease, and other related documents are modified to accommodate such a change in a manner acceptable to the Board; (2) any new agreements required by the new arrangement (*e.g.*, a reciprocal easement agreement) are entered into in form and substance acceptable to the Board; (3) the Board does not thereby incur any significant additional costs or liabilities or relinquish any significant rights (except as contemplated by this Agreement and the form of Ground Lease), and (4) the Board is otherwise provided assurances satisfactory to the Board that the Board's objectives under this Agreement will be fulfilled. Certain portions of this Agreement -- such as the form of Ground Lease and the Fundamental Business Terms -- are drafted in a manner which assumes for purpose of illustration that two separate leases will be executed; however, neither party shall be bound to utilize two leases unless (a) the Developer so requests, and (b) the Board consents to the request, as described above in this Section 201. Other portions of this Agreement which assume that a single lease will be executed may need to be modified if the Developer requests two leases and the Board consents to the request.

4. If the Developer requests two leases and the Board consents to the request, the parties shall promptly work together to finalize the lease forms and make the other adjustments, as described above, necessary to accommodate two leases of the Site. Developer shall prepare and propose a form of reciprocal easement agreement ("REA") which will provide, among other things, for the

joint use and maintenance of entries and exits, parking areas, and other facilities. Board agrees that it will not unreasonably withhold its consent to such REA and Board further agrees that, in the event that one Ground Lease expires or is terminated and the other Ground Lease is still in effect, the REA shall nevertheless remain in effect and that Board shall assume and perform the obligations under the REA of the lessee whose Ground Lease expired or was terminated which accrue after the termination of the Ground Lease (but Board shall have no liability for any obligations or defaults of Lessee which accrue or occur (a) before the termination of the Ground Lease or (b) after the Board enters into a new ground lease of such portion of the Site, provided the new lessee assumes the obligations under the REA of the lessee whose Ground Lease expired or was terminated). The parties shall use reasonable efforts to finalize the lease forms and make the other adjustments described above at least thirty (30) days before the Closing Date.

5. The Board shall convey to the Developer and the Developer shall accept the leasehold interest in the Site in the condition provided in **Section 202** hereof.

B. [§ 202] Condition of the Site.

1. Condition of Title. Leasehold title to the Site shall be subject only to the "**Permitted Title Exceptions**" as defined in the exhibit entitled "**Condition of Title**", attached hereto as **Attachment No. 7** and incorporated herein by this reference.

2. Physical Condition. Except as provided in **Section 402** below, the Site and all improvements thereon shall be conveyed in an "as is" condition, with no warranty, express or implied by the Board as to the condition of the soil (or water), its geology, or the presence of known or unknown faults or as to the condition of the improvements. It shall be the sole responsibility of the Developer, at the Developer's expense, to investigate and determine the soil (and water) condition of the Site (including improvements) and the suitability of the Site (including improvements) for the development to be constructed by the Developer. If the soil (or water) condition of the Site (including improvements), or any part thereof, is not in all respects entirely suitable for the use or uses to which the Site and improvements will be put, then except as provided in **Section 402** below it is the sole responsibility and obligation of the Developer to take such action as may be necessary to place the Site and the soil (and water) condition thereof (including improvements) in all respects in a condition entirely suitable for the development of the Site.

C. [§ 203] Delivery of Completed Documents.

Prior to the Closing Date, the Board and the Developer shall complete, execute, acknowledge (if required for recordation) and deliver into escrow the following documents:

1. The Ground Lease (in the form attached hereto as **Attachment No. 5**);
2. The Memorandum of Lease (in the form attached to the Ground Lease as Exhibit C);

3. All documents required for construction financing and permanent financing of the Project by Developer and approved by Board pursuant to **Section 213** below ("**Developer Construction Loan**");

4. The Assignment of Construction Contract (as such term is defined in **Section 213** below);

5. The Parking Agreement (as such term is defined in **Section 214** below);

6. The REA (as such term is defined in **Section 201** above) (if applicable); and

7. Any other documents necessary for the disposition of the Site as contemplated in this Agreement.

D. [§ 204] Closing.

Close of Escrow (also referred to herein as "**Closing**") shall be deemed to have occurred upon recording of the Memorandum of Lease. At Closing, the leasehold interest in the Site shall be conveyed and possession of the Site shall be delivered to the Developer, and the Ground Lease shall commence.

E. [§ 205] Conditions to Closing.

Close of Escrow is subject to the following conditions:

1. **Developer Certification.** Prior to the Closing Date, the Developer shall certify in writing to the Board that:

(a) the Developer is ready, willing and able, in accordance with the terms and conditions of this Agreement, to perform in accordance with the Scope of Development;

(b) all conditions precedent to Closing of which the Developer is aware (including the delivery into escrow of documents referred to in **Section 203** hereof, the delivery to the Board of the documents and certifications referred to in **Section 213** hereof, and the performance of any other obligations of Developer as set forth in the Schedule of Performance which are scheduled to be performed before the Closing Date) have been fulfilled;

(c) that to the best of the Developer's knowledge, (i) the Developer and its respective partners are not in violation of any order or decree of any court of competent jurisdiction or, any governmental agency having jurisdiction, which if determined adversely to the interest of Developer or its respective partners, could materially adversely affect the Developer's ability to construct, develop, operate and maintain the Project as set forth in this Agreement and the Ground Lease, and (ii) there are no pending or threatened judicial or administrative proceedings, which, if determined adversely to the interests of the Developer or its respective partners, could materially

adversely affect the Developer's ability to construct, develop, operate and maintain the Project as set forth in this Agreement and the Ground Lease.

The Developer's certification shall include, if requested by the Board not later than ten (10) days after the delivery thereof, evidence reasonably satisfactory to the Board that all contracts, commitments and bonds required by this Agreement are in full force and effect as of the time of such certification, or will be in full force and effect concurrent with the Closing;

2. **Deliveries**. All funds and documents described in Sections 203, 206 and 207 have been delivered to Escrow Holder;

3. **The Leasehold Title Policy**. Escrow Holder can procure the Leasehold Title Policy insuring title in conformity with Section 208 of this Agreement;

4. Prior to the Closing Date, the Board shall determine that all conditions precedent to the Closing have been satisfied and performed, including:

(a) Developer has obtained the Required Land Use Approvals referred to in Section 211;

(b) Developer has obtained the Off-Site Parking Lease referred to in Section 212;

(c) Developer has delivered to the Board all of the documents and certifications referred to in Section 213 hereof;

(d) Developer has performed any other obligations of Developer as set forth in this Agreement, including without limitation the Schedule of Performance or the Scope of Development, which are scheduled to be performed before the Closing Date; and

(e) All submissions approvals described Schedule of Performance which are scheduled to be made or obtained before the Closing Date have been made or obtained.

5. Developer has obtained a commitment from an insurance company authorized to issue insurance in California to issue at Closing for a commercially reasonable premium a policy of pollution legal liability insurance insuring Developer, Developer's lender and Board against third-party claims for bodily injury or property damage, including, but not limited to, claims by such third-parties to the effect that Developer's excavation, construction, dewatering or other activities have exacerbated hazardous substance conditions on adjoining or nearby properties. The aggregate limit of such policy shall be at least \$5,000,000 which coverage shall be provided for a term of not less than five (5) years.

6. The Developer is not in material default under this Agreement; and

7. The Board is not in material default under this Agreement.

Waiver of Conditions Precedent. The conditions precedent described in Subsections 3 and 7 of this **Section 205** are for the sole benefit of Developer, and Developer unilaterally may waive such condition. The conditions precedent described in Subsections 1, 4 and 6 of this **Section 205** are for the sole benefit of the Board, and the Board unilaterally may waive any or all of such conditions. Except as otherwise expressly provided in this Agreement, any other closing conditions described in this Agreement may be waived only by written notice from both Developer and the Board to Escrow Holder and each other.

F. **[§ 206] Escrow and Escrow Instructions.**

1. The Board agrees to open an escrow for the purposes of this Agreement with Chicago Title Insurance Company or such other escrow company or escrow department of a title insurance company as may be acceptable to both the Board and the Developer (the "**Escrow Holder**"). This Agreement, together with escrow instructions and any supplemental escrow instructions mutually acceptable to the parties entered into by the parties consistent herewith (the "**Escrow Instructions**"), shall constitute the joint escrow instructions of the Board and the Developer with respect to the conveyance of the leasehold interest in the Site, and a duplicate original of all such documents shall be delivered to the Escrow Holder upon the opening of escrow.

2. The Board and the Developer shall provide such additional escrow instructions as shall be necessary and consistent with this Agreement. The Escrow Holder hereby is empowered to act under this Agreement and, upon indicating its acceptance of the provisions of this Section in writing, delivered to the Board and to the Developer within five (5) days after the opening of the escrow, shall carry out its duties as Escrow Holder hereunder.

3. The Board shall not pay any fees, charges or costs in connection with the Closing; Developer shall pay all such expenses.

4. The Developer shall pay into escrow to the Escrow Holder the following fees, charges and costs promptly after the Escrow Holder has notified the Board of the amount of such fees, charges and costs prior to the Closing Date:

- (a) All: (i) escrow fees, (ii) city or county transfer, conveyance or documentary taxes or fees, and (iii) recording and notary fees;

- (b) The premium for the Leasehold Policy referred to in **Section 208** below and any lender's policy required in connection with the Developer's Construction Loan; and

5. The Escrow Holder is authorized to:

(a) Pay, and charge the Developer, for any fees, charges and costs payable under this Section to third parties. Before such payments are made, the Escrow Holder shall notify the Board and the Developer of such fees, charges and costs;

(b) Deliver the Ground Lease and other documents (including those referred to in **Section 203** hereof) to the parties entitled thereto when the conditions of the escrow have been fulfilled by the Board and the Developer;

(c) Record the Memorandum of Lease and any instruments delivered through this escrow if necessary or proper to vest an enforceable leasehold interest in the Developer in accordance with the terms and provisions of this Agreement; and

(d) Do all things necessary and authorized to be done to fulfill this Agreement and the escrow instructions.

6. If the escrow is not in condition to permit the delivery of the Ground Lease, recordation of the Memorandum of Lease, and recordation of any documents in connection with any Developer Construction Loan by the Closing Date, either party who is not then in default hereunder may, in writing, terminate this Agreement as provided in **Sections 509 and 510** (including any cure period) and demand the return of its money, papers, documents, or real property. Thereupon all rights, liabilities, duties and obligations of the parties under this Agreement shall be determined as provided in **Sections 509-511** hereof. No termination or demand for return shall be recognized until ten (10) days after the Escrow Holder shall have mailed copies of such demand to the other party at the address of its principal place of business. Objections, if any, shall be raised by written notice to the Escrow Holder and to the other party within the 10-day period. If any objections are raised within the 10-day period, the Escrow Holder is authorized to hold all money, papers and documents until instructed by mutual agreement of the parties or, upon failure thereof, by a court of competent jurisdiction. If no such demands are made, the escrow shall be closed as soon as the conditions contained in this Agreement concerning the conveyance of the leasehold interest in the Site have been satisfied.

7. The Escrow Holder shall not be obligated to return any such money, papers or documents except as provided in Subsection 6 above, or upon the written instructions of both the Board and the Developer or until the party entitled thereto has been determined by a final decision of a court of competent jurisdiction.

8. Any amendment to the Escrow Instructions shall be in writing and signed by both the Board and the Developer. At the time of any amendment, the Escrow Holder shall agree to carry out its duties as Escrow Holder under such amendment.

9. All communications from the Escrow Holder to the Board or the Developer shall be directed to the addresses and in the manner established in **Section 601** of this Agreement for notices, demands and communications between the Board and the Developer.

10. The liability of the Escrow Holder under this Agreement is limited to performance of the obligations imposed upon it under this Agreement and the Escrow Instructions, and any supplemental escrow instructions delivered to and accepted by the Escrow Holder.

11. Each party hereto represents to the other that it has not authorized any broker or finder to act on its behalf in connection with this Agreement and that it has not dealt with any broker or finder purporting to act on behalf of any party. Each party hereto agrees to indemnify, defend and hold harmless the other party from and against any and all losses, liens, claims, judgments, liabilities, costs, expenses or damages (including reasonable attorneys' fees and court costs) of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such party or on its behalf with any broker or finder in connection with this Agreement or the transaction contemplated hereby. Notwithstanding anything to the contrary contained herein, this section shall survive the Closing or any termination of this Agreement.

12. If the Board has approved the use of two (2) Ground Leases, there shall be two (2) Escrows and two (2) Closings, but each of the Escrows shall be conditioned on the concurrent Closing of the other Escrow. The Board, in its sole and absolute discretion, may waive this condition.

G. **[§ 207] Deposit of Monies and Recordation of Documents.**

The parties hereto shall each deposit any monies required to close the escrow with the Escrow Holder prior to the Closing Date; provided that the Escrow Holder shall have notified the parties hereto in writing that the Ground Lease, the Memorandum of Lease and other documents referred to in **Section 203** hereof have been delivered to the Escrow Holder and that title is in the condition to be conveyed in conformity with the provisions of **Section 202** of this Agreement. The Escrow Holder shall cause the Title Insurance Company to deliver to the Developer a leasehold title insurance policy insuring title in conformity with **Section 208** of this Agreement, deliver to the parties fully executed duplicate originals of the Ground Lease, and record the Memorandum of Lease in the Official Records of the County Recorder for the County of San Diego. The Ground Lease shall not be recorded.

The parties agree to perform all acts necessary for recordation in sufficient time to close escrow in accordance with the provisions of this Agreement.

H. **[§ 208] Title Insurance.**

Concurrently with the recordation of the Memorandum of Lease and the delivery of the executed duplicate originals of the Ground Lease to the parties, First Southwestern Title Insurance Company or such other title insurance company approved by the Board and satisfactory to the Developer (the "**Title Insurance Company**") shall provide and deliver to the Developer a title insurance policy insuring that the leasehold title in the Site is vested in the Developer subject only to the Permitted Title Exceptions and all standard exceptions and exclusions from coverage set forth in the form of title policy ("**Leasehold Title Policy**"). The Leasehold Title Policy shall be in such amount as the Developer and the Title Insurance Company may agree. At Developer's option and sole cost, and provided that

the Closing is not thereby delayed, Developer may obtain an ALTA extended coverage leasehold owners policy of title insurance, subject only to the Approved Title Exceptions and such exceptions and other matters as are revealed by or result from the ALTA survey. The Title Insurance Company shall provide the Board with a copy of the Leasehold Policy.

I. [§ 209] Taxes and Assessments.

Ad valorem taxes and assessments, if any, levied, assessed or imposed on the Site during any period prior to the Commencement Date of the Ground Lease shall be borne by the Board. Ad valorem taxes and assessments (including possessory interest taxes), if any, levied, assessed or imposed on the Site during any period commencing after the Commencement Date of the Ground Lease shall be borne by the Developer, pursuant to the Ground Lease.

J. [§ 210] Occupants of the Site.

The Site shall be conveyed free of any possession or right of possession except that of the Developer.

K. [§ 211] Required Land Use Approvals.

Developer, at its sole cost and expense, shall use its reasonable best efforts to obtain all approvals, permits and authorizations from governmental and quasi-governmental agencies and other parties required for the development of the Project, including without limitation the approvals listed on **Attachment No. 8** attached hereto and incorporated herein (the "**Required Land Use Approvals**"). The Developer's rights and obligations to lease the Site pursuant to this Agreement shall be subject to, and conditioned upon, the Developer's obtaining the Required Land Use Approvals.

L. [§ 212] Off-Site Parking Lease.

Developer, at its sole cost and expense, shall use its reasonable best efforts to obtain approval of a long-term lease between the Board and the City of San Diego of City property along Friars Road adjacent to the Site for approximately one hundred twenty (120) parking spaces for the exclusive use of trolley park-and-ride patrons of the Morena Station during trolley hours (the "Off-Site Parking Lease") on terms acceptable to the Board in its sole discretion. It is anticipated that the Off-Site Parking Lease shall contain the following terms: (a) a term of fifty five (55) years, (b) nominal or no rent payable, (c) the site shall be improved by Developer and maintained by the Board, and (d) the site shall be improved and available for the use of trolley park-and-ride patrons before the parking currently available on the Site is disturbed by construction of the Project. The lease the Site pursuant to this Agreement shall be subject to, and conditioned upon, the Developer's obtaining City approval of the Off-Site Parking Lease.

M. [§ 213] Submission of Evidence of Financing and Project Commitments.

The Developer shall report regularly as requested by the Board (but at least every three (3) months) on its progress in obtaining financing for the development on the Site. The reports may be oral, or shall be in writing if requested by the Board. The reports shall explain in reasonable detail the sources and methods of financing sought, the status of obtaining the financing and the issues, if any, which must be resolved, and the pre-leasing activity which is required or has been achieved. The information in the reports shall remain confidential to the extent permitted by law, recognizing without limitation that they are subject to review by responsible officials, employees and contractors of the Board.

Not later than the times specified therefor in the Schedule of Performance, the Developer shall submit to the Board for approval, which approval shall not be unreasonably withheld, the following:

1. A current certified financial statement or statements covering the last two (2) years, or other financial statements or forms of financial confirmation, in such form reasonably satisfactory to the Board, evidencing the sources of capital sufficient to demonstrate that the Developer has adequate funds and is committing such funds to cover the construction costs and other costs the Developer is expected to incur in fulfilling the obligations of this Agreement.

2. Evidence satisfactory to the Board that the Developer has obtained the financing necessary for the acquisition and development of the Project in accordance with this Agreement. Such evidence of financing shall include the following, certified by the Developer to be true and correct copies thereof:

(a) A copy of the term sheet describing the details of the terms and conditions of the mortgage loan or loans obtained by the Developer (both for interim construction financing and take out financing if a condition of funding the construction loan) to assist in financing the construction of the Project;

(b) Construction and permanent loan commitments from Permitted Mortgagees (as defined in the Ground Lease) subject only to such conditions as may be approved by the Board;

(c) Copies of all proposed construction and permanent loan documents (e.g., notes, trust deeds, indentures, loan agreements, etc.) pertaining to the Project; and

(d) Evidence satisfactory to the Board of sources of equity capital sufficient to demonstrate that the Developer has adequate funds legally committed to cover the difference, if any, between construction cost minus financing authorized by mortgage loans, and evidence of Developer's financial ability to meet normally anticipated cost over-runs.

3. A copy of the contract between the Developer and the general contractor for the construction of improvements upon the Site. Such contract shall be submitted to Board for

approval prior to execution and shall be deemed approved unless Board provides written notice to the Developer of disapproval within ten (10) working days of receipt. Such contract shall provide for the commencement of construction on the Site by dates certain, which dates shall be in conformance with this Agreement. Such contract shall contain retention provisions requiring withholding of a minimum of five percent (5%) of payments due to the general contractor and subcontractors until the contractual obligations of such entities are fully completed. Such contract shall also contain, to the Board's reasonable satisfaction, adequate indemnification, insurance and other contractual provisions as may reasonably be required to protect the Board and any other provisions required by this Agreement to be contained in such contract, and shall be certified by the Developer to be a true and correct copy thereof. Without limiting the foregoing, the contract between the Developer and the general contractor shall be approved by the Board and executed by the Developer and the general contractor on or prior to the Closing Date. Developer shall also deliver to the Board, for the Board's information, copies of all contracts between the general contractor and all finish work subcontractors and all subcontractors whose work exceeds five percent (5%) of the total construction contract costs; provided, however, that the Board shall not have the right to approve such contracts.

4. An assignment by the Developer, in form and substance satisfactory to the Board, assigning to the Board as security for the Developer's performance under this Agreement, the interests of the Developer under the construction contract with the general contractor referred to in Subsection 3 of this Section (the "**Assignment of Construction Contract**"). It is understood and agreed that such assignment will be expressly subordinate to any assignment of such contracts required by a Permitted Mortgagee.

5. Evidence satisfactory to the Board that Developer has obtained, in form and substance acceptable to the Board, all Required Land Use Approvals and any other permits, approvals and authorizations of any type required for the design, development, construction, use and operation of the Project.

6. Evidence satisfactory to the Board that Developer has obtained, in form and substance acceptable to the Board, all easements, encroachment agreements, licenses and other off-site rights required for the development, construction, use and operation of the Project.

7. Evidence satisfactory to the Board that Developer has obtained, in form and substance acceptable to the Board, the Off-Site Parking Lease.

It is the purpose of this procedure to ensure to the satisfaction of the Board that the leasehold interest in the Site will not be conveyed unless and until Developer demonstrates that it has sufficient financing and development commitments to commence and complete the construction of all of the improvements to be constructed pursuant to this Agreement. Prior to the close of escrow, the Developer shall provide or cause to be provided to the Board any additional evidence reasonably required by the Board to establish that all items required under this Section are current and in full force and effect.

The Board shall approve all evidence, contracts and commitments required under this Section within the time established therefor in the Schedule of Performance except as otherwise set forth in this Section. Such approval shall not be unreasonably withheld. Any disapproval shall be given in writing with the specific reasons therefor. In the event the Board shall disapprove any evidence, contracts or commitments required under this Section, the Developer may revise and resubmit the same within thirty (30) days of receipt of the Board's written disapproval.

N. **[§ 214] Parking Agreement.** The parties shall enter into a parking agreement governing the shared use and maintenance of the on-Site Parking Facilities as described in **Section 103** (the "**Parking Agreement**"). The Parking Agreement shall provide for (a) the construction of the on-Site Parking Facilities at Developer's sole cost and expense, (b) the shared maintenance of landscaping, lighting, and paving in the on-Site parking Facilities, and (c) the provision of security by each party sufficient for its own requirements. The Parking Agreement shall not (x) require the Board to maintain or contribute to the maintenance of any portion of the on-Site Parking Facilities other than that used by trolley patrons, (y) require that the Board provide or contribute to a level of maintenance or security greater than that provided at other trolley stations, or (z) require that the Board provide any security for the benefit of Developer or the residents or occupants of the Project. The parties shall use reasonable efforts to complete the Parking Agreement at least thirty (30) days before the Closing Date.

III. **[§ 300] DEVELOPMENT OF SITE.**

A. **[§ 301] Development of Site.**

1. **[§ 302] Scope of Development.**

The Developer shall develop the Site with the Project as provided in the Scope of Development.

2. **[§ 303] Preliminary Drawings.**

(a) The "**Basic Concept Drawings**," as that term is defined in the Scope of Development, and related documents containing the overall plan for development of the Site, have been submitted to the Board.

(b) The Developer shall submit for approval by the Board, the "**Schematic Design Drawings**," as that term is defined in the Scope of Development, containing the overall plan for development of the Project and all materials required for application for the Required Land Use approvals, within the time set forth therefor in the Schedule of Performance.

(c) The Developer shall submit for approval by the Board, the "**50% Complete Construction Drawings**", as that term is defined in the Scope of Development, and related documents containing the overall plan for development of the Project within the time set forth therefor in the Schedule of Performance. The Design Development

Drawings shall be consistent with the Schematic Design Drawings. Any changes to the approved Design Development Drawings and related documents shall be mutually agreed upon between the Developer and the Board.

3. [§ 304] **Construction Plans, Drawings and Related Documents.**

(a) The Developer shall prepare and submit construction plans, drawings and related documents to the Board for architectural and site planning review and written approval as and at the times established in the Schedule of Performance. The construction drawings prepared by Developer shall include all private and public improvements and on-site and off-site utilities required by the Scope of Development. The construction plans, drawings and related documents shall be submitted in two stages: preliminary and final working drawings. "**Final Construction Drawings and Related Documents**" are hereby defined as those drawings and materials which are in sufficient detail to obtain a building permit.

(b) The Developer shall also prepare and submit to the Board for its approval preliminary and final landscaping and finish grading plans for the Site. Such preliminary and final plans shall be prepared and submitted within the times established in the Schedule of Performance, subject to extensions as are authorized herein or as mutually agreed to by the parties hereto.

(c) During the preparation of all drawings and plans, Board staff and the Developer shall hold regular progress meetings to coordinate the preparation of, submission to, and review of construction plans and related documents by the Board. The Board and the Developer shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to the Board can receive prompt and speedy consideration.

(d) If any revisions or corrections of plans approved by the Board shall be required by any government official, agency, department or bureau having jurisdiction, or any lending institution involved in financing, the Developer and the Board shall cooperate in efforts to obtain a waiver of such requirements or to develop a mutually acceptable and commercially reasonable alternative.

4. [§ 305] **Board Approval of Plans, Drawings and Related Documents.**

(a) The Board shall have the right of review (including, but not limited to, architectural review) and approval of all plans, drawings and related documents for the development of the Site, including any proposed changes therein subject to other provisions hereof.

The Developer has retained Fehlman LaBarre as the architect for the Project through construction completion, provided, however, that Developer may retain a

substitute or additional architect if Board approves in writing, in advance of such substitution.

The Board shall approve, conditionally approve or disapprove such plans, drawings, and related documents referred to in this Agreement (and any proposed changes therein) within the times established in the Schedule of Performance. Any disapproval shall state in writing the reasons for disapproval and the steps which must be taken to achieve such approval. Subject to the succeeding paragraph, the Developer, upon receipt of a disapproval, shall revise such portions of the plans, drawings or related documents in a manner that satisfies the reasons for disapproval, and shall resubmit such revised portions to the Board as soon as possible after receipt of the notice of disapproval, but in no event more than thirty (30) calendar days after receipt of the notice of disapproval. The Board shall approve or disapprove such revised portions in the same manner and within the same time frame as provided in the Schedule of Performance for approval or disapproval of plans, drawings and related documents initially submitted to the Board.

If the Developer desires to make any substantial change in the Final Construction Drawings and Related Documents after their approval by the Board, the Developer shall submit the proposed change to the Board for its approval. The Board shall approve, conditionally approve or disapprove such proposed change as provided in this Section and in the same manner and within the same time period as provided in the Schedule of Performance for approval or disapproval of plans, drawings and related documents initially submitted to the Board.

Board may request the Developer to make changes to the Final Construction Drawings and Related Documents following Board approval thereof, but Board shall not require any change if (i) such change would increase the Development Costs of the Project and Board does not agree to provide the estimated additional necessary funding, including funding for reasonable consultant fees necessary to prepare such changes; or (ii) such change would cause a material delay in the completion of the Project construction; or (iii) such change would materially adversely affect the value of the Project.

(b) The Board neither undertakes nor assumes nor shall it have any responsibility or duty to Developer or to any third party to review, inspect, supervise, pass judgment upon or inform Developer or any third party of any matter in connection with the development or construction of the Project, whether with respect to the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished to the Project, any person furnishing the same or otherwise. Developer and all third parties shall rely upon its or their own judgment with respect to such matters, neither Developer nor any third party is entitled to rely on any review, inspection, supervision, exercise of judgment or information supplied to the Developer or to any third party by the Board in connection with this Agreement.

The parties shall prepare and attach to the Ground Lease at Closing a schedule describing the plans, drawings, and related documents which have been approved by the Board.

5. [§ 306] Cost of Construction.

The entire cost of developing the Site and constructing all improvements thereon shall be borne by the Developer. The Board and the Developer shall each pay the costs necessary to administer and carry out their respective responsibilities and obligations under this Agreement.

6. [§ 307] Indemnification.

To the fullest extent permitted by law, the Developer shall indemnify, protect, defend and hold harmless the Board and its officers, employees and agents, from and against all liability, loss, damage, costs, or expenses of any kind (including court costs) arising from or as a result of any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which shall occur on or adjacent to the Site and which shall be directly or indirectly caused by any acts done thereon or any errors or omissions of the Developer, its agents, employees and contractors, or any of them, including but not limited to, claims of negligent or defective design or construction, regardless of whether any such liability occurs before or after issuance of the Certificate of Compliance. These indemnity obligations shall survive the expiration or termination of this Agreement. Developer's obligations under this Section exclude only claims, losses or liability to the extent due to the gross negligence or willful misconduct of Board or its officers, employees and agents.

7. [§ 308] Local, State, and Federal Laws.

The Developer shall comply with all applicable laws, including all applicable federal and state labor standards.

8. [§ 309] City and Other Governmental Board Permits.

Before commencement of any work or improvement upon the Site, the Developer shall secure or shall cause to be secured, any and all permits, approvals or certificates which may be required by the Board, the City or any other governmental agency with jurisdiction over the Site or over the construction, development or work contemplated under this Agreement. The Board shall cooperate with Developer and provide all proper assistance to the Developer in securing these permits and certificates and any other approvals required for the Project in order to meet the time periods set forth in the Schedule of Performance; provided that the Board shall not be required to incur any expense in connection with providing any such assistance.

9. [§ 310] Taxes, Assessments, Encumbrances and Liens.

The Developer shall not place or allow to be placed on the Site, or any portion thereof, any mortgage, trust deed, encumbrance or lien and the Developer shall remove, or shall have

removed, any levy or attachment made on the Site, or any portion thereof, or shall assure the satisfaction thereof within a reasonable time. Nothing herein contained shall be deemed to prohibit the Developer from contesting the validity or amounts of any encumbrance or lien, nor to limit the remedies available to the Developer with respect thereto, provided such contest does not subject the Site, or any portion thereof, to forfeiture or sale.

B. [§ 311] Sale of Developer's Interest in the Project.

Except as otherwise expressly provided in this Agreement, the Developer shall not under any circumstances be entitled to assign this Agreement or any of the rights herein, without the prior written consent of the Board, which may be granted or withheld in the sole and absolute discretion of Board.

If, contrary to the provisions of this Agreement, the Developer does assign this Agreement or any of the rights herein, or any change in the ownership or control of Developer in violation of Section 107 occurs, in addition to all other legal and equitable remedies the Board may be entitled to, the Board shall be entitled to recover from Developer the total consideration received by Developer for such sale, transfer, conveyance or assignment. Said consideration shall belong and be paid immediately to the Board.

IV. [§ 400] USE OF THE SITE.

A. [§ 401] Inspection of the Site.

1. During the first ninety (90) days after the Effective Date (the "Feasibility Period"), Developer shall fully and independently inspect and assess the condition of the Site and any other information deemed pertinent by Developer to its acquisition, use or development of the Site (including any permits, approvals, laws, statutes, rules, ordinances and other governmental regulations or requirements applicable to the Site), and shall approve or disapprove the same in its sole discretion. In connection therewith, Developer shall have the right to physically inspect, and to cause one or more engineers or other representatives of Developer to physically inspect, the Site without interfering with the Board's operation of the Site. Developer shall make such inspections in good faith and with due diligence. All inspection fees, appraisal fees, engineering fees and other expenses of any kind incurred by Developer relating to the inspection of the Site will be solely Developer's expense. The Board shall cooperate reasonably with Developer in providing access to the Site for such inspections. The Board hereby reserves the right to have a representative present when Developer conducts any inspection of the Site. Prior to and as a condition to Developer making each physical inspection of the Site, Developer shall provide the Board with all of the following items reasonably in advance of such inspection (but in any case at least one (1) Business Day before such inspection): (a) reasonably detailed written notice of the proposed date, time and nature of such inspection, (b) evidence in a form reasonably acceptable to the Board that Developer has obtained and will maintain in force and effect insurance that is, in the Board's judgment, appropriate to cover any risks related to such inspection, and (c) evidence in a form reasonably acceptable to the Board that Developer has obtained all permits or other governmental approvals required for such inspection. After the expiration of the Feasibility Period,

Developer may continue to inspect the Site during the pendency of this Agreement but without additional termination rights.

2. Developer shall indemnify, protect, defend (with counsel approved by the Board) and hold harmless the Board, its contractors and employees from and against any and all injuries, losses, liens, claims, judgments, liabilities, costs, expenses and damages (including reasonable attorneys' fees and court costs) sustained by or threatened which result from or arise out of any inspections of the Site by Developer or its representatives, however caused. Notwithstanding any provision herein to the contrary, the indemnity contained in the preceding sentence shall survive the Closing or the earlier termination of this Agreement.

3. Developer shall deliver to the Board, within five (5) business Days after receipt, copies of all studies, reports and similar information, including all supplements, addenda and updates of such information, regarding the physical condition of the Site (e.g., soils, geotechnical, hydrological, and environmental reports, studies, assessments and tests) obtained by Developer.

B. [§ 402] Hazardous Substances.

1. Developer shall not, without the Board's prior written consent, use, store, generate, dispose or otherwise allow any "Hazardous Substances" (as defined below) onto the Site.

2. Developer shall comply with all rules, laws and regulations relating to Hazardous Substances which Developer uses, stores or allows on the Site.

3. Developer shall not cause the unlawful release, deposit, discharge or disposal of any Hazardous Substances on or around the Site or permit the unlawful release, deposit, discharge or disposal of any Hazardous Substances on the Site.

4. No above or underground storage tanks shall be installed or maintained on the Site without Board's prior express written approval.

5. Developer shall be responsible for posting on the Site any signs required by any state, federal or local law, including, without limitation, Section 25249.6 of the California HEALTH AND SAFETY CODE and regulations promulgated pursuant thereto. Developer shall also complete and file any business response plans or inventories required by any state, federal or local law, including, without limitation, Chapter 695 of the California HEALTH AND SAFETY CODE and regulations promulgated pursuant thereto. Developer shall concurrently file a copy of any such business response plan or inventory with Board.

6. Developer shall defend, indemnify and hold harmless the Board and its officers, employees, and agents from any claims, liability, injury, damage, costs or expenses (including without limitation, attorneys' fees and the cost of any cleanup, testing, remediation, removal or disposal of Hazardous Substances) relating to or arising out of any Hazardous Substances released, deposited, discharged or disposed onto, under or around the Site by Developer, its contractors, employees, agents or assigns or arising as a result of Developer's violation of the

provisions of this Section. The obligations of this paragraph shall survive the expiration or termination of this Agreement.

7. The Board has delivered to Developer a copy of that certain "Groundwater Assessment in the Area of the New Morena Trolley Station for the Mission Valley West Light Rail Transit Extension, on the Block Bounded by Morena Boulevard, Linda Vista Road, Friars Road and Napa Street, San Diego, California" prepared by Earth Tech and dated November 7, 1996 (the "**Earth Tech Report**"). The Earth Tech Report identifies a "plume" of certain Hazardous Substances in the groundwater on the Site, as more particularly described in the Earth Tech Report (the "**Known Plume**"). The Board shall indemnify, defend and hold harmless Developer, its permitted successors and assigns, from any and all loss, liability, costs and expenses (including, without limitation, attorneys' fees and costs of cleanup, testing, remediation, removal or disposal of Hazardous Substances) arising out of the Known Plume and, subject to Subsection (c) below, any enlargement or migration of the Known Plume onto or under the Site; provided, however, that:

(a) the Board's obligations under this paragraph shall not apply to any Hazardous Substances other than the Known Plume;

(b) the Board's obligations under this paragraph shall not apply to, and the Developer at its sole cost and expense shall be responsible for, any and all cleanup, testing, remediation, removal and disposal costs and expenses necessitated as a result of Developer's activities on the Site, including without limitation soil excavation and temporary construction "dewatering";

(c) the Board's obligations under this paragraph shall not apply to the extent that the Developer's excavation, construction, dewatering or other activities exacerbate Hazardous Substance conditions on the Site or on adjoining land;

(d) the Developer shall use commercially reasonable efforts to avoid any loss, liability, costs or expenses arising out of the Known Plume; and

(e) neither the Board nor the Developer waive any rights of recovery against the parties who are responsible for any Hazardous Substance contamination, and the parties agree to reasonably cooperate with each other in connection with recovery of any remediation and other costs incurred by either party as a result of such contamination.

The obligations of this paragraph shall survive the expiration or termination of this Agreement.

8. Developer hereby releases the Board and its officers, employees, and agents from any claims, liability, injury, damage, costs or expenses (including without limitation, attorneys' fees and the cost of any cleanup, testing, remediation, removal or disposal of Hazardous Substances) relating to or arising out of any Hazardous Substances released, deposited, discharged or disposed onto, under or around the Site except for the obligations of the Board

under Subsection 7 of this **Section 402**. Developer agrees as to the matters released to waive the benefits of Section 1542 of the CIVIL CODE of the State of California, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Developer's Initials

Board's Initials

The obligations of this paragraph shall survive the expiration or termination of this Agreement.

9. The term "**Hazardous Substances**", when used in this Agreement, shall mean any hazardous waste or hazardous substance as defined in any federal, state, or local statute, ordinance, rule, or regulation applicable to the property, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Title 42 United States Code 9601-9662), the Resource Conservation and Recovery Act (Title 42 United States Code 6901-6992k), the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health and Safety Code 25300-25395), and the Hazardous Waste Control Law (Health and Safety Code 25100-25250.25). "Hazardous Substances" shall also include asbestos or asbestos-containing materials, radon gas, and petroleum or petroleum fractions, whether or not defined as a hazardous waste or hazardous substance in any such statute, ordinance, rule, or regulation.

C. **[§ 403] Obligation to Refrain from Discrimination.**

There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, national origin, ethnicity, disability, marital status, sex or sexual orientation, in connection with the construction of the Project or in the lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, or any part thereof, nor shall the Developer itself or any person claiming under or through the Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number use or occupancy of tenants, lessees, subtenants, or sublessees of the Site.

D. **[§ 404] Effect and Duration of Covenants.**

1. The covenants established herein shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Board, its successors and assigns, and any successor in interest to the Site or any part thereof.

2. The covenants contained in this Agreement shall remain in effect as follows:

(a) All indemnity and release obligations shall survive the termination of this Agreement.

(b) The obligations of Developer under Subsection (3) of Section 401 shall survive the termination of this Agreement.

(c) All other covenants in this Agreement shall terminate upon the Close of Escrow.

3. The duties and obligations of the Lessee under the Ground Lease are separate and independent from the duties and obligations of the Developer under this Agreement, and a breach by the Developer under this Agreement shall not be deemed a breach under the Ground Lease.

E. **[§ 405] Effect of Violation of the Terms and Provisions of this Agreement.**

The Board shall have the right in the event of any breach of the terms and provisions of this Agreement, to exercise all rights and remedies available at law, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches.

V. **[§ 500] DEFAULTS, REMEDIES AND TERMINATION.**

A. **[§ 501] Defaults – General; Notice.**

A failure or delay by any party to perform any term or provision of this Agreement shall constitute a default under this Agreement. The non-defaulting party shall give written notice of default to the defaulting party, specifying the default complained of and the actions required to cure the default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default. A party shall be deemed in material default of this Agreement, and the party not in default shall have the remedies described below, if either: (1) a monetary default is not cured within ten (10) days after service of the notice of default; or (2) a non-monetary default is not cured within thirty (30) days after service of the notice of default; or (3) a non-monetary default which cannot reasonably be cured within thirty (30) days is not (a) commenced to be cured within thirty (30) days after service of the notice of default, (b) pursued diligently, and (c) cured promptly within a reasonable period of time after commencement of the cure.

Any failures or delays by a party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any rights or remedies, or deprive a party of its right to institute and maintain any actions or proceedings which are allowed by this Agreement.

B. **[§ 502] Legal Actions.**

1. **[§ 503] Institution of Legal Actions.**

Any legal actions must be instituted in the Superior Court of the County of San Diego, State of California, in any other appropriate court in that County, or in the Federal District Court for the Southern District of California.

2. **[§ 504] Applicable Law.**

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

3. **[§ 505] Acceptance of Service of Process.**

In the event that any legal action is commenced by the Board against the Developer, service of process on the Developer shall be made by personal service upon the Developer, or in such manner as may be provided by law, and shall be valid whether made within or without the State of California.

C. **[§ 506] Rights and Remedies are Cumulative.**

Except with respect to rights and remedies which are expressly declared to be exclusive in this Agreement, the rights and remedies of any non-defaulting party are cumulative and the exercise of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the defaulting party.

D. **[§ 507] Damages; Specific Performance.**

If a party defaults with regard to any of the provisions of this Agreement, after notice and opportunity to cure as provided in Section 501 above; the defaulting party shall, except as otherwise expressly provided in this Agreement, be liable to the other party for damages caused by such default, and the non-defaulting party, at its option, may institute an action for specific performance of the terms of this Agreement, or exercise any other remedy or remedies which it may be entitled to.

E. **[§ 508] Remedies and Rights of Termination.**

1. **[§ 509] Termination by Developer.**

In addition to any other termination rights of Developer set forth in this Agreement, the Developer may terminate this Agreement, if:

(a) the Developer has established to the reasonable satisfaction of the Board that the Developer is unable, despite diligent and timely good faith efforts (and in full compliance with the requirements of this Agreement and the requirements of the

governmental entity for the submission of all plans, specifications, data or other information), to obtain any Required Land Use Approval necessary for the construction of the improvements contemplated by this Agreement within the time established therefor in the Schedule of Performance; or

(b) the Developer has established to the reasonable satisfaction of the Board that the Developer is unable, despite diligent and timely good faith efforts, to obtain and submit to the Board the Evidence of Financing and Project Commitments described in **Section 211** of this Agreement within the time established therefor in the Schedule of Performance or if, having obtained Evidence of Financing, the lender fails to fund the loan; or

(c) the Board fails to execute and deliver the Ground Lease and deliver possession of the Site at Closing or is otherwise in material default of this Agreement, after notice and reasonable opportunity to cure such default.

2. **[§ 510] Termination by Board.**

In addition to any other termination rights of the Board set forth in this Agreement, but subject to the notice and cure provisions of **Section 501**, the Developer shall be in default and the Board at its option may terminate this Agreement if:

(a) the Developer assigns or attempts to assign this Agreement, or any rights herein, or makes or attempts to make any total or partial sale, transfer or conveyance of the whole or any part of Developer's leasehold interest in the Site or the improvements thereon, except as permitted by this Agreement; or

(b) there is change in the ownership of the Developer, or with respect to the identity of the parties in control of the Developer, or the degree thereof contrary to the provisions of **Section 108** hereof; or

(c) the Developer fails to diligently pursue or to obtain and submit to the Board the Evidence of Financing and Project Commitments described in **Section 211** of this Agreement within the time established therefor in the Schedule of Performance; or

(d) the Developer fails to diligently pursue or to obtain and submit to the Board any Required Land Use Approval necessary for the construction of the improvements contemplated by this Agreement within the time established therefor in the Schedule of Performance; or

(e) the Developer fails to prepare, complete and submit to the Board, for its approval, the Basic Concept Drawings, the Schematic Design Drawings and the 50% Complete Construction Drawings described in **Section 303** and the Final Construction Drawings and Related Documents described in **Section 304** consistent with the

requirements set forth in the Scope of Development within the time established therefor in the Schedule of Performance; or

(f) the Developer fails to execute and deliver the Ground Lease within the time established therefor in the Schedule of Performance; or

(g) the Developer fails to perform any of its other obligations under this Agreement (including any Attachment to this Agreement) within the time established therefor herein or in the Schedule of Performance; or

(h) the Developer fails to timely pay or reimburse the Board for any costs or expenses incurred by the Board with respect to the Site which are to be borne by the Developer under this Agreement; or

(i) the Developer fails to perform all of Developer's indemnity obligations to Board under this Agreement, including, but not limited to, those set forth in Sections 308, 401, and 402.

3. **[§ 511] Effect of Termination.**

(a) No expiration or termination of this Agreement shall affect Developer's indemnity obligations to the Board under this Agreement, including, but not limited to, those set forth in Sections 308, 401, and 402, or the Board's indemnity obligations to Developer under Section 402. The obligations of Developer under Subsection (3) of Section 401 and Developer's release under Subsection 8 of Section 402 shall survive the termination of this Agreement.

(b) The deposits made by the Developer under the ENA are non-refundable and shall not be refunded to the Developer in the event of any expiration or termination of this Agreement or any other circumstance.

VI. **[§ 600] GENERAL PROVISIONS.**

A. **[§ 601] Notices, Demands, and Communications Between the Parties.**

Unless otherwise specifically provided herein, all formal notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered upon personal delivery, or by Federal Express (or similar reputable express delivery service), or by telecopier transmission with verification of receipt and back-up copy mailed the same day, or as of the second business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

For the Board:

General Manager
Metropolitan Transit Development Board
1255 Imperial Avenue, Suite 1000
San Diego, California 92101-7490
Telephone: (619) 231-1466
Telecopier: (619) 234-3407

with copies to:

General Counsel
Metropolitan Transit Development Board
1255 Imperial Avenue, Suite 1000
San Diego, California 92101-7490
Telephone: (619) 557-4512
Telecopier: (619) 234-3172

and

Hecht, Solberg, Robinson & Goldberg LLP
Attn: R. Martin Bohl
600 West Broadway, Suite 800
San Diego, California 92101
Telephone: (619) 239-3444
Telecopier: (619) 232-6828

For the Developer:

CityLink Investment Corporation
Attn: William D. Jones
2505 Congress Street, Suite 110
San Diego, California 92110
Telephone: (619) 220-7094
Telecopier: (619) 220-7117

with a copy to:

Sullivan, Wertz, McDade & Wallace
Attn: Bruce R. Wallace
945 Fourth Avenue
San Diego, California 92101
Telephone: (619) 233-1888
Telecopier: (619) 696-9476

Addresses for notice may be changed by written notice sent in the manner provided above.

B. **[§ 602] Conflicts of Interest.**

No member, official or employee of the Board shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he, or she is, directly or indirectly, interested.

C. **[§ 603] Warranty Against Payment of Consideration for Agreement.**

The Developer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

D. **[§ 604] Nonliability of Board Officials and Employees.**

No member, official, or employee of the Board shall be personally liable to the Developer or any successor in interest, in the event of any default or breach by the Board or for any amount which may become due to the Developer or to its successor, or on any obligations under the terms of this Agreement.

E. **[§ 605] Enforced Delay; Extension of Time of Performance.**

In addition to specific provisions of this Agreement, delays in performance (other than the payment of money) by either party hereunder shall not be deemed to be a default where and to the extent that such delays in performance are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, Acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, acts of the other party, or any other causes beyond the control (and without the fault) of the party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if the party claiming such extension sends notice to the other party within thirty (30) days of knowledge of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the Board and the Developer.

F. **[§ 606] Inspection of Books and Records.**

The Board has the right at all reasonable times to inspect the books and records of the Developer pertaining to the Site and the Project as pertinent to the purposes of this Agreement.

G. **[§ 607] Approvals.**

Unless otherwise expressly provided herein, approvals required of the Board or the Developer shall not be unreasonably withheld and approval or disapproval shall be given within the time set forth in the Schedule of Performance or, if no time is given, within a reasonable time. Unless otherwise

expressly provided herein, the General Manager of the Board or his/her designee shall have the authority to issue all approvals and disapprovals on behalf of the Board required or allowed hereunder.

H. **[§ 608] Severability.**

If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

I. **[§ 609] Gender, Number.**

Whenever the context requires, the use herein of (i) the neuter gender includes the masculine and the feminine, and (ii) the singular number includes the plural.

J. **[§ 610] Business Days.**

If the last day for performance of an act falls upon a day that is not a Business Day, such last day shall be the next following regular Business Day.

K. **[§ 611] Captions.**

Captions in this Agreement are inserted for convenience of reference and do not define, describe or limit the scope or intent of this Agreement or any of its terms.

L. **[§ 612] Entire Agreement.**

This Agreement, together with any other written document referred to herein, embody the entire agreement and understanding between the parties regarding the subject matter hereof, and any and all prior or contemporaneous oral or written representations, agreements, understandings or statements shall be of no force and effect.

M. **[§ 613] Recitals; Exhibits.**

Any recitals set forth above and any attached exhibits are incorporated by reference into this Agreement.

N. **[§ 614] Authority of Signatories.**

Each signatory and party hereto hereby warrants and represents to the other party that it has legal authority and capacity and direction from its principal to enter into this Agreement, and that all resolutions and/or other actions have been taken so as to enable said signatory to enter into this Agreement.

O. **[§ 615] Modifications.**

No modification, waiver or discharge of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver or discharge is or may be sought. Any amendments to this Agreement must be approved by the Board's Board of Directors.

P. **[§ 616] Attorneys' Fees and Legal Expenses.**

Should any party hereto institute any action or proceeding in court or any arbitration or similar proceeding to enforce any provision hereof or for damages by reason of any alleged breach of any provision of this Agreement or for any other judicial remedy, the prevailing party(ies) shall be entitled to receive from the losing party(ies) all reasonable attorneys' fees and all court costs in connection with said proceedings.

Q. **[§ 617] Preparation of Agreement.**

No inference, assumption or presumption shall be drawn from the fact that a party or its attorney prepared or drafted this Agreement. It shall be conclusively presumed that both parties participated equally in the preparation and/or drafting of this Agreement.

R. **[§ 618] Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be original and all of which shall constitute one and the same document.

S. **[§ 619] Certificates.**

At any time and from time to time, each party ("Responding Party") agrees to sign and deliver to the other party ("Requesting Party") within ten (10) days after receipt of written request therefor a statement certifying that (a) this Agreement is unmodified and in full force and effect (or, if such is not the case, so stating and setting forth any modifications), (b) that, to the Responding Party's knowledge, the Requesting Party is not in breach hereunder (or, if such is not the case, so stating and setting forth any alleged breaches), and (c) any other information reasonably related to the status of this Agreement. Such certification may be conclusively relied on by the Requesting Party, any equity investor of Developer, and any title insurance company insuring title to the Site.

T. **[§ 620] Successors and Assigns.**

Subject to the provisions of this Agreement restricting or prohibiting assignment, this Agreement shall be binding on and inure to the benefit of the successors and assigns of the respective parties.

U. [§ 621] **Joint and Several Liability.**

If any party consists of more than one person or entity, the liability of each such person or entity signing this Agreement shall be joint and several.

V. [§ 622] **No Third Party Beneficiaries.**

This Agreement has been made and is made solely for the benefit of the Board and the Developer and their respective successors and permitted assigns. Nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement.

VII. [§ 700] **TIME FOR ACCEPTANCE OF AGREEMENT BY BOARD.**

Execution and delivery of this Agreement by the Developer to the Board shall be considered an offer by Developer to enter into this Agreement. If this Agreement is not authorized, executed and delivered by the Board within seven (7) days after the date of signature by the Developer, the offer to enter into this Agreement may be terminated by the Developer on written notice to the Board. The effective date of this Agreement (the "**Effective Date**") shall be the date this Agreement is fully executed by both Developer and the Board.

"Board"

Metropolitan Transit Development Board,
a California public agency

By: _____
Thomas F. Larwin, General Manager

"Developer"

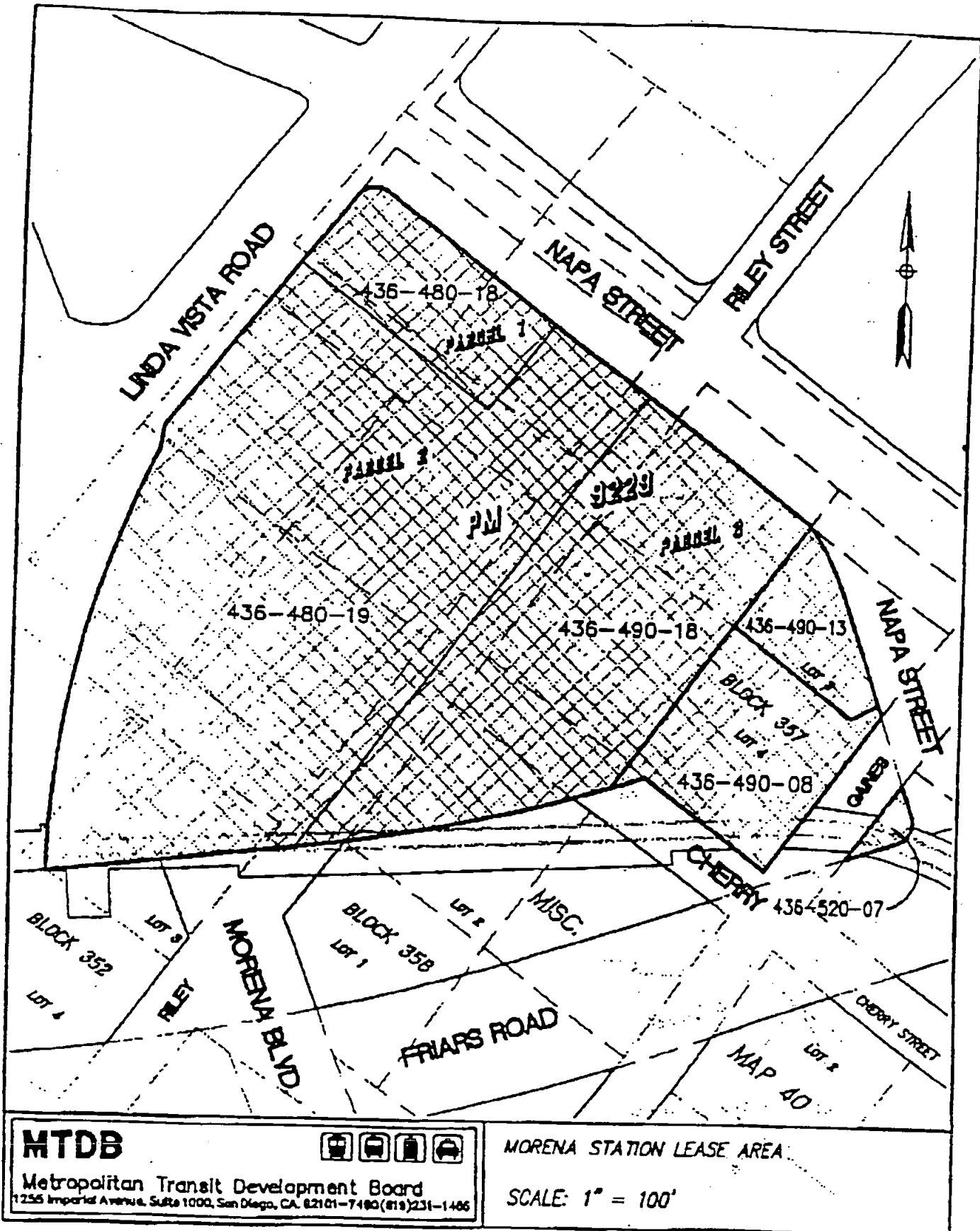
CityLink Investment Corporation,
a California corporation

By: _____
William D. Jones, President

[Developer to provide evidence of authority]

ATTACHMENT 1

Site Map



ATTACHMENT 2

Legal Description

Morena Station

APN 436-480-18, 436-480-19, 436-490-08, 436-490-13, 436-490-18, 436-520-07

All that real property in the City of San Diego, County of San Diego, State of California, conveyed in deed to San Diego Metropolitan Transit Development Board recorded September 28, 1990 as DOC # 90-531980, described as Parcels 1 through 3, inclusive, of Parcel Map No. 9229 recorded as File No. 79-422984 of Official Records.

Together with that all real property in the City of San Diego, County of San Diego, State of California, conveyed in deeds to San Diego Metropolitan Transit Development Board recorded June 30, 1999 as DOC # 1999-0457571, DOC # 1999-0457572 and DOC # 1999-0457573 all of Official Records of San Diego County, being portions of Blocks 357 and 386 of Old San Diego, according to map thereof made by James Pascoe in 1870, a copy of which was filed in the Office of the County Recorder of San Diego County, December 21, 1921 and is known as Miscellaneous Map No. 40.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Signature: _____

John R. Bergeren, LS 8000
License Expires 12/31/00
Date: January 28, 2000



ATTACHMENT NO. 3

Schedule of Performance

ACTION	DATE
1. <u>Execution of the Agreement by the Developer.</u> The Developer shall execute the Agreement and deliver it to the Board.	On or before April 6, 2000.
2. <u>Execution of Agreement by the Board.</u> The Board shall hold a public hearing on this Agreement, shall authorize execution and execute this Agreement, and shall deliver this Agreement to Developer.	Within sixty (60) days after the Agreement is executed by Developer and submitted to the Board.
3. <u>Submission – Architect, Landscape Architect and Civil Engineer.</u> Developer shall submit to the Board for approval the name and qualifications of its Architect, Landscape Architect and Civil Engineer.	Prior to or concurrent with submission of the executed Agreement by Developer.
4. <u>Approval – Architect, Landscape Architect and Civil Engineer.</u> The Board shall approve or disapprove the Architect, Landscape Architect and Civil Engineer.	Prior to or concurrent with approval of the Agreement by the Board.
5. <u>Submission – Basic Concept Drawings.</u> Developer shall submit Basic Concept Drawings to the Board.	Prior to or concurrent with submission of the executed Agreement by Developer.
6. <u>Approval – Basic Concept Drawings.</u> The Board shall approve or disapprove Basic Concept Drawings and related documents for the Site.	Concurrent with the approval of the Agreement by the Board.

ACTION	DATE
7. <u>Submission - Preliminary Plan Review.</u> Developer shall submit required documents and drawings to the City of San Diego and the Board for review.	On or before thirty (30) days after approval of the Agreement by the Board.
8. <u>Submission - Schematic Design Drawings and Preliminary Landscaping and Grading Plans.</u> Developer shall prepare and submit to the Board Design Development Drawings, Preliminary Landscaping and Grading Plans for the Site, and all other documentation required for the Required Land Use Approvals.	On or before ninety (90) days after receipt of the City's assessment letter responding to Developer's submission for preliminary plan review
9. <u>Approval - Schematic Design Drawings and Preliminary Landscaping and Grading Plans.</u> The Board shall approve or disapprove Schematic Design Drawings and Preliminary Landscaping and Grading Plans.	Within thirty (30) days after submission of Schematic Design Drawings and Preliminary Landscaping and Grading Plans by the Developer.
10. <u>Submission - Planned Development Permit Application.</u> Developer shall prepare and submit the Planned Development Permit Application to the City of San Diego, including an application for environmental review and all other required documentation.	Within thirty (30) days after approval by the Board of Schematic Design Drawings.
11. <u>Presentation - TAAC.</u> Developer shall present project to the Trolley Access Advisory Committee for review and comment.	Within ninety (90) days after approval of the Agreement by the Board.
12. <u>Submission - 50% Complete Construction Drawings.</u> Developer shall prepare and submit to the Board 50% Complete Construction Drawings and Specifications for the Site.	Within sixty (60) days after approval by the Board of Schematic Design Drawings and Preliminary Landscaping and Grading Plans.
13. <u>Approval - 50% Complete Construction Drawings.</u> The Board shall approve or disapprove the 50% Complete Construction Drawings.	Within thirty (30) days after receipt by the Board.

ACTION	DATE
14. <u>Submission – Final Construction Drawings.</u> Developer shall prepare and submit to the Board the Final Construction Drawings and Specifications and the Final Landscaping Plans and Finish Grading Plans for the Site. <u>Note:</u> These drawings will be approved in increments as they are submitted.	Within sixty (60) days after approval by the Board of the 50% Complete Construction Drawings.
15. <u>Approval – Final Construction Drawings.</u> The Board shall approve or disapprove the Final Construction Drawings and Specifications and the Final Landscaping Plans and Finish Grading Plans. <u>Note:</u> These drawings will be approved in increments as they are submitted.	Within thirty (30) days after receipt by the Board of the Final Construction Drawings and Specifications and Final Landscaping Plans and Finish Grading Plans.
16. <u>Submission to City – Final Construction Drawings.</u> Developer shall prepare and submit to the City the Final Construction Drawings and Specifications and the Final Landscaping Plans and Finish Grading Plans for the Site.	Within ten (10) days after approval by the Board of the Final Construction Drawings.
17. <u>Final Construction Schedule.</u> Developer shall prepare and submit to the Board the Final Construction Schedule.	Within ten (10) days after approval by the Board of the Final Construction Drawings.
18. <u>Approval – Final Construction Schedule.</u> The Board shall approve or disapprove the Final Construction Schedule.	Within ten (10) days after receipt by the Board of the Final Construction Schedule.
19. <u>Evidence of Financing.</u> Developer shall submit to the Board evidence of financing (as may be modified) pursuant to Section 213 of the Agreement.	At least thirty (30) days prior to the Closing Date, but in any event, not later than July 1, 2001.
20. <u>Approval of Financing.</u> The Board shall approve or disapprove Developer's evidence of financing with respect to the Site and shall so notify Developer.	Within fifteen (15) days after receipt of such evidence of financing by the Board and in any event prior to the Closing Date.

ACTION	DATE
21. <u>Evidence of Insurance</u> . Developer shall provide the Board with evidence of all insurance required by Section 1002 of the Lease..	Within fifteen (15) days after receipt of such evidence of insurance but in any event at least thirty (30) days prior to the Closing Date.
22. <u>General Contractor and Construction Contract</u> . Developer shall submit to the Board Developer's proposed General Contractor and Construction Contract	At least thirty (30) days prior to the Closing Date.
23. <u>Approval - General Contractor and Construction Contract</u> . The Board shall approve or disapprove Developer's proposed General Contractor and Construction Contract	Prior to the Closing Date.
24. <u>Required Land Use Approvals</u> . Developer shall obtain the Required Land Use Approvals per Section 211 of the Agreement.	Prior to the Closing Date.
25. <u>Off-Site Parking Lease</u> . Developer shall obtain the Off-Site Parking Lease per Section 212 of the Agreement.	Prior to the Closing Date.
26. <u>Opening of Escrow</u> . The Board shall open an escrow for conveyance of the Site.	Within five (5) days after receipt of written request from Developer, but in any event at least thirty (30) days prior to the Closing Date.
27. <u>Close of Escrow</u> .	On or before July 15, 2001.
28. <u>Execution of Ground Lease</u> . The Board and Developer shall execute the Ground Lease.	Prior to or simultaneously with the Close of Escrow.
29. <u>Commencement of Construction</u> . Developer shall commence construction of the improvements on the Site.	Within thirty (30) days after Close of Escrow.
30. <u>Completion of Construction</u> . Developer shall complete construction of the improvements on the Site.	On or before January 15, 2003.

ACTION	DATE
31. <u>Construction of Public Improvements.</u> Developer shall commence and complete all public improvement work referred to in the Scope of Development (Attachment No. 4) to be performed by Developer with respect to the Site.	On a schedule which will coordinate with the construction schedule for the development of the Site by Developer, but not later than completion of construction of the Project.

All defined terms used in this Schedule of Performance shall have the same meanings as given them in the Agreement.

ATTACHMENT NO. 4

Scope of Development

A. Developer Responsibilities

1. General

The Developer shall construct or cause to be constructed on the Site a mixed-use, transit oriented development which shall contain approximately one hundred twenty five (125) to one hundred forty (140) residential units consisting of apartments and lofts for rental within approximately ten (10) buildings, excluding the garage, of approximately one hundred twenty thousand (120,000) gross square feet. The development shall also include a clubhouse of three thousand (3,000) gross square feet, a recreation center and swimming pool for the use of residents.

The Developer shall also construct or cause to be constructed on the Site, commercial retail facilities of approximately twenty five thousand (25,000) gross square feet consisting of an anchor tenant such as a drug store and ancillary community shopping facilities. The total development will be enhanced through landscaping and a series of pedestrian plazas and walkways.

The Developer shall construct or cause to be constructed the following parking and related facilities to accommodate approximately three hundred ninety one (391) automobiles on the Site and approximately one hundred twenty (120) automobiles off-site with access off Friars Road adjacent to the Site. The Friars road off-site parking facilities shall be constructed on property leased from the City of San Diego:

- (a) Parking structures for residential development: 222 spaces
- (b) Surface parking for retail commercial customers: 87 spaces
- (c) On-site MTDB parking for the use of trolley patrons: 73 spaces
- (d) On-site MTDB/residential shared-use parking: 9 spaces
- (e) Off-site MTDB parking for trolley patrons - Friars Road: Approximately 120 spaces
- (f) New bus stops on Friars Road to replace bus stops relocated from Riley Street.

2. Site Preparation

The Developer, at its cost and expense, shall prepare the Site and each Parcel, for development. Such site preparation shall consist of the following:

- (a) Complete demolition and removal to the surface elevation of the adjoining ground of all existing buildings, other structures and improvements including the removal of all bricks, lumber, pipes, equipment and other material and all debris and rubbish resulting from such demolition.

(b) Complete removal of all subsurface improvements, foundations, walls, slabs, basements, tanks and abandoned utilities as necessary to construct the development.

(c) Disconnection, capping and removal of utility lines, installations, facilities and related equipment within or on the Site. Utilities located within the right-of-way of Linda Vista Road shall be relocated as required by the Water Utilities Department. Such cost of relocation shall be the responsibility of the Developer.

(d) Removal of all paving (including catch basins, curbs, gutters, drives and sidewalks) within or on the Site and within the adjacent public right-of-way to the traveled way of adjacent streets.

All of items (a) through (d) inclusive shall be performed in accordance with City requirements.

3. Urban Design Standards

The proposed development, including its architectural design concepts, landscape features, materials and off-site improvements, shall be subject to design review by the Board in accordance with adopted procedures. The Developer shall conform to the North Bay Redevelopment Plan, the Linda Vista Community Plan, the Transit-Oriented Development Design Guidelines, and the San Diego Municipal Code.

These standards, together with the following specific conditions, will be used as a basis for evaluating development through all stages of the design review process.

(a) Architectural Standards

The architecture of the development shall create a community landmark and establish a high quality of design that will serve as a catalyst for the revitalization of the Morena Shopping Quarter and the Linda Vista community.

(b) Form and Scale

The development is intended to create a vibrant urban environment designed for the comfort and convenience of pedestrians, while also accommodating the automobile. The structures shall be designed to step up from a one-story retail building at the corner of Linda Vista Road and Napa Street, to two-story commercial/loft spaces, to three-story apartment buildings over parking next to the Trolley Station platform.

(c) Street and Trolley Platform Level Design

Building setbacks and surface parking areas shall be carefully sited to create attractive and lively street and Trolley frontages, as illustrated in the Conceptual Site Plan for the Project

attached as Exhibit A. In addition to these general criteria, the following conditions and specifications for each of the following special design features shall be observed:

- Provide enhanced pedestrian plazas and clock tower as shown on the Basic Concept Drawings.
- Provide pedestrian areas for bus stops on Linda Vista Road and Napa Street.
- Design a combination of building entrances, windows, architectural articulation and landscaping of Retail "B" and "C" buildings to create visually interesting and interactive street-facing facades.
- Provide building articulation throughout the site in accordance with the intent of the CC 3-4 zone.
- Provide directional signage identifying the Trolley Station and adjacent bus stops.

(d) Building Materials

A materials board, which illustrates the location, color, quality and texture of proposed exterior materials, shall be submitted to the Board for review and approval at the Fifty Percent (50%) Working Drawings stage. Reflective surface materials are not appropriate.

(e) Energy Considerations

Energy efficient features shall be incorporated into the design of the structures. The Developer shall demonstrate consideration of such energy features as a part of the design review process.

(f) Access

Vehicular access to the Site shall be provided from Linda Vista Road and Napa Street. Curb cuts shall be perpendicular to the street and shall be approximately thirty feet (30') in width. Vehicular access to the on-site garage may be located on Napa and Riley Streets. Such access shall be perpendicular to the street. The garage security gates shall be of quality architectural materials.

Pedestrian walkways linking Linda Vista Road and Napa Street to the Trolley Station platform shall be provided.

Utilitarian areas housing trash, storage, or other utility services shall be located in the parking garage or otherwise concealed from view of the public right-of-way.

(g) Landscape

The landscape of the development shall establish a high quality of design. Off-site improvement shall implement the standard established in the citywide landscape regulations including curbs, sidewalk paving, street trees, tree grates, ornamental street lighting and trash receptacles.

- Wherever possible, street trees shall be provided in tree grates adjacent to the curb to enhance the pedestrian experience and provide a buffer between the pedestrian and the street.
- Landscaping and pedestrian-scaled street lighting shall also be used to help define and enhance pedestrian pathways and plazas, as well as to comply with citywide landscaping regulations.

The quality of off-site improvements shall be coordinated with the quality of on-site improvements and no distinction shall be made at the property lines.

(h) On-Site Open Space Improvements

On-site improvements, particularly the pedestrian plaza at Napa Street, the clock tower element, and the enhanced pedestrian paths linking Linda Vista Road and Napa streets to the Trolley platform shall be designed to unify the site and its proposed development.

4. Off-Site Improvements

The Developer shall design and construct at its cost all public improvements for adjacent streets as required by the City of San Diego as a condition of permit approval.

The Developer shall construct or cause to be constructed concurrently with each Parcel, the following off-site public improvements:

- (a) City Utilities (sewer, water, and storm drain). Connection of on-site sewer, water and storm drain systems from the development to the City utilities located within the right-of-way.
- (b) Roof drains from the development shall be connected to the storm drain system.
- (c) Provide catch basins and storm drain system as required by the City of San Diego.
- (d) Removal of City utilities in Riley Street. Removal and relocation of existing City utilities located within the right-of-way of Riley Street. Such relocation shall be subject to the requirements of the Water Utilities Department.

(e) Fire hydrants shall be provided pursuant to requirements of Fire Department and Water Utilities Department.

(f) Off-site Parking: Approximately 120 parking spaces for trolley patrons along Friars Road adjacent to the Project, together with pedestrian walkways from the Off-Site Parking to the Trolley Station.

(g) New bus stop improvements on Friars Road (the "Friars Road Bus Stop Improvements") to replace the bus stops relocated from Riley Street, as illustrated on **Exhibit B** attached and consisting of the following:

- Westbound (north side of Friars Road) – a 4-foot by 40-foot concrete extension of the existing sidewalk.
- Eastbound (south side of Friars Road) – a 3-foot by 30-foot concrete extension to the existing sidewalk, plus an additional concrete triangular area on the east side of the sidewalk extension.
- Retaining walls as necessary to produce the sidewalk areas described above.
- A pedestrian crosswalk across Friars Road to be located at the existing traffic signal on the west side of the Friars Road trolley track crossing.

5. Street Vacation/Parcel Map

The Developer shall prepare and process through the City of San Diego, a Parcel Map which includes the vacation of the following streets within the Site: Riley Street. The Developer shall as part of this proposed vacation prepare plans for the relocation of all public nonfranchise utilities within this vacation area and implement those plans satisfactory to the City of San Diego. The Board shall cooperate with the Developer to obtain such street vacation.

6. Removal or Remedy of Soil or Water Contamination

Developer at its sole cost and expense shall be responsible for, any and all Hazardous Substance cleanup, testing, remediation, removal and disposal costs and expenses necessitated as a result of Developer's activities on the Site, including without limitation soil excavation and temporary construction "dewatering". The Developer shall (at its own cost and expense) remove or otherwise remedy as provided by law and implementing rules and regulations, and sufficiently to adequately protect the public health and safety (including the health and safety of occupants of the Site and adjacent properties), any contaminated or hazardous soil or water conditions on the Site, the remediation or removal of which is necessitated as a result of Developer's activities on the Site. Such work shall include without limitation the following:

(a) Remove (and dispose of) or treat any contaminated soil or water on the Site (and adjacent public rights of way which the Developer is required to improve) as necessary to comply with applicable governmental standards and requirements.

(b) Design and construct all improvements on the Site in a manner which will assure protection of occupants and all improvements from any contamination, whether in vapor or other form, or from the direct and indirect effects thereof.

(c) Prepare a site safety plan and submit it to the appropriate governmental and other authorities for approval in connection with obtaining a building permit for the construction of improvements on the Site. Such site safety plan shall assure workers and other visitors to the Site of protection from any health and safety hazards during development and construction of the improvements. Such site safety plan shall include monitoring and appropriate protective action against vapors or the effect thereof. Such site safety plan shall be updated with respect to each Development Parcel, and re-submitted for approval, thirty (30) days prior to closing of the mortgage loan or other financing for the applicable Development Parcel (including conveyance of any related Sales Parcel to the Developer).

(d) Obtain from the County of San Diego or California Regional Water Quality Control Board or any other authorities required by law any permits or other approvals required in connection with the removal or remedy of soil or water contamination, in connection with the development and construction on the Site.

The Developer agrees that the Board, and its consultants and agents, shall have the right (but not the obligation) to enter upon the Site at any time to monitor the excavation and construction on the Site, to test the soils or water on the Site, and to take such other actions as may be reasonably necessary to assure compliance with this Section 6 of the Scope of Development. Nothing herein (including without limitation the Board's right to inspect) shall be construed to make the Board, the City, or their respective officers, employees, contractors and agents liable for the responsibilities under this Section 6, and the provisions and requirements of Section 402 of the Agreement shall apply with respect thereto.

7. Archeological Protection

Concurrently with submission of Design Development Drawings to the Board with respect to each Parcel, the Developer shall submit the results and backup information of a record search and determination of potential archaeological significance of the applicable Parcel completed by a qualified archaeologist. If the applicable Parcel is determined by the Board to have a potential for significant subsurface resources, the Developer shall conduct appropriate site monitoring during grading, testing and data recovery as approved by the Board.

8. Development Identification Signs

Prior to commencement of construction on the Site, the Developer shall prepare and install, at its cost and expenses, sign(s) around the Site, which identify the development. There shall be at least one sign on the Morena/Linda Vista Frontages and one sign on Napa Street. Each sign shall be at least four (4) feet by six (6) feet and be visible to passing pedestrian and vehicular traffic. The design of all signs as well as their proposed location shall be submitted to the Board and the Redevelopment Agency for review and approval prior to installation. All signs shall at a minimum include:

- Color rendering of the development
- Development name
- Developer
- Lender
- The phrase:

A Project of the Metropolitan Transit Development Board and the Redevelopment Agency of the City of San Diego

Mayor _____

Council Members _____

MTDB Members

- Completion Date _____
- For information call _____

B. Board Cooperation

The Board shall cooperate with Developer, at no out-of-pocket cost to the Board, in processing the Required Land Use Approvals and any other permits necessary for the Project.

C. **Easements**

The Board and the Developer shall grant and permit all necessary and appropriate easements and rights for the development of the Site or any Parcels within the Site, including, but not limited to, easements and rights of vehicular access, pedestrian access and all utility services on such terms and conditions as the Board and the Developer may agree.

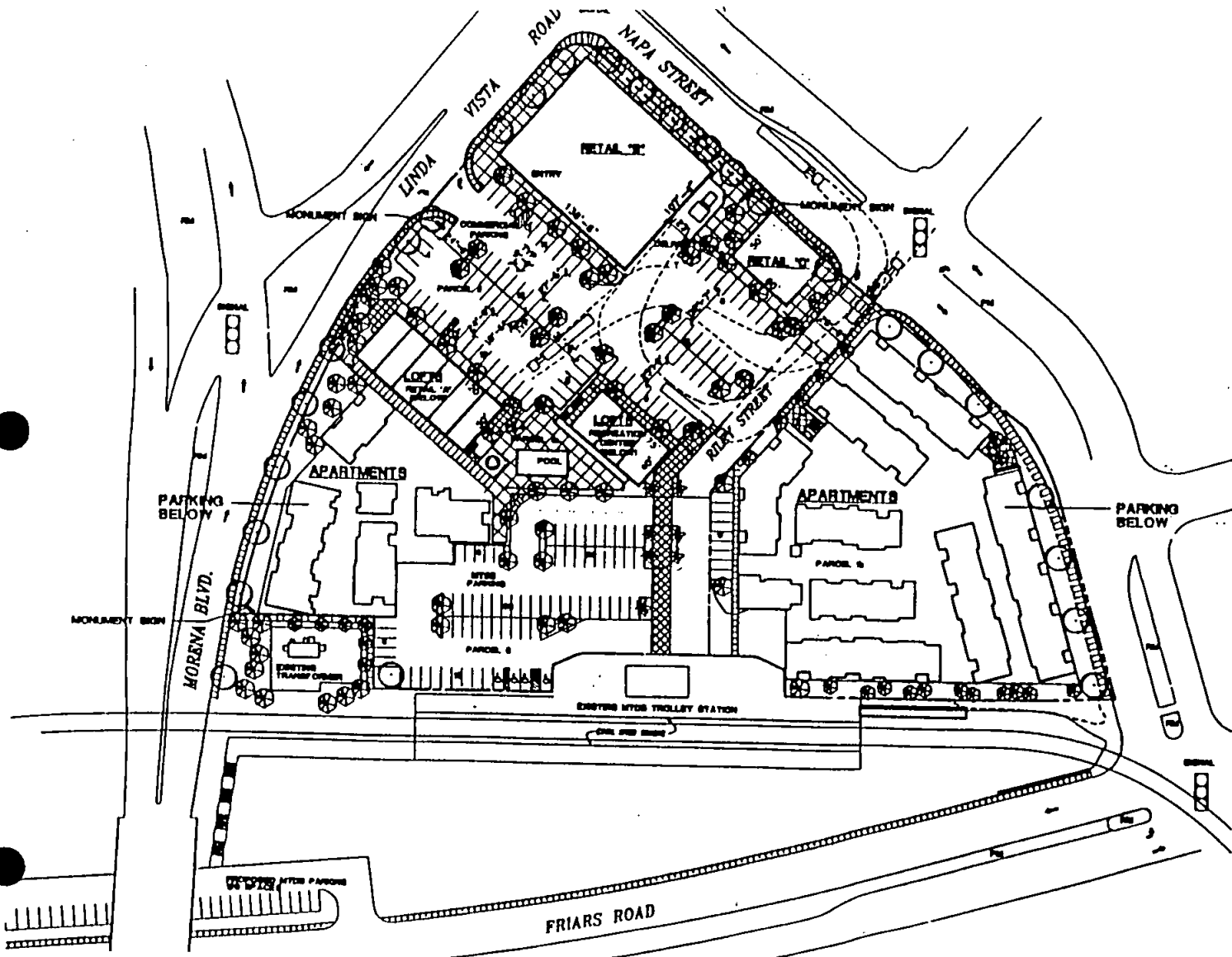
D. **Definitions.**

1. **"Basic Concept Drawings"** means conceptual site plan and building elevations depicting the general layout of the subject property, identifying land uses and general building character. Drawings are sufficient for Preliminary Plan Review with the City of San Diego.

2. **"Schematic Design Drawings"** means Schematic design documents consisting of drawings and other documents illustrating the scale and relationship of project components including site plan, floor plan(s), building elevations, site/building section(s), preliminary grading plan, preliminary landscape plan, and required information by the City of San Diego sufficient for processing a Planned Development Permit.

3. **"50% Complete Construction Drawings"** means Construction Drawings in the process of being prepared including site plan, floor plans, building elevations, sections, grading and utility plans, landscape plans, schedules and details including structural, mechanical, electrical, and plumbing systems of a sufficiently complete status (50%) to document the intended size, shape and dimension of the project components intended upon the completion of construction documents.

4. **"Final Construction Drawings and Specifications"** means the completed Drawings and Specifications, setting forth in detail the requirements for the construction of the Project.



SUMMARY

SITE AREA	234,180 S.F. (5.3 ACRES)
PARCEL 1	38,781 S.F.
PARCEL 2	74,730 S.F.
PARCEL 3	80,208 S.F.
PARCEL 4	33,904 S.F.
RILEY STREET	6,496 S.F.

COMMERCIAL

RETAIL	
RETAIL 'A'	6,000 S.F.
RETAIL 'B'	14,864 S.F.
RETAIL 'C'	2,980 S.F.
TOTAL RETAIL	23,864 S.F.

RESIDENTIAL

LOFTS (LIVE/WORK)	9 UNITS
APARTMENTS	
APARTMENTS (EAST)	88 UNITS
APARTMENTS (WEST)	33 UNITS
TOTAL APARTMENTS	121 UNITS
TOTAL RESIDENTIAL	130 UNITS

BUILDING AREA

CLUBHOUSE	3,000 S.F.
APARTMENTS	81,048 S.F.
APARTMENTS	32,288 S.F.
LOFTS	9,000 S.F.
COMMERCIAL	23,864 S.F.
PARKING GARAGE	84,780 S.F.
PARKING GARAGE	22,459 S.F.
TOTAL BUILDING	228,441 S.F.

PARKING

COMMERCIAL	87 SPACES (1/774)
RESIDENTIAL	
APARTMENTS (WEST)	88 SPACES (1.8/UNIT)
APARTMENTS (EAST)	144 SPACES (1.7/UNIT)
APARTMENT (VISITOR)	12 SPACES
TOTAL RESIDENTIAL	222 SPACES (1.8/UNIT)
MTDS (ON SITE)	73 SPACES
MTDS (ON SITE-SHARED)	8 SPACES
TOTAL	387 SPACES

LEGEND

PROPERTY LINE	---
RAISED MEDIAN	FM
PAINTED MEDIAN	PM



OVEMBER 4, 1999

SITE PLAN

MORENA VISTA MIXED USE PROJECT SAN DIEGO, CALIFORNIA

**HUMAN
EARTH**
ARCHITECTS
P.C.
400 Sign Avenue
Suite A
San Diego, CA 92104
Tel: 619 594-0000
Fax: 619 594-0001

**FLOCKE &
AVOYER**
COMMERCIAL REAL ESTATE
2200 Camino del Rio South, Suite 100
San Diego, CA 92108
Tel: (619) 594-0000 Fax: (619) 594-0001

CITYLINK
1111 Broadway, Suite 1100 San Diego, CA 92101
Tel: 619 594-0000 Fax: 619 594-0001

Exhibit A

Conceptual Site Plan

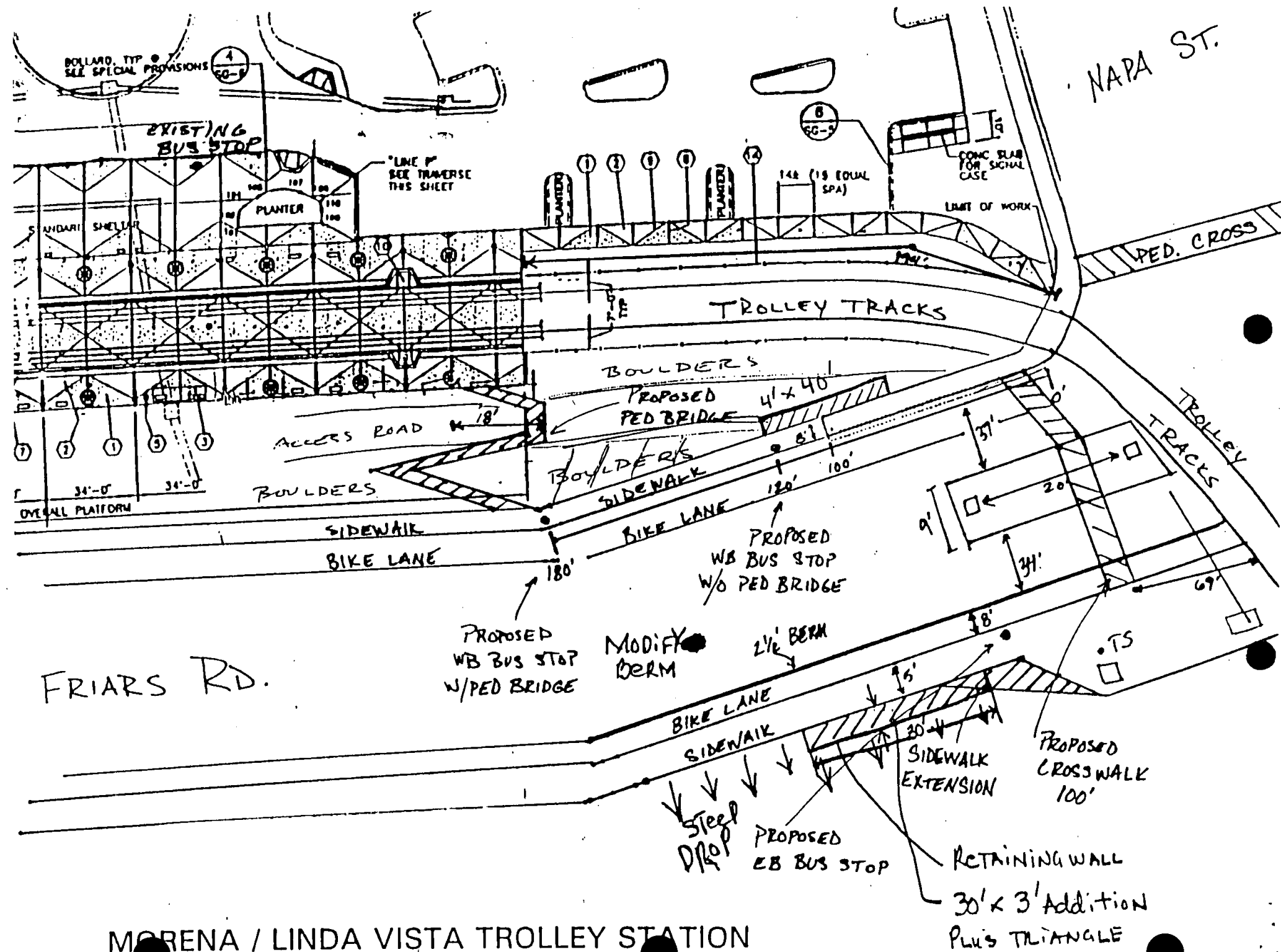
[to be provided by Developer].

[Should illustrate Street and Trolley Platform Level Design (ref. Section A.3.(c))]

Exhibit B

Illustration of Bus Stop Improvements

[to be provided by Board]



MORENA / LINDA VISTA TROLLEY STATION

Attachment No. 5

Ground Lease

[to be attached]

ATTACHMENT NO. 6

Fundamental Business Terms

1. **The Project:** The Lessee (Developer or its permitted assign(s)) shall develop the Site with the Project at its sole expense, as more particularly described in the Scope of Development.
2. **Ground Lease Term.** One or two leasehold interests in the Site would be conveyed in one or two Ground Leases in the form of Attachment No. 5 to the Agreement. The Term of both Ground Leases would be fifty-five (55) years, with one option to extend the Term an additional twenty-five (25) years and one final option to extend the Term an additional nineteen (19) years.
3. **Rent.** The Lessee shall pay to the Board as Rent, at the times and in the manner provided in the Ground Lease, Base Rent, Overage Rent, Additional Rent and all other monetary obligations of Lessee under the Ground Lease.
 - a. **Base Rent.** The Lessee shall pay to the Board as Base Rent a total of one hundred fifty thousand dollars (\$150,000) per year. If two ground leases are approved, the Base Rent shall be reasonably allocated among the two ground leases (e.g., \$87,000 per year for the Residential Area and \$63,000 per year for the Mixed Use Area). The Base Rent shall not be subordinate to debt service or any other fees or levies.
 - i. **Commencement.** For the Mixed Use Area, Base Rent shall commence the earlier of (a) twelve (12) months after the Effective Date (date of execution) of the Ground Lease or (b) the date on which the Certificate of Occupancy is issued for the Mixed Use Area. For the Residential Area, Base Rent shall commence the earlier of (a) fifteen (15) months after the Effective Date of the Ground Lease or (b) the date on which the Certificate of Occupancy is issued for the Residential Area.
 - ii. **Base Rent Escalation.** For each of the development parcels, the Base Rent for each development parcel shall escalate by twelve and one-half percent (12.5%) every five (5) years, commencing on the fifth anniversary of the Effective Date.
 - iii. **Adjustment of Base Rent to Market.** The Base Rent for each development parcel shall be adjusted based on the "Fair Market Value" of the parcel, determined pursuant to appraisal, on the thirtieth (30th) anniversary of the Effective Date. If one or both of the options to extend the term of the Ground Lease is exercised, Base Rent for the option term(s) shall also be adjusted effective as of the commencement of the option term (i.e., the fifty-fifth (55th) and the eightieth (80th) anniversary of the Effective Date). The appraisal of

the Site shall be completed three (3) months in advance of each such anniversary. The adjusted Base Rent shall be nine percent (9%) of ninety percent (90%) of appraised Fair Market Value of the parcel, but in no event shall Base Rent be adjusted to an amount less than the adjusted Base Rent for the preceding year, escalated as described in **Section 3.a.iii.** above.

- iv. Appraisal Procedure. The appraiser will be instructed to value the land in fee assuming that (a) the Site (i) is vacant, (ii) free and clear of the Ground Lease, and (iii) free and clear of any liens or encumbrances other than the Permitted Title Exceptions (other than the Memorandum of Lease) and such other encumbrances, if any, approved by the Board pursuant to the Ground Lease in a writing which acknowledges that such encumbrance shall be considered for purposes of this appraisal, and (b) improvements functionally equivalent to the Project is the highest and best use permitted to be built on the Site. The appraisal process shall be as described in Subsection (b) of **Section 304** of the Ground Lease.
- v. Base Rent Illustration: See **Exhibits 1 and 2, Schedule of Base Rent - Residential, Schedule of Base Rent - Mixed-Use**
- b. **Overage Rent.** Commencing at the time of Stabilization (defined below) on each development parcel, Lessee shall pay to the Board annually, as Overage Rent for each development parcel, an amount equal to one percent (1%) of Gross Revenue (defined below) from such development parcel for the previous twelve (12) months.
- c. **Additional Rent.** The Lessee shall pay to the Board annually, as Additional Rent for each development parcel, an amount equal to (2.15%) of Gross Revenue from such development parcel for the previous twelve (12) months.
 - i. Commencement - Residential Area. For the Residential Area, Additional Rent payments shall commence the earlier of: (a) six (6) years after Stabilization or (b) at the time Gross Revenue for the residential development reaches Two Million Two Hundred Thousand Dollars (\$2,200,000)* annually.
 - ii. Commencement - Mixed Use Area. For the Mixed Use Area, Additional Rent payments shall commence the earlier of: (a) six (6) years after Stabilization or (b) at the time Gross Revenue for the Mixed Use Area reaches Eight Hundred Thousand Dollars (\$800,000)* annually.

* Note: The Gross Revenue thresholds in **Sections 3.c.i. and 3.c.ii.** above may be reasonably adjusted between the two parcels by mutual agreement of the parties, provided that the total of the two thresholds is not less than Three Million Dollars (\$3,000,000).

Illustration: See **Exhibits 3 and 4**, Schedule of Overage Rent and Additional Rent Calculations

- d. **Debt Service Coverage Ratio.** To assist the Lessee in securing financing for the Project, during the first five (5) years after Stabilization for each development parcel, the payment of Overage Rent and Additional Rent for such parcel shall be conditioned on achieving a Net Operating Income which exceeds a (1.35:1) debt service coverage ratio from such parcel, i.e., Net Operating Income must be sufficient to make the loan payments on any Permitted Mortgage plus a reserve in the amount of thirty-five percent (35%) of such loan payments before the Lessee shall be required to make any Overage Rent or Additional Rent payments. This condition exists only during the first five (5) years after Stabilization for each development parcel and is intended only to assist the Lessee securing financing for the project. This debt service coverage provision applies only to Permitted Mortgages at then competitive rates and terms, not to exceed eighty percent (80%) loan to value.
4. **Infrastructure Improvements.** The Lessee shall be responsible for bearing the cost of all design and construction of all on-site and off-site infrastructure improvements required for the Project.
5. **Transfer Fee.** As more particularly described in **Section 800 et seq** of the Ground Lease, in the case of any and all (a) direct or indirect transfers of any interest in the Ground Lease or (b) direct or indirect transfers of any interest in the Lessee (in either case, a "Transfer"), the Board shall be entitled to payment, as additional Rent, of a Transfer Fee equal to five percent (5%) of the transferor's Net Gain.

Illustration: See **Exhibit 5**, Illustrations of Additional Rent Payable on Transfer Calculation

6. **Definitions.** The following terms shall have the following meanings.
 - a. **"Additional Rent"** shall be one percent (1%) of Gross Revenue, payable pursuant to **Section 306** of the Ground Lease.
 - b. **"Agreement"** means the Disposition and Development Agreement between the Metropolitan Transit Development Board and CityLink Investment Corporation to which this Attachment 6 is attached. Terms defined in the Agreement shall have the same meaning when used herein.
 - c. **"Base Rent"** means the fixed annual Base Rent payable by the Lessee under the Ground Lease, initially totaling one hundred fifty thousand dollars (\$150,000) per year, as adjusted from time to time pursuant to the provisions of the Ground Lease.
 - d. **"Cost of Acquisition"** shall have the meaning defined in **Section 802** of the Ground Lease.

- e. **"Debt Service"** means the principal and interest payment on a Permitted Mortgage equally amortized over the term of the loan.
- f. **"Debt Service Coverage Ratio"** means the ratio of (a) Net Operating Income to (b) Debt Service.
- g. **"Development Costs"** shall have the meaning defined in **Section 802** of the Ground Lease. The Developer's Fee shall not exceed 4% of direct costs. No overhead of the Developer's organization will be included as a cost. Lessee shall certify Final Development Costs to the Board at completion of construction of the Project..
- h. **"Gross Revenue"** shall include all revenue of any kind or nature received by Lessee derived from the Site and all improvements thereon, including, without limitation (a) all revenue received from subtenants or licensees of the Site, and all interest earned on security deposits, provided such interest is retained by Lessee and not returned to any subtenant, (b) all other revenues from or connected with the Site, all operations and improvements thereon, including without limitation deposits forfeited, cancellation fees, and any cost reimbursement of any kind received by Lessee in excess of the actual cost to Lessee; and (c) proceeds of business interruption and similar insurance payable as a result of loss of revenues. Gross Revenues shall not include (w) proceeds of casualty insurance or condemnation awards, (x) proceeds from any sale or refinancing of any interest in the Site, (y) security deposits and any interest thereon that belongs to the subtenant, or (z) reimbursement from the Board, subtenants or other parties for actual costs related to the development and operation of the Site, repayments of loans made by Lessee, or refunds of fees, deposits or taxes paid by Lessee.
- i. **"Internal Rate of Return (IRR)"** shall have the meaning defined in **Section 802** of the Ground Lease.
- j. **"Net Operating Income (NOI)"** means Gross Revenue less Operating Expenses.
- k. **"Net Gain"**
 - i. In the case of a Transfer by the original Lessee, the Lessee's Net Gain shall be determined by subtracting Development Costs from Net Sales Proceeds.
 - ii. In the case of a Transfer by anyone other than the original Lessee, the Net Gain shall be determined by subtracting Cost of Acquisition from Net Sales Proceeds.
- l. **"Net Sales Proceeds"** shall have the meaning defined in **Section 802** of the Ground Lease.

- m. **"Operating Expenses"** shall have the meaning defined in Subsection (d) of Section 313 of the Ground Lease.
- n. **"Overage Rent"** shall be two and fifteen hundredths percent (2.15%) of Gross Revenue, payable pursuant to **Section 307** of the Ground Lease.
- o. **"Rent"** means all monetary amounts payable by the Lessee under the Ground Lease, including Base Rent, Overage Rent and Additional Rent.
- p. **"Stabilization"**
 - i. Mixed Use Area. For the Mixed Use Area, means the earlier of: (a) when the mixed use portion of the Project reaches ninety percent (90%) occupancy, or (b) five (5) months after issuance of a Certificate of Occupancy for the Mixed Use Area.
 - ii. Residential Area. For the Residential Area, means the earlier of (a) when the project reaches ninety percent (90%) occupancy or (b) three (3) months after issuance of a Certificate of Occupancy for the Residential Area.

This "Fundamental Business Terms" attachment is intended to be consistent with the Agreement and the Ground Lease. In the event of any conflict between the Agreement and this exhibit, the Agreement shall control. In the event of any conflict between the Ground Lease and this exhibit, the Ground Lease shall control.

Exhibit 1

Schedule of Base Rent - Residential

<u>Year</u>	<u>Base Rent</u>	<u>Remarks</u>
0		Groundlease Executed
1		Construction Begins
2	\$87,000	COO
3	\$87,000	
4	\$87,000	
5	\$97,875	
6	\$97,875	
7	\$97,875	
8	\$97,875	
9	\$97,875	
10	\$110,109	
11	\$110,109	
12	\$110,109	
13	\$110,109	
14	\$110,109	
15	\$123,873	
16	\$123,873	
17	\$123,873	
18	\$123,873	
19	\$123,873	
20	\$139,357	
21	\$139,357	
22	\$139,357	
23	\$139,357	
24	\$139,357	
25	\$156,777	
26	\$156,777	
27	\$156,777	
28	\$156,777	
29	\$156,777	
30	\$176,374 (1)	
31	\$176,374	
32	\$176,374	
33	\$176,374	
34	\$176,374	
35	\$198,421	
36	\$198,421	
37	\$198,421	
38	\$198,421	
39	\$198,421	
40	\$223,223	
41	\$223,223	
42	\$223,223	
43	\$223,223	
44	\$223,223	
45	\$251,126	
46	\$251,126	
47	\$251,126	
48	\$251,126	
49	\$251,126	
50	\$282,517	
51	\$282,517	
52	\$282,517	
53	\$282,517	
54	\$282,517	
55	\$317,832	

(1) Base Rent is adjusted to "market" on the 30th, 56th, and 80th anniversary of ground lease commencement.

Exhibit 2

Schedule of Base Rent - Commercial

<u>Year</u>	<u>Base Rent</u>	<u>Remarks</u>
0		Groundlease Executed
1		Construction Begins
2	\$63,000	OOO
3	\$63,000	
4	\$63,000	
5	\$70,875	
6	\$70,875	
7	\$70,875	
8	\$70,875	
9	\$70,875	
10	\$79,734	
11	\$79,734	
12	\$79,734	
13	\$79,734	
14	\$79,734	
15	\$89,701	
16	\$89,701	
17	\$89,701	
18	\$89,701	
19	\$89,701	
20	\$100,914	
21	\$100,914	
22	\$100,914	
23	\$100,914	
24	\$100,914	
25	\$113,528	
26	\$113,528	
27	\$113,528	
28	\$113,528	
29	\$113,528	
30	\$127,719 (1)	
31	\$127,719	
32	\$127,719	
33	\$127,719	
34	\$127,719	
35	\$143,884	
36	\$143,884	
37	\$143,884	
38	\$143,884	
39	\$143,884	
40	\$161,644	
41	\$161,644	
42	\$161,644	
43	\$161,644	
44	\$161,644	
45	\$181,850	
46	\$181,850	
47	\$181,850	
48	\$181,850	
49	\$181,850	
50	\$204,581	
51	\$204,581	
52	\$204,581	
53	\$204,581	
54	\$204,581	
55	\$230,154	

(1) Base Rent is adjusted to "market" on the 30th, 50th, and 80th anniversary of ground lease commencement.

Exhibit 3

Overage and Additional Rent Illustration (Residential Parcel)

	<u>Yr 0</u>	<u>Yr 1</u>	<u>Yr 2</u>	<u>Yr 3</u>	<u>Yr 4</u>	<u>Yr 5</u>	<u>Yr 6</u>	<u>Yr 7</u>
Apts (1)								
Total GSI	\$ 2,231,879	\$ 2,298,938	\$ 2,367,907	\$ 2,438,944	\$ 2,512,112	\$ 2,587,476		
<u>Vacancy</u>								
Apts 5%	\$ (111,599)	\$ (114,947)	\$ (118,395)	\$ (121,947)	\$ (125,606)	\$ (129,374)		
Total Vacancy	\$ (111,599)	\$ (114,947)	\$ (118,395)	\$ (121,947)	\$ (125,606)	\$ (129,374)		
Gross Revenues (1)	\$ 2,120,280	\$ 2,183,992	\$ 2,249,511	\$ 2,316,997	\$ 2,386,507	\$ 2,458,102		
Operating Expenses	\$ (602,381)	\$ (662,648)	\$ (684,342)	\$ (705,355)	\$ (732,221)	\$ (756,231)		
Base (2)	\$ (87,000)	\$ (87,000)	\$ (87,000)	\$ (87,875)	\$ (87,875)	\$ (87,875)		
Overage Rent (3)	\$ -	\$ -	\$ (18,659)	\$ (23,170)	\$ (23,665)	\$ (24,581)		
Add'l Rent (4)	\$ -	\$ -	\$ -	\$ (15,000)	\$ (35,000)	\$ (52,849)		
NOI	1,430,899	1,434,344	1,461,510	1,475,597	1,497,545	1,526,568		
Debt Service (5)	\$ (1,005,816)	\$ (1,005,816)	\$ (1,005,816)	\$ (1,005,816)	\$ (1,005,816)	\$ (1,005,816)		
Coverage	1.34	1.34	1.35	1.33	1.33	1.34		
Base	\$ 87,000	\$ 87,000	\$ 87,000	\$ 97,875	\$ 97,875	\$ 97,875		
Overage Rent 1% of GI	\$ -	\$ -	\$ 18,659	\$ 23,170	\$ 23,665	\$ 24,581		
Add'l Rent 2.15% of GI	\$ -	\$ -	\$ -	\$ 15,000	\$ 35,000	\$ 52,849		
Total	\$ 87,000	\$ 87,000	\$ 103,659	\$ 136,045	\$ 156,740	\$ 175,305		

(1) Based on KMA estimate \$1.35/SF rents with \$78/mo per unit of additional income and net of vacancy

(2) Fixed and nonsubordinated.

(3) Based on 1% of Gross Income (actual income) unless payment causes debt service coverage to be below 1.35

(4) Commences when Gross Income is at or exceeds \$2.2M or Year 6 whichever is sooner. (Threshold of \$2.2M may vary)
Amount paid cannot exceed debt service coverage of 1.35 in first five years.

(5) Based on estimated cost of \$15.3 million with 70% loan to cost ratio with interest rate at 8% amortized over 25 years.

Exhibit 4

Overage and Additional Rent Illustration (Mixed Use Parcel)

	<u>Yr 0</u>	<u>Yr 1</u>	<u>Stabilized</u> <u>Yr 2</u>	<u>Yr 3</u>	<u>Yr 4</u>	<u>Yr 5</u>	<u>Yr 6</u>	<u>Yr 7</u>
Gross Revenues (1)	\$ 830,577	\$ 660,173	\$ 670,389	\$ 691,186	\$ 712,641	\$ 734,754		
Operating Expenses	\$ (30,512)	\$ (31,122)	\$ (31,744)	\$ (32,379)	\$ (33,027)	\$ (33,887)		
Base (2)	\$ (63,000)	\$ (63,000)	\$ (63,000)	\$ (70,875)	\$ (70,875)	\$ (70,875)		
Overage Rent (3)	\$ (8,308)	\$ (8,502)	\$ (8,704)	\$ (8,912)	\$ (7,126)	\$ (7,348)		
Add'l Rent (4)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (15,797)		
NOI	\$ 530,760	\$ 549,549	\$ 568,921	\$ 581,020	\$ 601,613	\$ 607,047		
Debt Service (5)	\$ (314,760)	\$ (314,760)	\$ (314,760)	\$ (314,760)	\$ (314,760)	\$ (314,760)		
Coverage		1.69	1.75	1.81	1.85	1.91	1.83	
Base	\$ 63,000	\$ 63,000	\$ 63,000	\$ 70,875	\$ 70,875	\$ 70,875		
Overage Rent 1% of GI	\$ 8,308	\$ 8,502	\$ 8,704	\$ 8,912	\$ 7,126	\$ 7,348		
Add'l Rent 2.15% of GI	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 15,797		
Total	\$ 69,306	\$ 69,602	\$ 69,704	\$ 77,787	\$ 78,001	\$ 94,020		

(1) Based on rents of \$18.33/SF/NNN and net of vacancy

(2) Fixed and nonsubordinated.

(3) Based on 1% of Gross Income (actual income) unless payment causes debt service coverage to be below 1.35

(4) Commences when Gross Income is at or exceeds \$.8M or Year 6 whichever is sooner. (Threshold of \$.8M may vary)
Amount paid cannot exceed debt service coverage of 1.35 in first five years.

(5) Based on an estimated development costs of \$4.8M at 70% loan to cost at 8% interest amortized over 25 years.

Exhibit 5

Illustrations of Additional Rent Payable on Transfer Calculations

Sale of Project(s) and Full Assignment of Groundlease Example

Assumptions

\$20,000,000 Development Costs
 \$1,000,000 Capital Improvement (i.e. new roof)
 \$16,000,000 Original Loan @ 80% of Development Costs
 \$4,000,000 Equity

Participation Formula

Net Sales Proceeds	\$25,000,000
Plus Additional Proceeds	\$0
(Less) Development Costs	(\$20,000,000)
(Less) Capital Improvements	(\$1,000,000)
Project Profit	\$4,000,000
MTDB Participation @ 5%	(\$200,000)

Refinancing of Project(s) and Later Sale of Project and Full Assignment of Groundlease Example

Assumptions

\$20,000,000 Development Costs
 \$1,000,000 Capital Improvement (i.e. new roof)
 \$16,000,000 Loan @ 80%
 \$19,000,000 New Refinanced Amount
 \$4,000,000 Equity
 \$3,000,000 Refinance Proceeds Distributed

Participation Formula

Net Sales Proceeds	\$25,000,000
Plus Additional Proceeds	\$3,000,000
(Less) Development Costs	(\$20,000,000)
(Less) Capital Improvements	(\$1,000,000)
Project Profit	\$7,000,000
MTDB Participation @ 5%	(\$350,000)

Sale of a Partial Ownership Interest (e.g., 30%) and Assignment of Partial Interest in Groundlease Example

Assumptions

\$20,000,000 Development Costs
 \$1,000,000 Capital Improvement (i.e. new roof)
 \$16,000,000 Loan @ 80%
 \$4,000,000 Equity

Participation Formula

Net Sales Proceeds	\$8,500,000
Plus Additional Proceeds	\$0
(Less) Development Costs @ 30%	(\$6,000,000)
(Less) Capital Improvements @ 30%	(\$300,000)
Project Profit	\$200,000
MTDB Participation @ 5%	(\$10,000)

ATTACHMENT NO. 7

Condition of Title

1. **Preliminary Title Report.** No later than ten (10) Business Days after the Effective Date, the Board shall, or shall cause Title Company to, deliver to Developer (i) a preliminary title report (the "Title Report") on the Site issued by Title Company and (ii) copies of all documents shown as exceptions in the Title Report. If Developer desires to obtain an American Land Title Association ("ALTA") Extended Coverage Owner's Policy of Title Insurance in lieu of a California Land Title Association ("CLTA") Owner's Title Insurance Policy, then prior to the end of the Feasibility Period, Developer shall (a) notify the Board thereof, (b) obtain an ALTA survey of the Site (the "Survey") at Developer's sole cost and expense, and (c) deliver a copy of the Survey to the Board and Title Company. The Board shall provide Developer with copies of any surveys of the Site obtained by the Board. Developer shall review the Title Report and the Survey, if any, within ninety (90) days after the Effective Date (the "Title Review Period"). If any exceptions appear in the Title Report or any items appear on the Survey that are unacceptable to Developer, then Developer shall before the expiration of the Title Review Period provide written notice to the Board, which notice shall specify all such unacceptable exceptions to title and unacceptable items shown on the Survey (collectively "Developer's Title Objections") and explain why each such title exception or Survey item is unacceptable to Developer. Upon expiration of the Title Review Period, Developer shall be deemed to have accepted all exceptions to title, all matters shown on the Title Report and all matters shown on the Survey (other than Developer's Title Objections), and such exceptions shall be included in the term "Permitted Title Exceptions" as used herein.

2. **Removal of Objections.** Within ten (10) Business Days after Developer notifies the Board of Developer's Title Objections, the Board shall notify Developer in writing as to whether and how the Board will cure Developer's Title Objections. If the Board notifies Developer that the Board intends to cure a Developer's Title Objection, then such Developer's Title Objection shall be deemed a "Curable Title Exception." The cure of such Curable Title Exception to the reasonable satisfaction of Developer shall be deemed an additional condition to Closing for Developer's exclusive benefit, and the Board shall use its reasonable best efforts to cure such Curable Title Exception, but the Board's failure to complete such a cure shall not constitute a default by the Board. The Board shall, at the Developer's request, periodically update the Developer on the status of the cure of any Curable Title Exception. Unless the Board notifies Developer in writing during such ten (10) Business Day period that the Board intends to cure a particular Developer's Title Objection, then upon expiration of such ten (10) Business Day period, the Board shall be deemed unable or unwilling to cure such Developer's Title Objection. If the Board fails to notify Developer that the Board intends to cure all of Developer's Title Objections as provided above, then Developer may, as its sole and exclusive remedy, either (a) terminate this Agreement by written notice to the Board by the earlier to occur of (i) the Closing Date or (ii) thirty (30) Business Days following notice from the Board that it is unwilling or unable to eliminate or modify Developer's Title Objections, or (b) accept such title as the Board can deliver without any changes to any of the terms of this transaction, in which event any uncured Developer's Title Objections (other than any Curable Title Exceptions)

Notwithstanding the foregoing, the Board shall pay off and remove on or before the Close of Escrow (a) all mortgages, deeds of trust and other monetary liens (other than those described above in Section 3.b.), and (b) all leases of the Site or any portion of the Site.

4. **Review of Supplemental Reports.** If Escrow Agent learns before the Closing Date that there are any title exceptions against the Site in addition to those specified in the Title Report and the Survey, Escrow Agent shall cause Title Company to issue to Developer and the Board a supplemental preliminary report ("**Supplemental Report**") referencing such title exceptions.

a. If any such exceptions are material and unacceptable to Developer, Developer shall, not later than the later of (i) ten (10) Business Days after receipt of the Supplemental Report and (ii) the end of the Title Review Period, notify the Board in writing of such fact and the reasons therefor ("**Developer's Supplemental Title Objections**"). Upon expiration of such period, Developer shall be deemed to have accepted all exceptions to title and all other matters shown on the Supplemental Report not timely objected to by Developer, and such exceptions shall be included in the term "Permitted Title Exceptions" as used herein.

b. Within ten (10) days after the Board receives notice of Developer's Supplemental Title Objections, the Board shall notify Developer in writing as to whether and how the Board intends to eliminate the Developer's Supplemental Title Objections. If the Board notifies Developer that the Board intends to cure a Developer's Supplemental Title Objection, then such Developer's Supplemental Title Objection shall be deemed a "**Curable Title Exception.**" The cure of such Curable Title Exception to the reasonable satisfaction of Developer shall be deemed an additional condition to Closing for Developer's exclusive benefit, and the Board shall use its reasonable best efforts to cure such Curable Title Exception, but the Board's failure to complete such a cure shall not constitute a default by the Board. The Board shall, at the Developer's request, periodically update the Developer on the status of the cure of any Curable Title Exception. Unless the Board notifies Developer in writing during such ten (10) Business Day period that the Board intends to cure a particular Developer's Supplemental Title Objection, then upon expiration of such ten (10) Business Day period, the Board shall be deemed to be unable or unwilling to cure such Developer's Supplemental Title Objection. Subject to the foregoing, the Board shall cooperate in good faith with Developer to cure Developer's Supplemental Title Objections. In the event the Board fails to notify Developer that the Board intends to cure all of Developer's Title Objections as provided above, Developer may, as its sole and exclusive remedy, either (a) terminate this Agreement by notice in writing to the Board by the earlier to occur of (i) the Closing Date, or (ii) thirty (30) Business Days following written notice from the Board that it is unwilling or unable to eliminate or modify the Developer's Supplemental Title Objections, or (b) accept such title as the Board can deliver without any changes to the terms of this transaction, in which event any uncured Developer's Supplemental Title Objections (other than any Curable Title Exceptions) shall be included in the term "Permitted Title Exceptions." If Developer does not elect to terminate this Agreement within the period described in the immediately preceding sentence, Developer

shall be deemed to have accepted all Developer's Supplemental Title Objections other than the Curable Title Exceptions, and such Developer's Supplemental Title Objections shall be included in the term "Permitted Title Exceptions."

5. **Cooperation.** Subject to the foregoing, the Board shall cooperate in good faith with Developer to cure Developer's Title Objections and Developer's Supplemental Title Objections; however, notwithstanding anything to the contrary contained herein, the Board shall have no obligation to bring any action or proceeding or otherwise to incur any material expense or liability whatsoever to cure or modify Developer's Title Objections or Developer's Supplemental Title Objections.

6. **Termination.** In the event of termination pursuant to this Attachment, the parties shall have the rights and obligations set forth in **Section 511** of the Agreement.

Attachment No. 8

Required Land Use Approvals

- Planned Development Permit for the Project
- Vacation of the portion of Riley Street on the Site
- Parcel Map (if necessary to create two parcels)
- CEQA documentation (e.g., Negative Declaration or EIR)
- Off-Site Parking Lease
- Grading Permit
- Building Permit
- Such other similar approvals as may be required by the City of San Diego which Developer and the Board reasonably agree in writing should be included as a "Required Land Use Approval"

[subject to further refinement]

GROUND LEASE

by and between

THE METROPOLITAN TRANSIT DEVELOPMENT BOARD

"Board"

and

"Lessee"

EXHIBITS AND ATTACHMENTS

EXHIBIT A:	Parcel Map
EXHIBIT B:	Legal Description
EXHIBIT C	Memorandum of Lease
EXHIBITS D-1 - D-4:	Rent Calculation Examples
EXHIBIT E:	List of Improvement Components
EXHIBIT F:	List of Personal Property
EXHIBIT G:	Parking Agreement
EXHIBIT H:	Items Approved by Board Pursuant to DDA
EXHIBIT I:	Security Financing; Rights of Holders
EXHIBIT J:	Illustrations of Additional Rent Payable on Transfer Calculation
ATTACHMENT NO. 3	Schedule of Performance
ATTACHMENT NO. 4	Scope of Development

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GROUND LEASE

THIS GROUND LEASE ("Lease") is made as of _____, 200__, by and between THE METROPOLITAN TRANSIT DEVELOPMENT BOARD, a California public agency (the "Board"), and _____, a _____ ("Lessee").

I. [§ 100] SUBJECT OF LEASE

A. [§ 101] Parties to the Lease

1. [§ 102] The Board

The "Board" is a California public agency organized and existing under the laws of the State of California. The principal office of the Board is located at 1255 Imperial Avenue, Suite 1000, San Diego, California 92101-7490. "Board" as used in this Lease includes the Board and any assignee of or successor to its rights, powers and responsibilities.

2. [§ 103] Lessee

"Lessee" is _____, a California _____ ("_____"), whose _____ is _____ ("_____"). The principal office of the Lessee is _____, San Diego, California 92____. CityLink Investment Corporation, a California corporation ("CIC"), whose President and CEO is William D. Jones ("Jones"), is the _____ [describe CIC's relationship to Lessee for purposes of transfer restrictions] of Lessee. The principal office of the Lessee is 2505 Congress Street, Suite 110, San Diego, California 92110. Wherever the term "Lessee" is used herein, such term shall also include any permitted assignee or successor in interest as herein provided.

B. [§ 104] The DDA

1. This Lease is made pursuant to and in accordance with the Disposition and Development Agreement entered into by and between the Board and CIC, dated as of April 6, 2000, as amended (the "DDA"). Terms defined in the DDA shall have the same meaning when used in this Lease, unless the context clearly indicates otherwise. This Lease, together with the "Mixed Use Parcel Lease" (defined in Section 107 below), was entered into at Close of Escrow under the DDA. Lessee's duties and obligations under this Lease are separate and independent from the duties and obligations of the Developer under the DDA, and a breach by the Developer under the DDA shall not be deemed a breach under this Lease.

C. [§ 105] The Parcel

The "**Parcel**" is that certain real property owned by the Board consisting of approximately 3.5 acres in the Linda Vista area of the City of San Diego, California (the "**City**"), illustrated and designated as the "**Residential Area**" on the "**Parcel Map**" which is attached to this Lease as **Exhibit A**. The Parcel is bounded by Napa Street on the north and east, Morena Boulevard and Linda Vista Road on the north and west, and the Morena/Linda Vista Trolley Station and trolley right-of-way on the south, as and as more precisely described in the Legal Description of the Parcel which is attached hereto as **Exhibit B**. The Parcel corresponds with the area defined as the "**Residential Area**" under the DDA.

Except as expressly provided to the contrary in this Lease, reference to the Parcel is to the described land exclusive of any improvements now or hereafter located on such land, notwithstanding that any such improvements may or shall be construed as affixed to and as constituting part of the real property, and without regard to whether ownership of the improvements is in Board or Lessee.

D. [§ 106] The Project

The purpose of this Lease is to provide for the lease of the Parcel to Lessee and the development and operation on the Parcel by Lessee, at its sole cost and expense, of a transit-oriented, moderate density, rental apartment project and related on- and off-site facilities, amenities and improvements (the "**Project**"), as more particularly described in **Section 501** and the "**Scope of Development**" which is attached to this Lease as **Attachment No. 4**. A "**Site Plan**" for the Project is attached as **Exhibit A** to the Scope of Development. The improvements to be made by Lessee as part of the Project, including on- and off-site improvements (the "**Improvements**"), are more particularly described and defined in **Section 400** below and in the Scope of Development. The "**Project**" shall include any subsequent construction on the Parcel following the construction of the Improvements. The lease of the Parcel and the development and operation of the Parcel and the Improvements by Lessee, pursuant to this Lease, and the fulfillment generally of this Lease, are in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

E. [§ 107] The Mixed Use Project

1. The Parcel is contiguous to a separate parcel (the "**Mixed Use Parcel**") owned by the Board, as illustrated and designated on the Site Plan. Concurrently herewith, the Board and Lessee entered into a certain Ground Lease of even date herewith (the "**Mixed Use Parcel Lease**"), which provides for the lease by the Board to _____, a _____ (the "**Mixed Use Project Lessee**"), of the Mixed Use Parcel and for the development and operation thereon of a commercial/mixed-use project consisting of, among other components, ground-level retail space, residential rental "loft" units, on- and off-site parking and related improvements (the "**Mixed Use Project**"), as more particularly described therein. The Project and the Mixed Use Project are each

being developed concurrently, and when complete will constitute and be operated as an integrated, transit-oriented, moderate density, mixed-use project, all as more particularly described in the Scope of Development.

2. Lessee's duties and obligations under this Lease are separate and independent from the duties and obligations of the Mixed Use Project Lessee under the Mixed Use Parcel Lease, and that a breach by the Mixed Use Project Lessee under the Mixed Use Parcel Lease shall not be deemed a breach under this Lease.

F. [§ 108] The Trolley Station

1. The Board owns and operates the Morena/Linda Vista Trolley Station and trolley right-of-way (the "Trolley Station") adjacent to the Project to the south along Friars Road as illustrated and designated on the Site Plan. Nothing in this Lease shall restrict or impair in any way the Board's rights or discretion to operate, use, transfer, close or redevelop the Trolley Station for such purposes as the Board determines from time to time in its sole discretion.

2. The provision of parking for the Trolley Station on the Parcel and access to the Trolley Station across the Parcel is an essential element of the Project. At the commencement of the Lease, _____ () parking spaces for the park-and-ride patrons of the Trolley Station were located on the Parcel and on the Mixed Use Parcel. Upon completion of the Project, Lessee shall at all times maintain (a) a minimum of (i) seventy three (73) parking spaces on site for the exclusive use of trolley park-and-ride patrons of the Trolley Station during trolley hours, and (ii) nine (9) parking spaces on site for the shared use of trolley park-and-ride patrons of the Morena Station and the residents and guests of the Residential Area (collectively the "Trolley Parking"), (b) reasonable vehicular access from public streets to the Trolley Parking, and (c) reasonable pedestrian access across the Parcel and from the Trolley Parking to the Trolley Station, as illustrated and designated on the Site Plan. The Trolley Parking will be maintained pursuant to the "**Parking Agreement**" between the Board and Lessee, a copy of which is attached to the is Lease as **Exhibit G**. It is planned that the Board will also maintain off-site parking along Friars Road (on property currently under lease from the City of San Diego) for the use of trolley park-and-ride patrons (the "**Off-Site Parking**").

3. The Board shall provide such security services for the Trolley Station, the Trolley Parking and the Off-Site Parking as the Board may from time to time provide at the Board's other trolley stations; provided, however, that it is expressly understood that such security services shall be for the sole benefit of the Board, its employees and trolley patrons and not for Lessee, its tenants, or the occupants and visitors of the Project. If the Board's interest in this Lease is transferred separately from the Trolley Station, the new lessor under this Lease shall have no obligation to provide security for the Trolley Station, the Trolley Parking or the Off-Site Parking. Lessee and its tenants shall provide adequate overall security for the Project at least comparable to that customarily provided for similar mixed-use transit-oriented developments.

G. [§ 109] Parking and Access

In furtherance of the operation of Project and the Mixed Use Project, Lessee and the Mixed Use Project Lessee have entered into and recorded a Reciprocal Easement Agreement ("REA") which provides, among other things, for the joint use and maintenance of entries and exits, parking areas, and other facilities on the Parcel and the Mixed Use Parcel. The REA, among other things, permits and facilitates access on, over and through the Project and the Mixed Use Project to the Trolley Station, the Trolley Parking and the Off-Site Parking by trolley patrons, at no cost or expense to the Board. Amendments to the REA are subject to the prior written approval of the Board.

H. **[§ 110] Title**

Title to the leasehold estate created by this Lease was conveyed in the condition required by the DDA. The Board shall not at any time during the Term (defined below) of this Lease place any additional title exceptions against the Parcel (including without limitation any mortgage or deed of trust) except for title exceptions which (a) are expressly made subject and subordinate to this Lease and the rights of Lessee and any Permitted Mortgagee (defined below) hereunder or (b) are expressly required or permitted by this Lease. The parties shall cooperate reasonably regarding the grant of future easements which might be necessary or desirable for the operation of Project or the Trolley Station.

I. **[§ 111] Condition of the Parcel**

1. **"As Is" Condition**

Except as provided in Subsection 8 of **Section 711** below, the Parcel and all improvements thereon are conveyed in an "as is" condition, with no warranty, express or implied by the Board as to the condition of the soil (or water), its geology, or the presence of known or unknown faults or as to the condition of the improvements. It shall be the sole responsibility of Lessee, at Lessee's expense, to investigate and determine the soil (and water) condition of the Parcel (including improvements) and the suitability of the Parcel (including improvements) for the development to be constructed by Lessee. If the soil (or water) condition of the Parcel (including improvements), or any part thereof, is not in all respects entirely suitable for the use or uses to which the Parcel and improvements will be put, then except as provided in Subsection 8 of **Section 711** below it is the sole responsibility and obligation of Lessee to take such action as may be necessary to place the Parcel and the soil (and water) condition thereof (including improvements) in all respects in a condition entirely suitable for the development of the Parcel.

2. **Release**

Lessee hereby waives, releases, remises, acquits and forever discharges Board, its directors, officers, employees, and agents, successors and assigns, of and from any and all suits, causes of action, legal or administrative proceedings, claims, demands, actual damages, punitive damages, losses, costs, liabilities, interest, attorneys' fees and expenses of whatever kind and nature, in law or in equity, known or unknown, which Lessee shall or may have or acquire or possess in any

way directly or indirectly connected with, based upon, or arising out of, (i) Board's use, maintenance, ownership and operation of the Parcel prior to the Effective Date of Lease; or (ii) the condition (including structural fitness), status, quality, nature, contamination or environmental state of the Parcel and Project. It is the intention of this Lease that any and all responsibilities and obligations of Board, and any and all rights or claims of Lessee against Board, its successors and assigns and affiliated entities, arising by virtue of the physical or environmental condition of the Parcel and Project are by this release provision declared null and void and of no present or future effect as to such parties, except for those limited obligations of the Board under Subsection 8 of Section 711. Lessee agrees as to the matters released to waive the benefits of Section 1542 of the CIVIL CODE of the State of California, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Lessee's Initials

Board's Initials

II. [§ 200] LEASE OF THE PARCEL

A. [§ 201] Lease

For and in consideration of the rents, conditions, covenants and agreements set forth herein, Board hereby leases to Lessee and Lessee does hereby take and lease from Board, the Parcel subject to the terms, covenants and conditions of this Lease.

B. [§ 202] Term of the Lease

The term of this Lease shall commence upon the Effective Date of Lease (defined below), and, if not sooner terminated as provided in this Lease, shall expire at midnight on the last day of the calendar month immediately succeeding the fifty-fifth (55th) anniversary of the last day of the calendar month in which the Effective Date of Lease occurs. For example, if the Effective Date of Lease occurs on June 10, 2001, then the last day of the Term would be June 30, 2056. As used herein, "Effective Date" of the Lease means _____, 2001 [to be inserted by Escrow Holder at Close of Escrow under the DDA]. In no event shall the term of this Lease, including all extensions, exceed ninety nine (99) years.

III. [§ 300] RENT

A. [§ 301] Manner of Payment

Lessee covenants and agrees to pay Rent (defined below) as and when required by this Lease to Board, at Board's address set forth in **Section 102** hereof or at such place or to such person as Board may designate in writing by notice to Lessee from time to time, in such coin or currency of the United States as shall, at the time of payment, be legal tender for the payment of all debts, public or private. As used herein, "**Rent**" means all monetary amounts payable by Lessee under this Lease, including without limitation Base Rent, Overage Rent and Additional Rent (as such terms are defined below) and any sums payable in the event of a Transfer pursuant to **Section 803**.

B. **[§ 302] Base Rent**

1. **[§ 303] Initial Base Rent**

Lessee shall initially pay to the Board, for each Lease Year (defined below) or portion thereof during the Term, in the manner and at the time provided herein, the sum of _____ Dollars (\$ _____) per year ("**Base Rent**").

Base Rent shall be payable annually, in advance, beginning on the Base Rent Commencement Date (defined below) and continuing on the first (1st) day of each Lease Year thereafter during the Term. Base Rent for any partial Lease Year during the Term shall be a prorata portion of the installment then due, based upon a three hundred sixty five (365) day Lease Year. Base Rent shall be subject to adjustment in accordance with the terms of **Section 304**.

As used herein, "**Base Rent Commencement Date**" means the earlier of (i) the date Lessee receives a Certificate of Occupancy from the City following completion of the Improvements, or (ii) fifteen (15) months after the Effective Date of the Lease. Lessee shall use its best efforts to cause the City to issue the Certificate of Occupancy as soon as reasonably possible after completion of construction of the Improvements. Within ten (10) days after the Base Rent Commencement Date occurs, Board and Lessee shall enter into an addendum to this Lease confirming such date. Neither the failure nor refusal of either Board or City to enter into said addendum shall in any manner impair this Lease or the effectiveness or enforceability of the matters intended to be confirmed by said addendum. As used herein, "**Lease Year**" means that period of twelve (12) or fewer consecutive months which ends on December 31st of each year and which falls within the Term and the period from the last December 31st during the Term to and including the last day of the Term.

2. **[§ 304] Adjustments to Base Rent**

Base Rent shall be subject to adjustment during the Term pursuant to the terms of Subsections (a) and (b) of this **Section 304**.

(a) **Formula Adjustment**

Subject to the special adjustment set forth in Subsection (b), Base Rent shall be increased on the fifth (5th) anniversary of the Effective Date and every fifth (5th) anniversary thereafter (each, an "**Adjustment Date**") in the following manner: at each Adjustment Date the

then prevailing annual Base Rent shall be increased by twelve and one-half percent (12.5%) and the resulting amount shall be the Base Rent for the next five (5) Lease Years of the Term.

(b) Special Adjustment in the Thirtieth Lease Year

On the first (1st) day of the thirtieth (30th) Lease Year and on the first day of any extension of the Term (the "**Appraisal Date**", which shall also be an Adjustment Date), Base Rent shall be increased to the greater of (i) the Base Rent derived by making the formula calculation under Subsection (a), or (ii) the Base Rent derived by making the Fair Market Rental Value (defined below) determination in accordance with Subsections (1) through (3) below. In no event shall the annual Base Rent derived by comparing the foregoing calculations be less than the annual Base Rent for the Lease Year immediately preceding such adjustment. If the Fair Market Rental Value for the Parcel (defined below) has not been determined in accordance with this Subsection (b) by the applicable Appraisal Date, then Lessee shall continue to pay annual Base Rent as adjusted in accordance with Subsection (a) until such time as the Fair Market Rental Value for the Parcel has been determined, at which time any further adjustment in the Base Rent resulting from the calculations made pursuant to this Subsection (b) shall be made retroactively and paid within ten (10) days after such determination.

(1) Not later than seven (7) months prior to an Appraisal Date, Board shall provide written notice to Lessee setting forth the amount claimed by Board as the Fair Market Value of the Parcel. If Lessee disputes the amount so claimed by Board as Fair Market Value of the Parcel, then Lessee shall have thirty (30) days after receipt of Board's notice to make written demand by notice to Board for appraisal under this Lease pursuant to the process described in Subsection (3) below, failing which demand Lessee shall be deemed to have waived any further right to demand appraisal in connection with said dispute, in which event the amount of Base Rent to be used in making the calculation under Subsection (b) shall be calculated using the amount previously claimed by Board as Fair Market Value of the Parcel. If Lessee shall make such demand, then the Base Rent calculation shall be made with reference to the Fair Market Value of the Parcel determined pursuant to such appraisal (or otherwise by settlement between Board and Lessee).

(2) The calculation of "Fair Market Rental Value" made with respect to each Appraisal Date shall be made in accordance with the following Subsections (a) and (b).

a. The calculation of "**Fair Market Value of the Parcel**" shall be made by determining the price at which the Parcel would be sold for cash by a willing and knowledgeable seller not compelled to sell, to a willing and knowledgeable buyer not compelled to buy, if the Parcel were vacant, unimproved, unencumbered, free and clear of this Lease and all mortgages or deeds of trust, and available for development for the "highest and best use" then permitted by the City's Municipal Code and other legal requirements; provided, however, for purposes of determining the Fair Market Value of the Parcel, improvements functionally equivalent to the Project (or such higher and better use as may have been approved by the Board at Lessee's

request pursuant to **Section 502**) shall be deemed the "highest and best use" permitted to be built on the Parcel.

b. In determining Fair Market Rental Value, Board or the appraisers, as the case may be, shall first determine the Fair Market Value of the Parcel pursuant to Subsection a. above. "**Fair Market Rental Value**" shall be nine percent (9%) of ninety percent (90%) of the Fair Market Value of the Parcel, which shall be used in making the calculation under Subsection (b) of the annual Base Rent to be paid as of the Appraisal Date in question.

(3) If Lessee makes a demand for appraisals, then the Fair Market Value of the Parcel shall be determined as follows:

a. Within fifteen (15) days after the demand for appraisal has been given by Lessee to Board, the parties shall each appoint one (1) appraiser who is a licensed MAI Appraiser, or a member of the American Institute of Real Estate Appraisers or any successor thereto, or a member of the Society of Real Estate Appraisers, or any successor thereto, in each case with at least ten (10) years' full-time experience in San Diego County appraising commercial real estate and has performed appraisals of not less than three (3) facilities substantially similar to the Project in the five (5) years preceding the date on which the appraisal under this Lease is to be made. If either Board or Lessee fails to appoint its appraiser within such fifteen (15) day period, then the appraisal of the sole appraiser shall be binding. Each such appraiser shall determine the Fair Market Value of the Parcel and complete and submit his or her written appraisal to Board and Lessee within sixty (60) days after the appointment of both such appraisers. If the higher appraised Fair Market Value in such two (2) appraisals is not more than one hundred ten percent (110%) of the lower appraised Fair Market Value, then the Fair Market Value of the Parcel shall be the average of the two (2) appraised rental values. If it is not, however, then the appraisers so named shall have fifteen (15) days to designate a third appraiser with similar qualifications. If the two appraisers are unable timely to agree on the third appraiser, then either Board or Lessee, by giving prior written notice to the other party, shall have thirty (30) days to request and obtain appointment of such a qualified appraiser by applying to the Superior Court of the State of California for the County of San Diego. The third appraiser, however selected, shall be a person who has not acted in any capacity for either party.

b. The third appraiser shall conduct an independent appraisal of the Parcel to determine the Fair Market Value based upon the above-enumerated factors and complete and submit his or her written appraisal to Board and Lessee within sixty (60) days after his or her appointment. The Fair Market Value for the Parcel shall be the average of the two (2) of the three (3) appraised Fair Market Values that are closest to each other. The Fair Market Value for the Parcel, determined in accordance with this Subsection, shall be conclusive and binding upon Board and Lessee.

c. When submitting his or her appraisal, each appraiser shall certify that: (i) he or she has personally inspected the Parcel and all properties used as comparisons; (ii) he or she has no past, present or contemplated future interest in the Improvements

or the Parcel or the leasehold estate, or any part thereof; (iii) the compensation to be received by him or her from any source for making the appraisal is solely in accordance with this Lease; (iv) he or she has followed the instructions as set forth in Subsection (b); (v) neither the appraiser's employment to make the appraisal nor his or her compensation therefor is contingent upon reporting a predetermined value, or a value within a predetermined range of values; (vi) he or she is an appraiser who is a licensed MAI Appraiser, or a member of the American Institute of Real Estate Appraisers or any successor thereto, or a member of the Society of Real Estate Appraisers, or any successor thereto, in each case with at least ten (10) years' full-time experience in San Diego County appraising commercial real estate and has performed appraisals of not less than three (3) facilities substantially similar to the Project in the five (5) years preceding the date on which the appraisal to be made under this Lease is to be made; and (vii) the appraisal was prepared in conformity with the standards of professional practice common in the real estate appraisal industry.

d. Board and Lessee shall each pay the fee and expenses charged by its appraiser plus one-half (½) of the fee and expenses charged by the neutral third appraiser.

(c) Base Rent Adjustment Examples

Hypothetical examples of adjustments to Base Rent in accordance with the provisions of Subsections (a) and (b) are attached hereto as **Exhibits D-1 and D-2**.

C. [§ 305] Additional Rent and Overage Rent

Additional Rent and Overage Rent shall be calculated and paid by Lessee to Board in accordance with Subsections 1 through 8 of this Section 305.

1. [§ 306] Additional Rent

Except as otherwise provided in Subsection 7 below, commencing on the date (the "**Additional Rent Commencement Date**") which is the earlier of (i) six (6) years after the occurrence of Stabilization (defined below) of the Project, or (ii) at the time annual Gross Revenue (defined in Section 313 below) of the Project reaches at least Two Million Two Hundred Thousand Dollars (\$2,200,000.00) (i.e., the date when the Gross Revenue received from the Project for any twelve (12) consecutive calendar month period is \$2,200,000 or more) *[note - the \$2,200,000 amount is subject to mutually acceptable final allocation of \$3,000,000 total between Residential and Mixed Use Areas]*, and continuing annually thereafter during the remainder of the Term, Lessee shall pay to Board (in addition to, and not in lieu of, Base Rent), as supplemental Rent, an amount (the "**Additional Rent**") calculated on a Lease Year basis, equal to two and fifteen hundredths percent (2.15%) of Gross Revenue from the Project. Additional Rent shall be payable at the times set forth in Subsection 3 below.

2. [§ 307] Overage Rent

Except as otherwise provided in Subsection 7 below, commencing on the Stabilization of the Project, and continuing during the remainder of the Term, Lessee shall pay to Board (in addition to, and not in lieu of, Base Rent), as supplemental Rent, an amount (the "**Overage Rent**") equal to one percent (1.0%) of Gross Revenue from the Project for the previous twelve (12) consecutive calendar months. Overage Rent shall be payable at the times set forth in Subsection 3 below.

3. **[§ 308] Semi-annual Statements**

Within thirty (30) days after the end of each calendar half-year of each Lease Year during the Term, commencing with the calendar half-year in which the Base Rent Commencement Date occurs, Lessee shall furnish to Board a statement in writing, certified by an authorized officer, partner or employee of Lessee to be correct, setting forth in reasonable detail the Gross Revenue and Operating Expenses (defined in **Section 313** below) for such calendar half-year and reflecting the basis for the computation of the amount of Additional Rent and Overage Rent due for such calendar half-year (calculated each half-year on a calendar year-to-date basis). A "**calendar half-year**" shall mean the period ending with each June 30 and December 31 during the Term. Each such half-yearly statement shall be accompanied by accurate and exact copies of all tax reports (if any) made by Lessee to the State of California or any other governmental agency during the half-year covered by such half-yearly statement. Each Lease Year shall constitute a separate accounting period for the purpose of computing Additional Rent and Overage Rent, and Gross Revenue for any one Lease Year shall not be carried forward or carried back into any other Lease Year.

4. **[§ 309] Annual Statements and Payments**

Within one hundred fifty (150) days after the expiration of the Lease Year in which the Base Rent Commencement Date occurs, and each Lease Year thereafter, Lessee shall furnish to Board a statement duly certified by an authorized officer, partner or employee of Lessee setting forth in reasonable detail the Gross Revenue and Operating Expenses during the Lease Year just concluded, reflecting the basis for the computation of the amount of Additional Rent and Overage Rent (if any) due for such Lease Year just concluded, and certifying that the accounting practices of Lessee, in terms of reasonableness and propriety, conform to generally accepted accounting principles consistently applied. Each such annual statement shall be accompanied by the payment from Lessee to Board of any Additional Rent and Overage Rent reflected in said statement as being due for such calendar year. On or before the first (1st) day of each Lease Year, commencing with the Lease Year which next follows the Lease Year in which the Base Rent Commencement Date occurs, Lessee shall submit to Board a revenue projection for the Project for such Lease Year to assist Board in anticipating the amount of Additional Rent and Overage Rent for such Lease Year. Lessee shall act in good faith in preparing such projections; however, Lessee shall in no way be liable for the accuracy of such projections or for any damages incurred by Board resulting from Board's reliance on such projections, unless the same are occasioned by Lessee's negligence or willful misconduct.

5. **[§ 310] Board's Right to Audit**

Board shall have the right, at any time and from time to time upon reasonable notice to Lessee, and at Board's expense, to review and examine Lessee's records of Gross Revenue and Operating Expenses for any given period. If Board does not request an audit within five (5) years after receipt of Lessee's annual statement, then, except in any case where the Board reasonably suspects fraud or intentional misrepresentation of Gross Revenue and Operating Expenses, such statement shall be conclusively presumed to be accurate and Board shall have no right to require an audit with respect to the period covered by such statement. In addition, Board shall have the right, at any time upon reasonable notice to Lessee and at Board's sole expense, to have Lessee's records of Gross Revenue and Operating Expenses for any given Lease Year audited by a disinterested, reputable firm of certified public accountants (compensated on an hourly basis) who are actively engaged in the practice of their profession and who are to be selected by Board. If any deficiency in Lessee's payment of Additional Rent or Overage Rent is established pursuant to said audit, Lessee shall within thirty (30) days thereafter pay to Board the amount of such deficiency together with interest thereon from the date same was originally due at the rate per annum equal to three percent (3%) plus the prime rate published in the western edition of the Wall Street Journal, but in no event more than the maximum interest rate permitted by law. If the statement of Gross Revenue forming the basis for the Additional Rent and Overage Rent calculations previously made by Lessee to Board is less than the amount of Lessee's Gross Revenue as shown by Board's audit by four percent (4%) or more, then Lessee shall immediately pay to Board the cost of such audit, otherwise, the cost of such audit shall be paid by Board. If the statement of Gross Revenue forming the basis for the Additional Rent and Overage Rent calculations previously made by Lessee to Board is greater than the amount of Lessee's Gross Revenue as shown by Board's audit and further shows that an overpayment of Additional Rent or Overage Rent was made for the Lease Year so audited, then the amount of any overpayment shall be applied by Board against the next succeeding payments of Base Rent coming due.

6. **[§ 311] Retention of Records**

Lessee shall, for a period of at least five (5) years from the end of each Lease Year, keep safe and intact, at Lessee's address set forth in **Section 103** hereof or at such place or to such person as Board may approve in writing by notice to Lessee, all of the records, books, accounts and other data which are regularly kept by Lessee in the ordinary course of its business to establish Lessee's Gross Revenue and Operating Expenses for that Lease Year, and shall upon reasonable notice make the same available to Board and Board's auditors, representatives or agents for examination.

7. **[§ 312] Debt Service Coverage Ratio**

To facilitate Lessee securing financing for the Project, during the five (5) year period immediately following after Stabilization, the parties agree that Lessee's payment of Overage Rent and Additional Rent shall be conditioned on the Project achieving a Debt Service Coverage Ratio (defined below) of 1.35:1 or better (i.e., Net Operating Income [defined below] must be sufficient to permit Lessee to make the first mortgage loan payment on a Permitted Mortgage plus a reserve

in the amount of thirty-five percent (35%) of such first mortgage loan payment before Lessee shall be required to make any Overage Rent or Additional Rent payments during such period). During such 5-year period, in no event shall the Overage Rent and Additional Rent together exceed the amount by which the Net Operating Income exceeds the first mortgage loan payments plus the 35% reserve. This condition shall apply only during the five (5) year period immediately following after Stabilization and only to facilitate Lessee securing financing for the Project. This Debt Service Coverage Ratio condition shall apply only to a Permitted Mortgage which constitutes a first mortgage construction loan or permanent replacement financing (i.e., "take out financing" that replaces such construction loan in no greater principal amount (except for any normal "points" or lender fees which are included in the principal amount) and at generally prevailing terms for similar projects with an amortization schedule of not less than twenty five (25) years).

8. [§ 313] Definitions

As used herein, the following terms shall have the following meanings:

(a) **"Debt Service"** means the principal and interest payment on a Permitted Mortgage equally amortized over the term of the loan.

(b) **"Debt Service Coverage Ratio"** means the ratio of (a) Net Operating Income to (b) Debt Service on a Permitted Mortgage of the type described in **Section 901**.

(c) **"Gross Revenue"** means all revenue of any kind or nature received by Lessee derived from the Parcel and the Improvements thereon for the Lease Year in question, including, without limitation (i) all revenue received from subtenants or licensees of the Parcel or the Improvements, and all interest earned on security deposits, provided such interest is retained by Lessee and not returned to any subtenant; (ii) all other revenues from or connected with the Parcel, all operations and Improvements thereon, including without limitation, deposits forfeited, cancellation fees, and any cost reimbursement of any kind received by Lessee in excess of the actual cost to Lessee; and (iii) proceeds of business interruption and similar insurance payable as a result of loss of revenues. Gross Revenue shall not include security deposits (or interest thereon which is payable to the tenant or becomes part of the deposit), proceeds of casualty insurance or condemnation awards, proceeds from any sale or refinancing of any interest in the Parcel or the Improvements or reimbursement from subtenants or other parties for actual costs related to the operation of the Parcel and the Improvements, reimbursement from the Board, subtenants or other parties for actual costs related to the development and operation of the Parcel, repayments of loans made by Lessee, or refunds of fees, deposits or taxes paid by Lessee, or any bonus or premium paid to Lessee in connection with a Permitted Transfer.

(d) **"Net Operating Income (NOI)"** means Gross Revenue less Operating Expenses for the Lease Year in question.

(e) **"Operating Expenses"** means all of the following direct, out-of-pocket expenses, costs and disbursements actually paid by Lessee in connection with the ownership,

operation, management, maintenance, repair or restoration of the Project, determined on an accrual basis for the Lease Year in question:

(1) Any taxes and assessments imposed on the Parcel and on all Improvements thereon, any taxes assessed by virtue of Lessee's operations on the Parcel and the Improvements (excluding, however, state and federal income, corporate franchise, excise and similar taxes) and all taxes and assessments payable by Lessee pursuant to Section 603 et seq., of this Lease;

(2) Subject to Subsection (3) below, all costs and expenses incurred by Lessee in the ownership, operation, maintenance, management, repair or restoration of the Parcel and Improvements located or to be located thereon (or any part thereof), including, without limitation, costs incurred in keeping the Project in a clean and safe condition, including, without limitation, janitorial service costs, restroom and janitorial supplies, cost of trash removal and cost of window cleaning; cost of any equipment rental; utility costs, including electricity, gas, water, telephone, power, heat and sewer; the cost of all alterations, maintenance and repair to the Project and reasonable reserves established to pay such costs (including structural maintenance and repair and including all costs related to compliance with laws as provided in Section 601 below) and equipment located therein or constituting a part thereof; leasing fees and expenses; any expenditures for repairs to and replacement of capital improvements, furniture, furnishings and equipment in excess of the amounts reserved for that purpose, and the replacement and repair of all equipment, machinery or portions of the improvements within the Project, including structural, heating, electrical, ventilating, air conditioning, plumbing and other repairs or replacements, glass replacement, repair or replacement of carpeting, roof repair, metal finishing, painting, repair or replacement of interior partitions, doors and locks, and window coverings; cost of all building supplies, tools and materials, including, without limitation, keys, locks, graphics, plumbing and electrical supplies, air conditioning and telecommunication or teleconferencing supplies; the cost of all third-party contract services, including landscaping (internal and external), security service and elevator maintenance service; fees paid for maintenance and repair services; the cost of maintaining security guards; the fees for professional services, including legal, architectural, engineering, accounting, appraisal and auditing; the costs and expenses of financing of equipment (including leasing costs) for equipment located in the Project or constituting a part thereof; all costs of operation and maintenance of air conditioning, heating and similar equipment; the costs of all insurance, including fire and all-risk coverage, liability, business interruption, boiler and machinery, workers' compensation and any other insurance or bonds carried pursuant to the terms of this Lease, any Permitted Mortgage or otherwise carried by Lessee on account of the Project or Lessee's operations therein (including the amount of any deductibles paid by Lessee); and fees for licenses and permits required by operation of the Project, or any portion thereof;

(3) Operating Expenses shall not include:

- a. Depreciation, cost recovery and other non-cash items;
- b. **Development Costs**, as defined in Section 802;

c. Unless pursuant to a Transfer (defined below) or Permitted Mortgage allowed or permitted under this Lease, payments on account of any buyer's financing of its costs of acquisition of all or any part of Board's or Lessee's interest under this Lease, including, without limitation, payments of principal, interest, preferred return, rental participation or other payments made to lenders, partners, investors or otherwise;

d. Any amounts paid by Lessee to Board pursuant to this Lease as Rent owed Board pursuant to Section 319 or 320 for any late fee, charge or penalty, such as interest on any late payment or on any amount advanced by Board, or for costs and expenses of Board (including attorneys' fees) incurred in enforcing any provisions of this Lease;

e. Any repair, reconstruction or restoration expenses paid from proceeds of casualty insurance or condemnation awards; or

f. Any costs for Lessee's general overhead, attributed or allocated overhead or central office costs, salaries or wages for personnel employed in connection with the Project.

(4) No cost, expense or disbursement which Lessee shall pay or make as an Operating Expense hereunder shall be deducted, directly or indirectly, more than one time from Gross Revenue, nor shall any such cost, expense or disbursement also be included in Development Costs.

(5) The specific examples of Operating Expenses stated in this Subsection shall not be deemed to obligate Lessee to incur such costs or provide such services (except as Lessee may be otherwise required by other provisions of this Lease, or except as Lessee, in its sole discretion, may elect).

(6) All expenses which are to be included in Operating Expenses shall be computed on an accrual accounting basis, unless otherwise expressly provided herein. Except as otherwise expressly provided in this Subsection, each item constituting Gross Revenue and Operating Expenses shall also be determined and calculated on an accrual basis.

(7) Notwithstanding anything to the contrary contained herein, except for expenses expressly permitted hereunder, Operating Expenses paid to a Related Entity shall be included only to the extent they are consistent with amounts which would be paid to a non-Related Entity in an "arm's length" transaction.

(f) **"Related Entity"** means the following: (a) Lessee; (b) any partner or parent holding a ten percent (10%) or greater interest in Lessee; (c) any spouse or relative of the above; (d) any corporation, partnership or other entity in which any of the above persons or entities have a ten percent (10%) or greater interest; (e) any person or entity having a ten percent (10%) or greater beneficial interest, direct or indirect, in any of the above entities; or (f) any person or other entity which owns, directly or indirectly, ten percent (10%) or more of the stock, partnership interest, or other form of interest in Lessee.

(g) "Stabilization" means the earlier of (i) when the Project reaches ninety percent (90%) occupancy, or (ii) five (5) months *[note: use three (3) months for the Mixed Use Area]* after the issuance of a Certificate of Occupancy by the City for the Project. Lessee shall promptly notify the Board when the Project reaches ninety percent (90%) occupancy. Within ten (10) days after Stabilization occurs, Board and Lessee shall enter into an addendum to this Lease confirming the date of Stabilization. Neither the failure nor refusal of either Board or City to enter into said addendum shall in any manner impair this Lease or the effectiveness or enforceability of the matters intended to be confirmed by said addendum.

9 **[§ 314] Additional Rent and Overage Rent Examples**

Hypothetical examples of Additional Rent and Overage Rent calculations in accordance with the provisions of Subsections 1 through 8 are attached hereto as Exhibits D-3 and D-4.

D0 **[§ 315] Priority for Payment of Rent and Other Sums**

1 **[§ 316] Net Lease**

Board and Lessee agree that Base Rent, Additional Rent, Overage Rent, any supplemental Rent, and any and all other sums payable hereunder to or on behalf of Board, shall be paid without notice or demand, and without setoff, counterclaim, abatement, deferment, suspension or deduction. This is a net lease. Except as expressly provided to the contrary in this Lease, all costs incurred in the operation and maintenance of the Project shall be paid by Lessee.

2 **[§ 317] Absolute Assignment of Gross Revenue**

In consideration of Board's obligations under this Lease, Lessee hereby assigns to Board the Gross Revenue of the Project. The assignment of Gross Revenue pursuant to this Section is intended and shall be construed as an absolute assignment and not merely a passing of a security interest. Such absolute assignment is and shall be subject to the conditional permission to collect Gross Revenue and make the payments described in **Section 318**, in the priority described in **Section 318** which is granted to Lessee. It is understood and agreed that such assignment will be expressly subordinate to any assignment of the Gross Revenue of the Project required by a Permitted Mortgagee.

3 **[§ 318] Priority for Payment**

On the condition that Lessee is not in default under this Lease, Lessee shall have permission to collect and obtain all Gross Revenue of the Project. Lessee shall use commercially reasonable efforts to collect and obtain all Gross Revenue, and shall have the right and obligation to use the Gross Revenue to pay to Board the Base Rent, Additional Rent, Overage Rent, any supplemental Rent, and any and all other sums owed to Board under this Lease. Any and all Base Rent, Additional

Rent, Overage Rent, any supplemental Rent and other sums payable to Board by Lessee under the provisions of this Lease shall have a first priority for payment from the Gross Revenue. All other expenses of Lessee related to the Parcel and the Improvements, including without limitation, debt service, loan costs, and any other obligations which may be owed to a Permitted Mortgagee, and all Operating Expenses (defined below) and other expenses attributable to the operation, management, leasing, repair or renovation of the Parcel and the Improvements, other than amounts owed to Board, shall be subordinate to the payments to Board of Base Rent, Additional Rent, Overage Rent, any supplemental Rent, and any and all other sums owed to Board as required under this Lease.

E0 **[§ 319] Additional Rent**

In addition to and not by way of limitation of Board's rights under specific provisions of this Lease, Board shall at all times have the right (at its sole election and without any obligation so to do) to advance on behalf of Lessee any amount payable under the terms hereof by Lessee, or to otherwise satisfy any of Lessee's obligations hereunder (except payment of monetary obligations which are owing directly to Board such as Base Rent), provided that (except in case of emergency calling for immediate payment) Board shall first have given Lessee no less than fifteen (15) days advance written notice of Board's intention to advance such amounts on behalf of Lessee. No advance by Board shall operate as a waiver of any of Board's rights under this Lease and Lessee shall remain fully responsible for the performance of its obligations under this Lease. Lessee's obligation to reimburse amounts advanced by Board pursuant to this Section shall constitute supplemental Rent under this Lease, shall be due and payable by Lessee to Board ten (10) days after Board makes written demand therefor, and shall bear interest from the date same was advanced at the rate per annum equal to the three percent (3%) plus the prime rate published in the western edition of the Wall Street Journal, but not to exceed the maximum rate for which the parties may lawfully contract, from the date of advance.

F0 **[§ 320] Delinquency in Rent Payment; Collection of Rent**

The failure of Lessee to pay any installment of Rent (including without limitation, any estimated or final Additional Rent or Overage Rent, or any supplemental Rent) by the due date shall constitute a default, subject to Lessee's rights to receive notice and cure such default as provided in **Section 1200 et seq.** In the event Lessee fails to pay the applicable installment of Rent within ten (10) days after the due date, in addition to any other remedy provided by this Lease, Lessee shall pay to Board as a late charge an additional payment equal to five percent (5%) of such delinquent payment, and the amount due and unpaid shall bear interest at the lesser of the annual rate of three percent (3%) over the prime rate published in the western edition of the Wall Street Journal on the due date, or the highest annual rate which may lawfully be charged and collected under applicable law on the delinquent obligation. Said interest shall accrue from the due date of the installment of Rent to the date the installment of Rent is received by Board. It is the intent of this provision that Board shall be compensated by such payment and interest for loss resulting from rent delinquency, including costs to Board for servicing the delinquent account. Any failure of Board to enforce the foregoing provisions of this **Section 320** in any instance shall not constitute a waiver of Board's right to enforce the same at any subsequent time.

In case of a default in payment of any part of the Rent, Board shall have the right to separate its cause of action to permit the institution of a separate suit only for the Additional Rent or Overage Rent unable to be determined at the time suit is first brought, and neither the institution of such first suit nor the entry of judgment therein shall bar Board from bringing a subsequent suit against Lessee, for the amount of Additional Rent or Overage Rent not capable of being determined at the time of the initial action, at such time as such Additional Rent or Overage Rent may be determined. Any order or judgment concerning estimated installments of Additional Rent or Overage Rent shall not prejudice or bar Lessee's or Board's rights to the adjustment of Additional Rent or Overage Rent as provided by **Sections 309 and 310**.

[§ 400] DEVELOPMENT OF THE PARCEL

A0 [§ 401] General

Lessee, at its sole cost and expense, shall construct or cause to be constructed all of the on- and off-site improvements comprising the Project (the "**Improvements**"), in full conformity with the Scope of Development, the Schedule of Performance, and the "**Final Construction Drawings and Related Documents**" (as defined in the DDA) approved by Board pursuant to Section 305 of the DDA. Pursuant to the DDA, the Board has approved certain items regarding the financing of the Project, Project commitments, and certain plans, drawings and related documents, as more particularly set forth on **Exhibit H** attached hereto and made a part hereof.

B0 [§ 402] Required Land Use Approvals

Lessee, at its sole cost and expense, shall obtain all approvals, permits and authorizations from governmental and quasi-governmental agencies and other parties required for the development of the Project.

C0 [§ 403] Evidence of Financing and Project Commitments

Lessee shall report regularly as requested by the Board on its financing for the development on the Parcel. The reports may be oral, or shall be in writing if requested by the Board. The reports shall explain in reasonable detail the sources and methods of financing, and the pre-leasing activity which is required or has been achieved. The information in the reports shall remain confidential to the extent permitted by law, recognizing without limitation that they are subject to review by responsible officials, employees and contractors of the Board.

Lessee shall provide or cause to be provided to the Board any additional evidence reasonably required by the Board from time to time to establish that the following items are current and in full force and effect:

1 A current certified financial statement or statements covering the last two (2) years, or other financial statements or forms of financial confirmation, in such form reasonably satisfactory to the Board, evidencing the sources of capital sufficient to demonstrate that Lessee has adequate funds and is committing such funds to cover the construction costs and other costs Lessee is expected to incur in fulfilling the obligations of this Lease.

2 Evidence satisfactory to the Board that Lessee has obtained the financing necessary for the acquisition and development of the Project in accordance with this Lease. Such evidence of financing shall include the following, certified by Lessee to be true and correct copies thereof:

(a) A copy of the term sheet describing the details of the terms and conditions of the mortgage loan or loans obtained by Lessee (both for interim construction financing and take out financing if a condition of funding the construction loan) to assist in financing the construction of the Project;

(b) Construction and permanent loan commitments from Permitted Mortgagees (as defined in **Section 901** below) subject only to such conditions as may be approved by the Board;

(c) Copies of all proposed construction and permanent loan documents (e.g., notes, trust deeds, indentures, loan agreements, etc.) pertaining to the Project; and

(d) Evidence satisfactory to the Board of sources of equity capital sufficient to demonstrate that Lessee has adequate funds legally committed to cover the difference, if any, between construction cost minus financing authorized by mortgage loans, and evidence of Lessee's financial ability to meet normally anticipated cost over-runs.

3 Copies of the contracts between: (a) Lessee and the general contractor for the construction of improvements upon the Parcel, and (b) the general contractor and all finish work subcontractors and all Major Subcontractors. ("**Major Subcontractors**" for purposes hereof shall be those subcontractors whose work exceeds five percent (5%) of the total construction contract costs.) Such contracts shall provide for the commencement of construction on the Parcel by dates

certain, which dates shall be in conformance with this Lease. Such contracts shall contain retention provisions requiring withholding of a minimum of five percent (5%) of payments due to the general contractor and subcontractors until the contractual obligations of such entities are fully completed.

Such contracts shall also contain, to the Board's reasonable satisfaction, adequate indemnification, insurance and other contractual provisions as may reasonably be required to protect the Board and any other provisions required by this Lease to be contained in such contracts, and shall be certified by Lessee to be true and correct copies thereof.

4 If not previously provided, an assignment by Lessee, in form and substance satisfactory to the Board, assigning to the Board as security for Lessee's performance under this Lease, the interests of Lessee under the construction contracts referred to in Subsection 3 of this Section. It is understood and agreed that such assignment will be expressly subordinate to any assignment of such contracts required by a Permitted Mortgagee.

5 Evidence satisfactory to the Board that Lessee has obtained, in form and substance acceptable to the Board, all Required Land Use Approvals and any other permits, approvals and authorizations of any type required for the design, development, construction, use and operation of the Project.

6 Evidence satisfactory to the Board that Lessee has obtained, in form and substance acceptable to the Board, all easements, encroachment agreements, licenses and other off-site rights required for the development, construction, use and operation of the Project.

D0 [§ 404] Construction Plans, Drawings and Related Documents

1 Lessee shall prepare and submit construction plans, drawings and related documents to the Board for architectural and site planning review and written approval as and at the times established in the Schedule of Performance. The construction drawings prepared by Lessee shall include all private and public improvements and on-site and off-site utilities required by the Scope of Development. "**Final Construction Drawings and Related Documents**" are hereby defined as those drawings and materials which are in sufficient detail to obtain a building permit.

2 Lessee shall also prepare and submit to the Board for its approval preliminary and final landscaping and finish grading plans for the Parcel. Such preliminary and final plans shall be prepared and submitted within the times established in the Schedule of Performance, subject to extensions as are authorized herein or as mutually agreed to by the parties hereto.

3 During the preparation of all drawings and plans, Board staff and Lessee shall hold regular progress meetings to coordinate the preparation of, submission to, and review of construction plans and related documents by the Board. The Board and Lessee shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to the Board can receive prompt and speedy consideration.

4 If any revisions or corrections of plans approved by the Board shall be required by any government official, agency, department or bureau having jurisdiction, or any lending institution involved in financing, Lessee and the Board shall cooperate in efforts to obtain a waiver of such requirements or to develop a mutually acceptable and commercially reasonable alternative.

E0 **[§ 405] Board Approval of Plans, Drawings and Related Documents**

1 The Board shall have the right of review (including, but not limited to, architectural review) and approval of all plans, drawings and related documents for the development of the Parcel, including any proposed changes therein subject to other provisions hereof.

Lessee has retained Fehlman LaBarre as the architect for the entire Project through construction completion, provided, however, that Lessee may retain a substitute or additional architect if Board approves in writing, in advance of such substitution.

The Board shall approve, conditionally approve or disapprove such plans, drawings, and related documents referred to in this Lease (and any proposed changes therein) within the times established in the Schedule of Performance. Any disapproval shall state in writing the reasons for disapproval and the steps which must be taken to achieve such approval. Subject to the succeeding paragraph, Lessee, upon receipt of a disapproval, shall revise such portions of the plans, drawings or related documents in a manner that satisfies the reasons for disapproval, and shall resubmit such revised portions to the Board as soon as possible after receipt of the notice of disapproval, but in no event more than thirty (30) calendar days after receipt of the notice of disapproval. The Board shall approve or disapprove such revised portions in the same manner and within the same time frame as provided in the Schedule of Performance for approval or disapproval of plans, drawings and related documents initially submitted to the Board.

If Lessee desires to make any substantial change in the Final Construction Drawings and Related Documents after their approval by the Board, Lessee shall submit the proposed change to the Board for its approval. The Board shall approve, conditionally approve or disapprove such proposed change as provided in this Section and in the same manner and within the same time period as provided in the Schedule of Performance for approval or disapproval of plans, drawings and related documents initially submitted to the Board.

Board may request Lessee to make changes to the Final Construction Drawings and Related Documents following Board approval thereof, but Board shall not require any change if (i) such change would increase the Development Costs of the Project and Board does not agree to provide the estimated additional necessary funding, including funding for reasonable consultant fees necessary to prepare such changes; or (ii) such change would cause a material delay in the completion of the Project construction; or (iii) such change would materially adversely affect the value of the Project.

Lessee shall have the right, during the course of construction, to make change orders which consist of Minor Field Changes or Minor Changes (as defined below) costing less than Fifty

Thousand Dollars (\$50,000) in the aggregate. "**Minor Field Changes**" are those minor changes from the approved Final Construction Drawings and Related Documents which make no substantial change and have no adverse effect on the improvements or the design or space layouts and are made in order to expedite the work of construction in response to field conditions. "**Minor Changes**" shall be defined herein as changes which do not affect or change any material aspect (i) of the exterior design, treatments, materials, colors or quality of the Project or the individual units, including any products or specifications; (ii) the pedestrian circulation and amenities of the Project; or (iii) the Trolley Parking. All other changes shall require the approval of the Board. The Board shall respond to any request for approval of a change order within five (5) business days after receipt of such request, and, if the Board fails to respond within such five (5) day period, such change order shall be deemed approved.

2 The Board neither undertakes nor assumes nor shall it have any responsibility or duty to Lessee or to any third party to review, inspect, supervise, pass judgment upon or inform Lessee or any third party of any matter in connection with the development or construction of the Project, whether with respect to the quality, adequacy or suitability or the plans, any labor, service, equipment or material furnished to the Project, any person furnishing the same or otherwise. Lessee and all third parties shall rely upon its or their own judgment with respect to such matters, neither Lessee nor any third party is entitled to rely on any review, inspection, supervision, exercise of judgment or information supplied to Lessee or to any third party by the Board in connection with this Lease.

F0 [§ 406] Cost of Construction

The cost of developing the Parcel and constructing all improvements thereon shall be borne by Lessee. The Board and Lessee shall each pay the costs necessary to administer and carry out their respective responsibilities and obligations under this Lease.

G0 [§ 407] Schedule of Performance and Change Orders

Lessee shall begin and complete all construction of the Project within the times specified in the Schedule of Performance, or within such extensions of such times (a) as may be granted by the Board, in the Board's sole and exclusive discretion, (b) as are provided for in **Section 1211** of this Lease, or (c) as may be necessary as a result of any delay to the extent caused by the Board, or any of its agents, employees, or contractors, to the extent Lessee has provided notice to the Board of such delay. The Schedule of Performance is also subject to revision from time to time as mutually agreed upon in writing by and between Lessee and the Board. The time periods set forth in the Schedule of Performance are to be considered maximums, and Lessee agrees to pursue construction of the Project with all due diligence and to complete all construction of the Project in a shorter period of time if reasonably possible.

Within ten (10) working days after approval of the Final Construction Drawings and Related Documents (if not already approved as of the Commencement Date), Lessee shall prepare a construction schedule (the "**Construction Schedule**"), specifying the dates when the major elements

and components of the work to be performed thereunder are scheduled for completion, looking to completion of the construction on or before the date specified in the Schedule of Performance. In the event that any change occurs in the Construction Schedule by reason of delay or otherwise, Lessee shall prepare a revised Construction Schedule and submit it to the Board within ten (10) days after Lessee first has notice of the delay.

Not less than monthly, during periods of construction, Lessee shall submit to the Board a report summarizing in detail the progress of construction, the status of all necessary governmental approvals required in connection with the construction work, the status and degree of the completion of the work, and any anticipated delays under the Construction Schedule submitted to the Board pursuant to the preceding paragraph, foreseeable or known to Lessee. The reports shall include, if requested, a reasonable number of construction photographs taken since the last report submitted by Lessee.

H0 **[§ 408] Indemnification; Insurance**

To the fullest extent permitted by law, Lessee shall indemnify, protect, defend and hold harmless the Board and its officers, employees and agents, from and against all liability, loss, damage, costs, or expenses of any kind (including court costs) arising from or as a result of any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which shall occur on or adjacent to the Parcel and which shall be directly or indirectly caused by any acts done thereon or any errors or omissions of Lessee, its agents, employees and contractors, or any of them, including but not limited to, claims of negligent or defective design or construction, regardless of whether any such liability occurs before or after issuance of the Certificate of Compliance. These indemnity obligations shall survive the expiration or termination of this Lease. Lessee's obligations under this Section exclude only claims, losses or liability which is due to the sole negligence or willful misconduct of Board or its officers, employees and agents.

During the period of construction on the Parcel and until such time as the Board has issued a final Certificate of Compliance under **Section 415** for all improvements to be constructed by Lessee pursuant to this Lease, Lessee shall have and maintain the insurance policies set forth in **Section 1102**. All policies, endorsements, certificates and binders shall be subject to approval by the Risk Manager of the Board.

I0 **[§ 409] Antidiscrimination During Construction; Equal Opportunity**

Lessee, for itself and its successors and assigns agrees that in the construction of the improvements on the Parcel provided for in this Lease:

1 Lessee shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, ethnicity, disability, age, marital status, sex or sexual orientation. Lessee shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, creed, national origin, ethnicity, disability, age, marital status, sex or sexual orientation. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer;

recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2 Lessee shall, in all solicitations or advertisements for employees placed by or on behalf of Lessee, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, creed, national origin, ethnicity, disability, age, marital status, sex or sexual orientation.

3 Lessee shall cause the foregoing provisions to be inserted in all contracts for any work covered by this Lease so that such provisions shall be binding upon each contractor and subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

J0 **[§ 410] Local, State, and Federal Laws**

Lessee shall carry out the construction of the improvements on the Parcel in conformity with all applicable laws, including all applicable federal and state labor standards.

K0 **[§ 411] City and Other Governmental Board Permits**

Before commencement of any work or improvement upon the Parcel, Lessee shall secure or shall cause to be secured, all Required Land Use Approvals any and all permits, approvals or certificates which may be required by the Board, the City or any other governmental agency with jurisdiction over the Parcel or over the construction, development or work contemplated under this Lease. The Board shall cooperate with Lessee and provide all proper assistance to Lessee in securing these permits and certificates and any other approvals required for the Project in order to meet the time periods set forth in the Schedule of Performance; provided that the Board shall not be required to incur any expense in connection with providing any such assistance.

L0 **[§ 412] Rights of Access**

For the purposes of assuring compliance with this Lease, representatives of the Board shall have the reasonable right of access to the Parcel without charges or fees and at normal construction hours during the period of construction for the purposes of this Lease, including, but not limited to, the inspection of the work being performed in constructing the improvements. Such representatives of the Board shall be those who are so identified in writing by the Board. The Board shall indemnify Lessee and hold it harmless from any damage caused or liability arising out of this right of access.

M0 **[§ 413] Taxes, Assessments, Encumbrances and Liens**

Prior to recordation of a Certificate of Compliance for the Project pursuant to Section 415 of this Lease, Lessee shall not place or allow to be placed on the Parcel, or any portion thereof, any

mortgage, trust deed, encumbrance or lien not authorized by this Ground Lease, and Lessee shall remove, or shall have removed, any levy or attachment made on the Parcel, or any portion thereof, or shall assure the satisfaction thereof within a reasonable time. Nothing herein contained shall be deemed to prohibit Lessee from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to Lessee with respect thereto, provided such contest does not subject the Parcel, or any portion thereof, to forfeiture or sale.

NO [§ 414] Sale of the Project

Except as otherwise expressly provided in this Lease, Lessee shall not under any circumstances be entitled to sell any portion of its ownership interest in the Project prior to the issuance of a Certificate of Compliance by Board, without the prior written consent of the Board, which may be granted or withheld in the sole and absolute discretion of Board.

Following the issuance of a Certificate of Compliance, Lessee shall be entitled to sell its interest in any or all of the Project to the extent allowed and in accordance with the terms and provisions of Section 800 *et seq.*

If, contrary to the provisions of this Lease, Lessee does assign this Lease or any of the rights herein, or does sell, transfer, convey or assign any portion of its ownership interest in the Project or any part of the Parcel or the improvements thereon, in addition to all other legal and equitable remedies the Board may be entitled to, the Board shall be entitled to recover from Lessee the total consideration received by Lessee for such sale, transfer, conveyance or assignment. Said consideration shall belong and be paid to the Board and until so paid the Board shall have a lien on Lessee's interest in the Parcel for such amount.

OO [§ 415] Certificate of Compliance

Promptly after completion of all construction and development to be completed by Lessee upon the Parcel in compliance with the terms of this Lease, the Board shall furnish Lessee with a Certificate of Compliance upon written request therefor by Lessee. Such Certificate of Compliance shall be in such form as to permit it to be recorded in the Office of the County Recorder of San Diego County.

A Certificate of Compliance shall be, and shall so state, conclusive determination of satisfactory completion of the construction required by this Lease upon the Parcel and of full compliance with the terms hereof.

The Board shall not unreasonably withhold or delay any Certificate of Compliance. If the Board refuses or fails to furnish a Certificate of Compliance for the Parcel after written request from Lessee, the Board shall, within ten (10) days of the next regularly scheduled Board meeting after such written request, provide Lessee with a written statement of the reasons the Board refused or failed to furnish a Certificate of Compliance. The statement shall also contain the Board's opinion of the action Lessee must take to obtain a Certificate of Compliance. If the reason for such refusal is confined to the immediate unavailability of specific items or materials for landscaping, the Board

will issue its Certificate of Compliance upon the posting of a bond by Lessee with the Board in an amount representing a fair value of the work not yet completed.

Such Certificate of Compliance shall not constitute evidence of compliance with or satisfaction of any obligation of Lessee to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the improvements or any part thereof. Such Certificate of Compliance is not notice of completion as referred to in California CIVIL CODE Section 3093.

P0 [§ 416] Construction Signs

Lessee shall provide construction site signs that identify the Project and give recognition to the Board and the Redevelopment Agency; provided, however, that any such signs shall fully comply with all applicable sign laws of the City. The design and text of the signs shall be subject to prior review and approval by the Board. The construction signs shall be erected on the Parcel on or before commencement of construction on the Parcel and shall be maintained until issuance of the Certificate of Compliance or such earlier date approved by the Board.

[§ 500] **USE OF THE PARCEL AND THE IMPROVEMENTS**

A0 [§ 501] Use of the Parcel and the Improvements

Lessee shall have the right and Lessee covenants and agrees to develop and use the Parcel and the Improvements, in accordance with the provisions of this Lease, for the operation of the Project and for no other purposes. the Project shall include:

1. Approximately one hundred twenty five (125) to one hundred forty (140) "for-rent" apartment units.
2. Certain amenities and accommodations related to the Project, including, without limitation, clubhouse, swimming pool, and related facilities for the benefit of the residents of the Project.
3. On-site parking spaces, consisting of (a) approximately two hundred twenty two (222) parking spaces provided in structured parking on site for the residents and guests of the Project, (b) a minimum of seventy three (73) parking spaces provided on-site for the exclusive use of park-and-ride patrons of the Trolley Station during trolley hours, and (c) a minimum of nine (9) parking spaces provided on-site for the shared use of park-and-ride patrons of the Trolley Station and the residents and guests of the Project.

B0 [§ 502] Change in Use. Lessee shall have the right from time to time to request that the Board approve a change in use of the Parcel. The Board shall not unreasonably withhold its approval to such request, provided that the proposed new use is a transit-oriented and pedestrian-oriented development. It shall be reasonable for the Board to impose as a condition to its consent to a proposed change in use that this Lease be amended in such respects as the Board may reasonably require to address any new considerations brought about by the proposed new use of the Parcel. In

the event the Board should approve a change in use of the Parcel, the Base Rent hereunder shall be increased (but in no event shall it be decreased) effective as of the date of the Board's approval pursuant to the process for determination of Fair Market Rental Value in Subsection (b) of Section 304, to reflect the new permitted use(s).

C0 [§ 503] Management of the Parcel and the Improvements

The Parcel and the Improvements shall be managed or caused to be managed by Lessee in a prudent and businesslike manner. Board shall have the right of approval (which approval shall not be unreasonably withheld or delayed) over any prospective Operator of the Project or any part thereof at all times during the Term of this Lease. The term "**Operator**," as used in this Lease, shall mean a person, firm or other entity taking control of the management of the Project under an operating lease, management contract, license agreement, or other similar arrangement, but shall not include a property manager in the employ of Lessee or any property management arrangement in which Lessee retains control over all major management decisions (such as decisions whether to enter into, terminate or modify leases or to make major improvements or repairs to the Parcel). In determining reasonableness of withholding approval by Board, the experience and proven ability of the proposed Operator in the residential rental apartment business, consistent with the nature of the Improvements and the manner in which they are required to be operated by the terms of this Lease, shall be considered together with financial responsibility consistent with the financial obligations of such operation. If Lessee elects to manage and operate the Project with an Operator, the operating agreement between Lessee and the Operator shall be approved by Board (the "**Operating Agreement**"). Board's approval of the Operating Agreement shall not be unreasonably withheld.

Lessee further covenants and agrees as follows:

1 Lessee shall (a) diligently enforce the terms of the Operating Agreement with the Operator, including appropriate recourse to any remedies available to Lessee for material defaults under the Operating Agreement, (b) perform all acts and obligations and comply with all requirements under the Operating Agreement with the Operator required to be performed or complied with by Lessee so as to keep the Operating Agreement in full force and effect, and (c) not take or allow, by action or inaction of Lessee, any act, condition or circumstance that would violate the Operating Agreement with the Operator or excuse or prevent the Operator from fully performing and complying with the terms of the Operating Agreement. Clause (c) above shall not be construed to prohibit Lessee from terminating the Operating Agreement for material uncured default under the terms thereof, or as otherwise permitted thereunder for cause.

2 Board shall have the right, but no obligation, to cure, and any Operating Agreement between Lessee and the Operator shall expressly provide for Board to receive notice of and have the right to cure, any breach by or default of Lessee under the Operating Agreement, on behalf of and at the expense of Lessee during any period that Lessee is in default thereunder; provided that, except in case of an emergency requiring earlier action, Board shall give Lessee not less than fifteen (15) days prior written notice of Board's intent to cure on behalf of Lessee. The Operating Agreement shall further expressly provide that Board shall have a reasonable period of time (considering the

nature of the default) to cure any default of Lessee, following the expiration of all periods (including any extensions of time and periods during which performance is waived) allowed for Lessee's cure of such default, in the event that Lessee has failed to cure. Lessee shall pay Board, as supplemental Rent hereunder, all amounts expended by Board in curing any such default, together with interest thereon accruing as of the date Board expends such amounts at a rate per annum equal to three percent (3%) plus the prime rate published in the western edition of the Wall Street Journal, but in no event more than the maximum interest rate permitted by law.

3 Subject to the right of prior assignment to a Permitted Mortgagee (defined below) as security for a Permitted Mortgage (defined below), Lessee hereby assigns to Board, as security for the performance of the obligations of Lessee under this Lease, including, but not limited to, the provisions of this **Section 502**, all right, title and interest of Lessee in and to any Operating Agreement, if applicable; provided, however, that Board shall exercise no rights of Lessee pursuant to such assignment without first having effectively declared a default on the part of Lessee as provided in **Section 1201** of this Lease.

D0 **[\S 504] Obligation to Refrain from Discrimination**

There shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, race, color, creed, religion, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Parcel or the Improvements, and Lessee itself or any person or entity claiming under or through it shall not establish or permit any such practice or practices of discrimination, or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Parcel or the Improvements.

E0 **[\S 505] Form of Nondiscrimination and Nonsegregation Clauses**

All deeds, leases or contracts pertaining to the rental, sale or lease of the Parcel, the Improvements, or any portion thereof, shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

- 1 **In deeds:** "The grantee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of, any person or group of persons on account of sex, marital status, race, color, creed, religion, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

- 2 **In leases:** "The lessee covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, and this lease is made and accepted upon and subject to the following conditions:

There shall be no discrimination against or segregation of any person or group of persons on account of sex, marital status, race, color, creed, religion, national origin or ancestry, in the leasing, subleasing, transferring, use, or enjoyment of the land herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, sublessees, subtenants or vendees in the land herein leased."

- 3 **In contracts:** "There shall be no discrimination against or segregation of, any person or group of persons on account of sex, marital status, race, color, creed, religion, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the land."

F0 **[§ 506] Rights of Access – Public Improvements and Facilities**

Board, at the sole risk and expense of Board and at no risk or expense to Lessee, reserves the right to enter the Parcel or any part thereof upon prior written notice, at all reasonable times and with as little interference as possible, for the purposes of construction, reconstruction, maintenance, repair or service of any public improvements or public facilities, if any, located on the Parcel in accordance with this Lease. Any such entry shall be made only after reasonable written notice to Lessee. Board shall indemnify and hold Lessee harmless from and against any claims, injuries, demands, obligations, causes of action, damages, or liabilities pertaining to any such entry, including reasonable attorneys' fees, investigation costs and other costs actually incurred by Lessee. Any damage or injury to the Parcel or to the Improvements, or to Lessee's rights under this Lease, resulting from such entry shall be promptly remedied or repaired at the sole expense of Board. Board shall not be liable to Lessee for any inconvenience, annoyance, disturbance or loss of business covered by any such entry except to the extent caused by the gross negligence or willful misconduct of Board or its agents, servants or employees. Board shall make all reasonable efforts to keep any inconvenience, annoyance, disturbance or loss of business to a minimum. The provisions of this Section shall survive Lease termination with respect to any damage, injury or death occurring prior to such termination or for which Lessee may be liable.

G0 **[§ 507] Rights of Access for Construction, Repair and Maintenance of Public Improvements and Facilities**

The Board reserves the right to enter the Parcel or any part thereof at all reasonable times and with as little interference to other activities on the Parcel as possible for the purposes of construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located on the Parcel. Any such entry shall be made only after reasonable notice to Lessee, and the Board shall indemnify, defend and hold harmless Lessee from any claims or liabilities pertaining to any such entry or work. Any damage or injury to the Parcel or to the improvements thereon resulting from such entry shall be promptly repaired at the sole expense of the Board.

H0 [§ 508] Quiet Enjoyment

Subject to Sections 108, 109 and 506, the Board covenants and agrees that Lessee, by keeping and performing the covenants herein contained, shall at all times during the Term of this Lease peaceably and quietly have, hold and enjoy the Parcel and the Improvements, without unreasonable hindrance or interruption by Board or Board's agents, or by any other person or persons lawfully claiming by, through or under Board.

[§ 600] LAWS, UTILITIES AND TAXES

A0 [§ 601] Compliance With Laws

1 Lessee shall, at its sole cost and expense, comply with and shall require any Operator of the Project and any occupants or sublessees to comply with:

(a) All federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances (herein sometimes collectively referred to as "law") affecting the Parcel or the Improvements thereon, or any part thereof, or the use thereof, including those which require the making of any structural, unforeseen or extraordinary changes to the Parcel or the Improvements, whether or not any such statutes, laws, rules, orders, regulations or ordinance which may be hereafter enacted were within the contemplation of the parties at the time of execution of this Lease, or involve a change of policy on the part of the governmental body enacting the same; and

(b) All rules, orders and regulations of the National Board of Fire Underwriters or other bodies exercising similar functions in connection with the prevention of fire or the correction of hazardous conditions which apply to the Parcel and the Improvements constructed thereon; provided, however, that nothing in this Section 601 shall be construed to require Lessee to meet the standards of any future law which by its terms does not then apply to the Parcel, the Improvements thereon or the use, operation or occupancy thereof (for example, changes in building codes that apply prospectively and do not require alterations of existing structures).

E0 [§ 602] Utilities

Lessee agrees to pay or cause to be paid, as and when they become due and payable, all charges for water, gas, light, heat, telephone, electricity, garbage, refuse and all other utility and communication services rendered or used on or about the Parcel or the Improvements at all times during the Term of this Lease.

C0 [§ 603] Impositions (Including Taxes and Assessments)

1 [§ 604] Payment Generally

Subject to the provisions of **Section 609** and other limitations in **Sections 600** through **611**, Lessee agrees to pay or cause to be paid, as and when they become due and payable, and before any fine, penalty, interest or cost may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof, all taxes, assessments, franchises, excises, licenses and permit fees, and other governmental levies and charges, general and special, ordinary and extraordinary, unforeseen and foreseen, of any kind and nature whatsoever which at any time during the Term of this Lease may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on: (a) the Parcel, the Improvements, or any part thereof; (b) the rent and income received by Lessee from subtenants, guests or others for the use or occupation of all or any part of the Parcel or the Improvements thereon; or (c) the transactions contemplated herein or any document to which Lessee is a party, creating or transferring an interest or estate in the Parcel. All such taxes, franchises, excises, licenses and permit fees, and other governmental levies and charges shall herein be referred to as "**Impositions**", and any of the same shall herein be referred to as an Imposition. Any Imposition relating to a fiscal period of the taxing authority, a part of which period is included within the Term of this Lease and a part of which is included in a period of time before the Effective Date or after the expiration of the Term of this Lease, shall (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon, or become a lien upon the Parcel or the Improvements thereon, or shall become payable, during the Term of this Lease) be adjusted between Board and Lessee, and Lessee shall pay that portion of such Imposition relating to that part of such fiscal period occurring before the expiration of the Term of this Lease, and Board shall pay the remainder thereof, if any.

2. [§ 605] Payment of Impositions in Installments

If, by law, any Imposition may at the option of the payer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Lessee may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and, in such event, shall pay such installments as may become due during the Term of this Lease as the same become due and before any fine, penalty, further interest or cost may be added thereto; provided, however, that the amount of any installments of any such Imposition which will be the responsibility of Lessee pursuant to **Section 603** above, and which are to become due and payable after the expiration of the Term of this Lease, shall be deposited with Board for such payment on or before the date which is sixty (60) days prior to the date of such expiration; it being understood that

installments payable for the period subsequent to the expiration of the Lease are not the responsibility of Lessee as provided in Section 603.

3. **[§ 606] Board Right to Cure**

Subject to the provisions of Section 608, if Lessee, in violation of the provisions of this Lease, shall fail to pay and to discharge any Imposition, Board may (but shall not be obligated to) pay or discharge it, and the amount paid by Board and the amount of all costs, expenses, interest and penalties connected therewith, including attorneys' fees, together with interest at an annual rate which is the lesser of three percent (3%) over the prime rate published in the western edition of the Wall Street Journal on the date payment is made by Board, or the highest annual rate which may lawfully be charged and collected under applicable law, from the date payment is made by Board, shall be deemed to be and shall be payable by Lessee as additional Rent and shall be paid to Board by Lessee on demand.

4. **[§ 607] Tax Receipts**

Lessee shall furnish to Board, on or before the date when any Imposition would become delinquent, official receipts of the appropriate taxing authority or other evidence satisfactory to Board evidencing payment thereof.

5. **[§ 608] Limits of Tax Liability**

The provisions of this Lease shall not be deemed to require Lessee to pay municipal, county, state or federal income or gross receipts or excess profits taxes assessed against Board, or municipal, county, state or federal capital levy, estate, succession, inheritance, gift, or transfer taxes of Board, or corporation franchise taxes imposed upon any corporate owner of the fee of the Parcel; except, however, that Lessee shall pay all taxes assessed by any governmental authority upon the value of the Parcel and the Improvements thereon or by virtue of any operation by Lessee conducted on or out of the Parcel and the Improvements. It is agreed that in the event the State of California or any taxing authority thereunder changes or modifies the system of taxing real estate so as to tax the rental income from real estate in lieu of or in substitution (in whole or in part) for the real estate taxes and so as to impose a liability upon Board for the amount of such tax, then Lessee shall be liable under this Lease for the payment of the taxes so imposed during the Term of this Lease, including any renewal thereof, to the same extent as though the alternative tax was a tax upon the value of the Parcel and the Improvements.

6. **[§ 609] Permitted Contests**

Lessee shall have the right to contest the validity or the amount in part or in full, of any Imposition which it is obligated to pay under the provisions of this Lease. Lessee agrees that all such proceedings shall be begun within the period allowed by law after any contested item is imposed and shall be prosecuted to final adjudication with reasonable dispatch. Nothing herein shall

be construed to limit or prevent Board from opposing any such contest which may be instituted by Lessee hereunder.

Lessee shall give Board prompt notice in writing of any such contest at least twenty (20) business days before any delinquency occurs if Lessee intends to withhold payment of the Imposition pending determination of the contest or at least twenty (20) business days before institution of any contest if Lessee intends to contest such Imposition subsequent to payment thereof.

Lessee may only exercise its right to contest an Imposition hereunder while withholding payment thereof if (i) the subject legal proceedings shall operate to prevent the collection of the Imposition so contested, or the sale of the Parcel, the Improvements, or any part thereof, to satisfy the same, or (ii) if Lessee shall, prior to the date such Imposition is due and payable, have given such reasonable security as may be required by Board from time to time in order to insure the payment of such Imposition to prevent any sale, foreclosure or forfeiture of the Parcel, the Improvements, or any part thereof, by reason of such nonpayment. In the event of any such contest and the final determination thereof adversely to Lessee, Lessee shall, before any further fine, interest, penalty or cost may be added thereto for nonpayment thereof, pay fully and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs and expenses that may have accrued thereon or that may result from any such contest by Lessee and, after such payment and discharge by Lessee, Board will promptly return to Lessee such security as Board shall have received in connection with such contest.

Any such proceedings to contest the validity or amount of any Imposition or to recover any Imposition paid by Lessee shall be prosecuted by Lessee at Lessee's sole cost and expense; and Lessee shall indemnify, protect, defend and hold harmless Board against any and all claims, losses, liabilities, damages, costs or expenses of any kind, including, but not limited to, reasonable attorneys' fees and expenses, which may be imposed upon or incurred by Board in connection therewith.

7. [§ 610] Notice of Possessory Interest; Payment of Taxes and Assessments on Value of Entire Property

In accordance with California REVENUE AND TAXATION CODE §107.6(a), Board states that by entering into this Lease, a possessory interest subject to property taxes may be created. Lessee or any other party in whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest.

Without limiting the foregoing, in the event the Parcel or the Improvements thereon, or any possessory interest therein, should at any time be subject to ad valorem taxes or assessments levied, assessed or imposed on such property, Lessee shall pay taxes and assessments upon the assessed value of the entire property, and not merely upon the assessed value of its leasehold interest.

D. [§ 611] Other Liens

Lessee shall not, directly or indirectly, create or permit to be created or to remain, and will promptly discharge, at its expense, any mortgage, lien, encumbrance or charge on or pledge of the Parcel, the Improvements or the personal property thereon, or any part thereof, or Lessee's interest therein, or the Base Rent, Additional Rent, Overage Rent, supplemental Rent or other sums payable by Lessee under this Lease, (including, but not limited to, the liens of mechanics, laborers, materialmen, suppliers or vendors for work or materials alleged to be done or furnished in connection with the Parcel, the Improvements, and any other improvements thereon), other than any Trade Equipment Agreements (defined below) as are permitted with respect to personal property pursuant to Section 703, and other than any Permitted Mortgage as is permitted pursuant to Section 900 *et seq.*, and other than liens or encumbrances created by Board in accordance with Section 110. Lessee shall notify Board promptly of any lien or encumbrance which has been created on or attached to the Parcel or the Improvements, or to Lessee's leasehold estate therein, whether by act of Lessee or otherwise, but other than such liens or encumbrances created by Board, and Lessee shall remove, or shall have removed, any lien, encumbrance, levy or attachment made on the Parcel, or any portion thereof, or shall assure the satisfaction thereof within a reasonable time. Nothing herein contained shall be deemed to prohibit Lessee from contesting in good faith the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to Lessee with respect thereto, provided such contest does not subject the Parcel, or any portion thereof, to forfeiture or sale and Lessee posts a bond or other security in form and amount reasonably acceptable to the Board. The existence of any mechanic's, laborer's, materialmen's, supplier's or vendor's lien, or any right in respect thereof, shall not constitute a violation of this Section if payment is not yet due upon the contract or for the goods or services in respect of which any such lien has arisen.

Board shall not, directly or indirectly, create or permit to be created or to remain, and will promptly discharge, at its expense, any mortgage, lien, encumbrance, charge or pledge of the Parcel, which is or may be superior to Lessee's interest therein or the nonpayment of which would impair Lessee's rights therein, except as expressly required or permitted by this Lease.

[§ 700] OWNERSHIP OF AND RESPONSIBILITY FOR IMPROVEMENTS AND PERSONAL PROPERTY

A. [§ 701] Ownership During Term

1. [§ 702] Improvements

All Improvements constructed on the Parcel by Lessee as permitted or required by this Lease shall, during the Term of this Lease, be and remain the property of Lessee, and Board shall not have title thereto; provided, however, that, except as otherwise provided in this Lease with respect to Damage and Destruction (Section 708), Eminent Domain (Section 1100) and Alterations (Section 707), Lessee shall have no right to waste, destroy, demolish or remove the Improvements; and provided further that Lessee's rights and powers with respect to the Improvements are subject to the terms and limitations of this Lease.

For purposes of this Lease, the Improvements shall include (without limitation) all of those building components, furnishings, fixtures and equipment necessary for operation of the basic building systems and parking facilities, such as, but not limited to, chillers, boilers, plumbing, sanitary fixtures and central air-cooling systems, security systems, electrical distribution systems, telephone, computer, fiber optic, and other cable systems, and furnishings, fixtures and equipment of the nature or type or comparable to items described illustratively in the "**List of Improvement Components**" (attached hereto and incorporated herein as **Exhibit E**). Board and Lessee covenant for themselves and all persons claiming under or through them that the Improvements are real property.

2. [§ 703] Personal Property

All personal property located on the Parcel by Lessee as permitted or required by this Lease shall, during the Term of this Lease, be and remain the property of Lessee, and Board shall not have title thereto; provided, however, that, except as otherwise provided in this Lease with respect to repair and replacement of personal property, Lessee shall have no right to waste, destroy, demolish or remove the personal property; and provided further that Lessee's rights and powers with respect to the personal property are subject to the terms and limitations of this Lease.

At any time during the Term of this Lease, Lessee shall have the right to remove portions of the personal property for the purpose of repair or replacement as necessary for the appropriate operation of the Improvements as required by this Lease, provided that Lessee shall repair any damage to the Parcel or the Improvements caused by such removal.

Personal property shall include all furnishings, fixtures and equipment which are not affixed to the Parcel or the Improvements thereon so as to require damage to the Improvements, or impairment of the use of the Improvements, upon removal thereof including, but not limited to, furnishings, fixtures and equipment of the nature or type or comparable to items described in the "**List of Personal Property**" (attached hereto and incorporated herein as **Exhibit F**).

Personal property shall not include furnishings, fixtures or equipment owned or leased by subtenants and placed in space occupied by them in the Improvements for use in their home or business.

Notwithstanding anything to the contrary contained in this Lease (but subject to the last paragraph of this **Section 703** below), Lessee shall have the right, from time to time and with the reasonable approval of Board, to lease or sublease from an equipment supplier, or to finance from the vendor or a third-party lender the purchase of, any of the types of personal property customarily leased, subleased or financed in such manner in Improvements such as that operated on the Parcel (collectively referred to herein as "**Trade Equipment**"), and to execute and deliver to such equipment suppliers, vendors or lenders such leases, subleases, security agreements and other documents or instruments that may be necessary or appropriate to accomplish the same (collectively referred to herein as "**Trade Equipment Agreements**"). Subject to the last paragraph of this Section, Board hereby waives the right of distraint and agrees that it does not have and shall not

assert any right, lien or claim in or to any Trade Equipment so long as such Trade Equipment is leased, financed or otherwise subject to a security interest in favor of a third party. Subject to the last paragraph of this Section, Board further agrees to permit the applicable equipment supplier, vendor or lender (or its assignee) to remove and dispose of such Trade Equipment without reference to, and free and clear of, any demand of Board, and that such disposal or sale may be made on the Parcel. Board shall, upon Lessee's request, execute and deliver such documents as are requested and customarily required by the applicable equipment supplier, vendor or lender to confirm, subject to the last paragraph of this Section, that Board waives all rights as to the applicable Trade Equipment and agrees that such supplier, vendor or lender may remove such Trade Equipment subject to an obligation to restore any damage occasioned by such removal. Board agrees that all such items of financed or leased Trade Equipment installed or to be installed on the Parcel and the Improvements shall be and remain personal property and not real property, notwithstanding the fact that the same may be nailed or screwed or otherwise attached or affixed to the Parcel or the Improvements, and further agrees to recognize the rights therein of any equipment supplier, vendor or third-party lender (or its assignee).

Nothing contained in this **Section 703** or in **Section 704** shall give Lessee the right, without the approval of Board, to remove, or permit the removal from the Improvements of, any Trade Equipment that is used in the operation of the Improvements, if Board is willing to assume the executory obligations of Lessee as to such Trade Equipment under the applicable Trade Equipment Agreement. Any Trade Equipment Agreement to which **Section 703** or **704** applies shall expressly permit (without requiring) the Board to assume Lessee's executory obligations under such Trade Equipment Agreement in the event that the equipment supplier, vendor or third-party lender (or its assignee) would otherwise have the right to remove the applicable Trade Equipment from the Improvements. Notwithstanding the foregoing, Board understands and agrees that the personal property and Trade Equipment may be subject to the lien of a Permitted Mortgagee and that such Permitted Mortgagee may have a prior right to assume Lessee's obligations under any such Trade Equipment Agreement.

B. [§ 704] Ownership at Termination

Lessee shall not be required or permitted to remove the Improvements at the expiration or sooner termination of the Term of this Lease. Lessee shall not be permitted to remove the personal property at the expiration or sooner termination of the Term of this Lease, except as follows: (i) within sixty (60) days following the expiration or sooner termination of this Lease, Lessee (or any applicable equipment supplier, vendor or third-party lender that has an interest therein) may remove any personal property or Trade Equipment that is leased, financed or otherwise subject to a security interest in favor of a third party (but not any Trade Equipment that is used in the operation of the Improvements if the Board is willing to assume the executory obligations of Lessee as to such Trade Equipment under the applicable Trade Equipment Agreement), and (ii) upon demand by Board made prior to the expiration or sooner termination of the Term of the Lease, Lessee shall remove, within sixty (60) days following the expiration or sooner termination of the Term of this Lease, such personal property, or any portion thereof, designated by Board.

Any personal property designated by Board to be removed by Lessee and not removed by Lessee within said sixty (60) day period, shall, at the election of Board, and without compensation to Lessee: (i) become Board's property, free and clear of all claims to or against them by Lessee or any third person, firm or entity; (ii) be disposed of or destroyed by Board; or (iii) at Lessee's cost and expense, be placed in storage on behalf of Lessee, for such time as Board shall deem appropriate or until reclaimed by Lessee, whichever is sooner.

Upon termination of this Lease, whether by expiration of the Term or otherwise, the Improvements on the Parcel, and all personal property not designated by Board to be removed by Lessee, shall, without compensation to Lessee, then become Board's property, free and clear of all claims to or against them by Lessee or any third person, firm or entity. Notwithstanding anything in this **Section 704** to the contrary, Lessee shall have no right to remove any personal property, Trade Equipment, or Improvements, and Board shall not have the right to remove the same and shall not acquire title thereto, if Board enters into a new lease pursuant to **Section 902**.

Lessee shall indemnify, defend, protect and hold harmless Board from and against any and all liability, loss, damage, cost or expense (including attorneys' fees and court costs) arising from any claims with respect to the ownership or any interest in the Improvements and personal property (except claims arising due to Board's actions) or from Board's exercise of the rights conferred by this **Section 704**.

C. [§ 705] Maintenance and Repair of Improvements

Subject to the provisions of this Lease concerning condemnation, alterations, damage and destruction, Lessee agrees to maintain or cause to be maintained in good order, repair and operation the Parcel and the Improvements, including all furnishings, fixtures and equipment of Lessee thereon or therein throughout the Term of this Lease without expense to Board, and to perform or cause to be performed all repairs and replacements necessary to maintain and preserve the Parcel and the Improvements, including furnishings, fixtures and equipment, in a decent, safe and sanitary condition, in compliance with applicable laws, and equal in value, quality and use to the condition of the Improvements, including furnishings, fixtures and equipment, as originally constructed or installed, reasonable wear and tear excepted; and Board shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Project. Lessee hereby expressly waives all right to make repairs at Board's expense under Sections 1941 and 1942 of the California CIVIL CODE, as either or both may from time to time be amended, replace or restated. Any subsidence of soil or soil condition causing damage or destruction to the Parcel or the Improvements shall be treated as a casualty in accordance with **Sections 708 and 709**. All landscaping required to be planted as part of the Project shall be maintained in a healthy condition.

D. [§ 706] Waste

Lessee shall not commit or suffer to be committed any voluntary or permissive waste of the Parcel or the Improvements, or any part thereof.

Lessee agrees to keep or cause to be kept the Parcel and the Improvements clean and clear of refuse and obstructions and to promptly dispose of all garbage, trash and rubbish.

E. **[§ 707] Additional Construction, Alterations and Repairs**

1. **General Construction Standards**

All additional construction after the issuance of the Certificate of Compliance, alteration or repair work permitted herein shall be accomplished expeditiously and diligently. Lessee shall pay (or cause to be paid) all costs and expenses associated therewith. Lessee shall take all reasonably necessary measures to minimize any damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected thereby. Lessee shall repair, at its own cost and expense, any and all damage caused by such work and shall restore the area upon which such work is performed to a condition which is equal to or better than the condition which existed prior to the beginning of such work. Dust, noise and other effects of such work shall be controlled using the best accepted methods customarily utilized in order to control such deleterious effects associated with construction projects in a populated or developed area.

2. **Board's Approval of Plans**

Board's rights of approval with respect to any construction work undertaken prior to Board's issuance of the Certificate of Compliance shall be governed by the provisions of **Section 400 *et seq.*** Following completion of the construction as required by the DDA and issuance of said Certificate of Compliance, any construction or remodeling undertaken by Lessee on the Parcel or the Improvements shall be governed by the following:

(a0 Lessee shall have the right, following issuance of said Certificate of Compliance, without Board's consent (but subject to all other provisions of this Lease), to undertake any construction, reconstruction or alterations of the Project which will not (a) change the use of the Project to a non-permitted use, (b) materially reduce the value of the Improvements or (c) materially change the pre-existing location, design, height, bulk, architecture or exterior appearance of the Improvements on the Parcel. Without limiting the generality of the foregoing, any construction, reconstruction or alteration which would create an exterior building facade not conforming with the elements of the original construction for the Project shall be deemed "material" for the purposes of this Section.

(b0 If Lessee at any time following issuance of said Certificate of Compliance desires to undertake any construction, reconstruction or remodeling on the Project which is not exempt from Board's approval as provided in Subsection (a) above, Lessee shall, prior to commencement of such work, prepare or cause to be prepared, at its sole expense, and submit to Board for its review and written approval, preliminary plans for such work showing, without limitation, scaled elevations, scaled floor plans, design concepts, dimensions, material selection, colors, signing (if any) and such additional information as is reasonably necessary for Board to make an informed decision on such submission. Board shall approve or disapprove such submitted

preliminary plans within thirty (30) days of receipt of complete preliminary plans meeting the requirements of this Subsection, and such approval shall be in the reasonable discretion of Board. Failure of Board to specify any objection to such preliminary plans or make a proposal that would add to or change the preliminary plans within such 30-day period shall be deemed to be an approval. If the preliminary plans are approved by Board, Lessee shall prepare or cause to be prepared, at its sole cost and expense, and submit to Board for its review and written approval final plans and specifications developed from the approved preliminary plans, which approval shall not be withheld, provided that the final plans and specifications are in conformity with the approved preliminary plans and are in compliance with existing building codes and other laws, regulations and ordinances. Board shall approve or disapprove the final plans and specifications within thirty (30) days of receipt of complete final plans and specifications. Failure of Board to specify any objection to such final plans and specifications or make a proposal that would add to or change the final plans and specifications within such 30-day period shall be deemed an approval.

(c0 Each document submitted for Board's review pursuant to Subsection (b) above shall contain a cover page prominently listing the date mailed, the required return date and a statement to the effect that the document will be deemed approved by Board pursuant to Subsection (b) unless written objection thereto is given within the time period herein specified.

(d0 No material changes to the approved plans and specifications shall be made without the prior written approval of Board, which approval shall not be unreasonably withheld or delayed.

3. Use of Plans

Any contracts entered into after the Effective Date of Lease with any architect, other design professional or any general contractor shall provide, in form and substance reasonably satisfactory to Board, for the assignment thereof to Board as security to Board for Lessee's performance hereunder, and Board shall be furnished with any such agreement, together with the further agreement of the parties thereto, that if this Lease is terminated due to Lessee's default, Board may use any plans and specifications to which Lessee is then entitled pursuant to any such contract without payment of any further sums to any party thereto. Board's rights to said contracts and plans shall be subordinate to those of a Permitted Mortgagee.

4. Compliance With Construction Documents and Laws; Issuance of Permits

All improvements on the Parcel shall be constructed in strict compliance with any construction documents approved by Board under this Lease and also in strict compliance with all applicable local, state and federal laws and regulations. Lessee shall have the sole responsibility for obtaining all necessary permits and shall make application for such permits, directly to the person or governmental agency having jurisdiction.

5. Construction Safeguards

Lessee shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by Lessee, all necessary safeguards for the protection of workers and the public.

6. Conditions to Commencement of Construction

In no event shall Lessee commence any construction on the Parcel until the following conditions have been satisfied or waived by Board, in addition to other conditions and requirements imposed by this Lease:

(a0 Board has approved Lessee's final plans and specifications for the improvements (to the extent pursuant to Subsection 2 above Board is required to approve such plans and specifications);

(b0 Lessee has obtained financing and equity capital necessary for the full payment of construction of the improvements, together with any required operating capital;

(c0 Lessee has obtained building permits and all other governmental approvals necessary for the construction of the improvements;

(d0 Either: (i) the Off-Site Parking improvements and Friars Road Bus Stop Improvements (as defined in the Scope of Development) have been completed by Lessee, accepted by the Board and the Off-Site Parking is ready for use by trolley patrons; or (b) Lessee has provided at least one hundred thirty five (135) temporary parking spots on the Parcel, improved and with access to public streets and the Trolley Station as approved in writing by the Board; and

(e0 Lessee has entered into complete and binding contracts with its contractor or contractors for the construction of the improvements, which contracts have been approved by Board and which contracts shall provide for the obtaining prior to the commencement of construction of labor and material and performance bonds in an amount not less than the cost of construction of the improvements.

Lessee shall promptly provide the Board with such evidence as the Board may reasonably request that such conditions have been satisfied.

7. Board's Cooperation

Board shall cooperate with and assist Lessee in every reasonable way in Lessee's efforts to obtain all governmental consents, approvals, permits or variances which may be required for the performance of any construction permitted under the terms of this Lease. Such cooperation shall include, without limitation, Board's joinder in any application for any such consent, approval, permit or variance where joinder therein by the owner of the Parcel is required by law, but such cooperation shall not require Board to incur any costs in connection therewith.

8. **Rights of Access**

Representatives of Board shall have the reasonable right of access to the Parcel and any improvements thereon without charges or fees, at normal construction hours during the period of construction, for the purposes of ascertaining compliance with the terms of this Lease, including, but not limited to, the inspection of the construction work being performed, provided that such representatives shall be those who are so identified in writing by Board, shall be accompanied by Lessee's representatives if Lessee so desires, and shall comply with Lessee's contractor's reasonable rules for the construction site. This limitation of access shall not apply to the City's inspectors or other governmental employees and officers acting within their legal authority. Board shall indemnify Lessee and hold it harmless from any damage to the extent caused by the gross negligence or willful misconduct of Board or any representatives of Board during any inspection pursuant to this Subsection.

9. **Notice of Completion**

Upon completion of any construction, Lessee shall file or cause to be filed in the Official Records of the County of San Diego a Notice of Completion (the "**Notice of Completion**") with respect to the improvements, and Lessee shall deliver to Board, at no cost to Board, two (2) sets of the final as-built plans and specifications of the improvements.

10. **Exclusions**

Notwithstanding anything to the contrary contained in this Lease, Board's consent for any plan or proposal for any construction work on the Project shall not be required for (a) the construction of subtenant improvements, or (b) the reconstruction of improvements which have been damaged or destroyed by fire or other casualty, or which have become worn out; so long as any such reconstruction will not (i) materially reduce the value of the improvements, (ii) change the uses to uses other than as permitted by the provisions of **Section 501**, or (iii) substantially alter the design, size, number of units, height, bulk and exterior appearance of the improvements (in the case of reconstruction, the improvements as they existed prior to the event or condition requiring reconstruction), and provided that notice of intent to so reconstruct or construct is given by Lessee to Board at least thirty (30) days prior to the commencement of any work thereon.

11. **Protection of Board**

Nothing in this Lease shall be construed as constituting the consent of Board, expressed or implied, to the performance of any labor or the furnishing of any materials or any specific improvements, alterations of or repairs to the Parcel or the Improvements thereon, or any part thereof, by any contractor, subcontractor, laborer or materialman, nor as giving Lessee or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services or the furnishing of any materials in such manner as would give rise to the filing of mechanics' liens or other claims against the fee of

the Parcel or the Improvements thereon. Board shall have the right at all reasonable times to post, and keep posted, on the Parcel or the Improvements any notices which Board may deem necessary for the protection of Board and of the Parcel and the Improvements thereon from mechanics' liens or other claims. In addition, but subject to **Section 609** hereof, Lessee shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons doing any work or furnishing any materials or supplies to Lessee or any of its contractors or subcontractors in connection with the Parcel and the Improvements thereon.

F. **[§ 708] Damage or Destruction**

Lessee agrees to give notice to Board of any fire or other damage that may occur on the Parcel or the Improvements where the repair costs are estimated to exceed the greater of Fifty Thousand Dollars (\$50,000) as "**Adjusted for Inflation**" for the prior Lease Year, such notice to be given within ten (10) days of such fire or damage. Subject to the provisions of **Section 709**, if the Improvements shall be damaged or destroyed by any casualty (i) where the cost of restoration will not exceed fifty percent (50%) of the full insurable value of the Improvements as defined in **Section 1003**; and (ii) which is required to be insured against by the terms of this Lease or is actually insured against; and (iii) where the net insurance proceeds (as defined below) actually available to Lessee for restoration or rebuilding are sufficient to restore the Improvements, then Lessee agrees to make full repair of said damage and to restore the Improvements to the condition which existed prior to said damage with such alterations or changes thereto as are required by then current building codes or are approved by Board, provided that Board shall not unreasonably withhold or delay such approval. If Board's approval is so required, Lessee shall submit plans and specifications related thereto for Board's reasonable approval. If the Improvements shall be damaged or destroyed by any casualty where the cost of restoration will exceed the amount referred to in clause (i) above or where the casualty is not required to be insured against by the terms of this Lease and is not actually insured against or where the net insurance proceeds actually available to Lessee for restoration are insufficient to restore the Improvements, Lessee shall have the election to either restore the Improvements in the same manner as provided above or to terminate this Lease (unless termination is prohibited by Lessee's Permitted Mortgage) provided that if Lessee elects to terminate, Lessee shall comply with all of the following conditions:

1. Lessee shall give Board notice of termination as a result of such damage or destruction within forty-five (45) days after settlement of insurance proceeds, but in any event within one hundred eighty (180) days after the event causing such damage or destruction.

2. Lessee shall pay to Board all Base Rent, prorated to the date of such termination, together with all Additional Rent and Overage Rent payable to that same date, and any and all supplemental Rent and other sums then owed under this Lease to Board.

3. The net insurance proceeds shall be disbursed and applied as set forth in **Section 1006**.

4. Lessee shall deliver possession of the Parcel and remaining Improvements to Board and shall quitclaim to Board all right, title and interest in the Parcel and the remaining Improvements, if any.

As used herein, the term "**net insurance proceeds**" means the gross insurance proceeds paid by an insurer to Lessee for loss or damage to the Improvements on the Parcel less any and all reasonable costs and expenses (including, but not limited to, reasonable attorneys' fees) incurred by Lessee to recover said proceeds. Lessee agrees promptly to commence and prosecute to completion the settlement of insurance proceeds with respect to any event of damage or destruction of the Improvements.

Lessee agrees that preliminary steps toward performing repairs, restoration or replacement of the Improvements or portions thereof shall be commenced by Lessee within forty-five (45) days after settlement of insurance proceeds, but in any event within one hundred eighty (180) days after the event causing such damage or destruction and the required repairs, restoration or replacement shall be completed within a reasonable time thereafter.

Lessee agrees that, notwithstanding any other provision of this Lease, upon any event of damage or destruction to the Improvements, Lessee shall at its sole cost and expense (whether or not insurance proceeds are available therefor and whether or not Lessee terminates or intends to terminate this Lease but subject to reimbursement from insurance proceeds if and when available) immediately take such actions and undertake and complete such work as is necessary to assure the safe condition of the damaged Improvements pending the ultimate disposition of the Improvements. In any instance where Lessee may elect to terminate this Lease rather than restore the Improvements pursuant to this **Section 708** (or **709** below), if Lessee does not terminate this Lease, Lessee shall restore the Improvements.

G. [§ 709] Damage or Destruction During Final Years of Term

Notwithstanding **Section 708** to the contrary, in the event of major damage or destruction (as defined in this Section) to the Improvements during the last seven (7) years of the Term of this Lease as the same may be extended as provided herein, Lessee shall have the election to restore the Improvements as provided in **Section 708** or to terminate this Lease (unless termination is prohibited by Lessee's Permitted Mortgage) provided Lessee complies with all of the following conditions:

1. Lessee shall give Board notice of termination as a result of such damage or destruction within forty-five (45) days after settlement of insurance proceeds, but in any event within one hundred eighty (180) days after the event causing such damage or destruction.
2. Lessee shall pay to Board all Base Rent, pro-rated to the date of such termination, together with all Additional Rent and Overage Rent payable to that same date, and any and all supplemental Rent and other sums then owed under this Lease to Board.

3. The net insurance proceeds shall be disbursed and applied as set forth in Section 1006.

4. Lessee shall deliver possession of the Parcel and remaining Improvements to Board and shall quitclaim to Board all right, title and interest in the Parcel and the remaining Improvements, if any.

Major damage or destruction to the Improvements, as used in this Section, means such damage or destruction that the cost of restoration will exceed twenty-five percent (25%) of the full insurable value of the Improvements (as defined in Section 1003), which percentage amount shall be reduced monthly on a pro rata basis over the above-referenced seven (7) year period. For example, if the damage occurs three (3) years prior to the end of the Term, major damage or destruction shall mean the cost of restoration in excess of ten and seven tenths percent (10.7 %) of the full insurable value of the Improvements.

H. [§ 710] Construction Performance and Labor and Material (Payment) Bonds; Indemnification

Lessee agrees to hold Board and the Parcel and Improvements free and harmless, and indemnify Board against, all claims, liabilities, liens, damages, costs and expenses, for labor and materials in connection with all construction, repairs or alterations on the Parcel or the Improvements and the cost of defending against such claims, including reasonable attorneys' fees.

Lessee agrees to procure, or cause the procurement of, contractors' bonds covering labor, materials and faithful performance for construction, repairs or alterations on the Parcel or the Improvements.

Each such bond shall be in the amount equal to one hundred percent (100%) of the construction price in the contract entered into by Lessee and its general contractor. Said bonds must first be approved in writing as to the content and form by Board. Board shall not unreasonably withhold or delay such approval. Lessee shall, prior to commencement of construction, deliver to Board a certificate or certificates from the bonding company(s) issuing the aforesaid bonds, naming Board an additional insured under said bonds. The foregoing provisions of this Section shall be applicable to construction, repairs or alterations to the Parcel or the Improvements at all times during the Lease Term. The foregoing provisions shall not apply to any work which, in the aggregate, totals less than Twenty Thousand Dollars (\$20,000) as Adjusted for Inflation.

Board shall have the right to post and maintain on the Parcel and the Improvements any notices of non-responsibility provided for under applicable law.

I. [§ 711] Environmental Requirements

1. Lessee shall not, without the Board's prior written consent, use, store, generate, dispose or otherwise allow any "Hazardous Substances" (as defined below) in, on, under or around the Parcel or the Improvements; provided, however, that the Board shall not unreasonably withhold its consent to Lessee's use and storage of Hazardous Substances which are reasonably necessary in connection with the construction, operation, maintenance or repair of the Project, such as reasonable

and customary quantities of cleaners, pool chemicals, and fuel in vehicles used on the Parcel, products which are commonly and legally sold by retail stores, and materials commonly and legally used in construction materials for projects like the Project.

2. Lessee shall comply with all rules, laws and regulations relating to Hazardous Substances which Lessee uses, stores or allows in, on, or about the Parcel or the Improvements.

3. Lessee shall not cause the unlawful release, deposit, discharge or disposal of any Hazardous Substances in, on, under or around the Parcel or the Improvements or permit the unlawful release, deposit, discharge or disposal of any Hazardous Substances in, on, or under the Parcel or the Improvements

4. No above ground or underground storage tanks shall be installed on the Parcel without Board's prior express written approval, which may be withheld in the Board's sole and absolute discretion.

5. Lessee shall be responsible for posting on the Parcel and the Improvements any signs required by any state, federal or local law, including, without limitation, Section 25249.6 of the California HEALTH AND SAFETY CODE and regulations promulgated pursuant thereto. Lessee shall also complete and file any business response plans or inventories required by any state, federal or local law, including, without limitation, Chapter 695 of the California HEALTH AND SAFETY CODE and regulations promulgated pursuant thereto. Lessee shall concurrently file a copy of any such business response plan or inventory with Board.

6. Lessee shall promptly notify Board of any release of Hazardous Substances in, on, under or about the Parcel or the Improvements of which Lessee obtains knowledge, and of the receipt of any pertinent notices or communications from any governmental authority. Lessee shall promptly remove any vehicles or equipment which may cause contamination in, on, under or about the Parcel or the Improvements, and shall clean up any resulting contamination.

7. Lessee shall indemnify, defend, protect and hold harmless the Board and its officers, employees, and agents from any claims, liabilities, losses, injuries, damage, costs or expenses (including without limitation, attorneys' fees and the cost of any cleanup, testing, remediation, removal or disposal of Hazardous Substances) relating to or arising out of any Hazardous Substances released, deposited, discharged or disposed in, on, under or around the Parcel or the Improvements, or any part thereof, by Lessee, its tenants, or their contractors, employees, agents or assigns or arising as a result of a violation of the provisions of this Section 711. The obligations of this Subsection 7 shall survive the expiration or earlier termination of this Lease.

8. The Board has delivered to Lessee a copy of that certain "Groundwater Assessment in the Area of the New Morena Trolley Station for the Mission Valley West Light Rail Transit Extension, on the Block Bounded by Morena Boulevard, Linda Vista Road, Friars Road and Napa Street, San Diego, California" prepared by Earth Tech and dated November 7, 1996 (the "Earth Tech Report"). The Earth Tech Report identifies a "plume" of certain Hazardous Substances in the

groundwater on the Parcel and the Mixed Use Parcel, as more particularly described in the Earth Tech Report (the "**Known Plume**"). The Board shall indemnify, defend and hold harmless Lessee, its successors and assigns, and any Permitted Mortgagee, from any and all loss, liability, costs and expenses (including, without limitation, attorneys' fees and costs of cleanup, testing, remediation, removal or disposal of Hazardous Substances) arising out of the Known Plume and, subject to Subsection (c) below, any enlargement or migration of the Known Plume onto or under the Parcel; provided, however, that:

(a0 the Board's obligations under this Subsection 8 shall not apply to any Hazardous Substances other than the Known Plume;

(b0 the Board's obligations under this Subsection 8 shall not apply to, and the Lessee at its sole cost and expense shall be responsible for, any and all cleanup, testing, remediation, removal and disposal costs and expenses necessitated as a result of Lessee's activities on the Parcel or the Improvements, including without limitation, soil excavation and temporary construction "dewatering";

(c0 the Board's obligations under this Subsection 8 shall not apply to the extent that the Lessee's excavation, construction, dewatering or other activities exacerbate Hazardous Substance conditions on the Parcel, the Mixed Use Parcel, or on other adjoining land;

(d0 Lessee shall use commercially reasonable efforts to avoid any loss, liability, costs or expenses arising out of the Known Plume; and

(e0 neither the Board nor the Lessee waive any rights of recovery against the parties who are responsible for any Hazardous Substance contamination, and the parties agree to reasonably cooperate with each other in connection with recovery of any remediation and other costs incurred by either party as a result of such contamination.

This Subsection 8 shall be personal to the Board and shall not burden transferees of the Board's interest in the Parcel or this Lease (other than successors to Board by operation of law, e.g., successors by merger). The obligations of this Subsection 8 shall survive the expiration or earlier termination of this Lease.

9. Lessee hereby releases the Board and its officers, employees and agents from any claims, liability, injury, damage, costs or expenses (including without limitation, attorneys' fees and the cost of any cleanup, testing, remediation, removal or disposal of Hazardous Substances) relating to or arising out of any Hazardous Substances released, deposited, discharged or disposed onto, under or around the Site except for the obligations of the Board under Subsection 8 of this Section 711. The obligations of this paragraph shall survive the expiration or termination of this Lease.

Lessee agrees as to the matters released to waive the benefits of Section 1542 of the CIVIL CODE of the State of California, which provides as follows:

should be interpreted broadly (but not contrary to the express terms of this Lease) to effectuate such intent, even in circumstances not addressed or envisioned by the specific terms hereof, to prevent a circumvention of the parties intent for the Board to participate in such Net Gain; and

5. A change in ownership or control of Lessee or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or control of Lessee or the degree thereof, is for practical purposes a transfer or disposition of Lessee's interests under this Lease; and

6. These provisions are intended to and shall apply to any direct or indirect transfer by Lessee of any interest in the Lease or any direct or indirect transfer of any ownership interest in Lessee, as more particularly described below.

B. **[§ 802] Definitions**

1. **"Additional Proceeds"** means any additional proceeds from the Parcel not included in Gross Revenues, including without limitation the following: (a) proceeds of casualty insurance, and (b) proceeds of condemnation awards. See Exhibit 6 attached. *[possibly revise to make these events "Transfers"]*

2. **"Capital Improvements"** means any improvements to the Parcel (after the initial construction of the Improvements) deemed capital in nature pursuant to generally accepted accounting procedures, consistently applied.

3. **"Cost of Acquisition"** means the total price paid, by a party other than the original Lessee, for a Transfer.

4. **"Developer's Basis"** *[provide basis for determining the Developer's basis in its interest in Lessee.]*

5. **"Development Costs"** means the actual expended amount by Lessee, at a cost that does not exceed market rate for such services, to construct, finance the construction of, and initially lease-up the Improvements as set forth in the attached Scope of Development. A developer's fee not exceeding four percent (4%) of Direct Costs may be included in Development Costs. No overhead of the Developer's or Lessee's organizations shall be included in Development Costs. Costs that are paid or reimbursed by another party or refunded shall not be included in Development Costs. Lessee shall certify its final Development Costs to the Board within thirty (30) days of completion of construction of the Project.

6. **"Direct Costs"** means Hard Costs plus (a) *contractors general conditions*, (b) *contractors fee*, and (c) *contingency* (not to exceed five percent (5%) of Hard Costs). *[these terms need clarification]*

7. "Entity Interest Transfer" means any direct or indirect transfer of or creation of any ownership interest in Lessee (or of any owner of an interest in Lessee) or change in proportion thereof, however described, by any method or means (other than such changes occasioned by the death or incapacity of any individual).

8. "Gross Sales Proceeds" means the total amount of money paid and the value of any other consideration received for a Transfer, including without limitation the payoff, release or assumption of any indebtedness.

9. "Hard Costs" means (a) *land and related (site and landscaping) costs*, (b) *building shell*, and (c) *garage*. *[these terms need clarification]*

10. "Lease Interest Transfer" means any direct or indirect total or partial sublease (other than an Operating Sublease), assignment, sale, conveyance, or transfer in any other mode or form by Lessee of any rights or interest in the Lease, the Project, the Parcel or the Improvements, however described, by any method or means (other than such changes occasioned by the death or incapacity of any individual).

11. "Net Gain" means Net Sales Proceeds less either

- (a) Development Costs, in the case of a Transfer by the original Lessee, or
- (b) Developer's Basis, in the case of a transfer by the Developer of its interest in Lessee, or
- (c) Cost of Acquisition, in the case of any other Transfer.

12. "Net Sales Proceeds" means (a) the Gross Sales Proceeds, (b) less any normal transfer expenses and closing costs actually incurred in connection with the Transfer, (c) plus, in the case of a Lease Interest Transfer, any Additional Proceeds received (and not previously included in the calculation of Net Sales Proceeds in a prior Transfer), and (d) less, in the case of a Lease Interest Transfer, any the costs of any Capital Improvements made by the Lessee (and not previously included in the calculation of Net Sales Proceeds in a prior Transfer).

13. "Operating Sublease" means a sublease of this Lease to a party actually intending to occupy a residential unit on the Parcel [*or, in the case of the Mixed Use Lease, occupy a portion of the Parcel for the operation of a business*].

14. "Transfer" means a Lease Interest Transfer or an Entity Interest Transfer.

C. [§ 803] Conditions for Transfer

1. No Transfers Prior to Issuance of Certificate of Compliance

The Lessee shall not under any circumstances be entitled to make any Transfer prior to the issuance of a Certificate of Compliance by Board, without the prior written consent of the Board, which may be granted or withheld in the sole and absolute discretion of Board. If, without the prior written consent of the Board, a Transfer occurs prior to the issuance of a Certificate of Compliance by Board, in addition to all other legal and equitable remedies the Board may be entitled to, the Board shall be entitled to recover from Lessee the total consideration paid for such Transfer. Said consideration shall belong and be paid to the Board and until so paid the Board shall have a lien on Lessee's leasehold interest in the Parcel and Improvements for such amount. Any such lien shall be subordinate and subject to any Permitted Mortgage approved by the Board as provided in this Lease. *[issue: should standards of Section 107 of DDA apply between Close of Escrow and Certificate of Compliance?]*

2. Transfers After Issuance of Certificate of Compliance Limited

(a) Following the issuance of a Certificate of Compliance, Lessee shall not be entitled to make and shall not permit any Transfer except to the extent allowed and in accordance with the terms and provisions in this Section 803.

(b) Lessee shall not make or permit any Lease Interest Transfer without the prior written approval of Board, which approval shall not be unreasonably withheld or delayed if (i) the proposed Transferee (as defined below) or its management has sufficient experience in the development, operation and management of residential apartment projects comparable to the Project (or other use approved by the Board pursuant to **Section 502**), and (ii) the proposed Transferee is financially qualified and to perform all the agreements, undertakings, and covenants of this Lease and all other agreements entered into by Lessee which relate to the development, management, operation, maintenance, and restoration of the Parcel and of the Improvements.

(c) Lessee shall not, without the prior written approval of Board, make or permit any Entity Interest Transfer which would (i) result in the change of the general partner, manager, or controlling shareholder of Lessee, or (ii) otherwise result in a change in the control of Lessee. The Board's approval of such a Entity Interest Transfer shall not be unreasonably withheld or delayed if (iii) the proposed Transferee (as defined below) or its management has sufficient experience in the development, operation and management of residential apartment projects comparable to the Project (or other use approved by the Board pursuant to **Section 502**), and (iv) after such transfer the Lessee would be financially qualified and to perform all the agreements, undertakings, and covenants of this Lease and all other agreements entered into by Lessee which relate to the development, management, operation, maintenance, and restoration of the Parcel and of the Improvements:

(d) Lessee shall promptly notify Board of any and all changes whatsoever in the identity of the parties in ownership or control of Lessee or the degree thereof, of which it (or any of its partners, members, shareholders, or any of their officers or employees) have been notified or otherwise have knowledge or information. Any entity formation agreements and documents (or changes therein) related to a Transfer, as well as the agreements and documents effectuating any Transfer, shall be subject to the approval of Board in connection with its approval of the Transfer.

to Board as provided herein, the Board shall have a lien on Lessee's leasehold interest in the Parcel and Improvements for such amount. Any such lien shall be subordinate and subject to any Permitted Mortgage approved by the Board as provided in this Lease. **Exhibit J** attached illustrates the calculation of additional Rent payable on Transfer in several hypothetical situations.

Lessee shall allow Board to review and audit Lessee's books and records for the purpose of verifying Lessee's calculation of the Net Gain for the Transfer in question. *[The provisions of Ground Lease may need to be supplemented, in the Board's reasonable discretion, regarding Books and Records and Audit Rights.]*

4. **Exception for Permitted Mortgages**

The limitations on Transfer contained in this **Section 803** shall not be deemed to apply to or prevent, nor shall Board's approval be required under this Section in connection with the granting of any security interest or Permitted Mortgage expressly described in this Lease (it being understood that the granting of a Permitted Mortgage shall not be considered a Transfer pursuant to this **Section 803**, but shall be governed solely by the provisions of **Section 900**), nor the exercise by any Permitted Mortgagee of its right to foreclose its Permitted Mortgage by power of sale or judicial foreclosure or to acquire Lessee's leasehold interest by deed in lieu thereof; nor any Transfer of this Lease by a Permitted Mortgagee having acquired Lessee's interest in this Lease as a result of its rights under the Permitted Mortgage or under **Section 900**, or by any owner of the leasehold estate whose interest shall have been acquired by, through or under any Permitted Mortgage or shall have been derived immediately from any holder thereof, as provided in **Section 901**. Provided, however, that the limitations on Transfer contained in this **Section 802** shall apply to any Permitted Mortgagee which acquires its interest in the Parcel or Improvements other than by the exercise of its rights pursuant to the Permitted Mortgage or deed in lieu of foreclosure.

5. **Exception for Sublease**

The limitations on Transfer contained in this **Section 803** shall not be deemed to apply to any Operating Sublease, and in connection therewith the approval of Board shall not be required, provided the following provisions are complied with:

(a) The term of any Operating Sublease shall not extend more than twelve (12) months (in the case of a residential lease) and in no event beyond the Term of this Lease;

(b) Any and all subleases shall be subject and subordinate to this Lease, and any amendments hereto. Lessee's form of sublease shall be subject to Board approval, which shall not be unreasonably withheld, and each sublease shall contain a provision, satisfactory to Board, requiring the sublessee to execute and deliver upon demand, without charge therefor, such instruments in recordable form evidencing subordination of the sublease to this Lease as may be required by Board. Board hereby covenants that, if the sublessee is not in default in the payment of rentals or otherwise in default under the sublease, its interest under the sublease shall not be terminated in the event of a termination of this Lease (except in the event of damage, destruction or

condemnation). If the sublessee is in default in the payment of rentals or otherwise in default under the sublease at the time of termination of this Lease (except in the event of damage, destruction or condemnation, in which event, the sublease shall terminate), Board shall have the option to terminate the sublease as a result of such default or to continue the sublease in effect.

(c) Each sublease shall contain a provision, satisfactory to Board, requiring that, in the event of Lessee's default under this Lease, and upon the written request of Board, the sublessee will in writing attorn to Board. Said agreement of attornment shall provide, among other things, (i) that sublessee's right of possession pursuant to the terms of the sublease shall not be disturbed, (ii) that the sublessee shall pay the rent reserved in the sublease to Board from the date of said attornment, (iii) that Board shall not be responsible to the sublessee under the sublease except for obligations accruing subsequent to the date of such attornment, nor for any security deposits of sublessee except those actually received by Board, and (iv) that the sublessee, in the event of the termination of this Lease, will enter into a new lease with Board on the same terms and conditions as the existing sublease and for the balance of the term thereof.

(d) Lessee shall, promptly after execution of each sublease, notify Board of the name and mailing address of the sublessee and shall, on demand, permit Board to examine and copy the sublease.

(e) Lessee shall not accept, directly or indirectly, more than one month's prepaid rent from any sublessee.

D. [§ 804] Payment to Board for Processing Transfer

All reasonable costs incurred by Board to determine whether or not to approve or otherwise process any proposed Transfer shall be paid by Lessee. With respect to each Transfer, Lessee shall deliver a retainer to Board in the sum of Two Thousand Dollars (\$2,000) as Adjusted for Inflation, prior to commencement of any action by Board, to be applied to the payment of Board's costs. There shall be no charge for the Board's staff's time. The costs of Board for consultants or legal services required for considering or otherwise processing such Transfer shall be the actual sums billed to Board for such consulting or legal services. All such costs in excess of Two Thousand Dollars (\$2,000) as Adjusted for Inflation shall be paid within ten (10) days after written request therefor by Board. No approval by the Board shall be effective until all such costs are paid in full. If such costs incurred by Board with respect to a Transfer equal less than Two Thousand Dollars (\$2,000) as Adjusted for Inflation, the balance shall be refunded promptly following the consummation of such Transfer. This Section 804 shall not apply to Equity Interest Transfers for which the Board's consent is not required by Subsection 2.(c) of Section 803.

[§ 900] MORTGAGES

Note: the terms of this Article 9 are not fully and finally agreed by the parties. Pursuant to Section 201 of the DDA, the parties agree to negotiate in good faith in an attempt to fully and finally resolve the language for these sections. However, if for any reason the parties cannot reach agreement within thirty (30) days after the approval of the DDA by the Board, then after such time either party may terminate the DDA by written notice to the other party.

A. [§ 901] Permitted Mortgages

Lessee shall have the right, at any time and from time to time during the Term of this Lease, to mortgage, pledge, deed in trust, assign rents, issues and profits or collaterally assign its interest in this Lease (and the subleases, Improvements, Trade Equipment and personal property), and to assign or pledge assignment of the same as security for any debt for the financing of the Project (the holder of any such mortgage, pledge or other encumbrance, and the beneficiary of any such deed of trust or assignment being referred to in this Lease as "**Permitted Mortgagee**" and the mortgage, pledge, deed of trust, assignment or other instrument referred to in this Lease as "**Permitted Mortgage**"), upon and subject to each and all of the following terms and conditions:

1. A Permitted Mortgage shall contain a principal amount not exceeding eighty percent (80%) of the fair market value of the Lessee's interests under this Lease, including the subleases, Improvements, Trade Equipment and personal property. The fair market value of Lessee's interests under this Lease shall be determined by an appraisal conducted on behalf of the Permitted Mortgagee by a disinterested real estate appraiser having the qualifications for appraisers required by law and the Permitted Mortgagee's underwriting criteria.

2. A Permitted Mortgage shall cover all of Lessee's interest in the Lease, and the Parcel, and may encumber the subleases, Improvements, the Trade Equipment, the personal property on the Parcel, and the rents, issues and profits therefrom, and shall cover no interest in any other property (the foregoing is not intended to preclude the use of letters of credit or other security enhancements so long as such security enhancements secure no other obligations).

3. In no event shall any Permitted Mortgage apply to, or encumber in any way whatsoever, (a) the Board's fee title to the Parcel or (b) any Base Rent, Additional Rent, Overage Rent, any supplemental Rent, and any and all other sums payable hereunder to or on behalf of Board.

4. No such Permitted Mortgage shall be binding upon Board in the enforcement of its rights and remedies herein and by law provided, unless and until a certified copy of the original thereof bearing the date and book and page of recordation thereof and a certified copy of the original note secured by such Permitted Mortgage has been delivered to Board together with written notice of the address of the Permitted Mortgagee to which notices may be sent; and in the event of an assignment of such Permitted Mortgage, such assignment shall not be binding upon Board unless and until a certified copy thereof bearing the date and book and page of recordation together with

written notice of the address of the assignee thereof to which notices may be sent, have been delivered to Board.

5. Not more than one Permitted Mortgage may be outstanding at any one time in connection with this Lease. No Permitted Mortgage permitted by this Lease shall cover more than one indebtedness. No Permitted Mortgage shall secure any obligations other than the repayment of construction or permanent financing for the Project.

6. A Permitted Mortgage shall contain provisions permitting the disposition and application of the insurance proceeds and condemnation awards in the manner provided in this Lease.

7. A Permitted Mortgage is to be originated only by a lender with net worth, lending experience, underwriting practices reasonably acceptable to the Board who is duly licensed or registered with any regulatory agency having jurisdiction over its operation, and is not under any order or judgment of any court or administrative agency restricting or impairing its operation as a lender, and which is regularly engaged in real estate lending.

8. All rights acquired by said Permitted Mortgagee under said Permitted Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Board thereunder, none of which covenants, conditions and restrictions is or shall be waived by Board by reason of the giving of such Permitted Mortgage. Notwithstanding any foreclosure of any such Permitted Mortgage, Lessee shall remain liable for the payment of the Base Rent, Additional Rent, Overage Rent and supplemental Rent reserved in this Lease and the performance of all of the terms, covenants and conditions of this Lease which by the terms hereof are to be carried out and performed by Lessee.

9. No extension, modification, change or amendment to a Permitted Mortgage shall be effective, or binding upon Board, unless and until approved by Board.

Lessee shall not enter into any Permitted Mortgage as permitted hereunder, or any extension, modification, change or amendment to any previously approved Permitted Mortgage, without the prior written approval of Board. Board shall not unreasonably withhold its approval if such Permitted Mortgage (or modification thereof, if applicable) complies with each and all of the terms and conditions referred to in paragraphs 1 through 9, inclusive, of this **Section 901**, and is otherwise consistent with this Lease. Board agrees to approve or disapprove a proposed Permitted Mortgage (or modification thereof, if applicable) within a reasonable time, and within the time, if any, provided for such approval in the Permitted Mortgage loan documents (provided that such documents allow Board a reasonable time to review the loan documents). In the event Board disapproves a matter, Board shall provide its objections in writing to Lessee, indicating the reason for its disapproval. Any approval by Board shall extend only to the documents and matters actually submitted to Board for review and approval. Once Board has approved a matter, Board shall not subsequently disapprove the same matter, but approval by Board of one matter shall not be construed to be approval of any other matter not specifically approved by Board.

All costs incurred by Board to determine whether or not to approve or to otherwise provide assistance to Lessee as may be reasonably necessary to close any proposed Permitted Mortgage shall be paid by Lessee. The determination of such costs, the procedure for payment thereof, and all other terms and conditions related thereto shall be as set forth in **Section 804** for a Transfer, and Lessee shall comply with **Section 804** as applicable to any Permitted Mortgage in like manner as to a Transfer. This paragraph shall not apply to the initial construction and permanent financing for the Project.

Notwithstanding anything in this Lease to the contrary, if Lessee encumbers its leasehold estate by way of a Permitted Mortgage as permitted herein, and should Board be advised in writing of the name and address of the Permitted Mortgagee, then this Lease shall not be terminated or canceled on account of any breach or default by Lessee in the performance of the terms, covenants or conditions hereof until Board shall have complied with the provisions of **Section 902** as to the Permitted Mortgage's right to cure and to obtain a new lease.

B. [§ 902] Rights and Obligations of Permitted Mortgagees

If Lessee, or Lessee's successors or assigns, shall mortgage the leasehold interest herein demised in accordance with **Section 901**, then, as long as any such Permitted Mortgage shall remain unsatisfied of record, the following provisions shall apply:

1. Board will not accept a cancellation or surrender of, or modify, this Lease without the prior consent in writing of the Permitted Mortgagee. Board's right to terminate this Lease shall be subject to the rights of the Permitted Mortgagee as more specifically described in this Lease.

2. If a Permitted Mortgagee shall register with Board its name and address in writing, no notice of any default by Board to Lessee shall be deemed to have been duly given unless and until a copy thereof has been mailed to the Permitted Mortgagee by registered or certified mail at the address registered with Board.

3. In the event Lessee shall be in default hereunder, the Permitted Mortgagee shall, within the period and otherwise as herein provided, have the right (but not the obligation) to remedy such default, or cause the same to be remedied, and Board shall accept such performance by or at the instigation of such Permitted Mortgagee as if the same had been done by Lessee. The Permitted Mortgagee shall have thirty (30) days after the expiration of any applicable cure period given to Lessee upon notice to Lessee to remedy the default or cause the same to be remedied. Such additional thirty (30) day period shall be extended if the default is other than the payment of money and such that it is not practicable to cure within such thirty (30) day period, if the Permitted Mortgagee commences such cure within said thirty (30) day period and diligently prosecutes such cure to completion. For purposes of the preceding sentence, when and to the extent permitted by law, the commencement of judicial or non-judicial foreclosure proceedings by the Permitted Mortgagee shall be deemed the commencement of a cure. Lessee hereby constitutes and appoints the Permitted Mortgagee Lessee's agent and attorney in fact with full power, in Lessee's name, place and stead, and

at Lessee's cost and expense, to enter upon the Parcel and the Improvements, and perform all acts required to be performed herein or in any sublease made hereunder by Lessee.

4. While any such Permitted Mortgage remains unsatisfied of record, and an event or events shall occur which shall entitle Board to terminate this Lease, and if before the expiration of thirty (30) days after the date of service of notice of termination under this Lease such Permitted Mortgagee shall have paid to Board all Additional Rent, Overage Rent, supplemental Rent and other payments herein provided for then in default, and shall have complied or shall be engaged in complying with all other requirements of this Lease, if any, then in default, and with which such Permitted Mortgagee is capable of complying, Board shall not be entitled to terminate this Lease and any notice of termination theretofore given shall be void and of no effect.

5. In the event of the termination of this Lease prior to the natural expiration of the then current Term of this Lease due to breach or default of Lessee or operation of law including rejection or disaffirmance of this Lease pursuant to bankruptcy law or other law affecting creditors' rights, Board shall mail by registered or certified mail to the Permitted Mortgagee written notice of such termination, together with a statement of any and all sums which would at that time be due under this Lease then known to Board. Such Permitted Mortgagee shall thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions:

(a) Upon the written request of the Permitted Mortgagee within sixty (60) days after service of the aforementioned notice of termination, Board shall (i) enter into a new lease of the Parcel and the Improvements with such Permitted Mortgagee, or its designee, as provided in clause (b) of this subparagraph 5, and (ii) execute a quitclaim deed in favor of the Permitted Mortgagee with respect to the Improvements; it being understood that the Permitted Mortgagee shall hold title to the Improvements subject to the terms of the new lease referred to above.

(b) Such new lease shall be effective as of the date of termination this Lease and shall be for the remainder of the Term of this Lease, at the Base Rent, Additional Rent, Overage Rent, and supplemental Rent and upon the agreements, terms, covenants and conditions thereof. Any such new lease entered into with the Permitted Mortgagee shall have the same priority as this Lease and shall be prior to any lien or encumbrance on the fee interest. Concurrent with or before the execution of such new lease, the lessee named therein shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for the termination as aforesaid, and shall fully otherwise remedy any existing defaults under this Lease which are reasonably susceptible of cure by such new lessee, and shall pay all expenses, including but not limited to, reasonable attorneys' fees, court costs and disbursements incurred by Board in connection with such defaults and termination, the recovery of possession of the Parcel and the preparation of the Parcel and the preparation, execution and delivery of such new lease; with respect to any default which cannot be cured by such lessee until it obtains possession, such lessee shall have a reasonable time after it obtains possession to cure such default.

(c) The provisions of this Subsection shall survive the termination, rejection or disaffirmance of this Lease and shall continue in full force and effect thereafter to the same extent

as if this Subsection were a separate and independent contract made by the Board, Lessee and such Permitted Mortgagee and, from the effective date of such termination, rejection or disaffirmance of this Lease to the date of execution and delivery of such new lease, such Permitted Mortgagee may use and enjoy said Property without hindrance by Lessor or any person claiming by, through or under the Board.

6. If Board elects to terminate this Lease pursuant to any right of termination resulting from Lessee's being in default of any provision of this Lease, then any Permitted Mortgagee, in addition to all other rights herein granted such Permitted Mortgagee, shall have the right to be subrogated to any and all rights of Lessee with respect to curing of any default and shall also have the right to postpone and extend the specified date for termination of this Lease fixed by Board in a notice given pursuant to applicable provisions of this Lease, for a period of not more than six (6) months (subject to extension as provided below), provided such Permitted Mortgagee shall:

(a) concurrent with or before the Permitted Mortgagee gives Board notice of its exercise of the right to postpone or extend the specified date for termination of this Lease, cure all defaults which may be cured by the payment of a sum of money and undertake to cure any other existing default of Lessee, excepting the vacation or dismissal of any pending bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the then applicable bankruptcy act or other similar federal and state statutes or laws or other default not capable of being cured by the Permitted Mortgagee;

(b) continue to pay the Base Rent, Additional Rent, Overage Rent, supplemental Rent, and all other sums payable hereunder to or on behalf of Board, and perform all other obligations of Lessee that are required pursuant to this Lease, during any extension period(s); and

(c) promptly thereafter initiate steps to acquire Lessee's interest in this Lease by foreclosure of its mortgage or otherwise.

Such right shall be exercised by the Permitted Mortgagee giving Board notice of the exercise of the same prior to the time of termination fixed in Board's notice of termination. If, before the date specified for the termination of this Lease as extended by such Permitted Mortgagee, (1) the Permitted Mortgagee shall have obtained possession, and if (2) an assumption in writing of performance and observance of covenants and conditions herein contained on Lessee's part to be performed shall be delivered to Board by the Permitted Mortgagee, then and in such event the default under this Lease shall be removed and the Lease shall not be canceled. If the Permitted Mortgagee is unable, after due diligence, to acquire Lessee's interest in this Lease within the first six (6) month extension period, the Permitted Mortgagee may obtain an additional six (6) month extension upon notice to Board prior to the expiration of the initial six (6) month extension.

7. Any payment to be made or action to be taken by a Permitted Mortgagee hereunder as a prerequisite to obtaining a new lease or keeping this Lease in effect shall be deemed properly to have been made or taken by the Permitted Mortgagee if such payment is made or action taken by a permitted nominee, agent or assignee of the right of such Permitted Mortgagee.

8. The parties hereto shall give the Permitted Mortgagee notice of any condemnation proceedings affecting the Parcel or the Improvements. The Permitted Mortgagee shall have the right to intervene and be made a party to any such condemnation proceedings and the parties hereto do hereby consent that the Permitted Mortgagee may be made such party or intervenor.

9. No Permitted Mortgagee nor any owner of the leasehold estate whose interest shall have been acquired by, through or under any Permitted Mortgage or shall have been derived immediately from any holder thereof shall become personally liable under the agreements, terms, covenants or conditions of this Lease unless and until such time as the Permitted Mortgagee or such owner becomes the owner of the leasehold estate and then only those liabilities which accrue during the period as it remains the owner of the leasehold estate. Upon any assignment of this Lease by the Permitted Mortgagee or any owner of the leasehold estate whose interest shall have been acquired by, through or under any Permitted Mortgage or shall have been derived immediately from any holder thereof, the assignor shall be relieved of any further liability which may accrue hereunder from and after the date of such assignment provided that the assignee shall execute and deliver to Board a recordable instrument of assumption wherein such assignee shall assume the rights and obligations of Lessee and agree to perform and observe all covenants and conditions and provisions in this Lease from and after the effective date of such assignment as they are applicable to Lessee.

10. Anything herein contained to the contrary notwithstanding, the provisions of this Section 902 shall inure only to the benefit of the holder of a Permitted Mortgage.

11. The rights granted herein to a Permitted Mortgagee shall be enforceable by it. In the event any action or proceeding is brought to enforce or interpret the provisions hereof or to seek damages or performance or declare the rights of the parties hereto or such Permitted Mortgagee, the prevailing party including such Permitted Mortgagee, if prevailing, shall be entitled to reasonable attorneys' fees, costs and expenses.

12. Nothing herein contained shall require any Permitted Mortgagee or its designee as a condition of the exercise of any rights hereunder or in order to comply with the provisions of Section 800 or as a condition of entering into the new lease provided for herein to cure any non-monetary default of Lessee not reasonably susceptible of being cured by such Leasehold Mortgagee or its designee.

13. The following defaults, if any, relating to the prior Lessee shall be deemed cured upon the acquisition of the leasehold interest by a Permitted Mortgagee (or assignee thereof): (i) attachment, execution or other judicial levy upon the leasehold estate hereunder, (ii) assignment of the leasehold estate hereunder for the direct or indirect benefit of creditors of said Lessee, (iii) judicial appointment of a receiver or similar officer to take possession of the leasehold estate hereunder or the Premises, (iv) filing any petition by, for or against Lessee under any chapter of the Federal Bankruptcy Act, or (v) any other default which is of such a nature as to not be reasonably curable by a Mortgagee or the transferee. Any such deemed cure shall be for the sole benefit of the

Permitted Mortgagee (or assignee thereof); the prior Lessee shall not be released from any liability it may have for such matters.

C. **[\S 903] Board's Right to Cure Lessee's Defaults on Permitted Mortgages**

Lessee agrees to have any Permitted Mortgage made pursuant to this Lease provide:

1. That the Permitted Mortgagee shall by registered or certified mail and in writing give notice to Board of the occurrence of any event of default;

2. That Board shall be given at least thirty (30) days' notice of default in debt service payments before such Permitted Mortgagee will accelerate the indebtedness, exercise its power of sale or commence a proceeding to judicially foreclose its Permitted Mortgage. It is intended hereby that Board receive notice of default at least thirty (30) days prior to the last date a borrower or entity having an interest in the property may cure such default as provided in §2924 of the California CIVIL CODE or any successor or amending statute thereto. If any payments of amortization and interest required to be made under the provisions of the Permitted Mortgage shall not be performed which shall constitute a default under the terms of the Permitted Mortgage, Board may cure said default provided Board gives Lessee ten (10) days notice of Board's intention to cure such default, unless (a) Lessee shall cure such default within said ten (10) day period, or (b) Lessee obtains from the Permitted Mortgagee a written extension of time in which to cure such default together with a separate written extension of time granting Board a reasonable additional time to cure said default if said default is not cured within said extended time and copies thereof are delivered to Board. If Board shall elect to cure such default, Lessee shall pay the cost thereof to Board together with interest thereon at an annual rate which is the lesser of three percent (3%) plus the prime rate published in the western edition of the Wall Street Journal on the date of Board's payment, or the highest annual rate which may lawfully be charged and collected under applicable law, as supplemental Rent. Lessee does hereby authorize Board in Board's name without any obligation or duty on Board to do so, to do any act or thing required of or permitted to Lessee to prevent any default under said Permitted Mortgage or any acceleration thereof, or the taking of any foreclosure or other action to enforce the collection of the indebtedness, and Lessee agrees to indemnify and hold Board harmless and to reimburse Board upon demand for all reasonable costs, charges and expenses incurred by Board in such connection. If Lessee at any time shall request any Permitted Mortgagee to grant a moratorium on payment, to waive payment or to extend the time for payment, Lessee shall give Board written notice thereof by registered or certified mail concurrently with the making of said request and shall further give Board written notice by registered or certified mail of the granting or denial of said request.

D. **[\S 904] Non-Merger**

There shall be no merger of this Lease, or of the leasehold estate created thereby, with the fee estate in and to the Parcel by reason of the fact that this Lease or the leasehold estate created thereby, or any interest in either thereof, may be held directly or indirectly by or for the account of any person who shall own the fee estate in and to the Parcel or any portion thereof, and no such merger shall

occur unless and until all persons at the time having any interest in this Lease or the leasehold estate, including the Permitted Mortgagee and the holder of any mortgage upon the fee estate in and to the Parcel shall join in a written instrument effecting such merger.

E. **[§ 905] Board Cooperation**

Board covenants and agrees that it will act and fully cooperate with Lessee in connection with Lessee's right to grant a Permitted Mortgage as provided above. At the request of Lessee or any proposed or existing Permitted Mortgagee, Board shall promptly execute and deliver (a) any documents or instruments reasonably requested to evidence, acknowledge or perfect the rights of the Permitted Mortgagee as herein provided; and (b) a certificate of the type described in **Section 1322**. Any such certificate may be conclusively relied upon by any Permitted Mortgagee or Transferee of Lessee's interest in this Lease.

The provisions in the DDA pertaining to Permitted Mortgages were deleted from the DDA when the Developer requested the DDA terminate as of Close of Escrow. Those provisions appear largely redundant with the foregoing provisions, but the lack of time has prevented a thorough comparison. Accordingly, the parties reserve the right to include in the final form of Lease any such provisions contained in the 2/17/00 draft DDA, a copy of which is attached as Exhibit I.

[§ 1000] INDEMNIFICATION AND INSURANCE

A. **[§ 1001] Indemnification**

To the fullest extent permitted by law, Lessee shall indemnify, protect, defend and hold harmless the Board and its officers, employees and agents, from and against all liability, loss, damage, costs, or expenses of any kind (including court costs) arising from or as a result of any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which shall occur on or adjacent to the Parcel and which shall be directly or indirectly caused by any acts done thereon or any errors or omissions of Lessee, its agents, employees and contractors, or any of them, including but not limited to, claims of negligent or defective design or construction, regardless of whether any such liability occurs before or after issuance of the Certificate of Compliance, or arising out of or in connection with the use or occupancy of the Parcel and the Improvements by Lessee or any other person under Lessee, or any fire on the Parcel or the Improvements, or any nuisance made or suffered thereon, or any failure by Lessee to keep the Parcel and the Improvements in a safe condition; and Lessee shall reimburse Board for all its costs and expenses, including reasonable attorneys' fees incurred in connection with the defense of any such claims, and will hold all goods, materials, furnishings, fixtures, equipment, machinery and other property whatsoever on the Parcel and the Improvements at the sole risk of Lessee and save Board harmless from any loss or damage thereto by any cause whatsoever. These indemnity obligations shall survive the expiration or earlier termination of this Lease. Lessee's obligations under this Section exclude only claims, losses or

liability which is due to the sole negligence or willful misconduct of Board or its officers, employees and agents.

B. [§ 1002] Required Insurance

During the Term of this Lease, Lessee at its sole cost and expense shall:

1. Keep or cause to be kept a policy or policies of insurance against loss or damage to the Improvements on the Parcel resulting from fire, windstorm, hail, lightning, vandalism, malicious mischief, and such other perils ordinarily included in extended coverage casualty insurance policies. In addition, if Lessee carries coverage voluntarily for additional causes (such as earthquake, riot, civil commotion, or other), such coverage shall be treated in all respects as the policy or policies required to be kept under this Subparagraph 1, for so long as Lessee continues to voluntarily carry such coverage. All insurance hereunder shall be maintained in an amount not less than one hundred percent (100%) of the full insurable value of the Improvements as defined in Section 1003 (such value to include amounts spent for construction of the Improvements, architectural and engineering fees, and inspection and supervision).

2. Maintain or cause to be maintained public liability insurance naming Board, its contractors, agents, servants, officers and employees as additional insureds, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever in, on or about the Parcel or the Improvements; to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, as a result of the acts or omissions of Lessee, its agents, servants or employees alleged to be suffered by any person or persons whomsoever, resulting directly or indirectly from any act or activities of Lessee or under its control or direction arising from the use and occupancy under the Lease of the Parcel and the Improvements; and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from the acts or activities of Lessee under this Lease in connection with the Parcel, the Improvements, or Lessee or its sublessees, or any person acting for Lessee or under its control or direction.

Such property damage and personal injury insurance shall also protect Board and such additional insureds against incurring any legal cost in defending claims for alleged loss. Such personal injury and property damage insurance shall be maintained in full force and effect during the entire term of this Lease in an amount of at least Three Million Dollars (\$3,000,000) Adjusted for Inflation, combined single limit.

Lessee agrees that provisions of this paragraph as to public liability insurance shall not be construed to limit in any way the extent to which Lessee may be held responsible for the payment of damages to persons or property resulting from Lessee's activities, or the activities of any other person or persons for which Lessee is otherwise responsible.

3. Maintain or cause to be maintained business or rental interruption insurance against loss of rental to Board due to a cause referred to in Subparagraph 1 above, in an amount equal to, and insuring against, any loss of Base Rent, Additional Rent and Overage Rent (as to Additional Rent and Overage Rent, an amount for each year up to the amount of Additional Rent and Overage Rent paid for the Lease Year prior to the Lease Year in which the loss or damage occurs) by Board for a minimum of twelve (12) months.

4. Maintain or cause to be maintained workers' compensation insurance issued by an insurance carrier authorized under the laws of the State of California for workers' compensation and employer's liability under the Workers' Compensation Insurance and Safety Act now in force in California, or any act hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by Lessee in connection with the Parcel and the Improvements, and shall cover full liability for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of, any person incurring or suffering injury or death in connection with the Parcel and the Improvements, or the operation thereof by Lessee.

5. During the course of any alteration, construction or reconstruction, including, without limitation, during the period of the construction of the Improvements, builders risk insurance for the amount of the completed value on an all-risk form including "course of construction" coverage, (including earthquake and flood if required by any Permitted Mortgagee) insuring the interests of Board and Lessee. Board shall be named as loss payee. The insurer shall waive all rights of subrogation against Board. Lessee shall also require its general contractor and Major Subcontractors (as defined in the DDA) to carry such insurance.

6. Such other insurance (or other terms with respect to any insurance required pursuant to this Section 1102, including without limitation amounts of coverage or deductibles) on or in connection with the Project as the Board may reasonably require, which at the time is commonly obtained in connection with properties similar in type of building size, use and location to the Project.

C. [§ 1003] Definition of "Full Insurable Value"

The term "full insurable value", as used in Section 1002 and elsewhere in this Lease, shall mean the actual replacement cost excluding the cost of excavation, foundation and footings below the ground level of the Improvements. To ascertain the amount of coverage required, Lessee shall cause the full insurable value to be determined from time to time by appraisal by the insurer or by any appraiser mutually acceptable to Board and Lessee, not less often than once each three (3) years; except that no such appraisals shall be required if the policy is written on a "replacement cost" basis.

D. **[§ 1004]** **General Insurance Provisions**

All insurance provided for under **Section 1002** of this Lease shall be for the benefit of Lessee, Board (and as to the insurance provided for in Subsection 2 of **Section 1002** above, the additional insureds described therein) and any Permitted Mortgagee.

All insurance provided for under **Section 1002** shall be periodically reviewed by the parties for the purpose of mutually increasing or decreasing the minimum limits of such insurance, from time to time, to amounts which may be reasonable and customary for similar facilities of like size and operation and in the same location as the Parcel.

All insurance provided for under **Section 1002** shall be effected under policies issued by insurers licensed or permitted to do business in the State of California and reasonably approved by Board. Board may not withhold approval of any insurer having a rating of AXVII or better in Best Insurance Guide, or if Best Insurance Guide is no longer in existence, a similar or comparable rating.

Any insurance required to be maintained by Lessee pursuant to **Section 1002** may be taken out under a blanket insurance policy or policies covering other premises or properties, and other named or additional insureds in addition to the parties hereto; provided, however, that any such policy or policies of blanket insurance, or supplemental written certification from the insurers under such policies, shall specify therein the amount of insurance allocated to the coverage required under **Section 1002** (except that no such allocation shall be required if coverage is provided on a "blanket limit" basis) and provided further, that in all other respects, any such blanket policy shall comply with the other provisions of **Section 1002**.

All certificates of insurance shall provide that such certificates and the policies related thereto shall not be canceled or materially changed without at least thirty (30) days' prior written notice to Board.

All insurance policies shall provide that there shall be no exclusion from coverage for cross liability among the named insureds.

Certificates of insurance (and, at Board's request, copies of each required policy) shall be deposited with Board together with appropriate evidence of payment of the current premiums therefor; and, at least thirty (30) days prior to expiration of any such policy, certificates of renewal policies be so deposited.

E. **[§ 1005]** **Failure to Maintain Insurance**

If Lessee fails or refuses to procure or maintain insurance as required by this Lease to be procured and maintained by Lessee, Board shall have the right, at Board's election, to procure and maintain the insurance described in **Section 1002** for the benefit of Lessee, Board and any Permitted Mortgagee. The premiums paid by Board shall be treated as supplemental Rent due from Lessee, to be paid on the first day of the month following the date on which the premiums were paid. Board shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s) which shall include Lessee.

F. [§ 1006] Disposition of Insurance Proceeds Resulting from Loss or Damage to Improvements

All proceeds of insurance with respect to loss or damage to the Improvements to be maintained and repaired by Lessee during the term of this Lease shall be payable, under the provisions of the policy of insurance, jointly to Lessee and Board and, except as provided below, said proceeds shall constitute a trust fund to be used for the repair, restoration or reconstruction of the Improvements in accordance with the provisions of Section 708 or 709. To the extent that such proceeds exceed the cost of such repair, restoration or reconstruction, then such proceeds shall be divided as follows:

1. If the event causing loss or damage to the Improvements occurs on or prior to the thirtieth (30th) anniversary of the Effective Date of Lease, the entire amount by which such proceeds exceed the cost of such repair, restoration or reconstruction shall belong to Lessee.

2. If the event causing loss or damage to the Improvements occurs after the thirtieth (30th) anniversary of the Effective Date of Lease, the amount which shall belong to Lessee shall be the amount by which such proceeds exceed the cost of such repair, restoration or reconstruction, multiplied by a fraction: the numerator of the fraction shall be the number of years in the Lease Term, as the same may have been extended (if duly extended) minus the number of anniversaries of the Effective Date of Lease which have occurred prior to the event of loss or damage to the Improvements, and the denominator of the fraction shall be the number of years in the Lease Term, as the same may have been extended (if duly extended). The balance of such proceeds shall belong to Board.

Provided, however, that within the period during which there is an outstanding Permitted Mortgage as described in Section 900, such proceeds shall be made payable jointly to the Permitted Mortgagee, if any, Lessee and Board and, except as provided below, shall be disposed of jointly by the parties as a trust fund to be applied to the repair, restoration and reconstruction of the damaged or destroyed Improvements. To the extent that such proceeds exceed the cost of such repair, restoration or reconstruction, then such proceeds shall be divided as follows:

1. If the event causing loss or damage to the Improvements occurs on or prior to the thirtieth (30th) anniversary of the Effective Date of Lease, the entire amount by which such proceeds exceed the cost of such repair, restoration or reconstruction shall belong to Lessee and any Permitted Mortgagee as their respective interests may appear.

2. If the event causing loss or damage to the Improvements occurs after the thirtieth (30th) anniversary of the Effective Date of Lease, the amount which shall belong to Lessee and any Permitted Mortgagee as their respective interests may appear shall be the amount by which such proceeds exceed the cost of such repair, restoration or reconstruction, multiplied by a fraction, the numerator of the fraction shall be the number of years in the Lease Term, as the same may have been extended (if duly extended) minus the number of anniversaries of the Effective Date of Lease which have occurred prior to the event causing loss or damage to the Improvements, and the denominator

To secure the performance of such work, that portion of such remaining insurance proceeds equal to one hundred fifteen percent (115%) of the estimated cost of the work described in clause (a), (b) or (c) of this Subsection 2, whichever shall be greater, shall be held by Board and Lessee jointly (and deposited in an interest bearing account, which interest shall belong to and be payable as it accrues and becomes available as provided in Subsection 3 below) and such funds shall be expended for the specified work when Board has made its election, after which the balance, if any, shall be paid as set forth in Subsection 3 below. The estimated cost of the work described in clauses (a), (b) and (c) above shall be determined by Board and Lessee each putting the work referred to in clauses (a), (b) and (c) out to bid to not less than four (4) reputable contractors licensed by the State of California, within sixty (60) days of the parties mutually agreeing to terminate this Lease or Board receiving notice of Lessee's election to terminate this Lease. The bids shall be for the cost of immediate construction and the contractors shall not be informed of the reasons for which the bids are being solicited. The job shall be open for bid for a period not to exceed thirty (30) days. The three (3) lowest of the four (4) bids obtained by the parties with respect to the work described in clauses (a), (b) and (c) separately shall be averaged and such averages shall be deemed the estimated cost of the work described in clauses (a), (b) and (c), respectively. The balance of any remaining insurance proceeds over and above the one hundred fifteen percent (115%) set aside shall be paid immediately as set forth in Subsection 3 below.

3. Then, any insurance proceeds remaining shall be paid as follows:

(a) If the event causing loss or damage to the Improvements occurs on or prior to the thirtieth (30th) anniversary of the Effective Date of Lease, the entire amount by which such proceeds exceeds the allocations described in Subsections 1 and 2 above shall belong to Lessee.

(b) If the event causing loss or damage to the Improvements occurs after the thirtieth (30th) anniversary of the Effective Date of Lease, the amount which shall belong to Lessee shall be the amount by which such proceeds exceeds the allocations described in Subsections 1 and 2 above, multiplied by a fraction: the numerator of the fraction shall be the number of years in the Lease Term, as the same may have been extended (if duly extended) minus the number of anniversaries of the Effective Date of Lease which have occurred prior to the event causing damage or loss to the Improvements, and the denominator of the fraction shall be the number of years in the Lease Term, as the same may have been extended (if duly extended). The balance of the proceeds shall belong to Board.

Lessee hereby waives any claim against Board for any loss covered by insurance of the type specified in **Section 1002**; only to the extent that such waiver is permitted under its policies of insurance and will not cause to be voided any coverage thereunder, and Lessee shall obtain from its insurance company or companies a waiver of any right of subrogation that it may have against Board.

[§ 1100] **EMINENT DOMAIN**

To secure the performance of such work, that portion of such remaining insurance proceeds equal to one hundred fifteen percent (115%) of the estimated cost of the work described in clause (a), (b) or (c) of this Subsection 2, whichever shall be greater, shall be held by Board and Lessee jointly (and deposited in an interest bearing account, which interest shall belong to and be payable as it accrues and becomes available as provided in Subsection 3 below) and such funds shall be expended for the specified work when Board has made its election, after which the balance, if any, shall be paid as set forth in Subsection 3 below. The estimated cost of the work described in clauses (a), (b) and (c) above shall be determined by Board and Lessee each putting the work referred to in clauses (a), (b) and (c) out to bid to not less than four (4) reputable contractors licensed by the State of California, within sixty (60) days of the parties mutually agreeing to terminate this Lease or Board receiving notice of Lessee's election to terminate this Lease. The bids shall be for the cost of immediate construction and the contractors shall not be informed of the reasons for which the bids are being solicited. The job shall be open for bid for a period not to exceed thirty (30) days. The three (3) lowest of the four (4) bids obtained by the parties with respect to the work described in clauses (a), (b) and (c) separately shall be averaged and such averages shall be deemed the estimated cost of the work described in clauses (a), (b) and (c), respectively. The balance of any remaining insurance proceeds over and above the one hundred fifteen percent (115%) set aside shall be paid immediately as set forth in Subsection 3 below.

3. Then, any insurance proceeds remaining shall be paid as follows:

(a) If the event causing loss or damage to the Improvements occurs on or prior to the thirtieth (30th) anniversary of the Effective Date of Lease, the entire amount by which such proceeds exceeds the allocations described in Subsections 1 and 2 above shall belong to Lessee.

(b) If the event causing loss or damage to the Improvements occurs after the thirtieth (30th) anniversary of the Effective Date of Lease, the amount which shall belong to Lessee shall be the amount by which such proceeds exceeds the allocations described in Subsections 1 and 2 above, multiplied by a fraction: the numerator of the fraction shall be the number of years in the Lease Term, as the same may have been extended (if duly extended) minus the number of anniversaries of the Effective Date of Lease which have occurred prior to the event causing damage or loss to the Improvements, and the denominator of the fraction shall be the number of years in the Lease Term, as the same may have been extended (if duly extended). The balance of the proceeds shall belong to Board.

Lessee hereby waives any claim against Board for any loss covered by insurance of the type specified in **Section 1002**; only to the extent that such waiver is permitted under its policies of insurance and will not cause to be voided any coverage thereunder, and Lessee shall obtain from its insurance company or companies a waiver of any right of subrogation that it may have against Board.

[§ 1100] EMINENT DOMAIN

In the event that the Parcel, the Improvements or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, then, as between Board and Lessee (or any Permitted Mortgagee, if a Permitted Mortgage is then in effect), the interests of Board and Lessee (and any Permitted Mortgagee) in the award and the effect of the taking upon this Lease shall be as follows:

1. In the event of such taking of only a part of the Parcel or the Improvements thereon, this Lease shall terminate and end as to the portion of the Parcel so taken as of the date title or possession to such portion vests in the condemning authority, but, subject to the provisions of paragraph 2 below, shall continue in full force and effect as to the portion of the Parcel not so taken, and from and after such date the Base Rent required by this Lease to be paid by Lessee to Board shall be reduced in the proportion which the value of the part of the Parcel so taken bears to the total value of Lessee's interest in the Parcel; provided, however, Board shall have the right to substitute like adjacent property and maintain the Base Rent schedule without diminution, but only if the following conditions are satisfied:

(a) The adjacent property must be contiguous to that portion of the Parcel remaining subject to this Lease and reasonably acceptable to Lessee.

(b) The net amount of the award attributable to the Improvements taken (including severance damages to the remainder) and actually available and paid to Lessee is sufficient to construct on such like adjacent property such improvements which are comparable to the Improvements so taken or which were located on the portion of the Parcel so taken, and to restore to an architecturally and operationally complete and functional unit the Improvements not taken.

(c) The Base Rent shall be reduced in the manner described above until Lessee shall have completed construction of comparable improvements on the substitute adjacent property and such reconstruction to the Improvements to restore same to an architecturally and operationally complete and functional unit as described in clause (b) above.

(d) The adjacent property is made subject to the Permitted Mortgage of Lessee's Permitted Mortgagee then existing.

2. Notwithstanding anything to the contrary contained in Subsection 1, the following provisions shall apply in the event of any taking described in Subsection 1:

(a) Upon any taking of a portion of the Parcel or the Improvements which renders the operation of the Parcel and the Improvements remaining into an economically unviable condition, or which occurs during the last nine (9) years of the Term of this Lease and where such taking affects the use of a major part of the Improvements (determined in the same manner as a damage or destruction under Section 709), Lessee shall have the right to terminate this Lease and its obligations hereunder upon notice to Board given within one hundred twenty (120) days after the date title or possession to the portion taken vests in the condemning authority and such termination shall become effective as of the date of such taking.

6. Notwithstanding anything in this Section to the contrary, within the period during which there is an outstanding Permitted Mortgage on the Improvements, the Permitted Mortgagee shall be entitled to any portion of the award which would otherwise belong to Lessee, to the extent of its interest therein. The Permitted Mortgagee may, at its option, but subject to the terms of the Permitted Mortgage, apply said portion of the award to restoration of the Improvements or to reduction of the Permitted Mortgage, except that in the event of a partial taking, where the Lease remains in effect and Lessee is obligated to restore or repair the Improvements, then the Permitted Mortgagee shall apply said portion of the award to restoration of the Improvements. Any excess portion of Lessee's share of the award attributable to the condemnation of the Improvements after such restoration shall belong to Lessee or such Permitted Mortgagee, as their interests may appear.

7. Notwithstanding the foregoing provisions of this Section, Board may, in its discretion and without affecting the validity and existence of this Lease, transfer Board's interests in the Parcel in lieu of condemnation to any authority entitled to and having threatened to exercise the power of eminent domain; provided, however, that without the written consent of Lessee and any Permitted Mortgagee, Board shall not make any financial settlement with the condemning authority. In the event of such transfer by Board, Board shall retain its right to recover from said condemning authority the award with respect to its interest in the Parcel taken by the condemning authority in the manner provided in Subsection 5 above.

8. As used herein "net" amount of the award shall mean the gross award less all costs (including attorneys' fees) incurred by Lessee or Board, as the case may be, to recover such award.

[§ 1200] DEFAULTS, REMEDIES AND TERMINATION

A. [§ 1201] Defaults – General

Subject to the extensions of time set forth in **Section 1211**, failure or delay by either party to perform any term or provision of this Lease constitutes a default under this Lease. The party who fails or delays must promptly commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence.

In the event of any default, the injured party shall give written notice of default ("**Notice of Default**") to the party in default, specifying the default complained of by the injured party. Failure or delay in giving Notice of Default shall not constitute a waiver of any obligation, requirement or covenant required to be performed hereunder. Except as otherwise expressly provided in this Lease, any failures or delays by either party in asserting any rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of the right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

B. [§ 1202] Legal Actions

1. [§ 1203] Institution of Legal Actions

In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Lease. Such legal actions must be instituted in the Superior Court of the County of San Diego, State of California, in any other appropriate court in that county, or in the Federal District Court in the Southern District of California.

2. [§ 1204] Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Lease.

3. [§ 1205] Acceptance of Service of Process

In the event that any legal action is commenced by Board against the Lessee, service of process on Lessee shall be made by personal service upon the Lessee, or in such other manner as may be provided by law, and shall be valid whether made within or without the State of California.

C. [§ 1206] Rights and Remedies are Cumulative

Except with respect to rights and remedies which are expressly declared to be exclusive in this Lease, the rights and remedies of any non-defaulting party are cumulative and the exercise of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the defaulting party.

D. [§ 1207] Notices of Default

If either party is in default with regard to any of the provisions of this Lease, the non-defaulting party shall serve written Notice of Default for such default upon the defaulting party. If the default is not cured within ten (10) days after service of the Notice of Default if an obligation to pay money, or within thirty (30) days after service of the Notice of Default otherwise, or if such default (other than the payment of money) is of a type which is not capable of being cured within thirty (30) days, then if the default is not commenced to be cured within thirty (30) days after service of the Notice of Default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, the non-defaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default.

E. [§ 1208] Damages; Specific Performance

If a party defaults with regard to any of the provisions of this Lease after notice and opportunity to cure as provided in Section 1207 above, the defaulting party shall, except as otherwise expressly

provided in this Lease, be liable to the other party for damages caused by such default, and the non-defaulting party, at its option, may thereafter (but not before, unless necessary to prevent immediate harm) commence an action for specific performance of the terms of this Lease pertaining to such default, or exercise any other remedy or remedies which it may be entitled to.

F. [§ 1209] **Additional Remedies**

If Lessee defaults with regard any material provision of this Lease (including without limitation any default expressly set forth in **Section 1210**), Board shall serve a written Notice of Default for such default upon Lessee. If the default is not cured after notice and opportunity to cure as provided in **Section 1207** above, Board at its option, may thereafter (but not before, unless necessary to prevent immediate harm):

1. Correct or cause to be corrected said default and charge the costs therefor to the account of Lessee, subject however to any other provisions of this Lease expressly providing for any specific time or the occurrence of any condition before cure may be effected; provided that the Notice of Default given to Lessee by Board shall specify with particularity the condition constituting the default;
2. Correct or cause to be corrected said default and pay the cost thereof from the available proceeds of insurance, or in the event that Lessee has obtained a faithful performance bond indemnifying Board and the default sought to be cured is the subject of such bond, Board may call upon the bonding agent to correct said default and pay the costs thereof; provided that the Notice of Default given to Lessee by Board shall specify with particularity the condition constituting the default;
3. Have a receiver appointed to take possession of Lessee's interest in the Parcel and the Improvements, with power in said receiver to administer Lessee's interest therein, to collect all funds available in connection with its operation and maintenance thereof, and to perform all other acts consistent with Lessee's obligations under this Lease as the court deems proper;
4. Maintain and operate the Parcel and the Improvements without terminating the Lease;
5. Terminate the Lease pursuant to **Section 1210** by written notice to Lessee of its intention to do so;
6. Continue this Lease and Lessee's right to possession in effect and enforce its rights and remedies under the Lease, including the right to recover Base Rent, Additional Rent, Overage Rent, and any other Rent as it becomes due, as provided in §1951.4 of the California CIVIL CODE.

Board reserves and shall have the right at all reasonable times to enter the Parcel and the Improvements for the purpose of viewing and ascertaining the condition of the same, or to inspect the operations conducted thereon. Any such entry shall be made only after reasonable written notice to Lessee.

The rights reserved in this **Section 1209** shall not create any obligations on Board or Lessee or increase obligations imposed on Board or Lessee elsewhere provided in this Lease, and shall not defeat, render invalid or limit the rights or interests expressly provided in this Lease for the protection of Permitted Mortgagees.

G. [§ 1210] Remedies and Rights of Termination by Board

In the event that any time during the Term of this Lease, and in violation of this Lease, any of the following defaults by Lessee shall occur:

1. Lessee shall have used the Parcel or the Improvements for any purpose other than those provided for in this Lease;
2. Lessee shall have failed or refused to pay Board when due the applicable Base Rent, Additional Rent, Overage Rent, other Rent or sums required by this Lease to be paid by Lessee;
3. Lessee shall have failed or refused to pay when due any Impositions required by this Lease, subject, however, to the rights of Lessee to contest such Impositions pursuant to **Section 610** of this Lease;
4. Lessee shall have made or suffered to be made any voluntary or involuntary Transfer of the leasehold interest in the Parcel, or of the Improvements, or any part thereof, except as expressly permitted under this Lease;
5. Lessee shall have committed or suffered to be committed any permissive or voluntary waste of the Parcel or the Improvements or any part thereof;
6. Lessee shall have altered the Improvements in any manner except as permitted by this Lease;
7. Lessee shall have failed to maintain insurance as required by this Lease;
8. Lessee shall have failed to make repair and restoration of the Parcel and the Improvements in the event of damage or destruction or condemnation, if required by this Lease;
9. Lessee shall have engaged in any financing or entered into any other transaction creating any mortgage on the Parcel or the Improvements, or placing thereon any lien, mortgage, deed of trust, or other encumbrance or suffering any levy or attachment to be made thereon, except as permitted by the terms of this Lease;
10. Lessee shall have voluntarily filed or shall have involuntarily filed against it any petition under any bankruptcy or insolvency act or law or be adjudicated a bankrupt, or make a general assignment for the benefit of creditors;

11. Lessee shall have failed to cure any default under a Permitted Mortgage at least thirty (30) days prior to the last date Lessee may cure such default before an acceleration of the indebtedness thereunder;

12. Lessee shall have abandoned or surrendered possession of the Parcel or the Improvements, or Lessee's interest therein except as permitted by this Lease;

13. Lessee shall have failed to (i) commence and complete construction of the Project consistent with the requirements set forth in the Scope of Development within the time established therefor in the Schedule of Performance, or (ii) timely pay or perform or otherwise defaults under any of Lessee's other obligations provided in this Lease;

14. Lessee shall have failed to continuously operate the Improvements on the Parcel for the purposes and in the manner required by **Section 501** of this Lease;

15. Lessee shall have failed to continuously manage, or cause to be managed, the Improvements on the Parcel in a prudent and businesslike manner, as provided in **Section 502** of this Lease;

16. Lessee shall have expended any amount from Gross Revenue, other than as provided for in **Section 320** of this Lease and in accordance with the priorities for payment set forth in **Section 320**;

17. Lessee shall have failed to clean up any contamination or to comply with federal, state or local environmental laws or regulations, or orders of any governmental authority respecting Hazardous Substances, as required by **Section 711**;

18. Lessee shall (i) have made any extension, modification, change or amendment of the terms and conditions of any Permitted Mortgage (including any and all instruments and documents related thereto), without the prior written approval of Board, as required by **Section 901**, or (ii) have failed to timely pay or perform, or otherwise be in default under, any of Lessee's other obligations provided in any Permitted Mortgage (subject to any notice and cure provisions contained therein); or

19. Lessee shall have failed to perform or comply with any other material term or provision of this Lease;

ult shall not be cured after notice and opportunity to cure as provided in **Section 1207** above, then, in such event, Board may, at its option and in addition to any other remedy provided for in this Lease, but subject to the rights of any Permitted Mortgagee, terminate the Lease and re-vest in Board the leasehold interest theretofore transferred to Lessee, by written notice to Lessee of its intention to do so.

Upon termination of this Lease pursuant to this **Section 1210** or otherwise, Board may re-enter and repossess the Parcel and the Improvements thereon, and Lessee, in such event, does hereby waive any demand for possession thereof, and agrees to surrender and deliver the Parcel and the Improvements peaceably to Board immediately upon such termination in good order, condition and repair, except for reasonable wear and tear or as otherwise provided by this Lease in the event of damage and destruction or condemnation. Lessee agrees that upon such termination, title to all Improvements on the Parcel specified in this Lease to vest in Board, shall vest in Board.

No ejectment, re-entry or other act by or on behalf of Board shall constitute a termination unless Board gives Lessee notice of termination in writing. Such termination shall not relieve or release Lessee from any obligation incurred pursuant to this Lease prior to the date of such termination.

Termination of the Lease under this **Section 1210** shall not relieve Lessee from the obligation to pay any sum due to Board or from any claim for damages against Lessee. Damages which Board may recover in the event of default under this Lease shall include, but are not limited to, the worth at the time of award of the amount by which the unpaid Base Rent, Additional Rent, Overage Rent and other Rent payable to Board for the balance of the Lease Term remaining after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided. The right of termination provided by this **Section 1210** is not exclusive and shall be cumulative to all other rights and remedies possessed by Board, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which Board may be entitled.

H. [§ 1211] Enforced Delay in Performance for Causes Beyond Control of Party

For the purposes of any of the provisions of this Lease, neither Board nor Lessee, as the case may be, nor any successor in interest (including, without limitation, Lessee's Permitted Mortgagee or any successor in interest of said Permitted Mortgagee), shall be considered in breach of, or default in, its obligations under this Lease (exclusive of any obligation to pay money) as a result of the enforced delay in the performance of such obligations due to causes beyond its reasonable control and without its fault or negligence, including, but not limited to any law, regulation, ordinance or order of any public Board, acts of public agencies, acts of God, acts of the public enemy, acts of the federal government, acts of the other party (including but not limited to delays in performing such other party's obligations pursuant to this Lease), fires, floods, epidemics, quarantine restrictions, strikes, labor disputes, freight embargoes, inability to obtain materials or supplies or unusually severe weather or delays of contractors or subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of Board or Lessee, as the case may be, shall be extended for the period of such enforced delay. Provided that the party seeking the benefit of the provision of this Section shall promptly notify the other party in writing of such enforced delay and of the causes thereof, the extension of time for performance shall run from fifteen (15) days prior to the date on which such notice is given, but in no event earlier than the date of commencement of the cause.

I. [§ 1212] Non-Recourse as to Board

Note: the terms of this Section 1212 are not fully and finally agreed by the parties. Pursuant to Section 201 of the DDA, the parties agree to negotiate in good faith in an attempt to fully and finally resolve the language for these sections. However, if for any reason the parties cannot reach agreement within thirty (30) days after the approval of the DDA by the Board, then after such time either party may terminate the DDA by written notice to the other party.

Anything contained herein to the contrary notwithstanding, any claim based on or in respect of any liability of the Board under this Lease shall be enforced only against the Parcel and not against any other assets, properties or funds of (i) the Board, (ii) any director, officer, general partner, shareholder, limited partner, beneficiary, employee or agent of the Board or any general partner of the Board or any of its general partners (or any legal representative, heir, estate, successor or assign of any thereof), (iii) any predecessor or successor partnership or corporation (or other entity) of the Board or any of its general partners, shareholders, officers, directors, employees or agents, either directly or through the Board or its general partners, shareholders, officers, directors, employees or agents or any predecessor or successor partnership or corporation (or other entity), or (iv) any person affiliated with any of the foregoing, or any director, officer, employee or agent of any thereof.

The foregoing paragraph shall not limit the obligations of the Board (but nevertheless shall remain effective in all events as to the persons and entities described in (ii), (iii), and (iv) above) under Subsection 8 of Section 711, if and only if Lessee obtains and maintains in full force and effect at all times during the Lease Term, as the same may be extended (except such times, if any, that such insurance is not available at commercially reasonable rates), a policy of pollution legal liability insurance (a) from an insurance company authorized to issue insurance in California, (b) insuring Lessee and Board against third-party claims for bodily injury or property damage, including, but not limited to, claims by such third-parties to the effect that Lessee's excavation, construction, dewatering or other activities have exacerbated hazardous substance conditions on adjoining or nearby properties, (c) in an aggregate limit of at least Five Million Dollars (\$5,000,000) Adjusted for Inflation.

[§ 1300] GENERAL PROVISIONS

A. [§ 1301] Notices, Demands and Communications between the Parties

Unless otherwise specifically provided herein, all formal notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered upon personal delivery, or by Federal Express (or similar reputable express delivery service), or by telecopier transmission with verification of receipt and back-up copy mailed the same day, or as of the second business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Lease.

C. [§ 1303] **Conflict of Interests**

No member, official or employee of the Board shall have any personal interest, direct or indirect, in this Lease nor shall any such member, official or employee participate in any decision relating to the Lease which affects his or her personal interests or the interests of any corporation, partnership or association in which he, or she is, directly or indirectly, interested.

D. [§ 1304] **Warranty Against Payment of Consideration for Agreement.**

The Lessee warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Lease.

E. [§ 1305] **Nonliability of Board Officials and Employees**

No member, official or employee of Board shall be personally liable to Lessee, or any successor in interest to Lessee, in the event of any default or breach by Board or for any amount which may become due to Lessee or successor, or on any obligations under the terms of this Lease.

F. [§ 1306] **No Partnership**

Nothing contained in this Lease and no acts of Board or Lessee shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between Board and Lessee other than that of lessor and lessee.

G. [§ 1307] **Surrender of Property**

Upon the expiration or earlier termination of this Lease pursuant to the terms hereof, it shall be lawful for Board to re-enter and repossess the Parcel and the Improvements thereon without process of law, and Lessee, in such event, does hereby waive any demand for possession thereof, and agrees to surrender and deliver the Parcel and the Improvements thereon, peaceably to Board immediately upon such expiration or termination in good order, condition and repair, except for reasonable wear and tear, but subject, however to the provisions of **Section 1100** of this Lease regarding condemnation and **Sections 708 and 709** of this Lease regarding damage and destruction.

H. [§ 1308] **Severability**

If any term, covenant, condition or provision of this Lease, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Lease, or

Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Lease.

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If any term, covenant, condition or provision of this Lease, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Lease, or

the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

I. [§ 1309] **Binding Effect**

Subject to the provisions of this Lease restricting or prohibiting assignment, this Lease, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

J. [§ 1310] **Captions**

The captions contained in this Lease are for convenience of reference and shall not be construed to limit or extend the meaning of any part of this Lease.

K. [§ 1311] **Entire Agreement**

This Lease, together with any other written document referred to herein, embody the entire agreement and understanding between the parties regarding the subject matter hereof, and any and all prior or contemporaneous oral or written representations, agreements, understandings or statements shall be of no force and effect.

L. [§ 1312] **Modifications**

No modification, waiver or discharge of this Lease shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver or discharge is or may be sought. Any amendments to this Lease must be approved by the Board's Board of Directors.

M. [§ 1313] **Approvals**

All consents or approvals to be given by Lessee or Board shall not be unreasonably withheld or delayed unless this Lease expressly provides for the discretion of the party in giving such consent or approval. Approval or disapproval shall be given within the time set forth in the Schedule of Performance or, if no time is given, within a reasonable time. Unless otherwise expressly provided herein, the General Manager of the Board or his/her designee shall have the authority to issue all approvals and disapprovals on behalf of the Board required or allowed hereunder.

N. [§ 1314] **Inspection of Books and Records**

The Board has the right at all reasonable times to inspect the books and records of the Lessee pertaining to the Parcel, the Improvements and the Project as pertinent to the purposes of this Lease.

O. [§ 1315] **Gender, Number**

knowledge, the Requesting Party is not in breach hereunder (or, if such is not the case, so stating and setting forth any alleged breaches), and (c) any other information reasonably related to the status of this Lease. Such certification may be conclusively relied on by the Requesting Party, any Permitted Mortgagee, any equity investor of Lessee, and any title insurance company insuring title to the Parcel.

W. [§ 1323] Successors and Assigns

Subject to the provisions of this Lease restricting or prohibiting assignment, this Lease shall be binding on and inure to the benefit of the successors and assigns of the respective parties.

X. [§ 1324] Joint and Several Liability

If any party consists of more than one person or entity, the liability of each such person or entity signing this Lease shall be joint and several.

Y. [§ 1325] No Third Party Beneficiaries

This Lease has been made and is made solely for the benefit of the Board and the Lessee and their respective successors and permitted assigns, and, to the extent provided herein, any Permitted Mortgagee. Nothing in this Lease is intended to confer any rights or remedies under or by reason of this Lease on any persons other than the parties to it, any Permitted Mortgagee, and their respective successors and permitted assigns. Nothing in this Lease is intended to relieve or discharge the obligation or liability of any third persons to any party to this Lease.

Z. [§ 1326] Adjusted for Inflation

When used in this Lease, the phrase "Adjusted for Inflation" means

Note: the terms of this Section 1326 are not fully and finally agreed by the parties. Pursuant to Section 201 of the DDA, the parties agree to negotiate in good faith in an attempt to fully and finally resolve the language for these sections. However, if for any reason the parties cannot reach agreement within thirty (30) days after the approval of the DDA by the Board, then after such time either party may terminate the DDA by written notice to the other party.

AA. [§ 1327] Memorandum of Lease

This Lease shall not be recorded. A Memorandum of this Lease, in the form of Exhibit C attached, was recorded at Close of Escrow by the Board and Lessee.

Metropolitan Transit Development Board,
a California public agency

By: _____
Thomas F. Larwin, General Manager

_____,
a California _____

By _____,
a California _____,
its _____

By: _____
Title: _____

By: _____
Title: _____

[Lessee shall provide evidence of authority]

EXHIBIT A

Parcel Map

[To be added]

EXHIBIT B

Legal Description

[To be added]

EXHIBIT C

Form of Memorandum of Lease

[To be added]

EXHIBITS D-1 - D-4

Rent Calculation Examples

[To be added]

EXHIBIT E

List of Improvement Components

[To be added]

EXHIBIT F

List of Personal Property

[To be added]

ATTACHMENT NO. 3

Schedule of Performance

[to be attached]

ATTACHMENT NO. 3

Schedule of Performance

ACTION	DATE
1. <u>Execution of the Agreement by the Developer.</u> The Developer shall execute the Agreement and deliver it to the Board.	On or before April 6, 2000.
2. <u>Execution of Agreement by the Board.</u> The Board shall hold a public hearing on this Agreement, shall authorize execution and execute this Agreement, and shall deliver this Agreement to Developer.	Within seven (7) days after the Agreement is executed by Developer and submitted to the Board.
3. <u>Submission – Architect, Landscape Architect and Civil Engineer.</u> Developer shall submit to the Board for approval the name and qualifications of its Architect, Landscape Architect and Civil Engineer.	Prior to or concurrent with submission of the executed Agreement by Developer.
4. <u>Approval – Architect, Landscape Architect and Civil Engineer.</u> The Board shall approve or disapprove the Architect, Landscape Architect and Civil Engineer.	Prior to or concurrent with approval of the Agreement by the Board.
5. <u>Submission – Basic Concept Drawings.</u> Developer shall submit Basic Concept Drawings to the Board.	Prior to or concurrent with submission of the executed Agreement by Developer.
6. <u>Approval – Basic Concept Drawings.</u> The Board shall approve or disapprove Basic Concept Drawings and related documents for the Site.	Concurrent with the approval of the Agreement by the Board.
7. <u>Approval - Form of Ground Lease.</u> The Board and the Developer shall have agreed upon a final form of Ground Lease, pursuant to Section 201 of the Agreement.	On or before thirty (30) days after approval of the Agreement by the Board.
8. <u>Submission - Preliminary Plan Review.</u> Developer shall submit required documents and drawings to the City of San Diego and the Board for review.	On or before thirty (30) days after approval of the Agreement by the Board.
9. <u>Submission - Schematic Design Drawings and Preliminary Landscaping and Grading Plans.</u>	On or before ninety (90) days after receipt of the City's assessment letter responding to

ACTION	DATE
Developer shall prepare and submit to the Board Design Development Drawings, Preliminary Landscaping and Grading Plans for the Site, and all other documentation required for the Required Land Use Approvals.	Developer's submission for preliminary plan review
10. <u>Approval - Schematic Design Drawings and Preliminary Landscaping and Grading Plans.</u> The Board shall approve or disapprove Schematic Design Drawings and Preliminary Landscaping and Grading Plans.	Within thirty (30) days after submission of Schematic Design Drawings and Preliminary Landscaping and Grading Plans by the Developer.
11. <u>Submission - Planned Development Permit Application.</u> Developer shall prepare and submit the Planned Development Permit Application to the City of San Diego, including an application for environmental review and all other required documentation.	Within thirty (30) days after approval by the Board of Schematic Design Drawings.
12. <u>Presentation - TAAC.</u> Developer shall present project to the Trolley Access Advisory Committee for review and comment.	Within ninety (90) days after approval of the Agreement by the Board.
13. <u>Submission - 50% Complete Construction Drawings.</u> Developer shall prepare and submit to the Board 50% Complete Construction Drawings and Specifications for the Site.	Within sixty (60) days after approval by the Board of Schematic Design Drawings and Preliminary Landscaping and Grading Plans.
14. <u>Approval - 50% Complete Construction Drawings.</u> The Board shall approve or disapprove the 50% Complete Construction Drawings.	Within thirty (30) days after receipt by the Board.
15. <u>Submission - Final Construction Drawings.</u> Developer shall prepare and submit to the Board the Final Construction Drawings and Specifications and the Final Landscaping Plans and Finish Grading Plans for the Site.	Within sixty (60) days after approval by the Board of the 50% Complete Construction Drawings.
<u>Note:</u> These drawings will be approved in increments as they are submitted.	
16. <u>Approval - Final Construction Drawings.</u> The Board shall approve or disapprove the Final Construction Drawings and Specifications and the Final Landscaping Plans and Finish Grading Plans.	Within thirty (30) days after receipt by the Board of the Final Construction Drawings and Specifications and Final Landscaping Plans and Finish Grading Plans.

ACTION

DATE

Note: These drawings will be approved in increments as they are submitted.

17. Submission to City – Final Construction Drawings. Developer shall prepare and submit to the City the Final Construction Drawings and Specifications and the Final Landscaping Plans and Finish Grading Plans for the Site.

Within ten (10) days after approval by the Board of the Final Construction Drawings.

18. Final Construction Schedule. Developer shall prepare and submit to the Board the Final Construction Schedule.

Within ten (10) days after approval by the Board of the Final Construction Drawings.

19. Approval – Final Construction Schedule. The Board shall approve or disapprove the Final Construction Schedule.

Within ten (10) days after receipt by the Board of the Final Construction Schedule.

20. Evidence of Financing. Developer shall submit to the Board evidence of financing (as may be modified) pursuant to **Section 213** of the Agreement.

At least thirty (30) days prior to the Closing Date, but in any event, not later than July 1, 2001.

21. Approval of Financing. The Board shall approve or disapprove Developer's evidence of financing with respect to the Site and shall so notify Developer.

Within fifteen (15) days after receipt of such evidence of financing by the Board and in any event prior to the Closing Date.

22. Evidence of Insurance. Developer shall provide the Board with evidence of all insurance required by **Section 1002** of the Lease.

Within fifteen (15) days after receipt of such evidence of insurance but in any event at least thirty (30) days prior to the Closing Date.

23. General Contractor and Construction Contract. Developer shall submit to the Board Developer's proposed General Contractor and Construction Contract

At least thirty (30) days prior to the Closing Date.

24. Approval - General Contractor and Construction Contract. The Board shall approve or disapprove Developer's proposed General Contractor and Construction Contract

Prior to the Closing Date.

25. Required Land Use Approvals. Developer shall obtain the Required Land Use Approvals per

Prior to the Closing Date.

Section 211 of the Agreement.

26. Off-Site Parking Lease. Developer shall obtain the Off-Site Parking Lease per Section 212 of the Agreement.

Prior to the Closing Date.

27. Opening of Escrow. The Board shall open an escrow for conveyance of the Site.

Within five (5) days after receipt of written request from Developer, but in any event at least thirty (30) days prior to the Closing Date.

28. Close of Escrow.

On or before July 15, 2001.

29. Execution of Ground Lease. The Board and Developer shall execute the Ground Lease.

Prior to or simultaneously with the Close of Escrow.

30. Commencement of Construction. Developer shall commence construction of the improvements on the Site.

Within thirty (30) days after Close of Escrow.

31. Completion of Construction. Developer shall complete construction of the improvements on the Site.

On or before January 15, 2003.

32. Certification of Development Costs. Developer shall certify to the Board its Development Costs.

Within thirty (30) days after completion of construction.

33. Construction of Public Improvements. Developer shall commence and complete all public improvement work referred to in the Scope of Development (Attachment No. 4) to be performed by Developer with respect to the Site.

On a schedule which will coordinate with the construction schedule for the development of the Site by Developer, but not later than completion of construction of the Project.

All defined terms used in this Schedule of Performance shall have the same meanings as given them in the Agreement.

ATTACHMENT NO. 6

Fundamental Business Terms

1. **The Project:** The Lessee (Developer or its permitted assign(s)) shall develop the Site with the Project at its sole expense, as more particularly described in the Scope of Development.
2. **Ground Lease Term.** One or two leasehold interests in the Site would be conveyed in one or two Ground Leases in the form of Attachment No. 5 to the Agreement. The Term of both Ground Leases would be fifty-five (55) years, with one option to extend the Term an additional twenty-five (25) years and one final option to extend the Term an additional nineteen (19) years.
3. **Rent.** The Lessee shall pay to the Board as Rent, at the times and in the manner provided in the Ground Lease, Base Rent, Overage Rent, Additional Rent and all other monetary obligations of Lessee under the Ground Lease.
 1. **Base Rent.** The Lessee shall pay to the Board as Base Rent a total of one hundred fifty thousand dollars (\$150,000) per year. If two ground leases are approved, the Base Rent shall be reasonably allocated among the two ground leases (e.g., \$87,000 per year for the Residential Area and \$63,000 per year for the Mixed Use Area). The Base Rent shall not be subordinate to debt service or any other fees or levies.
 1. **Commencement.** For the Mixed Use Area, Base Rent shall commence the earlier of (a) twelve (12) months after the Effective Date (date of execution) of the Ground Lease or (b) the date on which the Certificate of Occupancy is issued for the Mixed Use Area. For the Residential Area, Base Rent shall commence the earlier of (a) fifteen (15) months after the Effective Date of the Ground Lease or (b) the date on which the Certificate of Occupancy is issued for the Residential Area.
 2. **Base Rent Escalation.** For each of the development parcels, the Base Rent for each development parcel shall escalate by twelve and one-half percent (12.5%) every five (5) years, commencing on the fifth anniversary of the Effective Date.
 3. **Adjustment of Base Rent to Market.** The Base Rent for each development parcel shall be adjusted based on the "Fair Market Value" of the parcel, determined pursuant to appraisal, on the thirtieth (30th) anniversary of the Effective Date. If one or both of the options to extend the term of the Ground Lease is exercised, Base Rent for the option term(s) shall also be adjusted effective as of the commencement of the option term (i.e., the fifty-fifth (55th) and the eightieth (80th) anniversary of the Effective Date). The appraisal of the Site shall be completed three (3) months in advance of each such anniversary. The adjusted Base Rent shall be nine percent (9%) of ninety percent (90%) of appraised Fair Market Value of the parcel, but in no event shall Base Rent be adjusted to an amount less than the adjusted Base Rent for the preceding year, escalated as described in Section 3.a.iii. above.

4. Appraisal Procedure. The appraiser will be instructed to value the land in fee assuming that (a) the Site (i) is vacant, (ii) free and clear of the Ground Lease, and (iii) free and clear of any liens or encumbrances other than the Permitted Title Exceptions (other than the Memorandum of Lease) and such other encumbrances, if any, approved by the Board pursuant to the Ground Lease in a writing which acknowledges that such encumbrance shall be considered for purposes of this appraisal, and (b) improvements functionally equivalent to the Project is the highest and best use permitted to be built on the Site. The appraisal process shall be as described in Subsection (b) of **Section 304** of the Ground Lease.
5. Base Rent Illustration: See **Exhibits 1 and 2**, Schedule of Base Rent - Residential, Schedule of Base Rent - Mixed-Use
2. **Overage Rent.** Commencing at the time of Stabilization (defined below) on each development parcel, Lessee shall pay to the Board annually, as Overage Rent for each development parcel, an amount equal to one percent (1%) of Gross Revenue (defined below) from such development parcel for the previous twelve (12) months.
3. **Additional Rent.** The Lessee shall pay to the Board annually, as Additional Rent for each development parcel, an amount equal to (2.15%) of Gross Revenue from such development parcel for the previous twelve (12) months.
 1. Commencement - Residential Area. For the Residential Area, Additional Rent payments shall commence the earlier of: (a) six (6) years after Stabilization or (b) at the time Gross Revenue for the residential development reaches Two Million Two Hundred Thousand Dollars (\$2,200,000)* annually.
 2. Commencement - Mixed Use Area. For the Mixed Use Area, Additional Rent payments shall commence the earlier of: (a) six (6) years after Stabilization or (b) at the time Gross Revenue for the Mixed Use Area reaches Eight Hundred Thousand Dollars (\$800,000)* annually.

* Note: The Gross Revenue thresholds in **Sections 3.c.i. and 3.c.ii.** above may be reasonably adjusted between the two parcels by mutual agreement of the parties, provided that the total of the two thresholds is not less than Three Million Dollars (\$3,000,000).

Illustration: See **Exhibits 3 and 4**, Schedule of Overage Rent and Additional Rent Calculations

4. **Debt Service Coverage Ratio.** To assist the Lessee in securing financing for the Project, during the first five (5) years after Stabilization for each development parcel, the payment of Overage Rent and Additional Rent for such parcel shall be conditioned on achieving a Net Operating Income which exceeds a (1.35:1) debt service coverage ratio from such parcel, i.e., Net Operating Income must be sufficient to make the loan payments on any Permitted Mortgage plus a reserve in the amount of thirty-five percent (35%) of such loan payments before the Lessee shall be required to make any Overage Rent or Additional Rent payments. This condition exists only during the first five (5) years after Stabilization for each development parcel and is intended only to assist the Lessee securing financing for the

project. This debt service coverage provision applies only to Permitted Mortgages at then competitive rates and terms, not to exceed eighty percent (80%) loan to value.

4. **Infrastructure Improvements.** The Lessee shall be responsible for bearing the cost of all design and construction of all on-site and off-site infrastructure improvements required for the Project.
5. **Transfer Fee.** As more particularly described in **Section 800 *et seq*** of the Ground Lease, in the case of any and all (a) direct or indirect transfers of any interest in the Ground Lease or (b) direct or indirect transfers of any interest in the Lessee (in either case, a "Transfer"), the Board shall be entitled to payment, as additional Rent, of a Transfer Fee equal to five percent (5%) of the transferor's Net Gain.

Illustration: See **Exhibit 5**, Illustrations of Additional Rent Payable on Transfer Calculation

6. **Definitions.** The following terms shall have the following meanings.
 1. **"Additional Rent"** shall be one percent (1%) of Gross Revenue, payable pursuant to **Section 306** of the Ground Lease.
 2. **"Agreement"** means the Disposition and Development Agreement between the Metropolitan Transit Development Board and CityLink Investment Corporation to which this Attachment 6 is attached. Terms defined in the Agreement shall have the same meaning when used herein.
 3. **"Base Rent"** means the fixed annual Base Rent payable by the Lessee under the Ground Lease, initially totaling one hundred fifty thousand dollars (\$150,000) per year, as adjusted from time to time pursuant to the provisions of the Ground Lease.
 4. **"Cost of Acquisition"** shall have the meaning defined in **Section 802** of the Ground Lease.
 5. **"Debt Service"** means the principal and interest payment on a Permitted Mortgage equally amortized over the term of the loan.
 6. **"Debt Service Coverage Ratio"** means the ratio of (a) Net Operating Income to (b) Debt Service.
 7. **"Development Costs"** shall have the meaning defined in **Section 802** of the Ground Lease. The Developer's Fee shall not exceed 4% of direct costs. No overhead of the Developer's organization will be included as a cost. Lessee shall certify final Development Costs to the Board at completion of construction of the Project.
 8. **"Gross Revenue"** shall include all revenue of any kind or nature received by Lessee derived from the Site and all improvements thereon, including, without limitation (a) all revenue received from subtenants or licensees of the Site, and all interest earned on security deposits, provided such interest is retained by Lessee and not returned to any subtenant, (b) all other revenues from or connected with the Site, all operations and improvements thereon, including without limitation deposits forfeited, cancellation fees, and any cost reimbursement of any kind received by Lessee in excess of the actual cost to Lessee; and (c)

proceeds of business interruption and similar insurance payable as a result of loss of revenues. Gross Revenues shall not include (w) proceeds of casualty insurance or condemnation awards, (x) proceeds from any sale or refinancing of any interest in the Site, (y) security deposits and any interest thereon that belongs to the subtenant, or (z) reimbursement from the Board, subtenants or other parties for actual costs related to the development and operation of the Site, repayments of loans made by Lessee, or refunds of fees, deposits or taxes paid by Lessee.

9. **"Net Operating Income (NOI)"** means Gross Revenue less Operating Expenses.
10. **"Net Gain"** shall have the meaning defined in Section 802 of the Ground Lease.
11. **"Net Sales Proceeds"** shall have the meaning defined in Section 802 of the Ground Lease.
12. **"Operating Expenses"** shall have the meaning defined in Subsection (d) of Section 313 of the Ground Lease.
13. **"Overage Rent"** shall be two and fifteen hundredths percent (2.15%) of Gross Revenue, payable pursuant to Section 307 of the Ground Lease.
14. **"Rent"** means all monetary amounts payable by the Lessee under the Ground Lease, including Base Rent, Overage Rent and Additional Rent.
15. **"Stabilization"**
 1. Mixed Use Area. For the Mixed Use Area, means the earlier of: (a) when the mixed use portion of the Project reaches ninety percent (90%) occupancy, or (b) five (5) months after issuance of a Certificate of Occupancy for the Mixed Use Area.
 2. Residential Area. For the Residential Area, means the earlier of (a) when the project reaches ninety percent (90%) occupancy or (b) three (3) months after issuance of a Certificate of Occupancy for the Residential Area.

This "Fundamental Business Terms" attachment is intended to be consistent with the Agreement and the Ground Lease. In the event of any conflict between the Agreement and this exhibit, the Agreement shall control. In the event of any conflict between the Ground Lease and this exhibit, the Ground Lease shall control.

Exhibits 1 and 2

Schedule of Base Rent

to be attached

Exhibits 3 and 4

Schedule of Overage Rent and Additional Rent Calculations

to be attached

Exhibit 5

Illustrations of Additional Rent Payable on Transfer Calculation

to be attached

ATTACHMENT NO. 4

Scope of Development

[to be attached]

ATTACHMENT NO. 4

Scope of Development

A. Developer Responsibilities

1. General

The Developer shall construct or cause to be constructed on the Site a mixed-use, transit oriented development which shall contain approximately one hundred twenty five (125) to one hundred forty (140) residential units consisting of apartments and lofts for rental within approximately ten (10) buildings, excluding the garage, of approximately one hundred twenty thousand (120,000) gross square feet. The development shall also include a clubhouse of three thousand (3,000) gross square feet, a recreation center and swimming pool for the use of residents.

The Developer shall also construct or cause to be constructed on the Site, commercial retail facilities of approximately twenty five thousand (25,000) gross square feet consisting of an anchor tenant such as a drug store and ancillary community shopping facilities. The total development will be enhanced through landscaping and a series of pedestrian plazas and walkways.

The Developer shall construct or cause to be constructed the following parking and related facilities to accommodate approximately three hundred ninety one (391) automobiles on the Site and approximately one hundred twenty (120) automobiles off-site with access off Friars Road adjacent to the Site. The Friars road off-site parking facilities shall be constructed on property leased from the City of San Diego:

- (a) Parking structures for residential development: 222 spaces
- (b) Surface parking for retail commercial customers: 87 spaces
- (c) On-site MTDB parking for the use of trolley patrons: 73 spaces
- (d) On-site MTDB/residential shared-use parking: 9 spaces
- (e) Off-site MTDB parking for trolley patrons - Friars Road: Approximately 120 spaces
- (f) New bus stops on Friars Road to replace bus stops relocated from Riley Street.

2. Site Preparation

The Developer, at its cost and expense, shall prepare the Site and each Parcel, for development. Such site preparation shall consist of the following:

- (a) Complete demolition and removal to the surface elevation of the adjoining ground of all existing buildings, other structures and improvements including the removal

of all bricks, lumber, pipes, equipment and other material and all debris and rubbish resulting from such demolition.

(b) Complete removal of all subsurface improvements, foundations, walls, slabs, basements, tanks and abandoned utilities as necessary to construct the development.

(c) Disconnection, capping and removal of utility lines, installations, facilities and related equipment within or on the Site. Utilities located within the right-of-way of Linda Vista Road shall be relocated as required by the Water Utilities Department. Such cost of relocation shall be the responsibility of the Developer.

(d) Removal of all paving (including catch basins, curbs, gutters, drives and sidewalks) within or on the Site and within the adjacent public right-of-way to the traveled way of adjacent streets.

All of items (a) through (d) inclusive shall be performed in accordance with City requirements.

3. Urban Design Standards

The proposed development, including its architectural design concepts, landscape features, materials and off-site improvements, shall be subject to design review by the Board in accordance with adopted procedures. The Developer shall conform to the North Bay Redevelopment Plan, the Linda Vista Community Plan, the Transit-Oriented Development Design Guidelines, and the San Diego Municipal Code.

These standards, together with the following specific conditions, will be used as a basis for evaluating development through all stages of the design review process.

(a) Architectural Standards

The architecture of the development shall create a community landmark and establish a high quality of design that will serve as a catalyst for the revitalization of the Morena Shopping Quarter and the Linda Vista community.

(b) Form and Scale

The development is intended to create a vibrant urban environment designed for the comfort and convenience of pedestrians, while also accommodating the automobile. The structures shall be designed to step up from a one-story retail building at the corner of Linda Vista Road and Napa Street, to two-story commercial/loft spaces, to three-story apartment buildings over parking next to the Trolley Station platform.

(c) Street and Trolley Platform Level Design

Building setbacks and surface parking areas shall be carefully sited to create attractive and lively street and Trolley frontages, as illustrated in the Conceptual Site Plan for the Project attached as **Exhibit A**. In addition to these general criteria, the following conditions and specifications for each of the following special design features shall be observed:

- Provide enhanced pedestrian plazas and clock tower as shown on the Basic Concept Drawings.
- Provide pedestrian areas for bus stops on Linda Vista Road and Napa Street.
- Design a combination of building entrances, windows, architectural articulation and landscaping of Retail "B" and "C" buildings to create visually interesting and interactive street-facing facades.
- Provide building articulation throughout the site in accordance with the intent of the CC 3-4 zone.
- Provide directional signage identifying the Trolley Station and adjacent bus stops.

(d) Building Materials

A materials board, which illustrates the location, color, quality and texture of proposed exterior materials, shall be submitted to the Board for review and approval at the Fifty Percent (50%) Working Drawings stage. Reflective surface materials are not appropriate.

(e) Energy Considerations

Energy efficient features shall be incorporated into the design of the structures. The Developer shall demonstrate consideration of such energy features as a part of the design review process.

(f) Access

Vehicular access to the Site shall be provided from Linda Vista Road and Napa Street. Curb cuts shall be perpendicular to the street and shall be approximately thirty feet (30') in width. Vehicular access to the on-site garage may be located on Napa and Riley Streets. Such access shall be perpendicular to the street. The garage security gates shall be of quality architectural materials.

Pedestrian walkways linking Linda Vista Road and Napa Street to the Trolley Station platform shall be provided.

Utilitarian areas housing trash, storage, or other utility services shall be located in the parking garage or otherwise concealed from view of the public right-of-way.

(g) Landscape

The landscape of the development shall establish a high quality of design. Off-site improvement shall implement the standard established in the citywide landscape regulations including curbs, sidewalk paving, street trees, tree grates, ornamental street lighting and trash receptacles.

- Wherever possible, street trees shall be provided in tree grates adjacent to the curb to enhance the pedestrian experience and provide a buffer between the pedestrian and the street.
- Landscaping and pedestrian-scaled street lighting shall also be used to help define and enhance pedestrian pathways and plazas, as well as to comply with citywide landscaping regulations.

The quality of off-site improvements shall be coordinated with the quality of on-site improvements and no distinction shall be made at the property lines.

(h) On-Site Open Space Improvements

On-site improvements, particularly the pedestrian plaza at Napa Street, the clock tower element, and the enhanced pedestrian paths linking Linda Vista Road and Napa streets to the Trolley platform shall be designed to unify the site and its proposed development.

4. Off-Site Improvements

The Developer shall design and construct at its cost all public improvements for adjacent streets as required by the City of San Diego as a condition of permit approval.

The Developer shall construct or cause to be constructed concurrently with each Parcel, the following off-site public improvements:

- (a) City Utilities (sewer, water, and storm drain). Connection of on-site sewer, water and storm drain systems from the development to the City utilities located within the right-of-way.

(b) Roof drains from the development shall be connected to the storm drain system.

(c) Provide catch basins and storm drain system as required by the City of San Diego.

(d) Removal of City utilities in Riley Street. Removal and relocation of existing City utilities located within the right-of-way of Riley Street. Such relocation shall be subject to the requirements of the Water Utilities Department.

(e) Fire hydrants shall be provided pursuant to requirements of Fire Department and Water Utilities Department.

(f) Off-site Parking: Approximately 120 parking spaces for trolley patrons along Friars Road adjacent to the Project, together with pedestrian walkways from the Off-Site Parking to the Trolley Station.

(g) New bus stop improvements on Friars Road (the "Friars Road Bus Stop Improvements") to replace the bus stops relocated from Riley Street, as illustrated on **Exhibit B** attached and consisting of the following:

- Westbound (north side of Friars Road) – a 4-foot by 40-foot concrete extension of the existing sidewalk.
- Eastbound (south side of Friars Road) – a 3-foot by 30-foot concrete extension to the existing sidewalk, plus an additional concrete triangular area on the east side of the sidewalk extension.
- Retaining walls as necessary to produce the sidewalk areas described above.
- A pedestrian crosswalk across Friars Road to be located at the existing traffic signal on the west side of the Friars Road trolley track crossing.

5. Street Vacation/Parcel Map

The Developer shall prepare and process through the City of San Diego, a Parcel Map which includes the vacation of the following streets within the Site: Riley Street. The Developer shall as part of this proposed vacation prepare plans for the relocation of all public nonfranchise utilities within this vacation area and implement those plans satisfactory to the City of San Diego. The Board shall cooperate with the Developer to obtain such street vacation.

6. Removal or Remedy of Soil or Water Contamination

Pursuant to Subsection 8.(b) of Section 711 of the Ground Lease, Developer at its sole cost and expense shall be responsible for, any and all Hazardous Substance cleanup, testing, remediation, removal and disposal costs and expenses necessitated as a result of Developer's activities on the Site, including without limitation soil excavation and temporary construction "dewatering". The Developer shall (at its own cost and expense) remove or otherwise remedy as provided by law and implementing rules and regulations, and sufficiently to adequately protect the public health and safety (including the health and safety of occupants of the Site and adjacent properties), any contaminated or hazardous soil or water conditions on the Site, the remediation or removal of which is necessitated as a result of Developer's activities on the Site. Such work shall include without limitation the following:

(a) Remove (and dispose of) or treat any contaminated soil or water on the Site (and adjacent public rights of way which the Developer is required to improve) as necessary to comply with applicable governmental standards and requirements.

(b) Design and construct all improvements on the Site in a manner which will assure protection of occupants and all improvements from any contamination, whether in vapor or other form, or from the direct and indirect effects thereof.

(c) Prepare a site safety plan and submit it to the appropriate governmental and other authorities for approval in connection with obtaining a building permit for the construction of improvements on the Site. Such site safety plan shall assure workers and other visitors to the Site of protection from any health and safety hazards during development and construction of the improvements. Such site safety plan shall include monitoring and appropriate protective action against vapors or the effect thereof. Such site safety plan shall be updated with respect to each Development Parcel, and re-submitted for approval, thirty (30) days prior to closing of the mortgage loan or other financing for the applicable Development Parcel (including conveyance of any related Sales Parcel to the Developer).

(d) Obtain from the County of San Diego or California Regional Water Quality Control Board or any other authorities required by law any permits or other approvals required in connection with the removal or remedy of soil or water contamination, in connection with the development and construction on the Site.

The Developer agrees that the Board, and its consultants and agents, shall have the right (but not the obligation) to enter upon the Site at any time to monitor the excavation and construction on the Site, to test the soils or water on the Site, and to take such other actions as may be reasonably necessary to assure compliance with this Section 6 of the Scope of Development. Nothing herein (including without limitation the Board's right to inspect) shall be construed to make the Board, the City, or their respective officers, employees,

contractors and agents liable for the responsibilities under this Section 6, and the provisions and requirements of Section 402 of the Agreement shall apply with respect thereto.

7. Archeological Protection

Concurrently with submission of Design Development Drawings to the Board with respect to each Parcel, the Developer shall submit the results and backup information of a record search and determination of potential archaeological significance of the applicable Parcel completed by a qualified archaeologist. If the applicable Parcel is determined by the Board to have a potential for significant subsurface resources, the Developer shall conduct appropriate site monitoring during grading, testing and data recovery as approved by the Board.

8. Development Identification Signs

Prior to commencement of construction on the Site, the Developer shall prepare and install, at its cost and expenses, sign(s) around the Site, which identify the development. There shall be at least one sign on the Morena/Linda Vista Frontages and one sign on Napa Street. Each sign shall be at least four (4) feet by six (6) feet and be visible to passing pedestrian and vehicular traffic. The design of all signs as well as their proposed location shall be submitted to the Board and the Redevelopment Agency for review and approval prior to installation. All signs shall at a minimum include:

- Color rendering of the development
- Development name
- Developer
- Lender
- The phrase:

A Project of the Metropolitan Transit Development Board and the
Redevelopment Agency of the City of San Diego

Mayor _____

Council Members _____

MTDB Members _____

- Completion Date _____.
- For information call _____.

B. **Board Cooperation**

The Board shall cooperate with Developer, at no out-of-pocket cost to the Board, in processing the Required Land Use Approvals and any other permits necessary for the Project.

C. **Easements**

The Board and the Developer shall grant and permit all necessary and appropriate easements and rights for the development of the Site or any Parcels within the Site, including, but not limited to, easements and rights of vehicular access, pedestrian access and all utility services on such terms and conditions as the Board and the Developer may agree.

D. **Definitions.**

1. **"Basic Concept Drawings"** means conceptual site plan and building elevations depicting the general layout of the subject property, identifying land uses and general building character. Drawings are sufficient for Preliminary Plan Review with the City of San Diego.

2. **"Schematic Design Drawings"** means Schematic design documents consisting of drawings and other documents illustrating the scale and relationship of project components including site plan, floor plan(s), building elevations, site/building section(s), preliminary grading plan, preliminary landscape plan, and required information by the City of San Diego sufficient for processing a Planned Development Permit.

3. **"50% Complete Construction Drawings"** means Construction Drawings in the process of being prepared including site plan, floor plans, building elevations, sections, grading and utility plans, landscape plans, schedules and details including structural, mechanical, electrical, and plumbing systems of a sufficiently complete status (50%) to document the intended size, shape and dimension of the project components intended upon the completion of construction documents.

4. **"Final Construction Drawings and Specifications"** means the completed Drawings and Specifications, setting forth in detail the requirements for the construction of the Project.

Exhibit A

Conceptual Site Plan

[to be provided by Developer]

[Should illustrate Street and Trolley Platform Level Design (ref. Section A.3.(c))]

Exhibit B

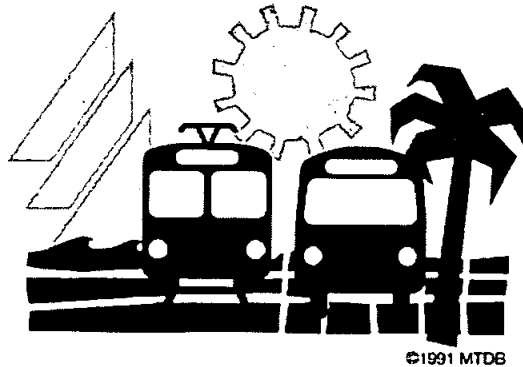
Illustration of Bus Stop Improvements

[to be provided by Board]

MTDB

Metropolitan Transit Development Board
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490
(619) 231-1466

Fax



DATE: August 1, 2002

TIME: 5:40 PM

TO: Jim Lovewell
City of San Diego

PHONE: 236.6792
FAX: 236.6706

FROM: Jeanne Yamamoto
MTDB

PHONE: 619.557.4548
FAX: 619.234.1047

RE: MOU BETWEEN CITY OF SAN DIEGO AND MTDB

Number of pages including cover sheet: 11

City's MTDB Coordinator - Steve Celniker
5333609

Message: Attached is a copy of Amendment No. 3 to the MOU which refers to the locale in question. If you require other copies of the MOU document, please call Deborah Gunn at 619.557.4510. Deborah will be in the office at 7:00 am tomorrow and would be able to assist getting the copies for you.

MTDB Project Coordinator
Frank Oswiany 5574505

DUPLICATE

MTDB Doc. No. L5506.3-90
AG 250.4, CIP 416.1

THIRD AMENDMENT TO
MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF SAN DIEGO
AND THE METROPOLITAN TRANSIT DEVELOPMENT BOARD
FOR MISSION VALLEY WEST LRT STREET USE

THIS UNDERSTANDING IS HEREBY
MADE AND ENTERED INTO THIS
DAY OF JUN 20 1994 1994
BY AND BETWEEN

THE CITY OF SAN DIEGO, a political
subdivision of the State of
California, 202 C Street, San Diego,
California 92101, hereinafter
referred to as CITY,

AND

THE SAN DIEGO METROPOLITAN TRANSIT
DEVELOPMENT BOARD, a public agency,
1255 Imperial Avenue, Suite 1000,
San Diego, California, 92101,
hereinafter referred to as MTDB.

WITNESSETH

WHEREAS, MTDB and the CITY have entered into a Memorandum of
Understanding for the construction and operation of the South Line and
East Urban Line light rail transit guideways, City Document No. 00-15881
and MTDB Document No. L5506.0-90 (previously known as 03-83-504); and

WHEREAS, MTDB and the CITY entered into a first amendment for the
construction and operation of the Bayside Line, City Document No. 0016947-3
and MTDB Document No. L5506.1-90 (previously known as 00-87-563); and

DOCUMENT NO. 60-18079
FILED JUN 20 1994
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

WHEREAS, MTDB and the CITY entered into a second amendment for the construction and operation of the Old Town Line, City Document No. 0017966 and MTDB Document No. L5506.2-90; and

WHEREAS, CITY and MTDB desire to further amend said Memorandum of Understanding to include the construction and operation of the Mission Valley West Line light rail transit guideway, delete obsolete language, and make conforming changes;

NOW THEREFORE, in consideration of the foregoing, the parties agree as follows:

1. The Memorandum of Understanding between the City of San Diego and the Metropolitan Transit Development Board, City Document No. 00-15881 and MTDB Document No. L5506.0-90; First Amendment, City Document No. 0016947-3 and MTDB Document No. L5506.1-90; and Second Amendment, City Document No. 0017966 and MTDB Document No. L5506.2-90, are amended as follows:

a. Paragraphs 6-20 of said Memorandum are renumbered to be paragraphs 7-21.

b. A new paragraph 6 is added to read as follows:

MTDB shall install its Mission Valley West Line transit guideway system in the public right-of-way from Taylor Street north across the San Diego River, then east through Mission Valley to east of Interstate 15 (near the Rancho Mission and Ward roads). The proposed transit

guideway system will cross over Friars Road (west of Morena Boulevard), cross under Morena Boulevard, cross Friars Road (at Napa Street) at grade, and cross over Fashion Valley Road, Mission Center Road, Camino Del Este, and Stadium Way. At the request of MTDB, the CITY shall, at no expense to CITY, direct and order the removal, relocation, or the reconstruction of all utilities, public and private, necessary for the construction and improvement of the system within the CITY right-of-way. To further these purposes, CITY and MTDB may create a Joint Powers Authority and convey, lease, or assign such real or personal property to the Authority as shall be necessary and appropriate to carry out the purpose and intent of this section.

- c. Paragraph 9 (renumbered paragraph 10) is amended to read as follows:

MTDB shall be responsible for all increased maintenance costs which directly result from installation or maintenance of the guideway system as presently designed, or as a result of any future changes in design or operation, including, but not limited to, signs, traffic signal LRT preemption, traffic legends, and lane markings.

- d. Paragraph 10 (renumbered paragraph 11) is amended to read as follows:

CITY shall, to the extent feasible, control traffic and enforce regulations to keep the transit guideway system clear of nonemergency vehicles during all periods of operation. MTDB shall not be responsible hereunder for any costs incurred by the CITY in connection with the transit guideway system in an amount greater than \$5,000, without approval by MTDB.

- e. Paragraph 11 (renumbered paragraph 12) is amended to read as follows:

MTDB shall furnish to the CITY preliminary plans and specifications for CITY review and comment. MTDB shall in good faith respond to all CITY comments. The final working drawings and specifications for that portion of the transit guideway system within the CITY's jurisdiction shall be approved or disapproved by the CITY within 30 days of submittal by MTDB. MTDB shall not be responsible hereunder for any costs incurred by the CITY in connection with the transit guideway system in an amount greater than \$5,000, without prior approval by MTDB.

- f. Paragraph 12 (renumbered paragraph 13) is amended to read as follows:

CITY shall be represented at preconstruction meetings. Site visits and/or inspections, by CITY staff, to facilities under construction by MTDB shall occur as CITY and MTDB deem necessary. CITY shall provide a final inspection and

acceptance of all facilities to be relinquished to the CITY. MTDB shall reimburse the CITY for reasonable costs of site visits and/or inspections. All inspections by CITY staff shall be coordinated through MTDB personnel. MTDB shall provide the CITY with a full set of as-built drawings at completion of project.

- g. Paragraph 14 (renumbered paragraph 15) is amended to read as follows:

MTDB shall consult with the CITY regarding significant increased/decreased headways of trains and the impact on traffic and pedestrian movements.

- h. Paragraph 15 (renumbered paragraph 16) is amended to read as follows:

MTDB shall eliminate presently required overhead catenary structures when technically and financially feasible.

- i. Paragraph 26 of said Memorandum is deleted in its entirety.

- j. Paragraphs 21-25 of said Memorandum are renumbered to be paragraphs 23-27.

- k. A new paragraph 22 is added to read as follows:

CITY and MTDB anticipate that this Memorandum shall, from time to time, be modified. All such modifications,

including any increase or decrease in the responsibilities of the parties, shall be incorporated in writing to this Memorandum. The San Diego City Manager and MTDB General Manager shall have authority to modify this Memorandum, provided the basic concepts may not be modified without prior CITY Council and MTD Board of Directors approval.

1. Paragraph 25 (renumbered paragraph 27) is amended to read as follows:

Any notice required or permitted under this Memorandum may be personally served on the other party, by the party giving notice, or may be served by certified mail, return receipt requested, to the following addresses:

MTDB:

General Manager
San Diego Metropolitan Transit Development Board
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490

CITY:

City Manager
City of San Diego
City Administration Building
202 C Street, M.S. 9A
San Diego, CA 92101

2. Except as herein above specifically amended, all terms and conditions of said Memorandum of Understanding between the City of San Diego and the Metropolitan Transit Development Board shall remain in full force and effect.

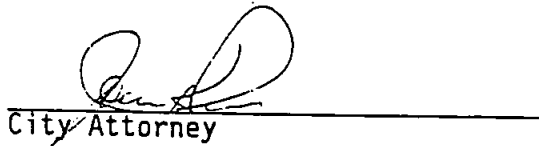
IN WITNESS whereof, the parties have caused this Third Amendment to be signed the month, day, and year below written.

CITY OF SAN DIEGO



Date: JUN 20 1994

Approved as to form:


City Attorney

Date: 6/20/94

JPL:drd:jy
MOU3AMND.JPL
3/21/94

SAN DIEGO METROPOLITAN
TRANSIT DEVELOPMENT BOARD



Thomas F. Larwin
General Manager

Date: 3/28/94

Approved as to form:


Jack Limber
General Counsel

Date: 3/28/94

0-18073

(R-2001-1377)

RESOLUTION NUMBER R- 294919

ADOPTED ON MAY 29 2001

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager be and he is hereby authorized and empowered to execute, for and on behalf of said city, a FOURTH AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING [MOU] BETWEEN CITY OF SAN DIEGO AND THE SAN DIEGO METROPOLITAN TRANSIT DEVELOPMENT BOARD, to add Mission Valley East LRT and San Ysidro Intermodal Transportation Center projects, as more particularly described in the Fourth Amendment to the MOU, a copy of which is on file in the office of the City Clerk as Document No. RR- 294919

APPROVED: CASEY GWINN, City Attorney

By *Elmer L. Heap, Jr.*
Elmer L. Heap, Jr.
Deputy City Attorney

ELH:smf
04/11/01
Or.Dept:Transp.
R-2001-1377
Form=r-t.frm

Passed and adopted by the Council of San Diego on May 29, 2001 by the following vote:

YEAS: PETERS, WEAR, ATKINS, STEVENS MAIENSCHIN, INZUNZA, MAYOR MURPHY.

NAYS: NONE

NOT PRESENT: MADAFFER

VACANT: DISTRICT 6

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: Ramone Lewis, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R- 294919, passed and adopted by the Council of The City of San
Diego, California on May 29, 2001.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: Ramone Lewis, Deputy

(O-94-115)

ORDINANCE NUMBER O- 18079 (NEW SERIES)

ADOPTED ON JUN 20 1994

AN ORDINANCE AUTHORIZING A THIRD AMENDMENT TO
THE MEMORANDUM OF UNDERSTANDING BETWEEN THE
CITY OF SAN DIEGO AND THE METROPOLITAN
TRANSIT DEVELOPMENT BOARD, CITY DOCUMENT NO.
OO-15881 AND MTDB NO. L5506.0-90

WHEREAS, on October 24, 1978, the City Council, by Resolution No. 222092, approved in concept the early implementation of a Light Rail System ("LRT") as proposed by the San Diego Metropolitan Transit Development Board ("MTDB") and approved in concept the alignment for the LRT in the City of San Diego from the Santa Fe Depot at "C" Street and Kettner Boulevard, east to 12th Avenue on "C" Street, then south along 12th Avenue and the San Diego and Arizona Eastern Railway right-of-way to the International Boarder at San Ysidro; and

WHEREAS, on November 23, 1981, MTDB adopted Resolution No. 81-120 which adopted an eastern light rail transit extension known as the East Urban Line which follows the San Diego and Arizona Eastern (SD&AE) trackway from 13th Street and Commercial east on Commercial to 32nd Street, then along SD&AE right-of-way; and

WHEREAS, on January 3, 1983, an ordinance was adopted authorizing the San Diego MTDB to utilize certain portions of the streets of the City of San Diego, pursuant to Sections 103.1 and 105 of the San Diego City Charter, for the purpose of constructing and operating an LRT extension, known as the Old

Town Line, which follows the existing Atchison, Topeka and Santa Fe Railroad right-of-way from Grape Street north along California Street to the San Diego River; NOW, THEREFORE,

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

Section 1. That the City Manager is hereby authorized to execute a Third Amendment to Memorandum of Understanding between the City of San Diego and MTDB for Mission Valley West LRT Street Use, a copy of which Third Amendment is on file in the office of the City Clerk as Document No. OO- 18079.

Section 2. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By



John K. Riess
Deputy City Attorney

JKR:ps
05/17/94
Or.Dept:E&D
O-94-115
Form=o+t

Passed and adopted by the Council of The City of San Diego on
June 20, 1994 by the following vote:

YEAS: MATHIS, ROBERTS, KEHOE, STEVENS, WARDEN, STALLINGS,
MCCARTY, VARGAS, MAYOR GOLDING.

NAYS: NONE.

NOT PRESENT: NONE.

AUTHENTICATED BY:

SUSAN GOLDING
Mayor of The City of San Diego, California

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

(Seal).

By: Mary Cepeda, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. O-18079 (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on May 31, 1994 and on June 20, 1994.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

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

(Seal)

By: Mary Cepeda, Deputy

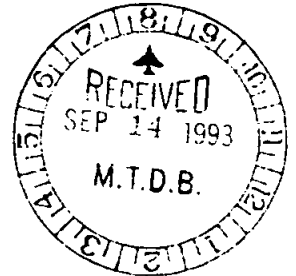
MTDB-
705-58

(O-93-205 COR.COPY)

ORDINANCE NUMBER O-17966 (NEW SERIES)

ADOPTED ON SEPTEMBER 7, 1993

AN ORDINANCE AMENDING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SAN DIEGO AND THE METROPOLITAN TRANSIT DEVELOPMENT BOARD, CITY DOCUMENT NO. OO-15881 AND MTDB NO. L5506.0-90.



WHEREAS, on October 24, 1978 the City Council, by Resolution No. 222092 approved in concept the early implementation of a Light Rail System ("LRT") as proposed by the San Diego Metropolitan Transit Development Board ("MTDB") and approved in concept the alignment for the LRT in The City of San Diego from the Santa Fe Depot at "C" Street and Kettner Boulevard, east to 12th Avenue on "C" Street, then south along 12th Avenue and the San Diego and Arizona Eastern Railway right-of-way to the International Border at San Ysidro; and

WHEREAS, on November 23, 1981, MTDB adopted Resolution No. 81-120 which adopted an eastern light rail transit extension known as the East Urban Line which follows the San Diego and Arizona Eastern (SD&AE) trackway from 13th Street and Commercial east on Commercial to 32nd Street, then along SD&AE right-of-way; and

WHEREAS, on January 3, 1983, an ordinance was adopted authorizing the San Diego MTDB to utilize certain portions of the streets of The City of San Diego pursuant to Sections 103.1 and 105 of the San Diego City Charter for the purpose of constructing and operating an LRT extension known as the Old Town Line which follows the existing Atchison, Topeka and Santa Fe Railroad

right-of-way from Grape Street north along California Street to the San Diego River; and

WHEREAS, the Memorandum of Understanding, San Diego City Document No. 00-15881 and MTDB Document No. L5506.0-90, dated January 3, 1983 sets out the terms and conditions of constructing and operating the LRT extension known as the Old Town Line as agreed between the San Diego MTDB and The City of San Diego; NOW, THEREFORE,

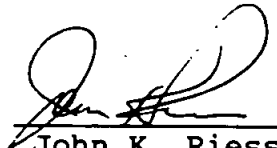
BE IT ORDAINED, by the Council of The City of San Diego, that the Memorandum of Understanding be amended as follows:

Section 1. That the revised Memorandum of Understanding dated September 7, 1993, on file in the office of the City Clerk as Document No. 00-17966, be and by this reference is made an integral part hereof and is hereby approved. The City Manager of The City of San Diego is hereby authorized and empowered to execute the revised Memorandum of Understanding on behalf of The City of San Diego.

Section 2. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By



John K. Riess
Deputy City Attorney

JKR:pev
06/28/93
09/08/93 COR.COPY
Or.Dept:E&D
O-93-205
Form=o+t

FIRST AMENDMENT TO
MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF SAN DIEGO
AND THE METROPOLITAN TRANSIT DEVELOPMENT BOARD
FOR BAYSIDE LRT STREET USE

THIS UNDERSTANDING IS HEREBY
MADE AND ENTERED INTO THIS
22nd DAY OF January, 1987,
BY AND BETWEEN

THE CITY OF SAN DIEGO, a political
subdivision of the State of
California, 202 C Street,
San Diego, California 92101,
hereinafter referred to as CITY,

AND

THE SAN DIEGO METROPOLITAN TRANSIT
DEVELOPMENT BOARD, a public
agency, 620 C Street, San Diego,
California 92101, hereinafter
referred to as MTDB.

WITNESSETH

WHEREAS, MTDB and the CITY have entered into a Memorandum of
Understanding for the construction and operation of the South Line and East
Urban Line light rail transit guideways, City Document No. 00-15881 and MTDB
Document No. 03-83-504; and

WHEREAS, CITY and MTDB desire to amend said Memorandum of
Understanding to include the construction and operation of the Bayside Line
light rail transit guideway, delete obsolete language relative to Caltrans'
construction management, and make conforming changes;

NOW THEREFORE, in consideration of the foregoing, the parties agree
as follows:

DOCUMENT NO. 00-16947-3
OCT 12 1987
FILED
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

1. The Memorandum of Understanding between the City of San Diego and the Metropolitan transit Development Board, City Document No. 00-15881 and MTDB Document No. 03-83-504 is amended as follows:

- a. Paragraph 10 of said Memorandum is deleted in its entirety.
- b. Paragraphs 4-9 of said Memorandum are renumbered to be paragraphs 5-10.
- c. A new paragraph 4 is added to read as follows:

MTDB shall install its Bayside Line transit guideway system in the public right-of-way from the Imperial Station along 12th Avenue to L Street, then along L Street to the San Diego & Arizona Eastern Railway and Santa Fe Railway rights-of-way, then along said railroad rights-of-way to the Santa Fe Depot at Broadway where the Line will branch north and east. The north branch will continue along the railroad right-of-way to Grape Street. The east branch will be along Broadway to the south side of Kettner Boulevard, then from Kettner Boulevard to C Street. At the request of MTDB, the CITY shall direct and order the removal, relocation or the reconstruction of all utilities, public and private, necessary for the construction and improvement of the system within the CITY right-of-way. To further these purposes, CITY and MTDB may create a Joint Powers

Authority and convey, lease or assign such real or personal property to the Authority as shall be necessary and appropriate to carry out the purpose and intent of this section.

d. Paragraph 18 is amended to read as follows:

During the construction of the transit guideway system in the L Street area, no more than two (2) intersections at any time shall be closed within any consecutive six (6) block segment to traffic and pedestrian movement, except as agreed to by the CITY and MTDB.

2. Except as herein above specifically amended, all terms and conditions of said Memorandum of Understanding between the City of San Diego and the Metropolitan Transit Development Board shall remain in full force and effect.

IN WITNESS whereof, the parties have caused this First Amendment to be signed the month, day, and year below written.

CITY OF SAN DIEGO

By: _____

Date: _____

SAN DIEGO METROPOLITAN
TRANSIT DEVELOPMENT BOARD

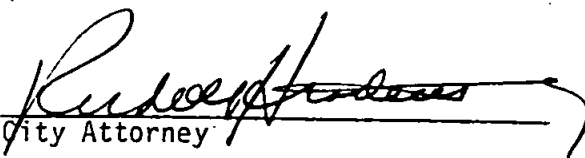
James R. Mills
Chairman of the Board

Date: April 5, 1988

By: _____
Thomas F. Larwin
General Manager

Date: April 5, 1988

Approved as to form:

By: 
City Attorney

Date: April 7, 1988

JL:bw
AGRMNT2
4/4/88

By: 
General Counsel

Date: April 5, 1988

MTDB

DOCUMENT/CONTRACT LOG SHEET

Failure to complete appropriate sections will cause a delay in contract processing.

PART I - General Information

Firm/Agency/Contractor Name and Address:

City of San Diego

File #(s) L 2010.10

Document/Contract #: L5506.2-90 W.O. # ---

Total Contract Amount: - 0 -

This Amendment Amount: ---

Board Approval Date: 1-14-93 Agenda Item # ---

Circle One: (Revenue/Expenditure)

FY Budget Line Item(s) (Table 3) Project/WBS # Amount

Document/Contract Purpose:

MOV for Old Town LRT
Street use

PART II - Insurance

Monitored by (MTDB/Consultant)

	Limits of Liability		Additional Coverages					
	General	Auto	A	B	C	D	E	F
Amount								
Policy Expiration Date								

Best & Co. Rating ---

EFFP ---

DBE Firm (Yes/No) Goal --- Actual ---

List of Certified Firms/Subcontractors:

Name	Type of Work	Amount	MBE/WBE

PART III - Review/Approval

Project Manager: [Signature] Date: 1/5/92
 Director: [Signature] Date: 1/6/92
 Accounting: MMC Date: 1/6/92
 Counsel: [Signature] Date: 1/14/93
 Gen. Manager: [Signature] Date: 1/14/93

PART IV - Document Mailout

Date: 1-21-93 Mailed by: [Signature]
 Special Handling: hand delivered by TE
 In-house distributions: TE
 Dir. [Signature] Auth. [Signature] Accounting [Signature] Read. ☒ Chron. ☒

PART V - Executed Document

Date: 1-14-93
 In-house distributions:
 Dir. --- Auth. --- Accounting --- S. James ---

Completion Date: ---

Comments:

ORIGINAL

MTDB Doc. No. L5506.2-90
L 2010.10

SECOND AMENDMENT TO
MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF SAN DIEGO
AND THE METROPOLITAN TRANSIT DEVELOPMENT BOARD
FOR OLD TOWN LRT STREET USE

THIS UNDERSTANDING IS HEREBY
MADE AND ENTERED INTO THIS
____ DAY OF SEP 07 1993, 1993
BY AND BETWEEN

THE CITY OF SAN DIEGO, a political
subdivision of the State of
California, 202 C Street, San Diego,
California 92101, hereinafter
referred to as CITY,

AND

1/28/94
THE SAN DI. *DAVE DIPERRO HAD*
DEVELOPMEN: *COPY OF FULLY EXECUTED*
1255 Imperi *AMENDMT #2 (ATTACHED)*
San Diego,
hereinafter

WITNESSETH

WHEREAS, MTDB and the CITY have entered into a Memorandum of
Understanding for the construction and operation of the South Line and East
Urban Line light rail transit guideways, City Document No. 00-15881 and MTDB
Document No. L5506.0-90 (previously known as 03-83-504); and

WHEREAS, MTDB and the CITY entered into a first amendment for the
construction and operation of the Bayside Line, City Document No. 0016947-3
and MTDB Document No. L5506.1-90 (previously known as 00-87-563); and

DOCUMENT NO. 00-17966
FILED SEP 07 1993
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

WHEREAS, CITY and MTDB desire to further amend said Memorandum of Understanding to include the construction and operation of the Old Town Line light rail transit guideway, delete obsolete language and make conforming changes;

NOW THEREFORE, in consideration of the foregoing, the parties agree as follows:

1. The Memorandum of Understanding between the City of San Diego and the Metropolitan Transit Development Board, City Document No. 00-15881 and MTDB Document No. L5506.0-90 is amended as follows:

- a. Paragraphs 5-25 of said Memorandum are renumbered to be paragraphs 6-26.
- b. Paragraph 4 is amended to read as follows:

MTDB shall install its Bayside Line transit guideway system in the public right-of-way along 12th Avenue and to Imperial Avenue Station, then along the San Diego & Arizona Eastern Railway to the Santa Fe Railway right-of-way, then along said railroad rights-of-way to the Santa Fe Depot at Broadway where the Line will branch north and east. The north branch will continue along California Street and the railroad right-of-way to Grape Street. The east branch will be along Broadway to the south side of Kettner Boulevard, then from Kettner Boulevard to C Street. At the request of MTDB, the CITY shall direct and order the removal,

relocation or the reconstruction of all utilities, public and private, necessary for the construction and improvement of the system within the CITY right-of-way. To further these purposes, CITY and MTDB may create a Joint Powers Authority and convey, lease or assign such real or personal property to the Authority as shall be necessary and appropriate to carry out the purpose and intent of this section.

- c. A new paragraph 5 is added to read as follows:

MTDB shall install its Old Town Line transit guideway system in the public right-of-way from Grape Street north along California Street and the Atchison, Topeka, and Santa Fe railroad right-of-way to the San Diego river. The proposed transit guideway system will cross city streets at grade, with the exception of Grape Street and Hawthorn Street, which will be underground crossings, and Laurel Street and Whitherby Street, which will be overhead crossings. At the request of MTDB, the CITY shall direct and order the removal, relocation, or the reconstruction of all utilities, public and private, necessary for the construction and improvement of the system within the CITY right-of-way. To further these purposes, CITY and MTDB may create a Joint Powers Authority and convey, lease or assign such real or personal property to the Authority as shall be necessary and appropriate to carry out the purpose and intent of this section.

- d. Paragraph 18 (renumbered Paragraph 19) is amended to read as follows:

During the construction of the transit guideway system, no more than two (2) intersections at any time shall be closed within any consecutive six (6) block segment to traffic and pedestrian movement, except as agreed to by the CITY and MTDB.

- e. Paragraph 19 (renumbered Paragraph 20) is amended to read as follows:

MTDB shall construct the Rail Yard/Maintenance Facility project to accommodate an increase in the light rail vehicle fleet. The expanded maintenance facility will be the renovation of the existing building located at 1535 Newton Avenue in San Diego. MTDB shall construct trackwork in Commercial Street, 13th Street, and Newton Avenue in order to access the building for light rail vehicle maintenance. As a part of the trackwork construction, a portion of 13th Street will be closed and Newton Avenue will terminate in a cul-de-sac. Thirteenth Street and Newton Avenue are dedicated public streets and lie within the City of San Diego's right-of-way.

MTDB shall construct street and sidewalk improvements such as the curb and gutter, sidewalk, street lights, parking striping, driveways, street overlay, and landscaping. MTDB

shall construct these street and sidewalk improvements to the satisfaction of the City engineer. MTDB agrees to maintain landscaping in the closed portion of 13th Street and along Newton Avenue to the satisfaction of the City engineer at MTDB's sole cost and expense.

- f. Paragraph 24 (renumbered Paragraph 25) is amended to read as follows:

Any notice required or permitted under this Memorandum may be personally served on the other party, by the party giving notice, or may be served by certified mail, return receipt requested, to the following addresses:

MTDB:

General Manager
San Diego Metropolitan Transit
Development Board
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101

CITY:

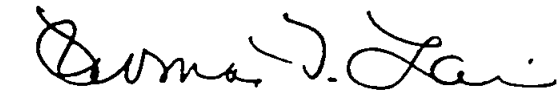
City Manager
Mail Station 9A
City Hall
202 "C" Street
San Diego, CA 92101

2. Except as herein above specifically amended, all terms and conditions of said Memorandum of Understanding between the City of San Diego and the Metropolitan Transit Development Board shall remain in full force and effect.

IN WITNESS whereof, the parties have caused this Second Amendment to be signed the month, day, and year below written.

CITY OF SAN DIEGO

SAN DIEGO METROPOLITAN
TRANSIT DEVELOPMENT BOARD

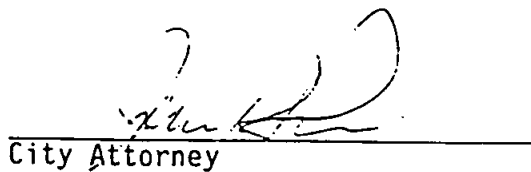


Thomas F. Larwin
General Manager

Date: 9-13-93

Date: Jan. 14, 1993

Approved as to form:


City Attorney
Jack Limber
General Counsel

Date: 9/1/93

Date: Jan. 14, 1993

JPL:paw
MOU2AMND.JPL
12/29/92

SECOND AMENDMENT TO
MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF SAN DIEGO
AND THE METROPOLITAN TRANSIT DEVELOPMENT BOARD
FOR OLD TOWN LRT STREET USE

THIS UNDERSTANDING IS HEREBY
MADE AND ENTERED INTO THIS
22ND DAY OF February, 1990
BY AND BETWEEN

THE CITY OF SAN DIEGO, a political
subdivision of the State of
California, 202 C Street, San Diego,
California 92101, hereinafter
referred to as CITY,

AND

THE SAN DIEGO METROPOLITAN TRANSIT
DEVELOPMENT BOARD, a public agency,
1255 Imperial Avenue, Suite 1000,
San Diego, California, 92101,
hereinafter referred to as MTDB.

WITNESSETH

WHEREAS, MTDB and the CITY have entered into a Memorandum of
Understanding for the construction and operation of the South Line and East
Urban Line light rail transit guideways, City Document No. 00-15881 and MTDB
Document No. 03-83-504; and

WHEREAS, MTDB and the CITY entered into a first amendment for the
construction and operation of the Bayside Line, City Document No. 0016947-3
and MTDB Document No. 00-87-563.

WHEREAS, CITY and MTDB desire to further amend said Memorandum of
Understanding to include the construction and operation of the Old Town Line
light rail transit guideway, delete obsolete language and make conforming
changes;

NOW THEREFORE, in consideration of the foregoing, the parties agree as follows:

1. The Memorandum of Understanding between the City of San Diego and the Metropolitan Transit Development Board, City Document No. 00-15881 and MTDB Document No. 03-83-504 is amended as follows:

- a. Paragraphs 5-25 of said Memorandum are renumbered to be paragraphs 6-26.
- b. Paragraph 4 is amended to read as follows:

MTDB shall install its Bayside Line transit guideway system in the public right-of-way along 12th Avenue and to Imperial Avenue Station, then along the San Diego & Arizona Eastern Railway to the Santa Fe Railway right-of-way, then along said railroad rights-of-way to the Santa Fe Depot at Broadway where the Line will branch north and east. The north branch will continue along California Street and the railroad right-of-way to Grape Street. The east branch will be along Broadway to the south side of Kettner Boulevard, then from Kettner Boulevard to C Street. At the request of MTDB, the CITY shall direct and order the removal, relocation or the reconstruction of all utilities, public and private, necessary for the construction and improvement of the system within the CITY right-of-way. To further these purposes, CITY and MTDB may create a Joint Powers Authority and convey, lease or assign such real or personal property to the Authority as shall be necessary and

appropriate to carry out the purpose and intent of this section.

- c. A new paragraph 5 is added to read as follows:

MTDB shall install its Old Town Line transit guideway system in the public right-of-way from Grape Street north along California Street and the Atchison, Topeka and Santa Fe railroad right-of-way to the San Diego river. At the request of MTDB, the CITY shall direct and order the removal, relocation or the reconstruction of all utilities, public and private, necessary for the construction and improvement of the system within the CITY right-of-way. To further these purposes, CITY and MTDB may create a Joint Powers Authority and convey, lease or assign such real or personal property to the Authority as shall be necessary and appropriate to carry out the purpose and intent of this section.

- d. Paragraph 18 (renumbered Paragraph 19) is amended to read as follows:

During the construction of the transit guideway system, no more than two (2) intersections at any time shall be closed within any consecutive six (6) block segment to traffic and pedestrian movement, except as agreed to by the CITY and MTDB.

- e. Paragraph 24 (renumbered Paragraph 25) is amended to read as follows:

Any notice required or permitted under this Memorandum may be personally served on the other party, by the party giving notice, or may be served by certified mail, return receipt requested, to the following addresses:

MTDB:

General Manager
San Diego Metropolitan Transit
Development Board
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101

CITY:

City Manager
Mail Station 9A
City Hall
202 "C" Street
San Diego, CA 92101

2. Except as herein above specifically amended, all terms and conditions of said Memorandum of Understanding between the City of San Diego and the Metropolitan Transit Development Board shall remain in full force and effect.

IN WITNESS whereof, the parties have caused this First Amendment to be signed the month, day, and year below written.

CITY OF SAN DIEGO

SAN DIEGO METROPOLITAN
TRANSIT DEVELOPMENT BOARD



Thomas F. Larwin
General Manager

Date: _____

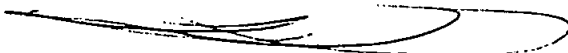
Date: 2/22/90

Approved as to form:

City Attorney

Date: _____

JPL:paw/jm
MOU2AMEN.JPL
2/16/90



Jack Limber
General Counsel

Date: 2/22/90



DOCUMENT/CONTRACT LOG SHEET

City of San Diego

Failure to complete appropriate sections will cause a delay in contract processing.

Please Use Ink (Black or Blue)

General Information

Firm/Agency/Contractor Name and Address:

City of San Diego

File #(:) CIP 453/426 Federally Funded: Yes

Document/Contract #: L65506.4-90W.O. # 1228

This Contract Amendment Amount: -0-

Total Contract Amount (including all amendments): -0-

Total Board Approval Amount: N/A

Board Approval Date: 1/25/01 Agenda Item # 6

- ☐ Corporation ☐ Partnership
☒ Public Agency ☐ Sole Proprietor

Local: ☐ Yes ☐ No

Circle One: (Revenue/Expenditure)

Document/Contract Purpose:

Memorandum of Understanding
for MVE and SYTL project
Terms with City of San Diego

FY	Budget Line Item(s)/Project/WBS #	Amount	Remaining Budget Balance
01	San Ys. Dr. Intermodal Transit / 10453	\$ -0-	\$ N/A
		\$	\$
		\$	\$
		\$	\$

Type of Contract: ☐ Construction (C) ☐ Services (S) ☐ Goods & Commodities (P) ☐ Specialty (L) ☒ Sole Source/Other (N)

DBE Firm (Yes/No) Goal Actual PPR

List of Certified Firms/Subcontractors:

Name	Type of Work	Amount	Ethnicity/Gender
		\$	
		\$	
		\$	
		\$	
		\$	

Insurance - Monitored by: ☐ MTDB ☐ Insurance Consultant ☒ N/A
☐ Less than 100k ☐ 100k or more

Total

Routing

- Review/Approval
1. Project Manager: [Signature] Date: 2/12/01
 2. Director: [Signature] Date: 2-12-01
 3. Finance: [Signature] Date: 2/20/01
 4. Counsel: [Signature] Date: 2-12-01
 5. Gen. Manager: [Signature] Date: 2/24/01

Document Mailout

Date: 2/26/01
Letter type: AXR
Mailed by: [Signature] Database Entry: [Signature]
Special Handling: GIVEN TO STAGGER FOR STAG
Distributions: [Signature]
Tickler [Signature] Finance (Log Sheet) [Signature] Read [Signature] Chron. [Signature]

Executed Document

Date: 2/31/01
Distributions: Project Manager [Signature]
Insurance Consultant [Signature] Date Sent: [Signature]
Other cc: SRH, L.P.D.

Completion Date:

Comments:

1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490
619/231-1466
FAX 619/234-3407

Agenda

Item No. 6

Board of Directors Meeting

CIP 426/453

January 25, 2001

Subject:

MISSION VALLEY EAST LIGHT RAIL TRANSIT PROJECT AND SAN YSIDRO
INTERMODAL TRANSPORTATION CENTER PROJECT

RECOMMENDATION:

That the MTD Board of Directors authorize the General Manager to execute a fourth amendment to the Memorandum of Understanding (MOU) between the City of San Diego and MTDB for the Mission Valley East (MVE) and San Ysidro Intermodal Transportation Center (SYITC) Projects (MTDB Doc. No. L05506.4-90) to provide for authorization to: construct and operate the MVE Light Rail Transit (LRT) Project within the City's public right-of-way (ROW), extend Alvarado Canyon Road from Mission Gorge Place to Adobe Falls Road, and to construct and operate the SYITC in the City's public ROW.

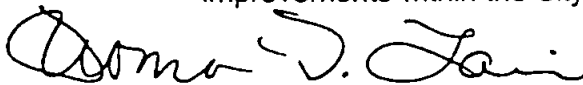
Budget Impact

None.

DISCUSSION:

The City of San Diego and MTDB entered into an MOU for the construction and operation of the South Line and the East Urban Line (to El Cajon), and amended that MOU to also include the Bayside, Old Town, and Mission Valley West lines. The MOU sets forth the respective responsibilities of the City and MTDB relative to the construction, maintenance, and operation, as well as liability apportionment. The proposed amendment (Attachment A) would add the MVE project as well as the SYITC project to the MOU, delete obsolete language, and make conforming changes.

This amendment also includes provisions for the plan check and permitting process through the City. MTDB shall be responsible for review and inspection of the structural integrity of bridges and tunnels, as well as box culverts and retaining walls that deviate from City standards. MTDB will have all costs for installation and maintenance of rail improvements within the City's ROW.



Thomas F. Larwin
General Manager

BStoke/SStroh /6-JAN25.SHAJJI – 1/10/01

Attachment: A. Fourth Amendment to MOU between City of San Diego and
MTDB (MTDB Doc. No. L05506.4-90)

Board Only**Member Agencies:**

City of Chula Vista, City of Coronado, City of El Cajon, City of Imperial Beach, City of La Mesa, City of Lemon Grove, City of National City, City of Poway, City of San Diego, City of San Marcos, County of San Diego, State of California

Metropolitan Transit Development Board is Coordinator of the Metropolitan Transit System and is Regulatory Authority for  Paratransit Administration

Subsidiary Corporations:  San Diego Transit Corporation,  San Diego Trolley, Inc. and  San Diego & Arizona Eastern Railway Company

ORIGINAL

MTDB Doc. No. L5506.4-90
AG 250.4, CIP 10426,10453

**FOURTH AMENDMENT TO
MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF SAN DIEGO
AND THE SAN DIEGO METROPOLITAN TRANSIT DEVELOPMENT BOARD
FOR MISSION VALLEY EAST LRT AND SAN YSIDRO INTERMODAL TRANSPORTATION
CENTER STREET USE**

THIS MEMORANDUM OF UNDERSTANDING IS
HEREBY MADE AND ENTERED INTO THIS
____ DAY OF MAY 29 2001 2001
BY AND BETWEEN

THE CITY OF SAN DIEGO, a political subdivision
of the State of California, 202 C Street,
San Diego, California 92101, hereinafter referred
to as CITY.

AND

THE SAN DIEGO METROPOLITAN TRANSIT
DEVELOPMENT BOARD, a public agency,
1255 Imperial Avenue, Suite 1000, San Diego,
California, 92101, hereinafter referred to as
MTDB.

WITNESSETH

WHEREAS, MTDB and the CITY have entered into a Memorandum of Understanding for the
construction and operation of the South Line and East Urban Line light rail transit guideways, City
Document No. 00-15881 and MTDB Document No. L5506.0-90 (previously known as 03-83-504); and

WHEREAS, MTDB and the CITY entered into a first amendment for the construction and
operation of the Bayside Line, City Document No. 0016947-3 and MTDB Document No. L5506.1-90
(previously known as 00-87-563); and

JUL 31 2001

DOCUMENT NO. 294919
FILED MAY 29 2001
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

WHEREAS, MTDB and the CITY entered into a second amendment for the construction and operation of the Old Town Line, City Document No. 0017966 and MTDB Document No. L5506.2-90; and

WHEREAS, MTDB and the CITY entered into a third amendment for the construction and operation of the Mission Valley West Line, City Document No. 00-18079 and MTDB Document No. L5506.3-90; and

WHEREAS, MTDB and the CITY desire to further amend said Memorandum of Understanding to include the construction and operation of the Mission Valley East light rail transit (LRT) Line guideway and the San Ysidro Intermodal Transportation Center projects, delete obsolete language, and make conforming changes;

NOW THEREFORE, in consideration of the foregoing, the parties agree as follows:

1. The Memorandum of Understanding between the CITY and MTDB, City Document No. 00-15881 and MTDB Document No. L5506.0-90; First Amendment, City Document No. 0016947-3 and MTDB Document No. L5506.1-90; Second Amendment, City Document No. 0017966 and MTDB Document No. L5506.2-90; and Third Amendment, City Document No. 00-18079 and MTDB Document No. L5506.3-90, are amended as follows:
 - a. Paragraphs 7-21 are renumbered to be paragraphs 14-28.
 - b. A new paragraph 7 is added to read as follows:

MTDB shall construct its Mission Valley East LRT line in the public right-of-way from Mission San Diego Station (east of Interstate 15), continuing east over Ward Road, Camino Del Rio North, Mission Gorge Road, and Alvarado Canyon Road, then east along Interstate 8 through San Diego State University, with a tunnel under College Avenue, over Alvarado Road, and east to La Mesa. Also, Alvarado Canyon Road would be extended by MTDB from its easterly terminus point at Mission Gorge Place east to connect with Adobe Falls Road, with a bridge crossing over Waring Road. To further these purposes, the CITY and

MTDB may create a Joint Powers Authority (the "Authority") and convey, lease or assign real or personal property to the Authority as shall be necessary and appropriate to carry out the purpose and intent of this section.

- c. A new paragraph 8 is added to read as follows:

MTDB shall construct its San Ysidro Intermodal Transportation Center in the public right-of-way including realigning the transit guideway system to the east of San Ysidro Boulevard between Camino De La Plaza/East Beyer Boulevard and the southern terminus point at the International Border with Mexico at Tijuana. MTDB shall further construct a pedestrian plaza between the Port of Entry building and the row of commercial shops on the east side of East San Ysidro Boulevard encompassing the trolley platform. The proposed pedestrian plaza will extend north and west toward the existing Government Services Administration (GSA) parking lot. MTDB shall relocate the existing bus, jitney, and taxi area to the existing GSA parking area with the creation of a new one-way loop road to provide a bus turn-around area and loading bays off the plaza. A new GSA parking area would be located within Caltrans' right-of-way north of the existing lot. The extension of the existing parking lot to accommodate the translocation of the GSA lot would require MTDB to construct a double box culvert drainage facility. Since the drainage facility will be within Caltrans' property, maintenance of the facility will continue to be the responsibility of Caltrans. When a change in property ownership occurs, the CITY agrees to take responsibility of maintaining the facility contingent upon MTDB providing a maintenance easement to the CITY. Furthermore, to service intercity buses, a bus bay facility will be constructed by MTDB behind the McDonald's building located at 727 East San Ysidro Boulevard. To provide for traffic circulation and access to the intercity bus bay facility and southern parcels, Rail Court will be extended by MTDB from its easterly terminus point in an L-shape alignment that creates an east leg of the intersection of East San Ysidro Boulevard and Interstate 5 northbound on-ramp. To further these purposes, CITY and MTDB may convey, lease or assign real or personal property to a Joint Powers Authority as shall be necessary and appropriate to carry out the purpose and intent of this section.

- d. A new paragraph 9 is added to read as follows:

The CITY shall process the review of these projects through its Planning and Development Review Process 2000. A CITY review team shall be assigned to work with MTDB throughout the design process and plan check review. The review team will review specific issues requested by MTDB during the design stage, and reach agreements that will facilitate continuing onto the next stage of design. MTDB will incur all costs for CITY's staff time for reviewing project plans. CITY will furnish to MTDB a monthly statement of CITY staff's work hours and dollars expended. The statement will also reflect the remaining balance in the account established with the CITY for plan review by CITY staff.

- e. A new paragraph 10 is added to read as follows:

MTDB shall be responsible for review of the structural integrity of bridges and tunnels as well as nonstandard box culverts and retaining walls constructed within the CITY's public right-of-way.

- f. A new paragraph 11 is added to read as follows:

MTDB will be exempt from paying fees for and obtaining permits including, but not limited to, public improvement permits, engineering permits, construction permits, grading permits, and encroachment removal agreements. MTDB will abide by local regulations as applicable. The CITY will issue an engineering tracking number in lieu of engineering permit number for plan processing purposes.

- g. A new paragraph 12 is added to read as follows:

MTDB contractors are required to obtain, and pay for, traffic control permits and noise permits.

- h. A new paragraph 13 is added to read as follows:

MTDB will bear all costs for installation and maintenance of rail improvements within CITY right-of-way, including bridge structures, retaining walls, trackwork, stations, traction power substations, fare vending machines, wayside control systems, catenary structures, lighting, shelters, fencing, utility conduits, drainage, and irrigation necessary for the operation of the foregoing improvements.

- i. Paragraph 14 (renumbered paragraph 7) is amended to read as follows:

MTDB shall be responsible for all design, construction, and inspection costs incurred by CITY staff directly resulting from any changes to CITY utilities, streets, and facilities required by installation of the transit system. Such changes may include, but are not limited to, all work involved in reconstruction or realignment of streets, utilities, drainage, traffic signals, signs, traffic legends, lane markings, street lighting, appurtenances, and all work necessary for traffic rerouting.

- j. Paragraph 19 (renumbered paragraph 12) is amended to read as follows:

MTDB shall furnish to the CITY any preliminary plans and specifications requested by the CITY for review and comment. MTDB shall, in good faith, respond to all CITY comments. The final working drawings and specifications for that portion of the transit guideway system within the CITY's jurisdiction shall be approved or disapproved by the CITY within 30 days after submittal by MTDB.

- k. Paragraph 20 (renumbered paragraph 13) is amended to read as follows:

CITY shall be notified of preconstruction meetings. Site visits and/or inspections by CITY staff to CITY facilities under construction by MTDB shall occur as requested by the City Inspector and MTDB Resident Engineer. If the City Inspector and MTDB Resident Engineer disagree on a particular issue during construction, the City Inspector shall contact the CITY's MTDB Engineering

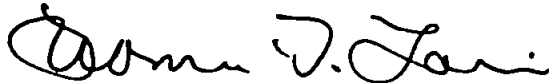
Liaison for his/her involvement. The CITY shall provide interim inspections along with a final inspection and acceptance of all facilities to be relinquished to CITY. MTDB shall reimburse the CITY for costs of work performed by CITY forces if necessary. All inspections by CITY staff shall be coordinated through the MTDB Resident Engineer. MTDB shall provide the CITY with a set of as-built drawings for CITY facilities at the completion of the project.

- I. Paragraph 24 (renumbered paragraph 17) is amended to read as follows:

MTDB shall minimize the removal or relocation of existing utility structures, and shall provide reasonable access to such structures and appurtenances.

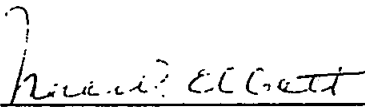
2. Except as hereinabove specifically amended, all terms and conditions of said Memorandum of Understanding between the CITY and MTDB shall remain in full force and effect.

SAN DIEGO METROPOLITAN
TRANSIT DEVELOPMENT BOARD



Thomas F. Larwin
General Manager

Approved as to form
D. General Counsel

By: 

BStoke
MOU-MVE-SYITC.SHAJJI
1/10/01

CITY OF SAN DIEGO



George I. Loveland
Senior Deputy City Manager

Approved as to form and legality
This _____ day of **MAY 29 2001** 2001
CASEY GWINN City Attorney

By: 

Elmer Heap
Deputy City Attorney

R-294919

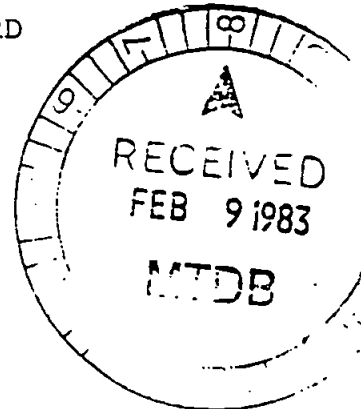
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CITY CLERK'S OFFICE

1983 JAN 31 PM 3:58

MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF SAN DIEGO AND SAN DIEGO, CALIF.
THE METROPOLITAN TRANSIT DEVELOPMENT BOARD

THIS UNDERSTANDING IS HEREBY

MADE AND ENTERED INTO THIS

3rd DAY OF January,
1983, BY AND BETWEENTHE CITY OF SAN DIEGO, a political
subdivision of the State of
California, 202 "C" Street, San
Diego, California 92101, herein-
after referred to as CITY,

AND

THE SAN DIEGO METROPOLITAN TRANSIT
DEVELOPMENT BOARD, a public agency,
620 "C" Street, San Diego,
California 92101, hereinafter
referred to as MTDB.WITNESSETH

WHEREAS, MTDB was created January 1, 1976, under Section 120050, et seq., Chapter 2, Division 11 of the California Public Utilities Code, and was thereby given responsibility for near-term operational planning, overall staging, construction and operation of exclusive public mass transit guideways in the area of San Diego County under its jurisdiction; and

WHEREAS, MTDB has need of and desires to reach an understanding with the CITY in carrying out MTDB's responsibilities for transit guideway construction and operation for the South Line and East Urban Line; and

WHEREAS, CITY and MTDB executed a Memorandum of Understanding on October 24, 1979, which is on file in the office of the City Clerk as Document No. 767335, for the construction and operation of a light rail transit South Line which runs in the public right-of-way from the Santa Fe Depot at "C" Street and Kettner Boulevard, east to 12th Avenue on "C" Street, then south along 12th Avenue and the San Diego and Arizona Eastern Railway right-of-way, to East Beyer Boulevard, south to Bolton Hall, then south along East Beyer Boulevard to San Ysidro Boulevard to its terminus near the International Border; and

WHEREAS, on November 23, 1981, MTDB adopted Resolution No. 81-120 which adopted an eastern light rail transit extension known as the East Urban Line which follows the San Diego & Arizona Eastern (SD&AE) trackway from 13th and Commercial east on Commercial Street to 32nd Street then along the SD&AE right-of-way to its terminus in the City of El Cajon; and

WHEREAS, MTDB has entered into a Cooperative Agreement with CALTRANS to provide all construction management services in accordance with CALTRANS' established design and management procedures; and

WHEREAS, the CITY and MTDB desire to consolidate and adopt one Memorandum of Understanding for the operation and construction of both the South Line and East Urban Line light rail transit guideways;

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

1. The CITY and MTDB do hereby revoke and rescind from operation after the effective date of this resolution the Memorandum of Understanding between the CITY and MTDB dated October 24, 1979, which is on file in the office of the City Clerk as Document No. 767335, and all Amendments thereto, and substitute for it this Memorandum of Understanding which is intended to operate as the sole and separate Memorandum of Understanding to govern the operation and construction of both and either the South Line and the East Urban Line light rail transit guideways.
2. MTDB shall install its South Line transit guideway system in the public right-of-way from the Santa Fe Depot at "C" Street and Kettner Boulevard, east to 12th Avenue on "C" Street, then south along 12th Avenue and the San Diego & Arizona Eastern Railway right-of-way, to East Beyer Boulevard, south of Bolton Hall, then south along East Beyer Boulevard to San Ysidro Boulevard to its terminus near the International Border.
3. MTDB shall install its East Urban Line transit guideway system in the public right-of-way from 13th and Commercial, then along Commercial Street to 32nd, then along the San Diego & Arizona Eastern Railway right-of-way to the cities of Lemon Grove, La Mesa and El Cajon. At the request of MTDB, the CITY shall direct and order the removal, relocation or reconstruction of

all utilities public and private, necessary for the construction and improvement of the system within the CITY public right-of-way.

4. MTDB shall be responsible for all costs directly resulting from any changes to CITY utilities, streets, and/or circulation systems required by installation of the transit system. Such changes may include but shall not be limited to, all work involved in reconstruction or realignment of streets, utilities, drainage, traffic signals, signs, traffic legends, lane markings, street lighting and all work necessary for traffic rerouting.
5. MTDB shall repair and reconstruct and improve, to the satisfaction of the CITY, all streets, curbs, gutters and sidewalks which are damaged or destroyed as a direct result of the construction or operation of the transit guideway system.
6. CITY shall allow modifications to its traffic signal system as requested by MTDB, and as approved by CITY, to facilitate the operation of the transit guideway system. Capital costs resulting directly from any such requested modification shall be the responsibility of MTDB.
7. MTDB shall be responsible for all increased maintenance costs which directly result from installation or maintenance of the guideway system as presently designed or as a result of any future changes in design or operation,

including, but not limited to, signs, traffic legends, and lane markings.

8. CITY shall, to the extent feasible, control traffic and enforce regulations to keep the transit guideway system clear of non-emergency vehicles during all periods of operation.
9. MTDB shall furnish to the CITY preliminary plans and specifications for CITY review and comment. MTDB shall in good faith respond to all CITY comments. The final working drawings and specifications for that portion of the transit guideway system within the CITY's jurisdiction shall be approved or disapproved by the CITY within 30 days of submittal by MTDB.
10. CALTRANS shall be responsible for all construction management, including inspection, within the Commercial Street area and the necessary work shall be performed in accordance with CITY and CALTRANS standards.
11. CITY reserves the right to perform any inspections it deems necessary and to make a final inspection and acceptance of all facilities to be turned over to CITY.
12. MTDB shall be responsible for all costs of maintaining the street paving in the area between points, a distance of two (2) feet from each outside operating rail, in a condition satisfactory to CITY.
13. MTDB shall consult with the CITY on increased/decreased headways of trains and the impact on traffic and pedestrian movements.

14. MTDB shall, upon the development and availability of suitable technology, eliminate presently required overhead catenary structures to the extent feasible.
15. MTDB shall minimize the removal or relocation of existing utility structures, and shall provide reasonable access to such structures.
16. CITY shall, to the extent feasible, construct and/or reconstruct any utilities, street surfaces, or related structures in a manner which permits at least one trackway of the transit guideway system to remain in service and to limit such activity to no more than three consecutive blocks at any one time.
17. Police, fire, and other vehicles in emergency service shall have pre-emptive right to travel upon the trackway of the transit guideway system and the special needs of emergency services shall be considered during design, construction and operation of the transit guideway system.
18. During the construction of the transit guideway system in the Commercial Street area, no more than two (2) intersections at a time shall be closed within any consecutive six (6) block segment to traffic and pedestrian movement, except as agreed to by CITY and MTDB.
19. CITY and MTDB anticipate that this Memorandum shall, from time to time, be modified. All such modifications, including any increase or decrease in the responsibilities of the parties, shall be incorporated in writing to this

Memorandum. The San Diego City Manager and MTDB General Manager shall have authority to modify this Memorandum, provided the basic concepts may not be modified without prior CITY Council and MTD Board of Directors approval.

20. In the event a mutually acceptable agreement on any modifications hereto or performance hereunder cannot be reached between the San Diego City Manager and the MTDB General Manager, then such unresolved issues shall be referred to the CITY Council and the MTD Board of Directors for resolution.
21. The agreement, approval or consent of the CITY or MTDB, wherever required under this Memorandum, shall mean the agreement, approval or consent of the San Diego City Manager or MTDB General Manager, respectively, unless otherwise specified, without need for further action by the CITY Council or MTD Board of Directors.
22. MTDB, its agents, officers and employees shall not be held liable for any claims, liabilities, penalties, fines or for damage to any goods, properties or effects of any person whatsoever, nor for personal injuries to or deaths of them, or any of them, caused by or resulting from any acts or omissions of CITY, its agents, employees, or representatives; CITY further agrees to indemnify and save free and harmless MTDB and its authorized agents, officers and employees against any of the foregoing liabilities and any cost and expense, including reasonable attorneys' fees incurred by MTDB on account of any claim

therefor, including claims by reason of alleged defects in the engineering services, improvement services, or any other work or services done or provided to MTDB by CITY pursuant to this Memorandum; and in the event that a court of competent jurisdiction should determine that the CITY has no authority to provide by agreement the performance of the hereinabove set forth services, CITY nevertheless agrees to assume the foregoing obligations and liabilities by which it is intended by both parties that CITY agrees to indemnify and to hold MTDB harmless from all claims arising by reason of the work done by, or any act or omission of, the CITY or its agents, employees or representatives, in connection with or in performance of the agreed upon services of work provided for in this Memorandum.

23. The CITY, its agents, officers and employees shall not be held liable for any claims, liabilities, penalties, fines or for damage to any goods, properties or effects of any person whatsoever, nor for personal injuries to or deaths of them, or any of them, caused by or resulting from any acts or omissions of MTDB, its agents, employees or representatives; MTDB further agrees to indemnify and save free and harmless the CITY and its authorized agents, officers and employees against any of the foregoing liabilities and any cost and expense, including reasonable attorneys' fees, incurred by the CITY on account of any claim therefor, including claims by reason of alleged

defects in the engineering services, improvement services, or any other work or services done or provided to CITY by MTDB pursuant to this Memorandum; and in the event that a court of competent jurisdiction should determine that MTDB has no authority to provide by agreement the performance of the hereinabove set forth services, MTDB nevertheless agrees to assume the foregoing obligations and liabilities by which it is intended by both parties that MTDB agrees to indemnify and to hold CITY harmless from all claims arising by reason of the work done by, or any act or omission of, MTDB, its agents, employees, or representatives in connection with or in performance of the agreed upon services or work provided for in this Memorandum.

24. Any notice required or permitted under this Memorandum may be personally served on the other party, by the party giving notice, or may be served by certified mail, return receipt requested, to the following addresses:

MTDB:

General Manager
San Diego Metropolitan Transit
Development Board
620 "C" Street, Suite 400
San Diego, CA 92101

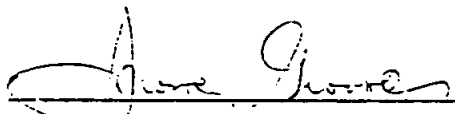
CITY:

City Manager
Mail Station 9A
City Hall
202 "C" Street
San Diego, CA 92101

25. MTDB shall not be responsible hereunder for any costs incurred by the CITY in connection with the transit guideway system in an amount greater than \$5,000.00, without prior approval by MTDB.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum to be signed the month, day, and year below written.

CITY OF SAN DIEGO

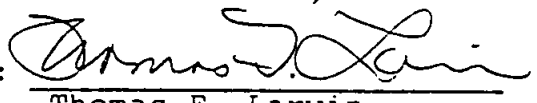
By: 
ASSISTANT TO THE CITY MANAGER

Date: 1/27/83

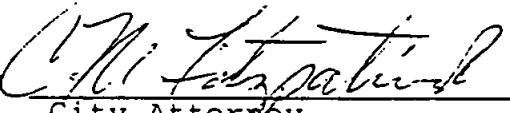
SAN DIEGO METROPOLITAN
TRANSIT DEVELOPMENT BOARD

By: 
Judith Bauer
Chairwoman of the Board

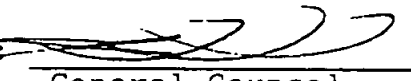
Date: Feb 24, 1983

By: 
Thomas F. Larwin
General Manager

APPROVED AS TO FORM:

By: 
City Attorney

Date: 1-28-83

By: 
General Counsel

Date: Feb 23, 1983

(O-83-115)

ORDINANCE NUMBER O- 15881 (New Series)

Adopted on JAN 3 1983

AN ORDINANCE AUTHORIZING THE SAN DIEGO METROPOLITAN TRANSIT DEVELOPMENT BOARD TO UTILIZE CERTAIN PORTIONS OF THE STREETS OF THE CITY OF SAN DIEGO PURSUANT TO SECTIONS 103.1 AND 105 OF THE SAN DIEGO CITY CHARTER FOR THE PURPOSE OF CONSTRUCTING AND OPERATING A LIGHT RAIL TRANSIT SYSTEM.

WHEREAS, on October 24, 1978 this City Council, by Resolution No. 222092 approved in concept the early implementation of a Light Rail Transit System ("LRT") as proposed by the San Diego Metropolitan Development Board ("MTDB") and approved in concept the alignment for the LRT in the City of San Diego from the Santa Fe Depot at "C" Street and Kettner Boulevard, east to 12th Avenue on "C" Street, then south along 12th Avenue and the San Diego and Arizona Eastern Railway right-of-way to the International Border at San Ysidro; and

WHEREAS, on November 23, 1981, MTDB adopted Resolution No. 81-120 which adopted an eastern light rail transit extension known as the East Urban Line which follows the San Diego & Arizona Eastern (SD&AE) trackway from 13th and Commercial east on Commercial Street to 32nd Street then along the SD&AE right-of-way; and

WHEREAS, the residents of the County of San Diego residing in the areas affected by the proposed East Line Extension of the light rail transit system passed by a majority vote at the Tuesday, November 3, 1981 general election, Proposition C, an

advisory vote that the proposed light rail transit system operate between downtown San Diego and El Cajon via Lemon Grove and La Mesa; and

WHEREAS, Sections 103.1 and 105 of the San Diego City Charter provide, among other things, that The City of San Diego, through its City Council, has the power to provide reasonable terms and conditions under which such transportation facilities may be conducted within the City and that plenary control over the primary and secondary uses of the streets of the City of San Diego are vested in the City and may be granted under such terms and conditions for the use of the public rights-of-way as determined by the City Council; and

WHEREAS, such terms and conditions have been memorialized and agreed to by the governing board of the MTDB by a Memorandum of Understanding which is attached hereto as Enclosure (1) and by this reference made an integral part hereof; NOW, THEREFORE,

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

Section 1. That Ordinance No. O-12626 (New Series), adopted April 9, 1979, and entitled "An Ordinance Authorizing the San Diego Metropolitan Transit Development Board to Utilize Certain Portions of the Streets of the City of San Diego Pursuant to Sections 103.1 and 105 of the San Diego City Charter for the Purpose of Constructing and Operating a Light Rail Transit System," be and the same is hereby revoked and rescinded from operation from and after the effective date of this Ordinance.

Section 2. That pursuant to the provisions of Sections 103.1 and 105 of the San Diego City Charter, the San Diego Metropolitan Development Board be and is hereby authorized to construct and operate a Light Rail Transit System South Line in the City of San Diego from the Santa Fe Depot at "C" Street and Kettner Boulevard, east to 12th Avenue on "C" Street, then south along 12th Avenue and the San Diego and Arizona Eastern Railway right-of-way, to East Beyer Boulevard, south to Bolton Hall, then south along Beyer Boulevard to San Ysidro Boulevard to its terminus near the International Border.

Section 3. That pursuant to the provisions of Section 103.1 and 105 of the San Diego City Charter the San Diego Metropolitan Development Board be and is hereby authorized to construct and operate a Light Rail Transit System East Urban Line in the City of San Diego which follows the San Diego & Arizona Eastern (SD&AE) trackway from 13th and Commercial east on Commercial Street to 32nd Street then along the SD&AE right-of-way to its terminus in the City of El Cajon.

Section 4. That the Memorandum of Understanding dated Jan 8 1983, attached hereto as Enclosure (1), and by this reference made an integral part hereof, is hereby approved, and the City Manager is hereby authorized to execute said Memorandum of Understanding. A copy of which is on file in the Office of the City Clerk as Document No. 00-15011.

Section 5. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: John W. Witt, City Attorney

By C. M. Fitzpatrick
C. M. Fitzpatrick
Senior Chief Deputy

CMF:ps
12/3/82
Or. Dept: E&D
O-83-115

Passed and adopted by the Council of The City of San Diego on
JAN 10 1933, by the following vote:

YEAS: Mitchell, Cleator, Jones, Gotch, Murony, Martinez.

NAYS: None.

NOT PRESENT: Golding, Struiksma.

VACANT: Mayor

BILL CLEATOR

Deputy Mayor of The City of San Diego, California

AUTHENTICATED BY:

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(Seal)

By JUNE A. BLACKNELL, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
ORDINANCE NO. O- 15681 (NEW SERIES) of the City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar
days had elapsed between the day of its introduction and the day of its final
passage, to wit, on JAN 10 1933, and on JAN 20 1933.

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by
a vote of not less than a majority of the members elected to the Council, and that
there was available for the consideration of each member of the Council and the
public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR

City Clerk of the City of San Diego, California

(Seal)

By June A. Blacknell, Deputy