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*Recording Requested By and
When Recorded Return to:*

SAN DIEGO UNIFIED SCHOOL DISTRICT
Attn: Randy White, Real Estate Management
4860 Ruffner Street
San Diego, CA 92111

APN: 535-362-16

DOC # 2011-0084310



FEB 14, 2011 8:23 AM

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
Ernest J. Dronenburg, Jr., COUNTY RECORDER
FEES: 0.00

4952

PAGES: 4



MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is effective as of April 27, 2010 ("the Effective Date").

1. THE CITY OF SAN DIEGO, a California municipal corporation ("Lessor"), with offices at 1200 Third Avenue, M.S. 51A, San Diego, CA 92101-4155, hereby leases to the SAN DIEGO UNIFIED SCHOOL DISTRICT, a public school district of the State of California ("Lessee"), with offices at 4100 Normal Street, San Diego, CA 92111, the premises described in that certain CITY OF SAN DIEGO NEW CENTRAL LIBRARY LEASE AGREEMENT ("Lease") dated April 27, 2010, for the purpose of developing and operating a public charter middle school or a public charter high school as set forth in the Lease.
2. The term of the Lease is forty (40) years, commencing on the Occupancy Date as defined in the Lease. The effective date of the Lease is April 27, 2010.
3. The premises will be located in a building to be constructed by Lessor on the land described in Exhibit "A" of the Lease and as follows:

The "Premises" shall be comprised of the space encompassed by the sixth (6th) and seventh (7th) floors (approximately 71,800 rentable square feet) of the "New San Diego Central Library" to be constructed on the real property owned by the City of San Diego and bounded by 11th Street, Park Boulevard, J Street, and K Street in San Diego, California (APN 535-362-16), and the elevator lobby for the elevators serving the Premises, all as shown in those certain plans dated January 28, 2010, as shown in the contract documents prepared by the architectural joint venture of ROB WELLINGTON QUIGLEY & TUCKER SADLER ARCHITECTS.

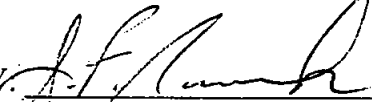
4. Lessee is granted an option to purchase the premises as provided in the Lease.
5. Lessee is given the right to extend the term of the Lease as provided in the Lease.

6. The terms of the Lease shall prevail over any conflicting terms in this Memorandum.

IN WITNESS WHEREOF, this Memorandum of Lease is executed to be effective as of the Effective Date:

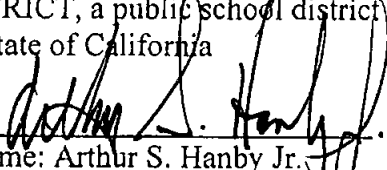
LESSOR:

THE CITY OF SAN DIEGO, a
California municipal corporation

BY: 
Name: James F. Barwick, CCIM
Title: Director, Real Estate Assets

LESSEE: 4953

SAN DIEGO UNIFIED SCHOOL
DISTRICT, a public school district of
the State of California

BY: 
Name: Arthur S. Hanby Jr.
Title: Strategic Sourcing & Contracts
Officer

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of San DiegoOn February 7, 2011 before me,TERESA Dolores Morse, Notary Public

Here Insert Name and Title of the Officer

personally appeared

James F. Banwick

Name(s) of Signer(s)



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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Teresa Dolores Morse

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Memorandum of lease - New Main LibraryDocument Date: April 27, 2010 Number of Pages: 1

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

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

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

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

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

State of California)
) ss.
County of San Diego)

4955

On February 8, 2011 before me, Adel Epley, Notary Public,
Notary Public, personally appeared Arthur S. Hanky, Jr.

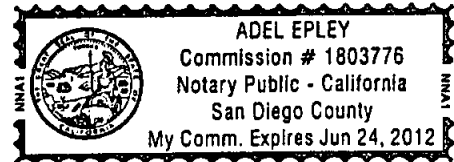
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s),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

I certify under PENALTY OF PERJURY under the laws of the State of California that the forgoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Adel Epley



(Seal)

ORIGINAL



**CITY OF SAN DIEGO
NEW CENTRAL LIBRARY LEASE AGREEMENT**

BETWEEN

**THE CITY OF SAN DIEGO,
a California municipal corporation, as lessor**

AND

**SAN DIEGO UNIFIED SCHOOL DISTRICT,
a public school district of the State of California, as lessee**

DOCUMENT NO. PR-305763

FILED APR 19 2010

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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CITY OF SAN DIEGO

NEW CENTRAL LIBRARY LEASE AGREEMENT

THIS CITY OF SAN DIEGO NEW CENTRAL LIBRARY LEASE AGREEMENT ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation, as lessor ("LESSOR"), and SAN DIEGO UNIFIED SCHOOL DISTRICT, a public school district of the State of California, as lessee ("LESSEE"), to be effective as of the date signed by LESSOR (the "Effective Date"), when authorized by each party's governing body, signed by the parties, and approved by each party's legal counsel, as follows:

FOR VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Building. This Lease shall be for a portion of the building, including the parking facility within it, commonly known as the "New San Diego Central Library" (the "Building") to be constructed on LESSOR-owned land bounded by 11th Street, Park Boulevard, J Street, and K Street in San Diego, California (APN 535-362-16; the "Site").
2. Construction. The construction of the Building shell shall be consistent with the Building's proposed plans (the "Plans") dated January 28, 2010, as shown in the contract documents prepared by the architectural joint venture of ROB WELLINGTON QUIGLEY & TUCKER SADLER ARCHITECTS. The Building shell shall include only the work shown on the Plans, and shall not include any tenant improvement work. LESSOR may modify the Plans in any manner which does not materially change the square footage, configuration, or dimensions of the Premises, or materially adversely affect access to or the utility of the Premises or is likely to materially increase the Building's "Common Area" (defined below) maintenance expenses ("CAM Expenses"), or is likely to materially increase the cost of, or unreasonably delay completion of, LESSEE'S tenant improvements in the Premises, without LESSEE'S prior written consent, which may not be unreasonably withheld, conditioned, or delayed.
3. Leasing of the Premises. LESSOR hereby leases to LESSEE, and LESSEE hereby leases from LESSOR, under the terms and conditions of this Lease, a portion of the Building (the "Premises") comprised of the space encompassed by the sixth (6th) and seventh (7th) floors of the Building (approximately 71,800 rentable square feet), and the elevator lobby for the elevators serving the Premises, as more particularly described in **Exhibit A: Premises**, attached hereto. LESSEE acknowledges and agrees that the rentable square footage figure set forth above is an approximation and that such approximation is reasonable. Upon completion of construction of the Building shell, LESSOR shall determine the actual, as-built rentable square feet of the Premises and the Building by applying the formula for "rentable area" pursuant to the *Standard Method for Measuring Floor area in Office Buildings (ANSI/BOMA Z65.1, 1996; reaffirmed 2001)*. LESSOR shall notify LESSEE of such measurements, which shall be used as the value for the actual, as-built rentable square feet of the Premises and the Building under this Lease, and shall not be subject to revision, except

with an actual physical change in the Premises or the Building, unless LESSEE notifies LESSOR within twenty (20) days after receipt of LESSOR'S measurements that LESSEE disagrees with the measurements, along with a reasonably detailed statement of the reasons for such disagreement. If LESSEE gives a notice of disagreement, the parties shall promptly meet and confer and use reasonable efforts to resolve the disagreement.

4. Delivery of Premises. Pursuant to that certain "Tenant Improvement Work Letter" (the "TI Work Letter"), incorporated herein and attached hereto as **Exhibit B: TI Work Letter**, LESSOR shall deliver the Premises to LESSEE upon Completion of Construction of the Building in shell condition, consistent with the Plans.
 - a. Completion of Construction. As used in this Lease, "Completion of Construction" shall mean the date: (a) the Building shell has been completed in all material respects as certified by LESSOR'S project architect; (b) the Premises are substantially free from debris and construction materials; (c) the HVAC, utility and plumbing systems for the Building shell are installed in accordance with the Plans and otherwise complete and ready for hook-up by LESSEE; and (d) LESSEE has ready access to and egress from the Premises and parking facility, unobstructed by construction equipment or materials, and the elevators serving the Premises are operational.
 - b. Punch List. LESSOR shall notify LESSEE approximately thirty (30) days before the date that LESSOR believes Completion of Construction will occur. Within ten (10) days after LESSEE'S receipt of such notice, LESSOR and LESSEE shall conduct a "walk-through" of the Premises, parking facility, lobbies, entries, exits, stairways, and elevators which will be used to access and egress the Premises, and compile a "punch list" of any items of LESSOR'S work with respect to those areas which are defective, deficient, or incomplete. As used herein, "punch list items" are minor items of repair, correction, adjustment, or completion that do not materially affect LESSEE'S access to and use of the Premises. LESSOR shall use commercially reasonable efforts to cause the punch list items to be remedied as soon as reasonably possible, but in any event within thirty (30) days. The punch list process shall not relieve LESSOR of its obligation to deliver the Premises to LESSEE in accordance with the Plans and to promptly remedy any defects or deficiencies in LESSOR'S construction. LESSOR shall have no obligations to make improvements to the Premises except as provided in the Plans. LESSEE shall make all tenant improvements to the interior of the Premises at its sole cost and expense.
 - c. "As-Is" Acceptance. Except for any items set forth on a written, detailed "punch list" of excepted items delivered to LESSOR on or before the Completion of Construction or any latent defects in the construction work performed for LESSOR which LESSEE, despite reasonable inspection of the Premises, fails to discover as of the Completion of Construction, LESSEE shall, as of the Completion of Construction, be deemed to have: (i) thoroughly inspected the Premises and determined that, to the best of LESSEE'S knowledge, the Premises comply with the Plans; and (ii) accepted the Premises in their then as-is condition with no right to require LESSOR to perform any additional work therein, except as set forth on the punch list or with respect to latent defects as provided

above. Notwithstanding the foregoing, if any defect or deficiency in the construction work performed for LESSOR in or affecting the Premises is covered by a warranty from LESSOR'S construction manager at risk ("CM@Risk;" i.e., the general contractor), subcontractor, or other person performing construction work for LESSOR, LESSOR shall reasonably cooperate with LESSEE to enforce such warranty.

5. Initial Term. The initial term of this Lease ("Initial Term") shall be forty (40) years, commencing on the first day of the month following the Occupancy Date. "Occupancy Date" shall mean the earlier of: (a) the date that LESSEE commences its use of the Premises pursuant to Lease Section 7 (Permitted Use); or (b) the first (1st) day of September which first occurs more than 270 days after Completion of Construction has occurred and LESSOR has so notified LESSEE. If LESSEE is unable to complete installation of its Tenant Improvements (as defined in the TI Work Letter) within 270 days after Completion of Construction due to LESSOR'S failure to comply with its obligations under this Lease (including the TI Work Letter), LESSEE shall be entitled to a credit against the Additional Rent next due under this Lease equal to one (1) day's Initial Term Rent and CAM Expenses for each day of delay caused by LESSOR. To the extent any credit to which LESSEE becomes entitled under this section cannot be satisfied within one (1) year, LESSEE may, at its option, require LESSOR to refund unearned Initial Term Rent for the balance of the credit.
6. Initial Term Rent. LESSEE shall pay rent (the "Initial Term Rent") to LESSOR in the amount of Twenty Million Dollars (\$20,000,000) for the entire Initial Term. LESSEE shall prepay the Initial Term Rent in installments as follows:
 - a. Five Million Dollars (\$5,000,000) shall be paid on the Commencement of Construction;
 - b. Five Million Dollars (\$5,000,000) shall be paid when the Building is twenty-five percent (25%) complete, as certified by LESSOR'S project architect;
 - c. Five Million Dollars (\$5,000,000) shall be paid when the Building is fifty percent (50%) complete, as certified by LESSOR'S project architect;
 - d. Three Million Dollars (\$3,000,000) shall be paid when the Building is seventy-five percent (75%) complete, as certified by LESSOR'S project architect; and
 - e. Two Million Dollars (\$2,000,000) shall be paid upon Completion of Construction.

"Commencement of Construction" shall mean the date LESSOR issues a "Notice to Proceed" to its Building construction contractor. One Four-Hundred-Eightieth (1/480) of the Initial Term Rent shall be deemed earned income to LESSOR on the last day of each month following the Occupancy Date. Initial Term Rent which is not yet earned income to LESSOR is sometimes referred to in this Lease as "unearned Initial Term Rent."

7. Permitted Use. The Premises may be used only for a public charter middle school or a public charter high school, and for no other purpose whatsoever without LESSOR'S prior written approval. LESSOR shall not unreasonably withhold consent to other uses, including without

limitation a private school or administrative or general business offices, which are not inconsistent or incompatible with LESSOR'S use of the remainder of the Building.

- a. LESSOR acknowledges that LESSEE'S intent is that the Premises will initially be operated as a public charter school pursuant to a sublease or operating agreement between LESSEE and the entity operating the public charter school. LESSEE acknowledges that such sublease or operating agreement shall be subject and subordinate to this Lease, and shall require LESSOR'S prior written approval, as provided in this Lease.
 - b. Notwithstanding any provision of this Lease to the contrary, LESSEE shall pay to LESSOR, as Additional Rent, any and all revenue generated by each use of the Premises that is not a permitted use under this Lease, as and when received by LESSEE.
8. Continuous Use. If LESSEE at any time or from time to time chooses not to continuously use the Premises, LESSEE shall so notify LESSOR and reasonably cooperate with LESSOR to ensure that LESSOR'S use of the remainder of the Building will not be materially adversely affected thereby.
9. Trust Deed. Prior to Commencement of Construction, LESSOR shall sign, acknowledge, and allow LESSEE to record in the San Diego County Recorder's Office a deed of trust ("Trust Deed") substantially in the form attached hereto as **Exhibit C: Trust Deed** encumbering fee title to real property in San Diego County owned by LESSOR. The Trust Deed shall secure LESSOR'S obligation to refund and pay to LESSEE any unearned Initial Term Rent, damages, and other sums to which LESSEE is entitled pursuant to this Lease or applicable law in the event this Lease is terminated before the expiration of the Initial Term for any reason, including without limitation condemnation or LESSOR'S or LESSEE'S default of this Lease or bankruptcy. LESSEE shall cause the Trust Deed to be reconveyed upon the satisfaction or extinguishment of the Secured Obligation (as defined in the Trust Deed). The Trust Deed shall comply with the following requirements:
- a. The Trust Deed shall encumber up to two (2) properties; contiguous parcels used for the same purpose shall be deemed one property.
 - b. Initially, the property (or properties) shall have a total fair market value of not less than Thirty Million Dollars (\$30,000,000) ("Minimum Value") as confirmed by an independent appraisal obtained by LESSOR at LESSOR'S expense (subject to LESSEE'S reasonable prior approval of the appraiser) within three (3) months before Commencement of Construction.
 - c. After the first ten (10) years of the Initial Term, and provided LESSOR is not then in default under this Lease, the Minimum Value of the encumbered property or properties shall be reduced to Twenty-Five Million Dollars (\$25,000,000).
 - d. After the first twenty (20) years of the Initial Term, provided LESSOR is not then in default under this Lease, and thereafter until the end of the Initial Term, the Minimum

Value shall be at least one hundred twenty-five percent (125%) of the balance of the unearned Initial Term Rent at any point in time (as such balance will decline as the Initial Term Rent is earned, as provided in Section 6, above).

- e. The Trust Deed shall be and remain a first priority deed of trust and LESSEE shall have the right to approve all title exceptions affecting the property (which approval shall not be unreasonably withheld). LESSOR shall provide for each property a current Phase I environmental assessment from a reputable company which concludes that there is no Recognized Environmental Condition. (If at some time such assessments are no longer commonly used, LESSOR shall provide an equivalent type of assessment to the same effect.) If the property has tenants or other occupants (together, "tenant"), LESSOR shall deliver to LESSEE the following before the Trust Deed is recorded: (i) a list of all tenants and a rent schedule showing the rent payable and security deposit (if any) for each tenant, certified by LESSOR to be true and complete; (ii) true and complete copies of the leases and all amendments thereto; (iii) an agreement in recordable form, signed and acknowledged by each tenant, subordinating its lease (and all rights thereunder) to the Trust Deed, in form and content reasonably acceptable to LESSEE; and (iv) either an estoppel certificate from each tenant, or a landlord's estoppel certificate for each lease, each dated not more than thirty (30) days before the Trust Deed is recorded, in form and content reasonably acceptable to LESSEE.
 - f. The Trust Deed shall be in the form attached hereto as **Exhibit C: Trust Deed**. A default by LESSOR under the Trust Deed shall, at LESSEE'S option, be a default under this Lease.
 - g. LESSEE shall cause the Trust Deed to be reconveyed upon satisfaction or extinguishment of the Secured Obligation (as defined in the Trust Deed).
 - h. After Completion of Construction, LESSOR may from time to time provided LESSOR is not then in default under this Lease substitute other property ("substitute property") in place of the property (or properties) which is (are) then encumbered by the Trust Deed, provided that: (a) such substitute property satisfies the criteria of this Section 9; and (b) LESSOR shall pay the cost of a title insurance policy ensuring the first priority of the Trust Deed (or a substitute Trust Deed) subject to the title exceptions approved by LESSEE.
10. Superior Interests. This Lease is subject to the exceptions to title disclosed by a preliminary title report (Order No. 73014382-U50) dated as of April 3, 2007, and issued by Chicago Title Company (the "Title Report"). LESSOR represents and warrants that to the actual knowledge of its Real Estate Assets Department without inquiry: (a) it is not in breach or default with respect to any of its obligations under the title exceptions disclosed by the Title Report; and (b) it has no knowledge of any exceptions to title except as disclosed in the Title Report. LESSEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Premises. If LESSEE'S use of the Premises is or becomes inconsistent or incompatible with a superior

interest affecting the Premises, LESSEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.

11. Memorandum of Lease. Concurrent with the execution of this Lease, the parties shall sign, acknowledge, and LESSEE shall record a Memorandum of Lease, substantially in the form attached hereto as **Exhibit D: Memorandum of Lease**.
12. Governmental Approvals. By entering into this Lease, neither LESSOR, as lessor under this Lease and in its capacity as a governmental entity, nor the San Diego City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to LESSEE'S development or operation of the Premises. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required for LESSEE'S development and operation of the Premises.
13. LESSOR'S Consent, Discretion. Whenever required or permitted under this Lease, LESSOR'S consent or approval shall mean the written consent or approval of the City Manager of San Diego, or his or her designee ("City Manager"), unless otherwise expressly provided. LESSOR'S discretionary acts hereunder shall be made in the City Manager's reasonable discretion, unless otherwise expressly provided.
14. San Diego's Strong Mayor Form of Governance. All references to "City Manager" in this Lease shall be deemed to refer to the Mayor of San Diego. This section shall remain in effect for the duration LESSOR operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of The City Charter of the City of San Diego, California.
15. Additional Rent. All amounts payable to LESSOR under this Lease in addition to Initial Term Rent shall be deemed additional rent ("Additional Rent"). Additional Rent shall be payable as rent under this Lease within thirty (30) days after LESSOR'S demand therefor, unless otherwise expressly provided.
16. Delinquent Rent. Any amount due from LESSEE to LESSOR which is not paid within five (5) days after the due date shall bear interest at the then legal rate of interest on judgments in California from the date such payment is due until paid. LESSOR'S acceptance of any portion of the late payment shall neither constitute a waiver of LESSEE'S default with respect to the late payment nor prevent LESSOR from exercising any other rights and remedies available at law or in equity.
17. Triple-Net Lease. In addition to all other amounts payable by LESSEE under this Lease, LESSEE shall pay all taxes, insurance, and maintenance expenses that arise from LESSEE'S occupancy, use, development, and maintenance of the Premises. LESSEE shall pay all costs and expenses of maintaining, repairing, replacing, renovating, and restoring all mechanical, plumbing, HVAC, fire sprinkler, and electrical systems exclusively serving the Premises

(including without limitation elevators to the extent they exclusively serve the Premises), and all improvements, fixtures, structures, and installations within the Premises. Costs and expenses of maintaining, repairing, replacing, removing and restoring mechanical, plumbing, HVAC, fire sprinkler, and electrical systems and elevators and access facilities which serve both the Premises and other areas of the Building shall be treated as CAM Expenses.

18. Utilities. LESSEE shall order, obtain, and pay for all utilities and service, all installation charges, and all other costs related to the delivery and use of utilities in connection with LESSEE'S development and operation of the Premises, and which are not included in the Building shell. All utilities not directly metered to the Premises shall be sub-metered to the Premises. LESSOR shall invoice LESSEE monthly for all sub-metered utilities, including a reasonable administrative fee for servicing LESSEE'S account.
19. Parking. LESSEE may rent up to thirty (30) parking passes for parking in the Building parking facility. Parking passes shall be valid from 6:00 A.M. to 6:00 P.M. Monday through Friday only. Upon LESSEE'S request, LESSOR shall mark up to six (6) contiguous parking spaces "reserved" for LESSEE'S exclusive use. No rental credits shall be given for the unavailability of a parking space at any given time; however, LESSOR shall manage the operation of the Building parking facility to provide reasonably acceptable levels of parking availability for the number of parking passes sold. Upon at least sixty (60) days' prior written notice, LESSOR may from time to time, in LESSOR'S sole discretion, increase the rental rate for parking passes to equal the prevailing rate charged by LESSOR for comparable LESSOR-owned parking facilities. The current such rental rate is One Hundred Seventy Dollars (\$170) per parking pass per month. If LESSOR does not own any parking structures, LESSOR may so increase the rental rate for parking passes to equal the then-prevailing rate for reasonably comparable commercial parking facilities in the downtown San Diego area. LESSOR shall be responsible for all operating expenses of the Building's parking facility. Upon not less than sixty (60) days prior written notice, LESSEE may from time to time relinquish its right to rent up to a cumulative total of ten (10) parking passes, in which event no rent shall be payable for such passes. Relinquishment of a parking pass shall be for at least one (1) year, after which period LESSEE may from time to time and upon at least sixty (60) days' prior written notice to LESSOR, elect to reclaim any or all of the passes and pay rent thereon.
20. Access to Parking Facility. LESSOR shall provide LESSEE reasonable access to and from the Building parking facility via the Building's elevator lobby at all reasonable times. LESSEE may propose modifications to the Building's core and shell to accommodate extending the Premises' elevators to the parking facility level, subject to LESSOR'S approval, which may not be unreasonably withheld unless the modifications would materially delay the Building construction work, materially increase LESSOR'S construction costs, adversely affect the functioning of the Building systems or the appearance of the Building, or have any other material adverse effect, and such approval may not be unreasonably delayed. If LESSOR approves LESSEE'S request for such modifications, LESSEE shall cause its architect to prepare reasonably detailed plans for the modifications and deliver such plans to LESSOR, who shall cause its CM@Risk to give a firm cost for the modifications. LESSEE

shall approve or disapprove the CM@Risk's firm cost within ten (10) days after receipt thereof. If LESSEE approves the cost, LESSEE shall pay for the actual cost of the modifications, including without limitation the cost of the architectural plans. LESSEE shall pay to LESSOR the actual cost of the modifications and LESSOR'S reasonable personnel costs related thereto, after which LESSOR shall commence work on the modifications. If LESSEE disapproves the cost, LESSEE shall nevertheless reimburse LESSOR for the reasonable, out-of-pocket expenses actually incurred by LESSOR for obtaining the cost, including LESSOR'S reasonable personnel costs related thereto.

21. LESSEE'S Operating Expenses. LESSEE shall pay all expenses related to its occupancy and use of the Premises.
22. Access to Premises. LESSEE may access the Premises at all times and shall establish its own days and hours of operation.
23. Common Area Maintenance. LESSOR shall maintain the Common Areas of the Building in good repair, and in a decent, safe, healthy and sanitary condition. LESSOR shall use reasonable efforts to minimize the CAM Expenses. From and after the Occupancy Date, LESSEE shall pay LESSEE'S Proportionate Share of the Building's CAM Expenses. CAM Expenses shall be payable as Additional Rent.
 - a. LESSEE'S Proportionate Share. "LESSEE'S Proportionate Share" shall mean a percentage calculated by dividing the actual, as-built rentable square feet of the Premises by the actual, as-built rentable square feet of the Building.
 - b. CAM Expenses Estimate. At the beginning of each Lease year, LESSOR shall prepare and deliver to LESSEE an estimate of the coming year's CAM Expenses (the "CAM Estimate"). LESSEE shall pay to LESSOR one twelfth (1/12) of the CAM Estimate monthly, due and payable on the first day of each month.
 - i. Within one hundred twenty (120) days after the end of each Lease year, LESSOR shall prepare and deliver to LESSEE an accounting of the actual CAM Expenses for the prior Lease year ("CAM Statement"), including a statement of any overpayment or underpayment of CAM Expenses by LESSEE for the just-ended Lease year (the "Reconciliation Amount"). In the case of an overpayment of CAM Expenses, the Reconciliation Amount shall be credited against any future amounts owing to LESSOR under the Lease, or reimbursed to LESSEE if no such future payments shall then be payable. In the case of an underpayment of CAM Expenses, LESSEE shall pay the Reconciliation Amount to LESSOR within thirty (30) days after receipt of the CAM Statement.
 - ii. From time to time upon reasonable notice to LESSOR, LESSEE and its accountants may review and copy the books and records used by LESSOR to produce each CAM Statement, and the underlying bills, invoices, and other evidence of the CAM Expenses. If LESSEE disputes a CAM Statement, LESSEE

shall deliver to LESSOR a written notice of such dispute ("Dispute Notice") within one hundred twenty (120) days after receipt of the CAM Statement. The Dispute Notice shall specify the items in the CAM Statement claimed to be incorrect. If LESSOR disagrees with the Dispute Notice, LESSOR and LESSEE shall mutually select an independent certified public accountant (a "Neutral Accountant") not compensated on a contingency fee or similar basis relating to the results of such audit. LESSEE shall pay all of the Neutral Accountant's costs and fees. The Neutral Accountant shall review the CAM Statement and any pertinent supporting documentation and render an opinion regarding the disputed items. The Neutral Accountant's opinion shall be deemed correct and shall be conclusively binding on both LESSOR and LESSEE. If the Neutral Accountant finds that LESSEE overpaid the disputed items, the amount of overpayment shall be credited against any future amounts owing to LESSOR under the Lease, or reimbursed to LESSEE, if no such future payments shall then be payable, and LESSOR shall reimburse LESSEE fifty percent (50%) of the amount LESSEE paid to the Neutral Accountant; provided, however, that if the overpayment exceeds five percent (5%) of the actual CAM Expenses payable by LESSEE for that year, LESSOR shall reimburse LESSEE for the entire amount payable to the Neutral Accountant. If the Neutral Accountant finds that LESSEE underpaid the disputed items, LESSEE shall pay such amount to LESSOR within thirty (30) days after receipt of the Neutral Accountant's opinion.

- c. CAM Expenses Defined. "CAM Expenses" shall mean all expenses, costs, and amounts that LESSOR pays because of or in connection with the ownership, management, maintenance, security, repair, replacement, renovation, restoration, or operation of the Building and Site, and which are reasonably allocated to the Common Areas. CAM Expenses shall include without limitation: (i) the costs of supplying all utilities, the costs of operating, maintaining, repairing, replacing, renovating, and restoring all mechanical, plumbing, fire sprinkler, storm-drainage, and electrical systems, and the costs of maintenance and service contracts in connection therewith; (ii) the costs of licenses, certificates, permits and inspections, the costs of contesting any laws that may affect CAM Expenses, and the costs of complying with any governmental mandate; (iii) the costs of all insurance premiums and deductibles; (iv) the costs of landscaping and re-lamping; (v) the costs of parking-area operation, repair, replacement, renovation, restoration, and maintenance; (vi) fees and other costs of all contractors and consultants hired in connection with the management, maintenance, security, repair, replacement, renovation, restoration, or operation of the Common Areas, including without limitation management, incentive, consulting, legal, and accounting fees; (vii) payments under any equipment-rental agreements and the fair rental value of any property-management office space; (viii) wages, salaries, and other compensation, expenses and benefits, including taxes levied thereon, of all persons to the extent engaged in the operation, maintenance, and security of the Common Areas; (ix) the costs of operating, maintaining, repairing, replacing, renovating, and restoring all systems and equipment (and components thereof to the extent serving the Common Areas); (x) the cost of janitorial, alarm, security and other services for the Common Areas, and the replacement of wall and floor coverings,

ceiling tiles and fixtures in Common Areas, and maintenance and replacement of curbs and walkways; (xi) rental or acquisition costs of supplies, tools, equipment, materials, and personal property used in the maintenance, operation, and repair of the Common Areas; and (xii) the cost of capital improvements or any other items that are: (A) intended to and do effect economies in the operation or maintenance of the Common Areas, or which reduce current or future CAM Expenses, or which are reasonably required to enhance the safety or security of the Building or its occupants; (B) required to comply with required conservation programs; (C) replacements or modifications of nonstructural items required to keep the Common Areas in good condition; or (D) required under any law; provided that the cost of any such capital improvement shall be amortized and billed as a CAM Expense over the reasonably estimated useful life of the improvement reasonably established by LESSOR. CAM Expenses shall also include the costs of a professional property manager, if LESSOR should decide to use one; provided, however, that such costs shall be consistent with costs required under similar leases of similar premises. LESSEE'S share of all CAM Expenses, including property management and administration fees, shall be payable based on LESSEE'S Proportionate Share.

- d. CAM Expenses Exclusions. Notwithstanding anything herein to the contrary, CAM Expenses shall not include the following:
- i. The cost of repair, alteration, or replacement of the foundations, exterior walls, structural walls, or other structural portions of the Building, or the roof or roof membranes, or the cost of improvements or items which are capitalized under standard accounting principles, except as expressly provided in subsection c., "CAM Expenses Defined," above;
 - ii. Leasing commissions and/or expenses and advertising and promotional expenses;
 - iii. Legal fees or other professional or consulting fees and costs in connection with the negotiation of tenant leases, or the handling of disputes with LESSOR'S consultants, contractors, employees or others performing services in connection with the Building, suppliers, vendors, or lenders, or with other tenants or occupants of the Building, or in the defense of LESSOR'S title or interest in the Building and/or Site;
 - iv. Repairs required to cure violations of laws enacted prior to the date of this Lease;
 - v. The cost of repairs or replacements incurred by reason of fire or other casualty or condemnation;
 - vi. Earthquake insurance and earthquake insurance deductibles;
 - vii. Damage and repairs necessitated by the negligence or intentional misconduct of LESSOR, LESSOR'S employees or agents, or any other tenant or occupant;

- viii. Compensation paid to LESSOR'S employees above the compensation paid to comparable private sector employees performing substantially the same duties for comparable properties in the downtown San Diego area;
- ix. That portion of compensation paid to service personnel to the extent such compensation is not reasonably allocable to the Common Areas;
- x. Costs incurred by LESSOR in curing its defaults, or for fines or penalties for violation of any law;
- xi. Costs (including permits, licensing, and inspection fees) incurred in (or cash or improvement allowances paid for) renovations or otherwise improving, decorating, painting, or altering space for other tenants or other occupants of space in the Building;
- xii. The cost of any service not provided to LESSEE, but provided to other tenants or other occupants of the Building, and for which LESSOR is entitled to be reimbursed (other than as reimbursement of operating expenses);
- xiii. Ground rent or interest and principal payments on mortgages, trust deeds, or other encumbrances, or monies paid to cure loan defaults;
- xiv. Depreciation and reserves;
- xv. Rental and other related expenses incurred in leasing air conditioning systems, elevators, or other equipment ordinarily considered to be of a capital nature, except: (1) when such equipment is used in providing janitorial and maintenance services and is not permanently affixed to the Building; (2) when such equipment is rented on a temporary basis for repairs or maintenance; and (3) for plants located in Common Areas;
- xvi. Expenditures to the extent LESSOR is entitled to be reimbursed by any insurance carrier, any tenant (including LESSEE, other than as reimbursement of CAM Expenses), or any other source;
- xvii. Bad-debt losses or rent write-offs;
- xviii. The cost of electricity or other utilities furnished to any particular tenant or occupant;
- xix. Costs incurred in connection with the original construction of the Building shell or the initial development of the Site, or to correct any defects or deficiencies in such construction;

- xx. Costs for sculpture, paintings or other objects of art in excess of amounts typically spent for such items in office buildings in the competitive area of the Building;
 - xxi. Costs, expenses, and expenditures relating solely to an obligation or liability of a particular tenant or occupant of the Building;
 - xxii. Costs incurred in the removal, abatement, or other treatment of hazardous substances present in the Building or Site;
 - xxiii. Amounts paid for goods or services from any legal entity affiliated with LESSOR and which is above the amount that would have been comparably payable to an unaffiliated party;
 - xxiv. Costs associated with the operation of the entity which constitutes LESSOR as the same are distinguished from the costs of operating the Common Areas of the Building, including without limitation accounting and legal expenses, costs of selling, financing, mortgaging, or hypothecating LESSOR'S interest in the Building and/or Site, costs of any disputes between LESSOR and its employees or building managers; and
 - xxv. The value or lost income to LESSOR of any space in the Building to the extent it is utilized for the management of the Building.
24. Place of Payment. Initial Term Rent, Additional Rent, and any other financial obligations pursuant to this Lease payable to LESSOR shall be made payable to "City Treasurer" and delivered to the Office of the City Treasurer, Civic Center Plaza Building, 1200 Third Avenue, First Floor, San Diego, CA 92101, or mailed to:
- THE CITY OF SAN DIEGO
Office of the City Treasurer
P.O. Box 122289
San Diego, CA 92112-4165
25. Option to Extend the Term. Provided LESSEE is not then in default of this Lease beyond any applicable cure period pursuant to a written notice of default from LESSOR, LESSEE shall have one (1) option to extend the term of this Lease for an additional ten (10) years beyond the Initial Term. However, in no event shall the term of this Lease be greater than fifty (50) years. No exercise of the option to extend the term of this Lease shall be valid unless in writing and delivered to LESSOR at least two (2) years prior to the expiration of the Initial Term. Any extension of the term of this Lease shall be subject to all terms and conditions of this Lease, except the rent for the extended term (the "Extension Rent") shall be set by agreement of the parties as provided herein.
- a. Extension Rent. The Extension Rent shall be equal to the fair market rent as of the commencement date of the extension term as evidenced by then-recent leases for similar

premises similarly improved and located within the market area of the Premises. Extension Rent shall be paid monthly in advance.

- b. Disputed Extension Rent. If LESSOR and LESSEE are unable to agree on the amount of the Extension Rent by a date which is not less than one hundred eighty (180) days before the commencement date of the extension term, then within ten (10) days after demand by either party, each party shall select an appraiser, and those two appraisers shall mutually designate an appraiser to determine the fair market rent for similar premises as provided above. If the parties' appraisers do not designate an appraiser within forty (40) days after the demand for appraisal, an appraiser shall be designated upon application by either party to any judge of the Superior Court of San Diego County, downtown branch. The designated appraiser shall determine the fair market rent. LESSOR and LESSEE shall each pay the fees of their own appraiser and shall each pay one-half (1/2) of the fees and costs of the appraisal. If the Extension Rent is not determined before the commencement of the extension term, then pending such determination, LESSEE shall pay rent monthly, in advance, in an amount calculated by increasing by three percent (3%) the Initial Term Rental rate being earned by LESSOR during the final year of the Initial Term. Once the Extension Rent is determined, an appropriate cash adjustment and payment or refund shall be made.

26. Termination Prior to Construction. LESSOR may, in its sole discretion and with notice to LESSEE, decide not to commence construction of the Building shell. In that case, this Lease shall immediately terminate upon LESSEE'S receipt of such notice. While Commencement of Construction is expected to be August 1, 2010, if Commencement of Construction fails to occur on or before August 1, 2011, LESSEE may thereafter at any time before Commencement of Construction deliver to LESSOR a notice of intent to terminate this Lease. If Commencement of Construction fails to occur within one hundred eighty (180) days after such notice, LESSEE may at any time thereafter unilaterally terminate this Lease upon thirty (30) days' prior written notice to LESSOR. No party shall be liable for any damages, financial or otherwise, which may be incurred by the other party as a result of the termination of this Lease prior to Commencement of Construction. LESSOR and LESSEE expressly waive any claim for expense or loss which either might incur as a result of a termination of the Lease pursuant to this section. Notwithstanding the foregoing, if Commencement of Construction is delayed beyond August 1, 2011, by a *force majeure* (as defined in Lease Section 79, *Force Majeure*), LESSOR shall promptly so notify LESSEE, and LESSEE'S right to give notice of intent to terminate this Lease as set forth in this section shall be suspended until the resolution of the delay, but in no event shall such *force majeure* suspension exceed one hundred eighty (180) days.
27. Conditions to Commencement of Construction. LESSOR shall not commence construction and LESSEE shall not be required to pay any Initial Term Rent unless and until the following have occurred:

- a. LESSOR has set aside sufficient funds which, when added to the Initial Term Rent and any construction loan funds which will be available from an institutional construction lender, will be sufficient to complete the construction of the Building shell;
 - b. LESSOR has signed a contract with a reputable experienced construction manager at risk for the construction of the Building shell, which contract requires: (i) at least a five percent (5%) holdback of the contract amount until completion of construction; and (ii) that prior to commencement of construction the contractor obtain payment and performance bonds from a reputable surety company authorized to do business in California as a surety and having an AM Best's rating of at least A-VII (or equivalent rating) naming LESSOR and LESSEE as obligees, in form, content, and amount reasonably acceptable to LESSEE;
 - c. Exception No. 8 disclosed by the Title Report (Deed of Trust) has been reconveyed; and
 - d. The Trust Deed and the Memorandum of Lease have been recorded and LESSEE has obtained at its expense an American Land Title Association ("ALTA") extended coverage leasehold policy of insurance in an amount to be determined by LESSEE insuring the priority of LESSEE'S interest in this Lease subject only to Items 3, 4, 5, 6, and 7 as disclosed in Schedule B of the Title Report, and any other exceptions approved by LESSEE pursuant to this Lease.
28. Completion of Construction. LESSOR shall complete construction of the Building shell within thirty-six (36) months after Commencement of Construction (the "Completion Deadline"). If Completion of Construction fails to occur on or before the Completion Deadline, LESSOR shall credit LESSEE'S Additional Rent payable under this Lease in an amount equal to one (1) day's Initial Term Rent and CAM Expenses for each day between the Completion Deadline and Completion of Construction, but not to exceed Two Thousand Five Hundred Dollars (\$2,500) per day. To the extent any credit to which LESSEE becomes entitled under this section cannot be satisfied within one (1) year, LESSEE may, at its option, require LESSOR to refund unearned Initial Term Rent for the balance of the credit. If the Completion of Construction does not occur within one hundred eighty (180) days after the Completion Deadline, LESSEE may at any time thereafter terminate this Lease effective on ninety (90) days' prior written notice to LESSOR and recover all unearned Initial Term Rent (plus interest thereon at the then legal rate of interest on judgments in California from the date(s) paid by LESSEE) and any other amounts to which LESSEE may be entitled; provided, however, that if Completion of Construction occurs before the expiration of such 90-day period, this Lease shall not terminate.
29. Option to Purchase. Provided LESSEE is not then in default of this Lease, LESSEE shall have the option to purchase the entire Premises either as a single condominium unit or two separate condominium units (each comprised of one entire floor of the Premises), at LESSEE'S election. LESSEE may exercise its option to purchase the Premises during the tenth (10th), twentieth (20th), thirtieth (30th), or fortieth (40th) year of the Initial Term. No exercise of an option to purchase the Premises shall be valid unless in writing and delivered

to LESSOR on or prior to the last day of the option year in question.

- a. Purchase Price. The purchase price for the Premises shall be the greater of: (1) the fair market value of the "Condominium" as of the date LESSEE exercises its purchase option, as determined by an independent, third-party appraiser, as provided below; and (2) LESSEE'S Proportionate Share of the sum of: (A) the actual, as-built Building core and shell construction costs; plus (B) Thirteen Million Nine-Hundred Sixty-Four Thousand Dollars (\$13,964,000), representing the land value of the Site [calculated by multiplying the sixty-nine thousand eight hundred twenty (69,820) square feet of land comprising the Site times Two Hundred Dollars (\$200) per square foot].
 - i. Condominium. As used in this Lease, the term "Condominium" shall be used to refer to the Premises as converted either into a single condominium unit or two separate condominium units, as one property, and to be purchased by LESSEE.
 - ii. Appraisal Process. Within ten (10) days after LESSEE'S exercise of its option to purchase, each party shall select an appraiser, and the two appraisers shall mutually designate an appraiser to determine the fair market value of the Condominium, which shall include the value of LESSEE'S right to use the parking spaces as provided below. If the parties' appraisers do not designate an appraiser within forty (40) days after LESSEE'S exercise of its option, an appraiser shall be designated upon application by either party to any judge of the Superior Court of San Diego County, downtown branch. The designated appraiser shall determine the fair market value of the Condominium. LESSOR and LESSEE shall each pay the fees of their own appraiser and shall each pay one-half (1/2) of the fees and costs of the appraisal. At the time the appraisers are appointed, LESSEE shall give notice to LESSOR specifying how many of LESSEE'S six (6) reserved spaces and how many of the remaining twenty-four (24) unreserved spaces shall be used for the Condominium. Such designation may not thereafter be changed by LESSEE without the written consent of the owner(s) of the other condominium(s) in the Building.
 - iii. Conversion Costs. LESSEE shall pay all costs associated with converting the Premises into a Condominium.
 - iv. Unearned Rent Applied. All Initial Term Rent remaining unearned by LESSOR, prorated to the date of the closing of the purchase and sale of the Condominium as contemplated herein, shall be applied to the purchase price of the Condominium (and any excess shall be refunded to LESSEE on the close of escrow).
- b. Escrow. The closing of the sale of the Condominium shall be through an escrow (the "Escrow") to be opened at a title company selected by LESSOR, subject to LESSEE'S reasonable approval. The parties agree to sign the Escrow agent's standard instructions consistent with the purchase provisions of this Lease. Each party shall pay one-half (1/2) of the Escrow agent's fee and all other closing costs and prorates shall be charged and

paid in accordance with escrow's standard practice in the purchase and sale of commercial condominiums. All amounts prorated at the closing shall be charged and paid in accordance with the then-standard escrow practices for the purchase and sale of office condominiums in the city of San Diego, California. This Lease shall terminate upon the recordation of grant deed(s) conveying ownership of the Condominium to LESSEE.

- c. Title. LESSOR shall convey title to the Condominium to LESSEE free and clear of all liens and encumbrances and subject only to such exceptions as may be approved by LESSEE. LESSOR shall not encumber the Building and/or Site in such a way as shall prevent the transfer of title to the Condominium to LESSEE free and clear of all liens and encumbrances as of the closing of the Escrow. LESSOR shall pay all fees and costs required to clear title to the Condominium as required hereby.
 - d. Condominium Conversion. LESSEE shall retain and pay such professionals (e.g., attorneys, engineers, and budget consultants) as may be required to prepare and process the documents necessary to legally create the Condominium. The parties acknowledge that the creation of the Condominium may require making the remainder of the Building a condominium unit and the creation of an owners association which will assess and collect assessments and perform other duties typical for similar condominium projects. The condominium conversion shall preserve LESSOR'S and LESSEE'S rights hereunder regarding access and use of the Common Areas and the Building parking facility.
 - e. No Assurances. LESSOR makes no representation or warranty as to LESSOR'S ability to convert the Premises into a condominium unit or units. Neither LESSOR nor the San Diego City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to LESSEE'S conversion of the Premises into a condominium unit or units. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required to convert the Premises into a condominium unit or units.
 - f. Parking. After the purchase of the Condominium, LESSEE'S rights to use the parking spaces designated by LESSEE shall be appurtenant to the Condominium, and LESSEE shall not be required to pay any fee therefor.
 - g. Details to be Resolved. The parties recognize that not all details regarding the purchase and sale of the condominium(s) or the condominium documents are addressed in this Lease. The parties shall work cooperatively to promptly address and resolve such details and other matters needed to achieve the condominium conversion as contemplated by this Lease. If the parties are unable to resolve any issues, they shall be resolved as set forth in Lease Sections 60 (Mediation) and 61 (Court Action).
30. Holdover. Any holding over by LESSEE after the expiration or earlier termination of this Lease shall be at will upon three (3) days notice to quit the Premises, shall not be construed

as a renewal or extension of this Lease, and all other terms and conditions of this Lease shall continue in full force and effect. Rent for any holdover period shall be the greater of: (1) one hundred twenty-five percent (125%) of the rental rate, including any Additional Rent, in effect immediately preceding such holding over; or (2) one hundred twenty-five percent (125%) of the then-prevailing fair market rental rate for the Premises, as reasonably determined by LESSOR.

31. Prohibited Uses. LESSEE shall not: (a) use the Premises except as permitted under this Lease; (b) allow or permit any liens or encumbrances to be placed on any portion of the Building, unless LESSEE disputes the lien or encumbrance and posts a bond or other security sufficient for a title company to remove or insure against the contested lien or encumbrance; (c) use the Premises in any manner which may create a health, safety, or fire hazard; (d) fail to pay all taxes assessed against LESSEE related to its tenancy, use, occupancy, or development of the Premises; or (e) fail to obey the Building's rules and regulations, as may be reasonably amended from time to time (the "Rules & Regulations"), a current copy of which is attached hereto as **Exhibit E: Rules & Regulations**. LESSOR shall not use the Building or the Site in a manner that is inconsistent of incompatible with LESSEE'S use of the Premises as permitted by this Lease.
32. Reservation of Naming Rights. LESSOR hereby reserves all right, title, and interest in and to any and all naming rights for the Building and the Site, including without limitation any event or activity conducted thereon. LESSEE shall have naming rights for the Premises and any activities conducted therein or which LESSEE is otherwise allowed to conduct in the Building; however, such naming rights shall be subject to LESSOR'S prior written approval, which approval shall be in LESSOR'S sole reasonable discretion. Any attempt by LESSEE to exercise its naming rights in violation of this provision shall be void, and such rights shall revert back to LESSOR.
33. Signs. LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising in any Common Area, on the exterior of the Building, or visible from outside the Building without LESSOR'S prior written consent. LESSEE shall remove all unauthorized items at its expense immediately after notice by LESSOR, or LESSOR may remove the items at LESSEE'S cost. LESSEE may, at its expense, install and maintain signs, the number, size, location, and appearance of which shall be subject to LESSOR'S sole reasonable discretion and prior written approval, including a directional sign in the main lobby of the Building, signs at the entrances to the Premises, signs denoting elevators serving the Premises, and such other signs as LESSEE may request.
34. Premises Keys. LESSEE shall make and control the keys to the Premises, with the exception that LESSEE shall provide LESSOR with a set of entry keys, which LESSOR may use to access the Premises for purposes permitted by this Lease. LESSOR shall promptly report to LESSEE the loss of any such key. LESSEE shall deliver all Premises keys to LESSOR upon the expiration or earlier termination of this Lease.

35. Communications Equipment. Provided reasonable space is available and reasonable aesthetics allow, with LESSOR'S prior written consent, which may not be unreasonably withheld, and only to the extent LESSOR has done so, LESSEE may, at its sole cost and expense, install, maintain, and remove one or more satellite signal reception dishes, microwave dishes, and other communications equipment (in such sizes and quantities as reasonably required for LESSEE'S operations within the Premises) on the roof of the Building, subject to the following further conditions: (a) LESSEE shall comply with all applicable laws; (b) such communications equipment shall be screened from view from nearby streets and buildings; (c) the installation, maintenance, and removal of such communications equipment shall be done in a manner which does not void or abrogate the roof warranty or impair the structural integrity of the roof, and LESSOR may require LESSEE to use LESSOR'S designated contractor for any installation, maintenance, and removal which may affect the roof warranty or the structural integrity of the roof, roof membrane, or Building, provided such contractor is price competitive; (d) LESSEE shall be responsible for any damage to the Building or other property caused by such installation, maintenance, and/or removal; (e) such equipment will not interfere with the Building systems and shall comply with all applicable non-interference and other applicable rules of the Federal Communications Commission; and (f) LESSEE shall remove all such equipment on the expiration or earlier termination of the Lease. Such equipment shall be for the sole use of LESSEE and its approved subtenants and assignees under this Lease. After each party's installation as allowed by this section, neither party shall install or operate additional equipment in the Building or on the Site that unreasonably interferes with the other party's use of its communications equipment. Notwithstanding the foregoing, LESSOR may install and maintain equipment at any time and from time to time and anywhere within the Site, including the Building (except the Premises), reasonably necessary for governmental emergency communications, which equipment shall take precedence over all other equipment otherwise allowed under this Lease.
36. Maintenance. LESSEE shall maintain the Premises in good repair, and in a decent, safe, healthy and sanitary condition to LESSOR'S reasonable satisfaction.
37. Improvements/Alterations. LESSEE, at LESSEE'S sole cost and expense, shall construct all tenant improvements in the Premises. The construction of all initial tenant improvements shall be subject to the TI Work Letter. LESSEE shall (if and to the extent LESSOR also does in the Building) incorporate the U.S. Green Building Council, Leadership in Energy and Environmental Design (LEED) 2.0 Rating System "Silver" Level Certification for all of its subsequent tenant improvements in the Premises. LESSEE shall not make any major additions or alterations to the Premises without LESSOR'S prior written approval. LESSOR shall notify LESSEE of LESSOR'S approval or disapproval (specifying the reason(s) for disapproval) within fourteen (14) days after receipt of LESSEE'S request for approval, accompanied by reasonably detailed plans showing the alterations or additions. As used above, a "major" alteration or addition is one which is either: (a) visible from outside of the Premises; (b) affects the Building's utility or life/safety systems; or (c) affects the structure of the Building. This provision shall not relieve LESSEE of any obligation under this Lease to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural

repair and restoration of damaged or worn improvements. LESSOR shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises.

38. Ownership of Improvements and Personal Property.

- a. Improvements. Upon the expiration of earlier termination of this Lease, any and all improvements, fixtures, structures, and installations or additions to the Premises now existing or constructed on the Premises by LESSEE shall be deemed to be part of the Premises and shall become LESSOR'S property without compensation to LESSEE. LESSEE shall ensure that upon LESSEE'S vacation of the Premises all such improvements, fixtures, structures, and installations or additions to the Premises shall be free of all liens and claims.
- b. Personal Property. LESSEE shall remove LESSEE-owned machines, appliances, equipment, trade fixtures, and other items of personal property upon the expiration of the term of this Lease, or as soon as practicable after termination, but in no event later than ninety (90) days after the expiration or earlier termination of this Lease. Any such items which LESSEE fails to remove shall be deemed abandoned and become LESSOR'S property free of all claims and liens, or LESSOR may, at its option, remove such items at LESSEE'S sole cost and expense. If any removal of such personal property by LESSEE results in damage to the Premises or the Building, LESSEE shall repair all such damage at its sole cost and expense.
- c. Late Removal. LESSEE shall pay to LESSOR rent calculated on a per diem basis using the rental rate in effect just prior to the expiration of earlier termination for any period of time needed to remove any personal property, whether by LESSOR or LESSEE, after the expiration of earlier termination of this Lease.

39. Eminent Domain. If all or part of the Premises is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of LESSOR and LESSEE (or beneficiary or mortgagee, if applicable) will be as follows:

- a. Full Taking. If the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. Partial Taking - Remainder Unusable. If a partial taking of the Premises, the Building, and/or access to the Site occurs, and in LESSEE'S reasonable opinion such taking renders the Premises unsuitable for the Lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. Partial Taking - Remainder Usable. If a partial taking of the Premises, the Building, and/or access to the Site occurs, and in the opinion of LESSEE, the taking does not render the Premises unsuitable for continued Lease operation, this Lease shall terminate in

regard to the portion of the Premises taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion of the Premises not taken. Upon the taking, the Initial Term Rent (or, if the extended term is in effect, the rent payable during the remainder of the extended term) shall be equitably reduced in proportion to the reduction in the rental value of the Premises, and if the taking occurs during the Initial Term, LESSOR shall promptly refund to LESSEE the difference between Initial Term Rent so reduced for the remainder of the Initial Term and the then-unearned Initial Term Rent.

- d. Award. All monies awarded in any taking shall belong to the respective parties in accordance with their respective interests in the Building, the Site, and this Lease. If this Lease is terminated, and unless LESSEE is compensated for the unearned Initial Term Rent by the condemner, LESSOR shall at the time of the award refund to LESSEE all unearned Initial Term Rent as of the termination date of this Lease.
 - e. No Inverse Condemnation. The exercise of any LESSOR right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon LESSOR for inverse condemnation.
40. Entry and Inspection. LESSOR reserves and shall always have the right, but not the obligation, to enter the Premises for the purpose of viewing and ascertaining the condition of the Premises, to protect its interests in the Premises, or to inspect the operations conducted in the Premises. LESSOR shall give LESSEE reasonable notice for a cursory inspection, and at least two (2) days notice for a thorough inspection before entering the Premises, except in the event of an emergency which LESSOR reasonably determines threatens injury to persons or property, in which case LESSOR shall only be required to give LESSEE such notice as is reasonable under the circumstances. LESSOR shall use best efforts to minimize interference with LESSEE'S use of the Premises in connection with any such entry. If LESSOR determines that the Premises are not in a decent, safe, healthy, and sanitary condition, LESSOR may, after ten (10) business days' prior notice to LESSEE, have any necessary maintenance work done at LESSEE'S sole expense. LESSEE shall pay LESSOR on demand any and all such costs, as Additional Rent, to put the Premises in a decent, safe, healthy, and sanitary condition. The rights reserved in this section shall not create any obligation on LESSOR or increase any of LESSOR'S obligations under this Lease.
41. Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with all applicable laws, statutes, ordinances, and regulations of city, county, state, and federal governments at LESSEE'S sole cost and expense. LESSEE shall comply with any and all notices issued by governmental officials of competent jurisdiction under the authority of any law, statute, ordinance, or regulation.
42. Mutual Indemnification & Hold Harmless. Each party shall protect, defend, indemnify, and hold the other party and its officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or

injuries to any person or property, including injury to the indemnifying party's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Lease, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that the indemnifying party's duty to indemnify and hold harmless shall not include any claims or liability arising from the gross negligence, recklessness, or intentional misconduct of the indemnified party and its elected officials, officers, employees, representatives, and agents.

43. **LESSEE Insurance Requirements.** LESSEE shall obtain and maintain, at its sole cost, the insurance described in this section during the term of this Lease and deliver to LESSOR'S Real Estate Assets Department current certificates of insurance with appropriate endorsements attached for the following policies:

- 1) **Commercial General Liability Insurance**, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Ten Million Dollars (\$10,000,000) per occurrence, subject to an annual aggregate of at least Ten Million Dollars (\$10,000,000);
- 2) **Automobile Liability Insurance**, providing coverage for all bodily injury and property damage, with a limit of at least Ten Million Dollars (\$10,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Lease. Coverage shall be written on *ISO form CA 00 01 12 90*, or a substitute form providing equivalent liability coverage;
- 3) **Workers' Compensation and Employers Liability Insurance**, as required by the laws of the State of California for all of LESSEE'S employees who are subject to this Lease, with Employers' Liability coverage with a limit of at least:
 - i. Ten Million Dollars (\$10,000,000) Bodily Injury by accident – each accident;
 - ii. Ten Million Dollars (\$10,000,000) Bodily injury by disease – each employee; and
 - iii. Ten Million Dollars (\$10,000,000) Bodily injury by disease – policy limit;
- 4) **Special Form Builders Risk Coverage** to be obtained and maintained until the final completion and acceptance of LESSEE'S tenant improvements, repairs, or other modifications to the Premises reasonably estimated to be in excess of Fifty Thousand Constant Dollars (\$50,000 Constant). "Constant Dollar" shall mean the value of One Dollar (\$1) increased by fifteen percent (15%), cumulatively, at the end of every fifth (5th) Lease year. [By way of example, \$50,000 would be increased to \$57,500 at the end of the fifth (5th) Lease year and to \$66,125 at the end of the tenth (10th) Lease year.] Such insurance shall be in an amount equal to the replacement cost of the completed work (without deduction for depreciation) and contain a waiver of subrogation in favor of LESSOR. LESSEE shall not commence any construction work in the Premises unless and until such insurance is in effect and evidence of the insurance has been delivered to

LESSOR; and

- 5) **Special Form Property Insurance** against damage or loss of its tenant improvements and other personal property related to the Premises in an amount representing one hundred percent (100%) of the replacement cost.
- a. LESSEE Parties. LESSEE shall ensure that each LESSEE Party (i.e., each subtenant and licensee of any part of the Premises) obtains and maintains during the term of their use and occupancy of the Premises all insurance required of LESSEE herein, with coverage amounts reasonably satisfactory to LESSOR.
- b. Certificates of Insurance. LESSEE shall ensure that: (a) each certificate of insurance states the coverage amount(s); and (b) appropriate endorsements are attached to certificates delivered to LESSOR. Certificates of insurance shall provide for at least thirty (30) days prior written notice to LESSOR of cancellation or nonrenewal, except for cancellation for nonpayment of premium, for which LESSOR shall receive at least ten (10) days prior written notice. LESSEE shall ensure that the notice of cancellation provision on the insurance certificates shall not contain the qualifying words "will endeavor" or "but failure to mail such notice shall impose no obligation or liability of any kind upon [the insurance company], its agents, or representatives" or any other similar language.
- c. Additional Insureds. Pursuant to a separate endorsement (i.e., CG 20 10 or equivalent during any period of construction performed by or on behalf of LESSEE, and CG 20 11 at all times during the term of this Lease), "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insured's in all Commercial General Liability or Excess Liability policies.
- d. Primary & Non-Contributory. Commercial General Liability and Excess Liability insurance policies shall be endorsed such that the coverage provided by LESSEE is primary and non-contributory to any coverage carried or maintained by LESSOR and its elected officials, officers, employees, representatives, and agents.
- e. Carrier Waivers. LESSEE shall ensure that all policies of insurance obtained and maintained by LESSEE and its contractors and subcontractors performing work in the Premises must provide that each underwriter and insurance carrier shall waive all of their respective rights of recovery, under subrogation or otherwise, against LESSOR, its elected officials, officers, employees, representatives, and agents.
- f. Qualified Insurer(s). Except for Workers Compensation insurance provided by the California State Compensation Insurance Fund, or coverage provided by any public entity pooling arrangements, all insurance required by the terms of this Lease must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to LESSOR. Non-admitted surplus lines insurers may be accepted provided they are included on the most

recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet LESSOR requirements. LESSEE may satisfy all or part of the liability coverage requirements of this section by maintaining its lawful self-insured status during the term of this LEASE and through excess liability coverage obtained through membership in its public entity risk sharing pools.

- g. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of LESSEE and must be disclosed and acceptable to LESSOR at the time evidence of insurance is provided.
- h. Continuity of Coverage. All policies shall be in effect on or before the first day of the Initial Term, except "course of construction/builders risk property insurance" which shall be in force at commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. All policies shall be kept in force for the duration of the term of this Lease. At least thirty (30) days prior to the expiration of each insurance policy, LESSEE shall furnish a certificate(s) and appropriate endorsements showing that a new or extended policy has been obtained which meets the requirements of this Lease. LESSEE shall provide proof of continuing insurance at least annually during the term of this Lease. If insurance lapses or is discontinued for any reason, LESSEE shall immediately notify LESSOR and obtain replacement insurance as soon as possible.
- i. Modification. To assure protection from and against the kind and extent of risk existing with the Premises, LESSOR, at its reasonable discretion, may require the reasonable revision of amounts and coverage at any time (but not more often than once in any five-year period) during the term of this Lease by giving LESSEE sixty (60) days prior written notice, provided, however, that such amounts shall be consistent with amounts required under similar leases of similar Premises. LESSEE shall also obtain any additional insurance reasonably required by LESSOR for new improvements, changed circumstances, or LESSOR'S reasonable re-evaluation of risk levels related to the Premises, provided such insurance is available at commercially reasonable rates. If this Lease is assigned, or all or part of the Premises are subleased, to a non-public body or agency, then as to such assignee or sublessee, the minimum amounts for Commercial General Liability Insurance, Automobile Liability Insurance, and Workers' Compensation and Employers Liability Insurance, above, shall be adjusted to be commensurate with the minimum amounts then commonly required for non-public tenants for similar premises in similar buildings. If any insurance required by Lease becomes unavailable at commercially reasonable rates and is not generally required for similar leases, then LESSEE may substitute the most similar insurance which is available at commercially reasonable rates and generally required for similar leases.
- j. Accident Reports. LESSEE shall immediately report to LESSOR any accident causing property damage or injury to persons and related to the Premises. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances,

the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

- k. Umbrella Policies. LESSEE may satisfy its limit requirements for liability insurance under excess or umbrella policies and/or insurance provided by LESSEE Parties, subject to LESSOR'S prior written approval.

44. LESSOR Insurance Requirements.

- a. Liability Insurance. LESSOR shall, at LESSOR'S expense, maintain in force continuously throughout the term of this Lease, commercial general public liability insurance covering the Building in an amount deemed by LESSOR'S Risk Management Department to be appropriate.
 - b. Property Insurance. LESSOR shall maintain all-risk property insurance covering the Building against loss or damage resulting from fire and other insurable casualties in an amount deemed by LESSOR'S Risk Management Department to be appropriate.
 - c. Self-Insurance. Notwithstanding anything to the contrary contained in this section, the original named LESSOR may elect to self insure, in whole or in part, its insurance obligations hereunder.
 - d. Deductibles/Retentions. All deductibles and self-insured retentions on any of LESSOR'S insurance policy or coverage are the sole responsibility of LESSOR and must be disclosed and reasonably acceptable to LESSEE at the time evidence of insurance is provided by LESSEE.
45. Damage and Destruction. With reasonable promptness after discovering any damage to the Building or Common Areas necessary for access to the Premises which materially adversely affects LESSEE'S use of the Premises and Common Areas pursuant to this Lease, or which, if not repaired, would increase the CAM Expenses or be unsafe or a violation of law, which damage results from any fire or other casualty (a "Casualty"), LESSOR shall notify LESSEE of LESSOR'S reasonable estimate of the time required to substantially complete repair of such damage (the "LESSOR Repairs"). LESSOR shall promptly and diligently perform the LESSOR Repairs at LESSOR'S sole cost and expense (and not as a CAM Expense), subject to reasonable delays for insurance adjustment and other events of *force majeure*. The LESSOR Repairs shall restore the damaged areas to substantially the same condition that existed when the Casualty occurred, except for: (a) any modifications required by law; and (b) any modifications that are deemed desirable by LESSOR, are consistent with the character of the Building, and do not materially impair access to, or utility of, the Premises, or LESSEE'S rights under this Lease, or are not likely to increase LESSEE'S insurance or other operating costs or the CAM Expenses, or to materially delay the substantial completion of the repairs. No Casualty and no restoration performed as required hereunder shall render LESSOR liable to LESSEE, constitute a constructive eviction, or excuse LESSEE from any obligation hereunder; provided, however, that if as a result of such Casualty or LESSOR

Repairs any portion of the Premises is untenable, inaccessible, or practicably unusable by LESSEE and is not occupied by LESSEE, the term of this Lease shall be extended by the number of days LESSEE was so prevented from occupying the Premises or, at LESSEE'S option, LESSEE shall be entitled to an equitable credit against the Additional Rent and rent (if the Casualty occurs during the extended term) next coming due to the extent of the interference with LESSEE'S occupancy and use of the Premises. LESSEE shall be responsible for insuring and repairing any damage to LESSEE'S improvements, alterations, fixtures, equipment, and other personal property resulting from fire or other Casualty. If, after a reasonable time, the Premises or portion thereof are still untenable, inaccessible, or practicably unusable by LESSEE, then LESSEE may give notice to LESSOR, and if the LESSOR Repairs are not completed within sixty (60) days thereafter, in addition to any other remedy LESSEE may have under this Lease, LESSEE shall be entitled to a credit in direct proportion to the portion of the Premises remaining untenable, inaccessible, or practicably unusable by LESSEE against Additional Rent equal to one (1) day's Initial Term Rent (or rent, if the Casualty occurs during the extended term) and CAM Expenses for each day thereafter until the LESSOR Repairs are completed. To the extent any credit to which LESSEE becomes entitled under this section cannot be satisfied within one (1) year, LESSEE may, at its option, require LESSOR to refund unearned Initial Term Rent for the balance of the credit.

46. Hazardous Substances. LESSEE shall not allow the installation, storage, utilization, generation, sale or release of hazardous or otherwise regulated substances in, on, under, or from the Premises or the Building. LESSEE and LESSEE'S agents and contractors shall not install, store, utilize, generate, or sell any hazardous substance on the Premises or the Building without LESSOR'S prior written consent. LESSEE and LESSEE's agents and contractors shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a hazardous substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment, or device which holds or incorporates a hazardous substance or hazardous waste. The foregoing shall not apply to hazardous substances commonly and lawfully used in the improvement of similar premises or to common cleaning supplies or to hazardous substances commonly and lawfully used in connection with a permitted use of the Premises, provided LESSEE complies with all laws related to such materials and notifies LESSOR of the materials and quantities thereof to be used and stored in the Premises.

- a. LESSEE Parties. Each of LESSEE'S obligations concerning hazardous substances under this Lease shall be an obligation of each LESSEE Party (i.e., each subtenant and licensee of any part of the Premises) as it pertains to such LESSEE Party.
- b. Release. For the purposes of this provision, a release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping,

leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean any hazardous liquid, solid, or gaseous material substances listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and is hereby incorporated into this Lease.

- c. Remediation. If LESSEE'S occupancy, use, development, maintenance, or restoration of the Premises results in a release of a hazardous substance, or petroleum related substance or its chemical constituents, LESSEE shall pay all costs of remediation and removal to the LESSOR'S satisfaction for unrestricted reuse of the Premises and the Building, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- d. Removal. If LESSEE or LESSEE'S contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring hazardous materials or hazardous wastes to the Building, LESSEE and/or LESSEE'S contractor or agent shall remove all hazardous substances and hazardous wastes in any type of container, equipment, or device from the Building immediately upon or prior to the expiration or earlier termination of this Lease. LESSOR reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment, or devices from the Building. LESSEE shall be responsible for any and all costs incurred by LESSOR to remove any container, equipment, or device requiring disposal or removal as required by this provision.
- e. Indemnity. LESSEE and each LESSEE Party shall protect, defend, indemnify, and hold LESSOR harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S or the LESSEE Party's occupancy, use, development, maintenance, or restoration of the Premises or the Building, including without limitation costs of environmental assessments; costs of regulatory remediation oversight; costs of remediation and removal; any necessary LESSOR response costs; all fines, penalties or fees assessed by any regulatory agency; damages for injury to natural resources, LESSEE'S or the LESSEE Party's elected officials, officers, employees, invitees, guests, agents, or contractors, or the public; and all costs of any health assessments or health effect studies; provided, however, that LESSEE'S or the LESSEE Party's duty to indemnify and hold harmless shall not include any claims or liability arising from the gross negligence, recklessness, or intentional misconduct of LESSOR or its elected officials, officers, employees, representatives, or agents.
- f. Notice of Release. If LESSEE knows or has reasonable cause to believe that a hazardous substance or petroleum related substance or its chemical constituents has been released on, from, or beneath the Premises or the Building, LESSEE shall immediately notify LESSOR and any appropriate regulatory or reporting agency per California Administrative Code Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to LESSOR within three (3) days of receipt of the

knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify LESSOR in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises or the Building.

- g. Environmental Assessment. Upon reasonable cause to believe that LESSEE'S or a LESSEE Party's occupancy, use, development, maintenance, or restoration of the Premises or the Building ("LESSEE'S Operations"), resulted in any hazardous substance being released on, from or beneath the Premises or the Building, LESSOR may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at LESSEE'S and the LESSEE Party's sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by LESSEE'S Operations on, in, from or under the Premises or the Building, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations; or require future restricted re-use of the Premises or Building, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by LESSOR in its sole discretion, LESSOR may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and Building and compliance with environmental law and regulations are achieved, and LESSEE and the applicable LESSEE Party shall pay all costs and expenses therefor.
- h. LESSOR'S Obligations. Promptly after LESSOR obtains knowledge of any release of a hazardous substance on, from, or beneath the Site, LESSOR shall notify LESSEE. Unless LESSEE or a LESSEE Party is responsible for remediating such release as provided in this Lease, LESSOR shall remediate and remove the hazardous substance as required by applicable laws, rules, and regulations of governmental authorities and use commercially reasonable best efforts to minimize the time and extent of any interference with the use and occupancy of the Premises by LESSEE, its subtenants and licensees. LESSOR shall protect, defend, indemnify, and hold LESSEE harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from the occupancy, use, development, maintenance, or restoration of the Building by LESSOR or any tenant, licensee, or occupant of the Building (or their respective employees, agents, and contractors), including without limitation costs of environmental assessments, costs of regulatory remediation oversight, costs of remediation and removal, any necessary LESSEE response costs, all fines, penalties or fees assessed by any regulatory agency,

damages for injury to natural resources or LESSOR'S (or LESSOR'S tenants or occupants) elected officials, officers, employees, invitees, guests, agents, or contractors, or the public, damages for LESSEE'S loss of use of the Premises, and all costs of any health assessments or health effect studies; provided, however, that LESSOR'S duty to indemnify and hold harmless shall not include any claims or liability to the extent arising from the gross negligence, recklessness, or intentional misconduct of LESSEE or its elected officials, officers, shareholders, partners, members, representatives, agents, or employees.

47. Common Areas. The term "Common Areas" shall mean all areas and facilities outside the Premises and within the exterior boundary line of the Site (including all interior utility raceways within the Building) that are provided and designated by the LESSOR from time to time for non-exclusive use by LESSOR, LESSEE, and other tenants of the Building.

- a. LESSEE'S Rights. LESSOR grants to LESSEE during the term of this Lease, the non-exclusive license to use, in common with others, the Common Areas as they exist from time to time, subject to any rights reserved by LESSOR under this Lease.
- b. Rules & Regulations. LESSOR shall have exclusive control and management of the Common Areas and may, from time to time, establish, modify, amend, and enforce the Rules & Regulations. LESSEE shall abide by the Rules & Regulations, and shall cause its employees, suppliers, shippers, customers, contractors and invitees to abide by the Rules & Regulations. LESSOR shall not be responsible to LESSEE for any other tenant's non-compliance with the Rules & Regulations. LESSOR shall enforce the Rules and Regulations in a fair manner as they apply to all tenants and occupants of the Building.
- c. Changes. LESSOR may, in LESSOR'S sole discretion and from time to time, make changes to the Common Areas, including without limitation, changes in the location, size, shape, and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress and egress, direction of traffic, landscaped areas, walkways, and utility raceways. LESSOR may temporarily close any Common Area for maintenance purposes, provided reasonable access to the Premises remains available. LESSOR may make improvements to the Common Areas and use the Common Areas while making improvements, alterations, or repairs to any part of the Building, and do and perform such other acts and make other changes in, to, or with respect to the Building as LESSOR may deem appropriate. Notwithstanding the foregoing, in connection with any of the above changes to the Common Areas: (i) LESSOR shall use reasonable efforts to minimize interference with LESSEE'S access to and use of the Premises and Building parking facility; (ii) LESSOR shall use reasonable efforts to schedule work that may adversely affect LESSEE'S use of the Premises outside of LESSEE'S normal business hours; (iii) the cost of such changes shall not be a CAM Expense; (iv) the changes shall not materially increase the CAM Expenses; and (v) the changes shall not reduce the number of parking spaces which LESSEE is entitled to use or unreasonably adversely affect LESSEE'S access to the Premises.

48. Assignment, Subletting, and Licensing. LESSEE shall not assign this Lease or any interest in this Lease, and shall not sublet the Premises or any part of the Premises, or any right or privilege appurtenant to the Premises, or allow any other person, except employees, agents, and guests of LESSEE, to use or occupy the Premises, or any part of the Premises, without LESSOR'S prior written consent, in each instance, which consent may not be unreasonably withheld. LESSOR'S consent to any assignment, subletting, occupation, or use by any other person shall not be deemed to be consent to any subsequent assignment, subletting, occupation, or use by another person. Any attempted assignment, subletting, or licensing without LESSOR'S consent shall be void. Each sublease and license of all or any part of the Premises shall be subject and subordinate to this Lease. This Lease shall not, nor shall any interest in this Lease, be assignable as to the interest of LESSEE by operation of law, without LESSOR'S written consent. For the purposes of this section "assignment" shall include the transfer of any ownership interest in this Lease by LESSEE or a transfer of a controlling interest in LESSEE or any general partner, principal, or controlling shareholder of LESSEE.

- a. Term of Subleases. LESSEE shall not sublease all or any portion of the Premises for a term extending beyond the expiration of the Initial Term unless and until the term of this Lease is extended by option or otherwise.
- b. Sublease Rent. LESSEE shall pay to LESSOR fifty percent (50%) of all sublease revenue in excess of LESSEE'S rent allocable to the subleased premises; provided, however, that LESSEE may first recover its actual bona fide out-of-pocket costs in connection with the sublease, including without limitation broker's commissions, rent concessions, the cost of tenant improvements or allowances, and attorney fees.
- c. Transfer Notice. At least thirty (30) business days prior to the proposed effective date of any assignment, subletting, occupation, or use by any other person (a "Transfer"), LESSEE shall deliver to LESSOR a notice of such intended Transfer (a "Transfer Notice") containing the following:
 - i. Information regarding the proposed transferee, including the name, address, and ownership of the transferee; the nature of the transferee's business; the transferee's character and reputation; and the transferee's current financial statements (certified by an officer, general partner, or owner of the transferee), bank account statements, tax returns, and a detailed business plan, all in form and thoroughness reasonably acceptable to LESSOR.
 - ii. All the terms of the proposed Transfer, including the consideration payable by the transferee; the portion of the Premises subject to the Transfer (the "Transfer Space"); a general description of any planned alterations or improvements; the proposed use; the proposed effective date of the Transfer; a statement of all cash and non-cash compensation, not including sublease revenue, to be paid LESSEE as consideration for the Transfer (the "Transfer Premium"). Such statement shall include a statement of the cash value of all non-cash compensation to be paid

LESSEE as consideration for the Transfer, determined by applying generally accepted appraisal and accounting principles consistently applied.

- d. Transfer Premium. LESSEE shall pay to LESSOR in cash fifty percent (50%) of the then-current cash value of the Transfer Premium when received by LESSEE, after LESSEE'S recovery of its out-of-pocket costs incurred in connection with the Transfer.
- e. Additional Information. LESSEE shall deliver to LESSOR such additional information regarding the proposed Transfer and/or transferee as LESSOR may reasonably request.
- f. LESSOR'S Response. Within thirty (30) days after receipt of the Transfer Notice, LESSOR shall deliver to LESSEE a notice approving or disapproving the Transfer. If LESSOR disapproves the Transfer, LESSOR shall state the reasons therefor with reasonable specificity.
- g. Subleases. Each sublease shall be subject and subordinate to this Lease. Without limiting the foregoing, by accepting a sublease, each sublessee shall be bound by the provisions of this Lease concerning equal opportunity, establishing a drug-free workplace, and compliance with disabled access laws, as those provisions are applicable to the subleased premises.
- h. LESSOR'S Right to Recapture. Only after the Initial Term, and notwithstanding any provision of this Lease to the contrary, within sixty (60) days after receipt of a Transfer Notice, LESSOR may recapture the Transfer Space by either terminating this Lease as to the Transfer Space, or electing to receive an assignment or sublease of the Transfer Space from LESSEE. A timely notice of recapture ("Recapture Notice") delivered to LESSEE shall either terminate this Lease or create an assignment or sublease for the Transfer Space for the same term as the proposed Transfer, effective as of the date specified in the Transfer Notice. If LESSOR declines or fails to deliver a Recapture Notice, LESSOR shall have no further right to recapture the Transfer Space under this provision unless it again becomes available after LESSOR'S approval or denial of the proposed Transfer.
- i. Rent After Recapture. If LESSOR recaptures the Transfer Space during the Initial Term, LESSOR shall pay to LESSEE rent monthly in advance in the amount and to the extent of LESSEE'S Initial Term Rent applicable to the Transfer Space under this Lease. If LESSOR recaptures the Transfer Space during an extended term of this Lease, LESSEE'S rent for the portion of the Premises retained by LESSEE shall be recalculated proportionately using the actual rentable square feet of the retained Premises. Upon a recapture, LESSOR shall deliver to LESSEE written confirmation of the amendments to this Lease occasioned thereby, and this Lease shall continue in full force and effect.
- ii. Partitions. If LESSOR recaptures the Transfer Space, LESSOR shall, at LESSOR'S sole cost and expense, construct any partitions required to segregate the Transfer Space from the remaining Premises retained by LESSEE. LESSEE shall, however,

pay for painting, covering, or otherwise finishing the surfaces of the partitions facing the remaining Premises retained by LESSEE.

49. Nondiscrimination. LESSEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE'S use of the Premises, including without limitation the provision of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
50. Equal Opportunity. To the extent applicable to LESSEE'S occupation, use, and operation of the Premises, LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or place of birth. LESSEE shall cause the foregoing provisions to be inserted in all subleases and all contracts for any work in the Premises so that such provisions will be binding upon each sublessee and contractor.
51. Taxes. Each party shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon their respective interests, occupancy, and use of the Site, the Building, and the Premises, including without limitation tenant improvements, machinery, equipment, appliances, or other improvements or property of any nature whatsoever constructed, installed, or maintained by the respective party, or levied by reason of the business or other each party's activities related to the Site, the Building, and the Premises, including without limitation licenses and permits. LESSEE acknowledges that this Lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on that interest. LESSEE shall pay all such possessory interest taxes. LESSEE'S payment for such taxes, fees, and assessments shall not reduce any rent due LESSOR.
52. Standard of Employees. Each party shall, and shall reasonably ensure that all persons under their control or direction shall, at all times conduct themselves and their operations in the Building and on the Site in a manner that is not inconsistent or incompatible with the other party's operations in the Building and on the Site.
53. Quiet Possession. LESSEE, paying the rent and performing its obligations under this Lease, shall at all times during the term of this Lease peaceably and quietly have, hold, and enjoy the Premises.
54. Cost Recovery. The City of San Diego maintains a schedule of fees to recover administrative costs related to City staff services provided to persons doing business with the City. LESSEE acknowledges that it may be subject to such cost-recovery charges related to such services charged by LESSOR in its capacity as a governmental entity, and not as LESSOR, as may be requested from time to time by LESSEE.
55. Performance under Protest. If a party disputes its obligation to pay any amount to be paid to the other party under this Lease, the paying party may make the payment "under protest."

The payment shall then not be regarded as a voluntary payment and the paying party may thereafter institute suit (or other legal action available under this Lease) for recovery of the amount paid. If the paying party obtains substantially the result sought, whether by settlement, dismissal, or judgment, said party may recover such sum or so much thereof as it was not legally required to pay, plus interest thereon at the then legal rate of interest on judgments in California.

56. Drug-free Workplace. To the extent applicable to LESSEE'S occupation, use, and operation of the Premises, LESSEE shall comply with all governmental laws, rules, and regulations related to maintaining a drug-free workplace. LESSEE shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances is prohibited in the Building and on the Site and specifying the actions that will be taken against employees for violations of the prohibition.
57. Disabled Access Compliance. To the extent applicable to LESSEE'S occupation, use, and operation of the Premises, LESSEE shall comply with Title 24 of the California Code of Regulations (i.e., the "Building Code", as defined in Title 24 of the California Health and Safety Code), the Americans with Disabilities Act of 1990 ("ADA"); and any other applicable state and federal laws and regulations enacted protecting the rights of people with disabilities.

58. LESSEE'S Default and LESSOR'S Remedies.

- a. Default. LESSEE shall be in default of this Lease if any of the following occurs:
- i. LESSEE fails to make any payment required under this Lease when due and within five (5) days after notice from LESSOR;
 - ii. LESSEE breaches any of its obligations under this Lease, other than those requiring payment to LESSOR, and fails to correct the breach within thirty (30) days following written notice thereof from LESSOR, or if not correctible within thirty (30) days, fails to commence to correct the breach within thirty (30) days and diligently pursue the correction to completion;
 - iii. LESSEE voluntarily files any petition under any bankruptcy or insolvency act or law, or any involuntary bankruptcy petition is filed against LESSEE under any bankruptcy or insolvency act or law which is not dismissed within ninety (90) days;
 - iv. LESSEE is adjudicated a bankrupt; or
 - v. LESSEE makes a general assignment for the benefit of creditors.

b. Remedies.

- i. Initial Term. During the Initial Term, upon LESSEE'S default, LESSOR may at any time, at its option, terminate this Lease and all rights of LESSEE, and all persons claiming rights through LESSEE, to the Premises or to possession of the Premises. Upon termination, LESSOR may enter and take possession of the Premises, and may recover from LESSEE the sum of:

- (1) the worth at the time of award of any unpaid rent that was due at the time of termination;
- (2) the worth at the time of award of the amount by which the unearned Initial Term Rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could have been reasonably avoided;
- (3) the worth at the time of award of the amount by which the unearned Initial Term Rent for the balance of the term after the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could be reasonably avoided;
- (4) any other amount necessary to compensate LESSOR for all the detriment proximately caused by LESSEE'S breach and default, or that in the ordinary course of things, would be likely to result; and
- (5) all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses i(1) and i(2), above, the "worth at the time of award" is computed by allowing interest at the then legal rate of interest on judgments in California. As used in clause i(3), above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent, Additional Rent, and any other amounts payable by LESSEE under this Lease.

- ii. Extended Term: After the Initial Term, upon LESSEE'S default, LESSOR may at any time, at its option, terminate this Lease and all rights of LESSEE, and all persons claiming rights through LESSEE, to the Premises or to possession of the Premises. Upon termination, LESSOR may enter and take possession of the Premises, and may recover from LESSEE the sum of:

- (1) the worth at the time of award of any unpaid rent that was due at the time of termination;

- (2) the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could have been reasonably avoided;
- (3) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could be reasonably avoided;
- (4) any other amount necessary to compensate LESSOR for all the detriment proximately caused by LESSEE'S breach and default, or that in the ordinary course of things, would be likely to result; and
- (5) all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses ii(1) and ii(2), above, the "worth at the time of award" is computed by allowing interest at the then legal rate of interest on judgments in California. As used in clause ii(3), above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent, Additional Rent, and any other amounts payable by LESSEE under this Lease.

- iii. Lease Termination. Notwithstanding anything to the contrary in this Lease, and except as provided in Lease Section 26 (Termination Prior to Construction), LESSOR may not terminate this Lease during the Initial Term due to LESSEE'S default unless LESSEE has defaulted and failed to cure the default within any applicable cure period and thereafter LESSOR gives a further notice to LESSEE stating LESSOR'S election to terminate this Lease, which shall be prominently titled, "NOTICE OF ELECTION TO TERMINATE LEASE." If LESSEE fails to cure the default on or before the first business day which is at least sixty (60) days after receipt of such notice, then this Lease shall terminate effective on the next business day. LESSOR shall concurrently serve such notice on the holder of any encumbrance against LESSEE'S interest in this Lease of which LESSOR has notice, and such encumbrance holder may (but shall not be obligated to) cure the default within the time provided above. If this Lease is terminated during the Initial Term due to LESSEE'S default, LESSOR shall refund to LESSEE the excess (if any) of the unearned Initial Term Rent over the rent and damages to which LESSOR is entitled, and any judgment against LESSEE shall so provide.
- iv. Reinstatement of Lease. Due to the unique nature of this Lease, involving the prepayment of the Initial Term Rent, and LESSEE'S considerable expenditures for tenant improvements, the parties agree that during the Initial Term Code of Civil

Procedure section 1179 shall be liberally construed to give relief from forfeiture of this Lease.

- c. Default if Leasehold is Encumbered. LESSEE may encumber its interest in this Lease and the Premises as provided in **Exhibit F: Leasehold Encumbrance**, attached hereto. LESSOR shall give the encumbrance holder notice of any default by LESSEE and notice of any exercise of LESSOR'S right to terminate this Lease as provided in said Exhibit F.
- d. Waiver. LESSOR'S waiver of a breach or default by LESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by LESSOR. LESSOR'S delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. LESSOR'S acceptance of any rents shall not be a waiver of any default preceding such payment. LESSEE acknowledges that the Premises are publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by LESSOR to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but LESSOR shall at all times have the legal right to require the cure of any breach or default. LESSOR'S acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.

59. LESSOR'S Default and LESSEE'S Remedies.

- a. Default. LESSOR shall be in default of this Lease if LESSOR breaches any of its obligations under this Lease and fails to correct the breach within thirty (30) days following written notice thereof from LESSEE, or if not correctible within thirty (30) days, fails to commence to correct the breach within thirty (30) days and diligently pursue the correction to completion. The notice required by this subsection shall not be required if LESSEE terminates this Lease pursuant to Lease Section 26 (Termination Prior to Construction) or Lease Section 28 (Completion of Construction).
- b. Remedies. If LESSOR is in default of this Lease, LESSEE may pursue all rights and remedies available at law or in equity. Notwithstanding the preceding sentence, and except as provided in Lease Section 26 (Termination Prior to Construction) and Lease Section 28 (Completion of Construction), LESSEE may not terminate this Lease during the Initial Term due to LESSOR'S breach unless LESSOR has failed to cure a default within any applicable cure period and thereafter LESSEE gives a further notice to LESSOR stating LESSEE'S election to terminate this Lease which shall be prominently titled, "NOTICE OF ELECTION TO TERMINATE LEASE." If LESSOR fails to cure the default on or before the first business day which is at least sixty (60) days after receipt of such notice, then this Lease shall terminate effective on the next business day. LESSEE shall concurrently serve such notice on the holder of any encumbrance against LESSOR'S interest in this Lease, the Building, and/or the Site of which LESSEE has

notice, and such encumbrance holder may (but shall not be obligated to) cure the breach within the time provided above. If this Lease is terminated due to LESSOR'S default, rejection in a bankruptcy proceeding or other reason (except LESSEE'S default), during the Initial Term, LESSOR shall refund to LESSEE all unearned Initial Term Rent as of the date of termination of this Lease, plus any damages or other sums to which LESSEE is entitled.

- c. Right to Perform LESSOR'S Duties. In addition to LESSEE'S other rights and remedies, if LESSOR fails to perform any of its obligations under this Lease within the time specified in this Lease (or, if no time is specified, within a reasonable time), LESSEE may give notice to LESSOR, and if LESSOR fails to perform the obligation within thirty (30) days after receipt of such notice, or if such performance cannot reasonably be completed within thirty (30) days, fails to commence performance within thirty (30) days and diligently pursue such performance to completion, LESSEE may (but shall not be required to) perform the obligation on behalf of LESSOR, in which case LESSOR shall reimburse LESSEE for the costs incurred by LESSEE in such performance within thirty (30) days after receipt of a reasonably detailed billing statement from LESSEE. If LESSOR fails to timely reimburse LESSEE, LESSEE may offset the amount owing from its payment of Additional Rent and rent (if then payable by LESSEE) next coming due under this Lease, or pursue any other available remedy. To the extent any credit to which LESSEE becomes entitled under this section cannot be satisfied within one (1) year, LESSEE may, at its option, require LESSOR to refund unearned Initial Term Rent for the balance of the credit. In the event of an emergency which threatens potential injury to any person or material damage to LESSEE'S property, the foregoing 30-day notice shall not be required and LESSEE shall give such notice as is reasonable under the circumstances.
- d. Waiver. LESSEE'S waiver of a breach or default by LESSOR shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by LESSEE. LESSEE'S delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default.

60. Mediation. Except for a dispute or claim related to the TI Work Letter, any dispute or claim by or between LESSOR and LESSEE relating to this Lease which cannot be settled informally shall first be submitted to mediation under the Commercial Mediation Rules of the American Arbitration Association before resorting to arbitration or litigation. LESSEE and LESSOR shall each pay one half of the cost of such mediation. Notwithstanding the foregoing, nothing in this section shall preclude a party from filing an action, either in arbitration or in the courts, or taking other necessary legal action to protect that party's legal rights (including, without limitation, recording a notice of default or filing an action for a receiver or injunctive relief under the Trust Deed), either prior to or during the mediation process and such action shall not be considered a waiver or breach of the right and obligation to mediate, provided the party filing the action proceeds with mediation as required herein.

No dispute or claim by or between LESSOR and LESSEE relating to this Lease or otherwise shall be submitted to binding arbitration under any circumstance.

61. Court Action. In any court action relating to this Lease, including, without limitation, judicial action regarding the Trust Deed, the parties shall request the court to appoint a referee to hear the case pursuant to Code of Civil Procedure sections 638 *et seq.* The parties shall request that the referee be an active or retired attorney with at least ten (10) years' experience in real property law (including office condominiums, if applicable to the dispute) in Southern California, or a retired California Superior Court judge. Pending resolution of the dispute, the parties shall continue their performances under this Lease to the extent practicable. The parties shall request the court to instruct the referee to make the ruling consistent with the express requirements of this Lease. If the dispute involves LESSEE'S option to purchase and/or the condominium documents under Lease Section 29 (Option to Purchase), or the parties' rights and duties under Lease Section 80 (Cooperative Use of Library), then to the extent not inconsistent with the express requirements of this Lease, the referee shall be requested to consider and apply commonly accepted practices for similar projects in Southern California, such that the performances contemplated by Lease Sections 29 or 80 (as applicable) can proceed on a commercially reasonable basis while adequately protecting the parties' rights thereunder. Considering the parties' need for prompt resolution of the dispute, the parties agree that delays and continuances shall be requested and granted only in exigent circumstances. All discovery shall be completed no later than ten (10) days before the first hearing date established by the referee; provided that the court or referee may extend such period in the event of a party's refusal or failure to provide requested discovery.
62. Waiver. A party's waiver of a breach or default by the other party shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by the waiving party. A party's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. LESSOR'S acceptance of any rents shall not be a waiver of any default preceding such payment. The failure by either party to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but each party shall at all times have the legal right to require the cure of any breach or default. LESSOR'S acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.

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63. Notices. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally, sent by United States mail, postage prepaid, or by reliable overnight courier. Notice shall be effective upon confirmed receipt. The parties addresses for notice are as follows:

THE CITY OF SAN DIEGO
Attn: Real Estate Assets Department
1200 Third Avenue, Suite 1700
M. S. 51A
San Diego, CA 92101

With a copy by First Class Mail to: SAN DIEGO CITY ATTORNEY
Attn: Real Property Section
1200 Third Avenue, Suite 1100
San Diego, California 92101-4106

SAN DIEGO UNIFIED SCHOOL DISTRICT
Attn: Executive Director of Capitol Improvement Bond Program
Facilities Planning & Construction
4860 Ruffner Street
San Diego, CA 92111

With a copy by First Class Mail to: Office of the General Counsel
SAN DIEGO UNIFIED SCHOOL DISTRICT
4100 Normal Street, Room 2148
San Diego, CA 92103

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

64. Partial Invalidity. If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
65. Number and Gender. Words of any gender used in this Lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
66. Captions. The section headings and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Lease. The numbers of the paragraphs and pages of this Lease may not be consecutive. The lack of consecutive numbers shall have no effect on the enforceability of this Lease.
67. Lease Modifications. Any modification, alteration, or amendment of this Lease shall be in writing and signed by all the parties hereto.

68. Time is of the Essence. Time is of the essence to the performance of this Lease.
69. Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive the expiration or earlier termination of this Lease.
70. Governance. This Lease shall be governed, construed, and enforced in accordance with the laws of the State of California.
71. Counterparts. This Lease may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.
72. Successors and Assigns. Except as otherwise provided in this Lease, all of the terms, covenants, and conditions of this Lease shall apply to, benefit, and jointly and severally bind the successors and assigns of the respective parties.
73. Attorney Fees. If any party brings an action or proceeding against another party under this Lease, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation reasonable attorney fees and costs. The "prevailing party" shall be that party who obtains substantially the result sought. If, as a result of an action brought by or against LESSEE relating to LESSEE'S leasehold and/or LESSEE'S operations therein, and LESSOR intervenes therein, becomes a party, or is made a party thereto, LESSEE shall pay all of LESSOR'S costs and expenses thereof, including without limitation reasonable attorney fees and costs. If, as a result of an action brought by or against LESSOR relating to LESSOR'S interest in this Lease, or otherwise in connection with this Lease, and LESSEE intervenes therein, becomes a party, or is made a party thereto, LESSOR shall pay all of LESSEE'S costs and expenses thereof, including without limitation reasonable attorney fees and costs.
74. Estoppel Certificates. Each party shall, within thirty (30) days after receiving a written request from the other party, execute and deliver to the requesting party a written statement, such as an estoppel certificate, stating the status of this Lease, the requesting party's performance hereunder, and such other information, confirmation, or statement concerning this Lease as may be reasonably requested. Such certificate or statement shall be intended to be, and may be, relied upon by purchasers, lenders, subtenants, and assignees, and the party issuing such certificate or statement shall be estopped from denying the truth of the facts stated therein.
75. Business Day Defined. As used in this Lease, "business day" shall mean any day other than a Saturday or Sunday, or a holiday observed by the City of San Diego, the State of California, or the federal government. Unless otherwise provided, all references to "days" in this Lease shall mean calendar days.
76. Consents and Approvals. Except as otherwise provided herein, if a party's consent or approval is required under this Lease, such consent or approval shall not be unreasonably

withheld, conditioned or delayed. A consent or approval by a party in a particular instance shall not be deemed an acknowledgment that the other party is not otherwise in breach or default of this Lease, and no such consent shall be deemed a waiver of any then-existing breach or default, unless specifically stated in writing by the waiving party at the time of such consent or approval. If a consent or approval is required by this Lease to be reasonable, then a party denying such consent or approval shall, upon request, deliver to the other party a written statement of its reasons for such denial.

77. No Affiliation. Nothing contained in this Lease shall be deemed or construed to create a partnership, joint venture, or other affiliation between LESSOR and LESSEE or between LESSOR and any other entity or party, or cause LESSOR to be responsible in any way for the debts or obligations of LESSEE or any other party or entity.

78. Interest on LESSOR'S Obligations. Unless otherwise specified in this Lease, if LESSOR fails to make any payment required under this Lease when due and within five (5) days after notice from LESSOR, the unpaid amount shall thereafter bear interest at the then legal rate of interest on judgments in California from the date such payment was due until paid.

79. Force Majeure. "Force majeure" means a cause beyond the reasonable control of a party, including, without limitation, fire, flood, inclement weather (excluding, however, reasonably anticipated weather delays), strikes, lockouts or other labor or industrial disturbance, civil disturbance, order of any government, court or regulatory body claiming jurisdiction or otherwise, act of public enemy, war, riot, sabotage, blockage, embargo, failure or inability to obtain materials (excluding, however, known or reasonably anticipated shortages in materials), earthquake or other natural disaster, and delays caused by any dispute resolution process; provided, however, that a party's lack of funds or financing shall not be deemed a force majeure.

80. Cooperative Use of Library. LESSOR and LESSEE want to cooperate in the use of the New Central Library as a joint-use library. The City of San Diego Public Library applied for and was awarded a grant pursuant to the California Reading and Literacy Improvement and Public Library Construction and Renovation Bond Act of 2000 (Proposition 14). The State gave higher priority to those applications showing joint use with schools. The primary purpose of a joint-use library is to serve the educational and recreational needs of the students, faculty, and general public using the facility. Library resources will be made available to students to promote academic excellence and recreational reading, promote the positive aspects of the joint-use library and increase community awareness of the library. LESSOR and LESSEE are committed to providing joint-use library services consistent with the awarded Proposition 14 grant.

a. Cooperative Joint-Use Agreement. LESSOR and LESSEE shall work cooperatively to define the roles and responsibilities of each party and enter into a cooperative joint-use agreement as soon as reasonably possible. The parties shall work cooperatively to promptly address and resolve such details and other matters needed to reach agreement as

contemplated by this Lease. If the parties are unable to resolve any issues, they shall be resolved as set forth in Lease Sections 60 (Mediation) and 61 (Court Action).

- b. Board of Library Commissioners. Using best efforts prior to Commencement of Construction, and if not possible, as soon as reasonably practicable but no later than thirty (30) days after Commencement of Construction, the Mayor of San Diego, or his designee, shall request that the City Council adopt an ordinance and the City Council shall have the opportunity to vote on said request, amending San Diego Municipal Code section 26.0301 to provide that during the Initial Term of this Lease and provided the Premises are being used for school or school-related purposes, one (1) member of the Board of Library Commissioners shall be an official representative of the San Diego Unified School District, a public school district of the State of California ("District"), with the same rights as the other members and subject to the other provisions of San Diego Municipal Code section 26.0301. At the times the District's official representative is to be nominated, the District shall provide the Mayor with a list of recommended official representatives in priority order. The Mayor will then vet the nominees and select one in that order to recommend to the Council for confirmation. If such an amendment is either not made no later than thirty (30) days after Commencement of Construction, or if made is thereafter repealed, amended in a manner materially adverse to the District's interests, or held by a court of competent jurisdiction to be invalid, LESSOR shall be in breach of this Lease.

81. Entire Understanding. This Lease contains the entire understanding of the parties and supersedes any and all prior agreements regarding the subject matter of this Lease. There is no other written or oral understanding between the parties with respect to this Lease or the Premises. Each party has relied solely on advice from its own attorneys and experts in entering into this Lease. No other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Lease. No modification, amendment, or alteration of this Lease shall be valid unless it is in writing and signed by all parties.

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82. Authority. Each individual executing this Lease on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Lease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Lease is binding upon such person or entity in accordance with its terms.

IN WITNESS WHEREOF, this Lease is executed to be effective as of the Effective Date:

Date: 4/28/2010

SAN DIEGO UNIFIED SCHOOL DISTRICT, a public school district of the State of California

BY: Arthur S. Hanby, Jr.
Name: Arthur S. Hanby, Jr.
Title: Strategic Sourcing and Contracts Officer

Date: 4/28/10

THE CITY OF SAN DIEGO, a California municipal corporation

BY: James F. Barwick
Name: James F. Barwick, CCIM
Title: Director, Real Estate Assets

Approved as to Form and Legality:

JAN I. GOLDSMITH, City Attorney

By: Brock Ladewig
Name: Brock Ladewig
Title: Deputy City Attorney

MARK BRESEE, General Counsel

By: Sandra T.M. Chong 4.28.10
Name: Sandra T.M. Chong
Title: Assistant General Counsel

SANDRA T.M. CHONG, Assistant General Counsel
San Diego Unified School District

Exhibit A: Premises
Exhibit B: TI Work Letter
Exhibit C: Trust Deed
Exhibit D: Memorandum of Lease
Exhibit E: Rules & Regulations
Exhibit F: Leasehold Encumbrance

Approved in public meeting of the Board of Education
of the San Diego Unified School District on 4/27/10
Cheryl Ward
Cheryl Ward, Board Action Officer, Board of Education

Exhibit A: Premises

The "Premises" shall be comprised of the space encompassed by the sixth (6th) and seventh (7th) floors (approximately 71,800 rentable square feet) of the "New San Diego Central Library" to be constructed on the real property owned by the City of San Diego and bounded by 11th Street, Park Boulevard, J Street, and K Street in San Diego, California (APN 535-362-16), and the elevator lobby for the elevators serving the Premises, all as shown in those certain plans dated January 28, 2010, as shown in the contract documents prepared by the architectural joint venture of ROB WELLINGTON QUIGLEY & TUCKER SADLER ARCHITECTS.

Exhibit B: Tenant Improvement Work Letter

RECITALS

- A. This Tenant Improvement Work Letter ("TI Work Letter") relates to and is a part of that certain CITY OF SAN DIEGO NEW CENTRAL LIBRARY LEASE AGREEMENT (the "Lease") entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation, as lessor ("LESSOR"), and SAN DIEGO UNIFIED SCHOOL DISTRICT, a public school district of the State of California, as lessee ("LESSEE"), and to which this TI Work Letter is attached.
- B. The purpose of this TI Work Letter is to set forth how LESSEE'S Tenant Improvements (as defined below) are to be constructed.
- C. The Tenant Improvements shall be constructed by LESSEE at LESSEE'S sole cost and expense and pursuant to this TI Work Letter. It is the intent of the parties that the Tenant Improvements be constructed prior to or concurrently with LESSOR'S interior improvements to avoid any delay in having an occupancy permit issued for the entire Building and/or the Premises.

TERMS AND CONDITIONS

2. **Definitions.** Except as defined in this TI Work Letter to the contrary, each capitalized term in this TI Work Letter shall have the same meaning as set forth in the main body of the Lease.
3. **Controlling Terms and Conditions.** Any dispute or inconsistency between the terms and conditions of this TI Work Letter and the main body of the Lease shall be resolved in favor of the terms and conditions set forth in the main body of the Lease, unless expressly stated herein.
4. **Entry by LESSEE.** LESSEE shall not enter upon and occupy the Premises prior to Completion of Construction; provided, however, that from time to time LESSEE and its agents may enter the Premises and Common Areas if accompanied by a LESSOR representative to inspect and determine the progress of construction, subject to obtaining LESSOR'S prior consent and complying with LESSOR'S safety requirements. Notwithstanding the foregoing, if any of LESSOR'S construction work requires covering walls, partitions or other areas, and if such covering would have to be removed to allow LESSEE to perform wiring, ducting, and/or cabling for the Tenant Improvements, then LESSOR shall give reasonable advance notice to LESSEE. Upon LESSOR'S prior written consent, which may not be unreasonably withheld, LESSEE'S construction personnel may then enter the Premises and Common Areas, if accompanied by a LESSOR representative, for the purpose of installing such wiring, ducting, and/or cabling before the covering occurs,

provided LESSEE has coordinated the installation with LESSOR'S construction manager at risk ("CM@Risk"), and such access does not unreasonably interfere with or delay LESSOR'S construction work, or result in added cost to LESSOR. LESSEE shall be responsible for any damage to LESSOR'S work or the Building caused by such access by LESSEE, and shall maintain the insurance required under the Lease during each such access period. Upon Completion of Construction and subject to the terms and conditions of this TI Work Letter, LESSEE and its officers, employees, agents, and contractors may enter upon and occupy the Premises solely for the purpose of constructing the Tenant Improvements.

5. LESSOR'S Consent & Approval. LESSOR'S consent and approval as required by this TI Work Letter shall be separate and distinct from any permitting review and approval required by applicable building codes and other legal requirements. LESSEE acknowledges and agrees that LESSOR'S consent and approval under this TI Work Letter is solely to protect LESSOR'S interest in the Building and the Premises. Whenever required under this TI Work Letter, LESSOR'S consent or approval shall mean the written consent or approval of the Mayor of San Diego, or his/her designee ("Mayor"), unless otherwise expressly provided. LESSOR'S discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.
6. Governmental Approvals. By entering into this TI Work Letter, neither LESSOR nor LESSOR'S City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to LESSEE'S occupancy, use, development, maintenance, or restoration of the Premises. Discretionary action includes without limitation re-zonings, variances, environmental clearances, and all other required governmental approvals.
7. Building Plans and Requirements. From time to time during LESSOR'S construction of the Building, LESSOR shall provide LESSEE, at LESSEE'S expense, copies of the most recent plans (or portions designated by LESSEE), for the construction of the Building in "AutoCAD" format. Promptly after the Completion of Construction, LESSOR shall deliver to LESSEE, at LESSOR'S expense, a copy of the "as built" plans (in "AutoCAD" format) for the Building. As more particularly provided in the Lease, LESSEE shall incorporate the U.S. Green Building Council, Leadership in Energy and Environmental Design (LEED) 2.0 Rating System "Silver" Level Certification for the Tenant Improvements.
8. Contractor and TI Professionals. LESSEE'S architectural, engineering, and design professionals (the "TI Professionals") shall be subject to LESSOR'S prior written approval, which may not be unreasonably withheld or delayed. LESSEE'S general contractor shall be selected by LESSEE pursuant to competitive bidding as required by law.
9. Modifications to Building Core and Shell. LESSOR shall make the modifications to the Building's core and shell to accommodate the Tenant Improvements as specified in the Building's proposed plans dated January 28, 2010, as shown in the contract documents prepared by the architectural joint venture of ROB WELLINGTON QUIGLEY & TUCKER

SADLER ARCHITECTS. LESSEE shall pay for the cost of such modifications as provided below. LESSEE may propose additional modifications to the Building's core and shell to accommodate the Tenant Improvements, subject to LESSOR'S approval within fourteen (14) days after receipt, which approval may not be unreasonably withheld unless the modifications would materially delay the Building construction work, materially increase LESSOR'S construction costs, adversely affect the functioning of the Building systems or the appearance of the Building, or have any other material adverse effect. If LESSOR approves such modifications, LESSOR shall, as soon as reasonably practicable, cause its architect to prepare reasonably detailed plans for the modifications and shall cause its CM@Risk to give a firm cost for the modifications. LESSEE shall approve or disapprove the architectural plans and the contractor's firm cost within fourteen (14) days after receipt thereof. If LESSEE approves the plans and cost, LESSEE shall pay to LESSOR the actual cost thereof, including without limitation the cost of the architectural plans and the CM@Risk's cost estimation for the modifications, and LESSOR'S reasonable personnel costs related thereto, after which LESSOR shall commence work on the modifications. If LESSEE disapproves the plans and cost, LESSEE shall nevertheless reimburse LESSOR for the reasonable, out-of-pocket expenses actually incurred by LESSOR in revising the plans and obtaining the cost, including LESSOR'S reasonable personnel costs related thereto.

10. LESSEE'S Plans. Before commencing construction of the Tenant Improvements, LESSEE shall obtain LESSOR'S approval of LESSEE'S plans and drawings as provided in this section.
 - a. Space Plan. LESSEE shall cause its architect or a professional space planner to deliver a space plan (the "Space Plan") to LESSOR. The Space Plan shall consist of drawings which: (i) label the rooms within the Premises (e.g., "classroom," "office," "conference room," etc.); (ii) locate partitions, doors, and openings; (iii) designate areas in which noise levels may be higher than in typical classrooms. LESSOR shall have twenty-one (21) days after receipt of the Space Plan to approve or disapprove the same as provided in subparagraph "e," Approval/Disapproval of Plans, below.
 - b. 60% Working Drawings. After LESSOR'S approval of the Space Plan, LESSEE shall cause its architect to deliver to LESSOR "sixty-percent working drawings" (the "60% Working Drawings") generally consistent with the approved Space Plan. The 60% Working Drawings shall: (i) be compatible with the Building's design, construction, and equipment; (ii) comply with all applicable laws; (iii) be capable of logical measurement and construction; (iv) contain all information (other than engineering drawings and specifications) as may be required for the construction of the Tenant Improvements; and (v) contain all partition locations, plumbing locations, air conditioning system and duct work, special air conditioning requirements, reflected ceiling plans, finish plans, office and school equipment locations, and special security systems. LESSOR shall have twenty-one (21) days after receipt of the Working Drawings to approve or disapprove the same as provided in subparagraph "e," Approval/Disapproval of Plans, below.

- c. 90% Working Drawings. After the 60% Working Drawings are approved by LESSOR, LESSEE shall submit to LESSOR for its review and approval "ninety-percent working drawings" (the "90% Working Drawings") prepared by the TI Professionals, showing complete engineering plans, including without limitation mechanical, electrical, plumbing, telecommunication, and computer cabling plans. LESSOR shall have twenty-one (21) days after receipt of the 90% Working Drawings to approve or disapprove the same as provided in subparagraph "e," Approval/Disapproval of Plans, below.
 - d. Final Plans. After the 90% Working Drawings are approved by LESSOR, LESSEE shall submit to LESSOR LESSEE'S final plans (the "Final Plans"). LESSOR shall have thirty (30) days after receipt of the Final Plans to approve or disapprove the same as provided in subparagraph "e," Approval/Disapproval of Plans, below.
 - e. Approval/Disapproval of Plans. For the purposes of this subparagraph, the Space Plan, 60% Working Drawings, 90% Working Drawings, and Final Plans are individually and collectively referred to as "LESSEE'S Plans." If LESSOR approves LESSEE'S Plans, LESSOR shall so notify LESSEE. If LESSOR disapproves LESSEE'S Plans, then LESSOR shall by written notice to LESSEE specifically: (a) approve those portions of LESSEE'S Plans which are acceptable; and (b) disapprove those portions of LESSEE'S Plans which are not acceptable, and state with reasonable specificity the reasons for such disapproval. LESSEE shall thereafter modify LESSEE'S Plans to correct the disapproved portions and resubmit them for approval in accordance with the above provisions. LESSOR'S approval of LESSEE'S Plans shall not be unreasonably withheld.
 - f. Building Permits. LESSEE shall cause its architect to obtain the building permits (and any approvals and permits required from the local health department and any other governmental agencies) required for the construction of the Tenant Improvements from the City of San Diego (in its governmental capacity) as soon as reasonably possible. If the City rejects the Final Plans or requires changes thereto, LESSEE, in consultation with LESSOR, shall cause its architect to promptly make all necessary changes required by the City. LESSOR and LESSEE shall reasonably cooperate to minimize any adverse affect which City-required changes may have on LESSEE'S use of the Premises.
 - g. Changes to Final Plans. LESSEE shall not make any material changes to the Final Plans without LESSOR'S prior written approval. LESSEE'S request for such changes shall include reasonably detailed plans. LESSOR shall have fourteen (14) days after receipt of the change request to approve or disapprove the same as provided in subparagraph "e," Approval/Disapproval of Plans, above.
 - h. Security System. LESSEE may include a separate security system for the Premises, subject to LESSOR'S prior written approval thereof, which shall not be unreasonably withheld.
11. As-Built Drawings. Upon completion of the Tenant Improvements, LESSEE shall deliver to

LESSOR "as built" drawings (in "AutoCAD" format), a certificate of substantial completion from LESSEE'S architect, full and final lien waivers (if applicable), and evidence of all governmental approvals obtained.

12. Tenant Improvements. The term "Tenant Improvements" shall mean all improvements shown in the Final Plans, including without limitation LESSEE'S trade fixtures.
13. TI Work. Before commencing construction of any Tenant Improvements, LESSEE shall deliver to LESSOR, and obtain LESSOR'S approval of: (a) evidence of contractors' and subcontractors' insurance; and (b) any required governmental permits. LESSEE shall construct all Tenant Improvements: (x) in a good and workmanlike manner using materials of a quality reasonably approved by LESSOR; (y) in compliance with approved plans and specifications, and all applicable laws; and (z) in a manner that does not impair the Building. If, as a result of any Tenant Improvements, LESSOR becomes required under law to perform any inspection, give any notice, or cause such Tenant Improvements to be performed in any particular manner, LESSEE shall comply with such requirement and promptly provide LESSOR with reasonable documentation of such compliance. LESSOR'S approval of LESSEE'S plans and specifications shall not relieve LESSEE from any obligation under this section.
14. TI Schedule. LESSEE and LESSOR shall reasonably cooperate to ensure that the Tenant Improvements are constructed concurrently with LESSOR'S interior improvements to avoid any delay in obtaining a certificate of occupancy for the entire Building (including the Premises). LESSEE and LESSOR shall ensure that their respective contractors coordinate all tenant improvement construction schedules to reduce any disputes and assure LESSEE'S access to the Premises when required to meet all construction completion deadlines.
15. LESSEE'S Costs. LESSEE shall pay all costs, fees, and expenses related to constructing the Tenant Improvements, including without limitation design, permits, utility connections, inspections, commissioning, cleaning, and project closeout. LESSEE shall pay all increases to LESSOR'S costs required to accommodate the construction of the Tenant Improvements, including without limitation service elevator, hoisting, temporary power, security, cleaning, and trash disposal. LESSEE shall not be required to pay any management fee to LESSOR in connection with the Tenant Improvements, or for any of LESSOR'S insurance, bonds, or inspections (other than such building inspection and other fees as the City of San Diego would normally charge in its governmental capacity), or other costs of LESSOR'S construction work.
16. Utilities. LESSEE shall order, obtain, and pay for all utilities and service and installation charges in connection with the Tenant Improvements.
17. Maintenance of the Premises. LESSEE shall, at LESSEE'S sole cost and expense and to LESSOR'S reasonable satisfaction, maintain the Premises in good order and repair and in a safe, healthy and sanitary condition at all times while the Tenant Improvements are being

installed, subject to normal and ordinary wear and tear resulting from LESSEE'S use of the Premises. LESSOR shall at no time be required to make any improvements or repairs to the Premises unless LESSOR, its agents, employees, or contractors cause the necessity for the repairs. LESSEE shall keep the Premises free and clear of rubbish, debris, and litter at all times in accordance with good construction practices.

18. Inspection. LESSOR may at all times upon reasonable prior notice and subject to compliance with LESSEE'S safety requirements enter and inspect the Premises.

[END WORK LETTER]

Exhibit C: Trust Deed

RECORDING REQUESTED BY

AND WHEN RECORDED RETURN TO:

APN: _____ Order #: _____ Escrow #: _____

DEED OF TRUST WITH ASSIGNMENT OF RENTS

THIS DEED OF TRUST, made _____, between THE CITY OF SAN DIEGO, a California municipal corporation, herein called TRUSTOR, whose address is _____, FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, herein called TRUSTEE, and SAN DIEGO UNIFIED SCHOOL DISTRICT, a public school district of the State of California, herein called BENEFICIARY,

WITNESSETH: That Trustor grants to Trustee in trust, with Power of Sale, that property in the City of San Diego, County of San Diego, State of California, described as:

together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing: (1) such obligations as Trustor (in its capacity as LESSOR) may have under that certain City of San Diego New Central Library Lease Agreement dated as of _____, (the "Lease") to pay certain sums (including, without limitation, damages and unearned "Initial Term Rent") to Beneficiary (in its capacity as LESSEE) in the event the Lease is terminated for any reason before the expiration of the Initial Term of the Lease. The foregoing is herein referred to as the "Secured Obligation"; (2) the performance of each agreement of Trustor incorporated by reference or contained herein; and (3)

payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust. Capitalized terms not defined in this Deed of Trust shall have the meanings given in the Lease. Notwithstanding anything in this Deed of Trust to the contrary, the only obligation of Trustor as LESSOR under the Lease which is secured by this Deed of Trust is the Secured Obligation; this Deed of Trust does not secure any of Trustor's other obligations under the Lease, as to which other obligations Beneficiary shall have the remedies provided for in the Lease or allowed by law.

A. To protect the security of this Deed of Trust, Trustor agrees:

- 1) To keep said property in good condition and repair, not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon, not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.
- 2) To provide, maintain and deliver to Beneficiary casualty insurance in an amount equal to the full replacement value of the improvements on the property (not including footings and foundations) and otherwise reasonably satisfactory to, and with loss payable to, Beneficiary. The amount collected under any fire or other insurance policy may be held by Beneficiary as additional security for the Secured Obligation and Trustor's other obligations under this Deed of Trust, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor for the repair and reconstruction of the property. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
- 3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.
- 4) To pay; at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and

without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the at the legal rate of interest on judgments in California in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed:

1) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require payment when due of all other sums so secured or to declare default for failure so to pay.

3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easements thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.

4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto".

5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents,

issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and hold and/or apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6) That upon default by Trustor in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including costs of evidence of title in connection with sale, Trustee shall apply to proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the legal rate of interest on judgments in California in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary

and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

9) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

10) Borrower requests that copies of the notice of default and notice of sale be sent to Borrower's address as shown above.

11) Any judicial action, including without limitation foreclosure, regarding this Deed of Trust shall be handled by judicial referee pursuant to California Code of Civil Procedure Sections 638 et seq.

Lender requests that copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust be sent to Lender's address, as set forth on page one of this Deed of Trust, as provided by Section 2924(b) of the California Civil Code.

If the Trustor/Grantor shall sell, convey or alienate said property, or any part thereof, or any interest therein, or shall be divested of his title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of the Beneficiary being first had and obtained, then LESSOR shall, at Beneficiary's option, be in default under the Lease.

Trustor

Trustor

Trustor

Trustor

Dated: _____

State of California)
) ss.
County of San Diego)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

DO NOT RECORD

REQUEST FOR FULL RECONVEYANCE

TO FIRST AMERICAN TITLE INSURANCE COMPANY, TRUSTEE:

The undersigned is the legal owner and holder of the note or notes, and of all other indebtedness secured by the foregoing Deed of Trust. Said note or notes, together with all other indebtedness secured by said Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note or notes above mentioned, and all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated _____

Please mail Deed of Trust,

Note and Reconveyance to _____

DO NOT lose or destroy this Deed of Trust OR THE NOTE which it secures. BOTH must be delivered to the TRUSTEE for cancellation before reconveyance will be made.

DEED OF TRUST
WITH POWER OF SALE

First American
Title Insurance
Company
TRUSTEE

Exhibit D: Memorandum of Lease

*Recording Requested By and
When Recorded Return To:*

APN#

Space above for Recorder's Use

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is effective as of _____, 20____ (the Effective Date”).

1. THE CITY OF SAN DIEGO, a California municipal corporation (“Lessor”), with offices at 1200 Third Avenue, M.S. 51A, San Diego, CA 92101-4155, hereby leases to the SAN DIEGO UNIFIED SCHOOL DISTRICT, a public school district of the State of California (“LESSEE”), with offices at _____, the premises described in that certain CITY OF SAN DIEGO NEW CENTRAL LIBRARY LEASE AGREEMENT (“Lease”) dated _____, 20____, for the purpose of developing and operating a public charter middle school or a public charter high school as set forth in the Lease.
2. The term of the Lease is forty (40) years, commencing on the Occupancy Date as defined in the Lease. The effective date of the Lease is _____, 2010.
3. The premises will be located in a building to be constructed by Lessor on the land described in attached Exhibit “A.”
4. Lessee is granted an option to purchase the premises as provided in the Lease.
5. Lessee is given the right to extend the term of the Lease as provided in the Lease.
6. The terms of the Lease shall prevail over any conflicting terms in this Memorandum.

IN WITNESS WHEREOF, this Memorandum of Lease is executed to be effective as of the Effective Date:

LESSOR:

THE CITY OF SAN DIEGO, a
California municipal corporation

BY: _____
Name: _____
Title: _____

Approved as to Form and Legality:

JAN I. GOLDSMITH, City Attorney

By: _____
Name: _____
Title: _____

LESSEE:

SAN DIEGO UNIFIED SCHOOL
DISTRICT, a public school district of the
State of California

BY: _____
Name: _____
Title: _____

_____, General Counsel

By: _____
Name: _____
Title: _____

Exhibit E: Rules & Regulations

1. The sidewalks, entrances, halls, corridors, elevators, and stairways and all other avenues of ingress and egress to and from the Building and Site shall not be obstructed or used as a waiting or lounging place by any tenant or any tenant's agent, servant, employee, invitee, licensee or visitor. Fire and security doors shall not be illegally propped or kept open at any time.
2. In case of invasion, riot, public excitement or other commotion, LESSOR may prevent access to the Building during the continuance of same. LESSOR shall in no case be liable for damages for the reasonable admission or exclusion of any person to or from the Building. LESSOR may exclude or expel from the Building any person who, in LESSOR'S judgment, is intoxicated or under the influence of liquor or drugs, or who is in violation of any of these Rules & Regulations.
3. LESSEE shall permit LESSOR'S employees (or LESSOR'S agents' employees) to take care of and clean the Building, exclusive of the Premises. LESSEE shall not cause any unnecessary labor by reason of LESSEE'S carelessness or indifference in the preservation of good order and cleanliness of the Premises and the Building. If LESSEE must dispose of crates, boxes, etc., which will not fit into provided waste receptacles, it will be LESSEE'S responsibility to dispose of same. In no event shall LESSEE set such items in the public hallways or other Common Areas of the Building for disposal. LESSEE shall store all of its trash and garbage within the Premises or in facilities provided by LESSOR for that purpose. All garbage and refuse disposal shall be made in accordance with reasonable directions issued from time to time by LESSOR.
4. LESSOR may reasonably prescribe the date, time, method and conditions that any personal property, equipment, trade fixtures, merchandise and other similar items shall be delivered to or removed from the Building. No iron safe or other heavy or bulky object shall be delivered to or removed from the Building, except by experienced movers or riggers approved in writing in advance by LESSOR. LESSEE shall pay LESSOR immediately upon demand for all damage done to the Building by the delivery or removal of such items, or by reason of their presence in the Building. Unless equipped with rubber tires, no hand trucks shall be used in the Common Areas, either by LESSEE, jobbers, or others in the delivery or receipt of merchandise. Any Building freight elevator shall be available for use by all tenants in the Building. LESSEE'S initial move-in and subsequent deliveries of bulky items, such as furniture, safes and similar items shall be subject to such reasonable scheduling as LESSOR, in its discretion, shall deem appropriate. Unless otherwise agreed to in writing by LESSOR, deliveries during normal office hours shall be limited to normal office supplies and other small items. No deliveries shall be made which impede or interfere with other tenants or the operations of the Building.
5. The restrooms, toilets, urinals, wash bowls, drains and water apparatus shall not be used for any purpose other than that for which they were constructed or installed, and no sweepings,

rubbish, chemicals, or other unsuitable substances shall be thrown or placed therein. LESSEE shall promptly repair any breakage, stoppage or change to such facilities which are located within the Premises. LESSEE shall pay LESSOR immediately upon demand all costs related to any breakage, stoppage or damage resulting from violation of this rule by LESSEE or any of LESSEE'S agents, employees, invitees, licensees or visitors with respect to facilities not within the Premises.

6. No sign, name, placard, advertisement or notice visible from the exterior of the Premises, shall be inscribed, painted or affixed by LESSEE on any part of the Building without the prior written approval of LESSOR. All signs or letterings on doors, or otherwise, must be approved by LESSOR and shall be inscribed, painted or affixed by a person approved by LESSOR at LESSEE'S sole cost and expense.
7. No signaling, telegraphic, telephonic, or wireless telecommunications instruments or devices, burglar alarm systems or similar service, or other wire, instruments or devices, shall be installed in the Premises without LESSOR'S prior written approval, which may not be unreasonably withheld. Such installations, and the boring or cutting for wires, shall be made at LESSEE'S sole cost and expense and under the control and direction of LESSOR. If LESSEE makes any such installations, LESSOR may require: (a) the installation and use of such electrical protecting devices that prevent the transmission of excessive currents of electricity into or through the Building; (b) the changing of wires and of their installation and arrangement underground or otherwise as LESSOR may reasonably direct; and (c) compliance on the part of all using or seeking access to such wires with such reasonable rules as LESSOR may establish relating thereto. All such wires used by LESSEE must be clearly tagged at the distribution boards and junction boxes and elsewhere in the Building, with the number of the Premises to which said wires lead, the purpose for which said wires are used, and the name of the company operating same.
8. Unless and until LESSEE obtains LESSOR'S prior written consent, LESSEE, its agents, servants, or employees, shall not:
 - (a) go on the roof of the Building;
 - (b) use any additional method of heating or air conditioning the Premises;
 - (c) sweep or throw any dirt or other substance from the Premises into any of the halls, corridors, elevators, or stairways of the Building;
 - (d) bring in or keep in or about the Premises any vehicles or animals of any kind;
 - (e) install any radio or television antennae or any other device or item on the roof, exterior walls, windows or window sills of the Building;
 - (f) place objects against glass partitions, doors or windows which would be unsightly from the interior or exterior of the Building;
 - (g) use the Premises for any manufacturing, storage or sale of merchandise or property of any kind;
 - (h) cause or permit unusual or objectionable odor to be produced or permeate from the Premises, including, without limitation, duplicating or printing equipment fumes; or

- (i) permit operation of any musical or sound producing instrument or device which may be heard outside the Premises or Building, or which may emit electrical waves which will impair radio or television broadcast or reception from or into the Building.
9. LESSEE shall not store or use any hazardous substance in the Premises without LESSOR'S prior written consent, including for illustration purposes: (a) ether, naphtha, phosphorous, benzene, gasoline, petroleum, crude or refined earth or coal oils, flashlight powder, kerosene or camphene; (b) any flammable, combustible, explosive or illuminating fluid, gas or material of any kind; or (c) any fluid, gas or material of any kind having an offensive odor, without LESSOR'S prior written consent.
10. No canvassing, soliciting, distribution of hand bills or other written material, or peddling shall be permitted in the Building, and LESSEE shall cooperate with LESSOR in preventing and eliminating same.
11. LESSEE shall promptly notify LESSOR of all damage to or defects in air conditioning equipment, plumbing, electrical facilities or any part or appurtenance of the Building which affects the Premises.
12. If the Premises becomes infested with pests or vermin, LESSEE, at its sole cost and expense, shall cause such pests or vermin to be exterminated from time to time to the satisfaction of LESSOR, and shall employ such exterminators as shall be approved by LESSOR.
13. No curtains, blinds, shades, screens, awnings, or other coverings, or projections of any nature shall be attached to or hung in, or used in connection with any exterior door, window, or wall of the Building without LESSOR'S prior written consent.
14. LESSEE shall not place a load upon any floor of the Premises which exceeds the load per square foot which such floor was designed to carry and which is allowed by law. Heavy objects shall stand on such platform as reasonably determined by LESSOR to be necessary to properly distribute the weight, which platform shall be provided at LESSEE'S sole expense. Business machines and mechanical equipment belonging to LESSEE, which cause noise or vibration that may be transmitted to the structure of the Building or to any space therein to such a degree as to be objectionable to LESSOR or to any tenant in the Building, shall be placed and maintained by LESSEE, at LESSEE'S sole expense, on vibration eliminators or other devices sufficient to eliminate noise or vibration. LESSEE shall pay LESSOR immediately upon demand all costs of damage done to the Building by maintaining or moving such equipment or other property.
15. With respect to any utilities used by LESSEE which are not separately metered or sub-metered to the Premises, LESSEE shall not waste electricity, water or air conditioning, shall cooperate with LESSOR to assure the most efficient operation of the Building's heating and air conditioning, shall comply with applicable governmental energy saving rules, laws or

regulations of which LESSEE has actual notice, and shall refrain from attempting to adjust controls.

16. LESSEE shall be responsible for the acts and omissions of its associates, employees, agents and any other person entering the Building or the Premises under the express or implied invitation of LESSEE. LESSEE shall cooperate with LESSOR to assure compliance by all such parties with these Rules & Regulations.
17. LESSOR may make reasonable amendments, modifications and additions to these Rules & Regulations, and make additional reasonable Rules & Regulations, as in LESSOR'S sole judgment may be needed from time to time for the safety, care, cleanliness and preservation or good order of the Building; provided, however, no such amendment, modification, or addition may unreasonably adversely affect LESSEE'S rights or obligations under this Lease.
18. Employees of LESSOR shall not perform any work or do anything outside of their regular duties unless under special instructions from LESSOR. No employee is authorized to admit any person (LESSEE or otherwise) to any leased premises without specific instructions from LESSOR.
19. LESSOR may, without notice and without liability to LESSEE, change the name and the street address of the Building of which the Premises are a part. LESSOR shall pay for all reasonable costs incurred by LESSEE as a result of changing the street address of the Building, unless the change is requested by an authorized governmental agency.
20. LESSOR may waive any one or more of these Rules & Regulations for the benefit of any tenant, provided such waiver is reasonable under the circumstances and is not unfairly discriminatory. No such waiver by LESSOR shall be construed as a waiver of such Rules & Regulations in favor of LESSEE or any other tenant, or prevent LESSOR from thereafter enforcing any such Rules & Regulations against any or all of the tenants of the Building.
21. LESSEE assumes all responsibility for protecting the Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Premises secured. LESSEE shall comply with all safety and fire protection evacuation procedures and regulations established by LESSOR or any governmental agency.
22. As used in these Rules & Regulations, "LESSEE" includes LESSEE and each of LESSEE'S subtenants, licensees, guests, invitees, and all persons which LESSEE controls or otherwise directs.

Exhibit F: Leasehold Encumbrance

1. Encumbering the Leasehold Estate with a Deed of Trust. The grant of a deed of trust or modification of a deed of trust or similar encumbrance (any such encumbrance is collectively referred to herein as a "Trust Deed") by LESSEE which is secured by LESSEE'S interest in this Lease and/or the Premises shall be subject to LESSOR'S prior written approval, which shall not be unreasonably withheld, and to the terms and conditions set forth below. The holder of a Trust Deed which has been approved by LESSOR is herein called a "Beneficiary."
 - a. No Trust Deed granted by LESSEE shall encumber LESSOR'S interest in this Lease, the Building or the Site.
 - b. Immediately following the recordation of any Trust Deed affecting LESSEE'S leasehold estate under this Lease, LESSEE, at LESSEE'S expense, shall cause to be recorded in the Office of the Recorder, San Diego County, California, a written request for delivery to LESSOR of a copy of any notice of default and of any notice of sale under such Trust Deed, as provided by the statutes of the State of California pertaining thereto. Inclusion in the body of the recorded Trust Deed itself of a request for notice having the effect described above shall constitute compliance with this provision.
 - c. If any payments required to be made under the provisions of the Trust Deed shall not be performed and constitute a default under the terms of the Trust Deed, LESSOR may cure said default within thirty (30) days after LESSEE'S time to cure has expired, unless (a) LESSEE shall cure such default within such cure period, or (b) LESSEE obtains from the Beneficiary a written extension of time in which to cure such default together with a separate written extension of time granting LESSOR a reasonable additional time to cure said default if said default is not cured within said extended time and copies thereof are delivered to LESSOR. If LESSOR shall elect to cure such default, LESSEE shall pay the cost thereof to LESSOR together with interest thereon at eight percent (8%) per annum. Neither the LESSOR'S right to cure any such default nor the exercise of such right by the LESSOR shall constitute or be construed to constitute an assumption by the LESSOR of the LESSEE'S liability under the Trust Deed or related financing documents.
 - d. The foreclosure of any Trust Deed or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the leasehold mortgage, or any conveyance of the leasehold estate hereunder from LESSEE to any Beneficiary or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of LESSOR or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance, LESSOR shall recognize in writing the purchaser or other transferee referred to in the preceding sentence in connection therewith as the LESSEE hereunder.

- e. LESSOR agrees to approve or disapprove a proposed Trust Deed (or modification thereof, if applicable) within thirty (30) days after receipt of the Trust Deed and other loan documentation. In the event LESSOR disapproves the transaction, LESSOR shall concurrently provide its objections in writing to LESSEE, indicating the reason for its disapproval.
2. Curable and Noncurable Defaults under the Lease; LESSOR'S Covenant of Forbearance. If LESSOR has consented to a Trust Deed encumbering LESSEE'S leasehold, then concurrent with giving any notice of default or notice of Lease termination to LESSEE, LESSOR shall give such notice to the Beneficiary and, notwithstanding anything to the contrary in this Lease, LESSOR shall not exercise its remedies under this Lease for LESSEE'S default during the periods specified herein so long as the Beneficiary of such Trust Deed takes the following actions:
- a. If a curable breach of the Lease occurs, a Beneficiary shall have the right to begin foreclosure proceedings and to obtain possession of the Premises, so long as Beneficiary complies with the conditions set forth below:
 - i. Cures LESSEE'S default within the same time period allotted to LESSEE for cure of such default, plus an additional thirty (30) days;
 - ii. Notifies LESSOR, within ten (10) days following receipt of LESSOR'S notice of LESSEE'S default, of its intention to effect this remedy;
 - iii. Institutes prompt steps or legal proceedings to foreclose on or recover possession of the leasehold, and thereafter prosecutes the remedy or legal proceedings to completion with due diligence and continuity (and Beneficiary's time to act shall be reasonably extended to obtain relief from any legal stay of such remedies or proceedings); and
 - iv. Keeps and performs, during the period until the leasehold shall be either (i) sold upon foreclosure pursuant to the Trust Deed, or (ii) released or reconveyed pursuant to the Trust Deed (such period being referred to hereinafter as the "Foreclosure Period"), all of the covenants and conditions of this Lease, including, without limitation, payment of all rent, taxes, assessments, utility charges and insurance premiums required by this Lease to be paid by LESSEE and which become due during the Foreclosure Period.
 - b. If a noncurable breach of the Lease occurs, a Beneficiary shall have the right to begin foreclosure proceedings and to obtain possession of the Premises, so long as Beneficiary complies with the conditions set forth below:
 - i. Notifies LESSOR, within twenty (20) days after receipt of LESSOR'S notice of LESSEE'S default, of its intention to effect this remedy;

- ii. Institutes prompt steps or legal proceedings to foreclose on or recover possession of the leasehold, and thereafter prosecutes the remedy or legal proceedings to completion with due diligence and continuity (and Beneficiary's time to act shall be reasonably extended to obtain relief from any legal stay of such remedies or proceedings); and
 - iii. Keeps and performs, during the Foreclosure Period, all of the covenants and conditions of this Lease requiring the payment of money, including, without limitation, payment of all rent, taxes, assessments, utility charges and insurance premiums required by this Lease to be paid by LESSEE and which become due during the Foreclosure Period.
- c. If LESSEE fails to cure any curable default within the time period allowed for such cure in this Lease, no cure by a Beneficiary of any such default in the manner allowed hereunder shall reinstate LESSEE in good standing under this Lease. If, following expiration of the cure period applicable to LESSEE, the Beneficiary shall fail or refuse to comply with any or all of the conditions herein applicable to LESSEE'S default, including failing to expeditiously obtain title to LESSEE'S leasehold, or in the case of a non-curable default Beneficiary fails to take the action required hereunder to assume responsibility for the Lease, then LESSOR shall be released from its covenant of forbearance hereunder, and may immediately terminate this Lease, subject to subsection d., below.
- d. In the event of the termination of this Lease prior to the expiration of the then current Term of this Lease due to breach or default by LESSEE or operation of law (including rejection or disaffirmance of this Lease pursuant to bankruptcy law or other law affecting creditors' rights), LESSOR shall mail by registered or certified mail to the Beneficiary 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 LESSOR. Such Beneficiary shall thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions:
 - i. Upon the written request of the Beneficiary within ninety (90) days after service of the aforementioned notice of termination, LESSOR shall enter into a new lease of the Premises with such Beneficiary, or its designee subject to the terms, covenants and conditions of the existing Lease;
 - ii. Such new lease shall be effective as of the date of termination of this Lease and shall be for the remainder of the Term of this Lease (including any unexercised renewal option), at the annual rent, Additional Rent, and upon the terms, covenants and conditions hereof. Any such new lease entered into with the Beneficiary shall have the same priority as this Lease and shall be prior to any lien or encumbrance on LESSOR'S leasehold interest or fee interest which arose after the effective date of this Lease. Concurrent with or before the execution of such new lease, the new 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 LESSOR in connection with such defaults and termination, the recovery of possession of the Premises and the preparation, execution and delivery of such new lease. With respect to any default which cannot be cured by such new LESSEE until it obtains possession, such LESSEE shall have a reasonable time after it obtains possession to cure such default. The LESSEE under the new lease shall have the same right, title and interest in and to the Premises and improvements therein as LESSEE had under this Lease immediately prior to its termination; and

- iii. These provisions 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 there were a separate and independent contract made by the LESSOR, LESSEE and such Beneficiary 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 Beneficiary may use and enjoy the Premises without hindrance by LESSOR or any person claiming by, through or under the LESSOR; provided, the Beneficiary pays all annual rent, Additional Rent and other sums as they come due under the Lease and otherwise uses and maintains the Premises in accordance with the Lease.
- e. Exhibit Controlling. In the event of any conflict between the provisions of this exhibit and any other provision of this Lease, this exhibit shall control.
- f. Nominees of Beneficiary. Any action to be taken or right to be exercised by a Beneficiary under this Article shall be deemed to have been made or taken by the Beneficiary if such action is taken or right is exercised by a nominee, agent or assignee of the right of such Beneficiary, and such nominee, agent or assignee shall have all of the Beneficiary's duties and obligations under this exhibit.
- g. Condemnation Notice. The parties hereto shall give the Beneficiary prompt notice of any condemnation proceedings affecting the Premises. The Beneficiary 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 Beneficiary may be made such party or intervener.
- h. Liability of Beneficiary. No Beneficiary nor any owner of the leasehold estate whose interest shall have been acquired by, through or under any Trust Deed or shall have been derived 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 Beneficiary or such owner becomes the owner of the leasehold estate and then only as to those liabilities which accrue during its ownership of the leasehold estate or which are expressly required to be assumed by this exhibit. Upon any assignment of this Lease by the Beneficiary or any owner of the leasehold estate whose interest shall have been acquired by, through or under any Trust Deed 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 LESSOR 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 which accrue from and after the effective date of such assignment as they are applicable to LESSEE.

- i. Rights Enforceable. The rights granted herein to a Beneficiary shall be enforceable by it as a third party beneficiary.
- j. Defaults Deemed Cured. The following defaults, if any, relating to the prior LESSEE shall be deemed cured upon the acquisition of the leasehold interest by a Beneficiary (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 Beneficiary or the transferee. Any such deemed cure shall be for the sole benefit of the Beneficiary (or assignee thereof); the prior LESSEE shall not be released from any liability it may have for such matters.
- k. No Merger. No merger shall result from a transfer pursuant to this exhibit, LESSEE'S surrender of this Lease, or a mutual cancellation of this Lease in any other manner except at the express election of the LESSOR and with the written consent of the Beneficiary. In the event of any such merger, LESSOR may (subject to any non-disturbance agreements entered into by LESSOR) either terminate any or all subleases or succeed to the interest of LESSEE thereunder.
- l. Modifications for Lender. LESSOR shall approve reasonable modifications to the terms of this Lease which are requested by a proposed Beneficiary, and which are limited to procedures, notice provisions or similar matters which procedures, notice provisions or similar matters will not materially adversely affect LESSOR'S rights or increase LESSOR'S duties. LESSOR and LESSEE will agree that this Lease may not be amended without the written consent of the Beneficiary, provided that such consent shall not be unreasonably withheld.

[END RULES & REGULATIONS]

RESOLUTION NUMBER R- 305763

DATE OF FINAL PASSAGE APR 28 2010

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE
A 40-YEAR LEASE AGREEMENT BETWEEN THE CITY
AND SAN DIEGO UNIFIED SCHOOL DISTRICT FOR TWO
FLOORS OF THE NEW CENTRAL LIBRARY FOR USE AS A
CHARTER SCHOOL.

WHEREAS, the City has planned for the development of a new central library [Library]
to be built on City-owned land and comprised of nine floors; and

WHEREAS, two of the floors were designed for potential future expansion of the
Library, with those two floors to be made available for lease in the interim to help cover
operating costs or defray construction costs; and

WHEREAS, the State of California has issued a conditional grant [Grant] of \$20 million
to the City for the construction of the Library, which requires that a lease agreement for the two
expansion floors must be signed by May 1, 2010; and

WHEREAS, the Grant is included in the original funding projection to build the Library;
and

WHEREAS, the City approached the San Diego Unified School District [District] to
discuss possible uses the District might have for the two expansion floors, and entered into a
Letter of Intent to negotiate a lease pursuant to City Council Resolution No. R-2009-1330, on
July 7, 2009; and

WHEREAS, the District and the City have negotiated a 40-year lease agreement [Lease] to incorporate a charter school in the Library for \$20 million prepaid rent, to be effective if and only if the City builds the Library; and

WHEREAS, due to the aesthetics and use of the Library, the City requires substantial control over development, use, and reuse of the Library property, which is provided through the Lease; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the Mayor or his designee is authorized to execute and deliver, for and on behalf of The City of San Diego, a 40-year lease agreement with the San Diego Unified School District, a public school district of the State of California, for a charter school within the sixth and seventh floors of the New Central Library, under the terms and conditions set forth in that City of San Diego New Central Library Lease Agreement on file in the Office of the City Clerk as Document No.

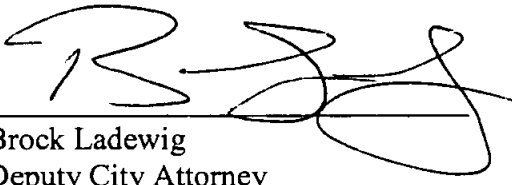
RR- 305763 [Lease]; and

BE IT FURTHER RESOLVED, prior to executing the deed of trust called for in the Lease, the Mayor or his designee shall seek and obtain the Council's approval of the City-owned real property to be pledged as collateral under such deed of trust; and

BE IT FURTHER RESOLVED, the Mayor or his designee is authorized to execute and deliver such agreements and documents required by the Lease and as may be necessary to

complete the transactions contemplated by the Lease, on terms and conditions deemed by the Mayor or his designee to be in the best interests of the City.

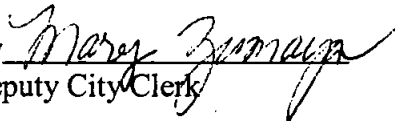
APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Brock Ladewig
Deputy City Attorney

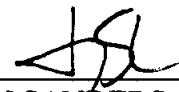
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R-2010-726
MMS#11894

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of APR 19 2010.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 4-23-10
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

Passed by the Council of The City of San Diego on April 19, 2010 by the following vote:

YEAS: **FAULCONER, GLORIA, YOUNG, EMERALD, HUESO.**
NAYS: **LIGHTNER, DEMAYO, FRYE.**
NOT PRESENT: **NONE.**
VACANT: **NONE.**
RECUSED: **NONE.**

AUTHENTICATED BY:

JERRY SANDERS

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: Mary Zumaya, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-305763 approved by the Council of the City of San Diego, California,
and authenticated by the Mayor on April 23, 2010.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By: Mary Zumaya, Deputy



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: April 13, 2010 REPORT NO: 10-052

ATTENTION: Council President and City Council Docket of April 20, 2010

SUBJECT: Lease Agreement with San Diego Unified for space in New Central Library

REFERENCE: City Council Meeting of July 7, 2009

REQUESTED ACTION: Approval of the the New Central Library Lease Agreement with San Diego Unified School District (SDUSD).

STAFF RECOMMENDATION: Approve the requested action

SUMMARY:

Under the Library Bond Act of 2000, the City was awarded a \$20M State grant to fund a new San Diego Main Library. In July, 2009 the City applied to change the application to include a charter school and to request an extension of the grant agreement which was set to expire. The State granted both the change request and the extension contingent upon certain benchmarks. One benchmark stipulates that "by May 1, 2010 the City will provide a copy of the completed lease agreement with SDUSD and an update on result of the bidding process along with a statement of viability of the budget and project."

In order to meet this milestone, on July 7, 2009 City Council approved "A Letter of Intent" (Attachment 1) between the City and SDUSD to lease space within the new Central Library for a charter school. The proposed lease agreement (Attachment 2) formalizes the terms and conditions of the Council approved Letter of Intent. The following list summarizes major lease terms:

- **Premises:** The sixth and seventh floors of the new library; approximately 71,800 square feet.
- **Use:** Operation of a public charter school.
- **Term:** Forty (40) years.

- **Termination Prior to Construction:** The City will be able to terminate the lease for any reason prior to the commencement of construction. While construction is expected to commence on August 1, 2010, if construction doesn't start before August 1, 2011, the District will have the option to request cancellation of the lease up to the time construction starts.
- **Termination after Construction:** After the new library is built, the lease may only be terminated if the City or the District breaches one of its obligations under the lease and fails to correct the breach after having been given ample time to do so.
- **Rent:** \$20 million, to be prepaid during construction of the library. If the City breaches an obligation under the lease, and fail to correct the breach after a formal warning and rectification period, and the lease is ultimately terminated, the District would be entitled to reimbursement of some portion (up to all) of the prepaid rent. The City will pledge some City-owned real property as collateral to pay the reimbursement of prepaid rent in the event the lease is terminated.
- **Operating Expenses:** The District will be responsible for all operating expenses for its premises and its proportionate share of the common area operating expenses for the new library.
[Note: This will be a Triple Net Lease" - in which the lessee pays rent to the lessor, as well as all operating expenses including utilities, taxes, insurance, and maintenance expenses that arise from the use of the property.]
- **Tenant Improvements:** The District will be responsible for the cost and construction of its own tenant improvements.
- **Extension Option:** The District will have one option to extend the lease for an additional 10 years at the then prevailing market rent.
- **Parking:** The District may rent up to thirty (30) parking passes for parking in the new library's parking facility, of which up to six (6) may be reserved for their sole use. The cost of parking will be the prevailing rate charged by the City in other City-owned parking facilities.
- **Purchase Option:** The District will have the option to purchase the premises as a condominium unit at the end of the 10th, 20th, 30th, and 40th years of the lease term. The purchase price will be the greater of: (a) the fair market value; or (b) the District's proportionate share (estimated at 23%) of the actual, as-built building core and shell construction costs, plus its proportionate share of the land value which was appraised at \$13,964,000.

FISCAL CONSIDERATIONS:

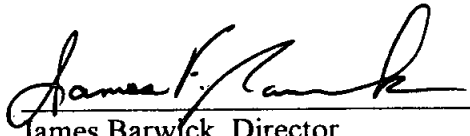
Approval of this lease agreement for a charter school would provide an additional Twenty Million Dollars (\$20,000,000) in revenue toward construction of the New Central Library Project. SDUSD will pre-pay rent in phases directly during the course of construction of the building shell. Payments will not commence until such time the project is approved by City Council and a "Notice to Proceed" is issued to the construction contractor. If the lease is not approved by May 1, 2010, it is anticipated the State will revoke the prior funding commitment of \$20 million in Library Bond grant funds.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

Letter Of Intent was approved July 7, 2009 by City Council by a 5-3 vote; Rules Committee voted 4-0 on June 24, 2009 to forward item to Council

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Major stakeholders include; City of San Diego Library Department and its patrons, San Diego Unified School District, Centre City Development Corporation (CCDC), California State Library and the San Diego Library Foundation.


James Barwick, Director
Real Estate Assets Department

Attachments:

- 1) Non-binding Letter of Intent dated July 8, 2009
- 2) Proposed New Central Library Lease Agreement

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO				CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY)	
TO: CITY COUNCIL		FROM (ORIGINATING DEPARTMENT): Real Estate Assets		DATE: 04/01/2010	
SUBJECT: Lease Agreement with San Diego Unified School District for space in New Central Library.					
PRIMARY CONTACT (NAME, PHONE): Tim Moore, 236-6733; MS 51 A			SECONDARY CONTACT (NAME, PHONE): ,		
COMPLETE FOR ACCOUNTING PURPOSES					
FUND					
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER					
OBJECT / GENERAL LEDGER ACCT					
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00
FUND					
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER					
OBJECT / GENERAL LEDGER ACCT					
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00
COST SUMMARY (IF APPLICABLE): This is a revenue generating agreement- no cost to City. Lease Agreement calls for School District to pay \$20,000,000 up front for rent over entire forty (40) year lease term.					
ROUTING AND APPROVALS					
CONTRIBUTORS/REVIEWERS:		APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	
Liaison Office		ORIG DEPT.	Barwick, James	4/8/2010	
Financial Management		CFO			
		DEPUTY CHIEF	Jarrell, David	4/14/2010	
		COO			
		CITY ATTORNEY	Ladewig, Brock	4/12/2010	
		COUNCIL PRESIDENTS OFFICE	JuradoSainz, Diana	4/15/2010	
PREPARATION OF:		☒ RESOLUTIONS	☐ ORDINANCE(S)	☒ AGREEMENT(S)	☐ DEED(S)
Request the Council approve the lease agreement between the City and the San Diego Unified School District, pursuant to the Council-approved Letter of Intent dated July 8, 2009, for space in the New Central Library for a Charter School.					

STAFF RECOMMENDATIONS: Approve requested action.	
SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)	
COUNCIL DISTRICT(S):	2
COMMUNITY AREA(S):	Primarily downtown, however all areas of the City will potentially benefit.
ENVIRONMENTAL IMPACT:	This activity is categorically exempt from CEQA pursuant to Section 15301(c) of the State CEQA Guidelines.
CITY CLERK INSTRUCTIONS:	

**COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO**

DATE: 04/01/2010

ORIGINATING DEPARTMENT: Real Estate Assets

SUBJECT: Lease Agreement with San Diego Unified School District for space in New Central Library.

COUNCIL DISTRICT(S): 2

CONTACT/PHONE NUMBER: Tim Moore/236-6733; MS 51 A

REQUESTED ACTION:

Approve New Central Library lease agreement with San Diego Unified School District.

STAFF RECOMMENDATION:

Approve requested action.

EXECUTIVE SUMMARY OF ITEM BACKGROUND: A Letter of Intent between the City of San Diego and the San Diego Unified School District, dated July 8, 2009 for the San Diego Unified School District to lease space for a charter school at the New Central Library Building was approved by Council on July 7, 2009. The lease agreement being presented for approval formalizes the terms and conditions of the Council approved Letter of Intent. Approval of this agreement by both parties is a requirement that must be met for the State Librarian to release a \$20 million grant for the construction of the New Central Library Building.

FISCAL CONSIDERATIONS: School District will pre-pay rent in the amount of Twenty Million Dollars (\$20,000,000.00), during the course of construction of the Library building, for the initial forty (40) year lease term. This money will be used to fund the construction of the New Central Library Building. Also, upon approval of the lease by both parties, the State Librarian will release a \$20 million grant for construction of the new Central Library Building.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE): N/A

PREVIOUS COUNCIL and/or COMMITTEE ACTION: Letter Of Intent was approved July 7, 2009 by City Council by a 5-3 vote; Rules Committee voted 4-0 on June 24, 2009 to forward item to Council

Barwick, James

Originating Department

Jarrell, David

Deputy Chief/Chief Operating Officer