

RE EXECUTE
AS ORIGINAL

SECOND AMENDMENT TO MEMORANDUM OF LEA

This SECOND AMENDMENT TO MEMORANDUM OF LEASE is entered into as of the 30 day of June, 1986, by and between the CITY OF SAN DIEGO, a municipal corporation ("City"), and MCKELLAR DEVELOPMENT OF LA JOLLA, a California corporation ("Tenant"), with reference to the following facts:

A. The City and Tenant's predecessor in interest, Scripps Clinic and Research Foundation ("Scripps"), entered into an Agreement for Ground Lease, Development and Use of Real Property ("Ground Lease") which was filed in the Office of the City Clerk of San Diego, California, on December 13, 1982, as Document No. RR-257635-2, a Memorandum of which was recorded as Instrument No. 85-128705 in the Official Records of San Diego County, California on April 15, 1985.

B. Scripps' interest in the Ground Lease was assigned to Tenant pursuant to an Assignment of Lease dated December 13, 1984, recorded as Instrument No. 85-093951 in the Official Records of San Diego County, California on March 21, 1985.

C. The Ground Lease was amended by a First Amendment to Agreement for Ground Lease, Development and Use of Real Property dated March 4, 1985, by and between the City and Tenant, with respect to which a First Amendment to Memorandum of Lease was recorded as Instrument No. 85-128706 in the Official Records of San Diego, California on April 15, 1985. Reference herein to the "Ground Lease" shall refer to the Ground Lease and the First Amendment thereto.

D. The City and Tenant have entered into a Second Amendment to the Ground Lease and desire to record this Second Amendment to Memorandum of Lease to provide notice thereof.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. The Ground Lease is hereby amended by that certain Second Amendment to Agreement for Ground Lease, Development and Use of Real Property, entered into as of even date herewith.

2. The terms of the Second Amendment to Ground Lease are more particularly set forth therein. All of the terms, conditions, provisions and covenants of the Second Amendment to Ground Lease are incorporated in this Second Amendment of Memorandum of Lease by reference, as though written out herein, and the Second Amendment to Ground Lease and this Second Amendment to Memorandum of Ground Lease shall be deemed to constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto have entered into this Second Amendment to Memorandum of Lease as of the date and year first set forth above.

CITY OF SAN DIEGO, a
municipal corporation

By: Coleman Conrad
Its: Deputy City Manager

MCKELLAR DEVELOPMENT OF LA JOLLA,
a California corporation

By: [Signature]
Its: PRESIDENT

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

On this the 14th day of July, 19 ,
before me, Victoria A. Carlson, the undersigned Notary
Public, personally appeared Christopher J. McKellar and

☒ personally known to me

☐ proved to me on the basis of satisfactory
evidence

to be the person(s) who executed the within instrument as
President and _____ or on behalf of the
corporation therein named, and acknowledged to me that the
corporation executed it.

WITNESS my hand and official seal.

Victoria A. Carlson
Notary's Signature

(S E A L)

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

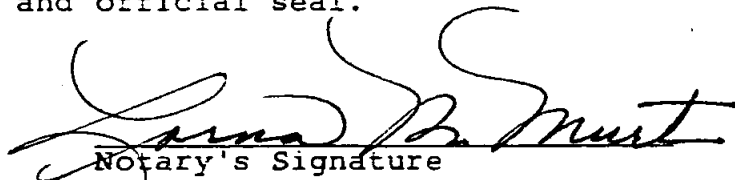
On this the 14th day of July, 1986,
before me, Lorna M. Murt, the undersigned Notary
Public, personally appeared Coleman Conrad and

☒ personally known to me

☐ proved to me on the basis of satisfactory
evidence

to be the person(s) who executed the within instrument as
Deputy City ~~xxxx~~ Manager or on behalf of the
corporation therein named, and acknowledged to me that the
corporation executed it.

WITNESS my hand and official seal.



Notary's Signature
Lorna M. Murt

(S E A L)

SECOND AMENDMENT TO AGREEMENT
FOR GROUND LEASE, DEVELOPMENT
AND USE OF REAL PROPERTY

This SECOND AMENDMENT TO AGREEMENT FOR GROUND LEASE, DEVELOPMENT AND USE OF REAL PROPERTY ("Second Amendment") is entered into as of the ~~30th~~ day of June, 1986, by and between the CITY OF SAN DIEGO, a municipal corporation ("City"), and MCKELLAR DEVELOPMENT OF LA JOLLA, a California corporation ("Tenant"), with reference to the following facts:

A. The City and Tenant's predecessor in interest, Scripps Clinic and Research Foundation ("Scripps") entered into an Agreement for Ground Lease, Development and Use of Real Property ("Ground Lease") which was filed in the Office of the City Clerk of San Diego, California, on December 13, 1982, as Document No. RR-257635-2, a Memorandum of which was recorded as Instrument No. 85-128705 in the Official Records of San Diego County, California on April 15, 1985.

B. Scripps' interest in the Ground Lease was assigned to Tenant pursuant to an Assignment of Lease recorded as Instrument No. 85-093951 in the Official Records of San Diego County, California on March 21, 1985.

C. The Ground Lease was amended by a First Amendment to Agreement for Ground Lease, Development and Use of Real Property dated March 4, 1985, by and between the City and Tenant, with respect to which a First Amendment to Memorandum of Lease was recorded as Instrument No. 85-128706 in the Official Records of San Diego, California on April 15, 1985. Reference herein to the "Ground Lease" shall refer to the Ground Lease and the First Amendment thereto.

D. The City and Tenant now desire to amend the Ground Lease in order to provide for various protections to Tenant's leasehold mortgagee, Aetna Life Insurance Company ("Tenant's Mortgagee"), which amendment the City has agreed to enter into pursuant to the terms of the Ground Lease.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. The City and Tenant intend that a "default" under the deed of trust, mortgage or other security instrument of Tenant's Mortgagee shall be valid regardless of whether the City receives prior notice of such default. Accordingly, City and Tenant hereby agree to amend the Ground Lease by deleting the word "default" from the first line of the second paragraph on Page 11 of Section 4.03 of the Ground Lease.

2. The City and Tenant intend that a foreclosure or sale pursuant to the deed of trust, mortgage or other security instrument of Tenant's Mortgagee shall be valid without the approval of the City. Accordingly, City and Tenant hereby agree to amend the Ground Lease by deleting the words "and approved by" from the third and fourth lines of the second paragraph on Page 11 of Section 4.03 of the Ground Lease.

3. The City and Tenant intend that Tenant's Mortgagee may assign the Ground Lease to its nominee, if such nominee is a reputable, qualified and financially responsible person in the opinion of the City, upon prior approval by the City which shall not be unreasonably withheld. Accordingly, the City and Tenant hereby agree to amend the Ground Lease by inserting the phrase "which shall not be unreasonably withheld," in the fourth line of the second paragraph on Page 11 of Section 4.03 of the Ground Lease, immediately following the phrase "Upon prior approval by City,".

4. The City and Tenant intend that Tenant's fire, extended coverage and vandalism insurance policy, required pursuant to Section 5.02(b) of the Ground Lease, should name Tenant's Mortgagee as an additional insured pursuant to a standard first mortgage endorsement. Accordingly, the City and Tenant hereby agree to amend the Ground Lease by inserting the following in the eighth line of Section 5.02(b) immediately following the word "hereof,": "the policy may name the mortgagee or beneficiary thereunder as an additional insured pursuant to a standard first mortgage endorsement and".

5. The City and Tenant intend that the right of first refusal created by Section 7.12 of the Ground Lease should not

apply to a sale in connection with a foreclosure. Accordingly, the City and Tenant hereby agree to amend the Ground Lease by inserting the following sentence at the end of Section 7.12:

"The rights created by this Section 7.12 shall not apply in the case of a sale in connection with a foreclosure under a deed of trust, mortgage, chattel mortgage or other security instrument consented to by the City in accordance with Section 4.03 hereof."

6. Except as expressly amended herein all terms of the Ground Lease shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have entered into this Second Amendment as of the date and year first set forth above.

CITY OF SAN DIEGO, a municipal
Corporation

By: [Signature]

Its: [Signature]

MCKELLAR DEVELOPMENT OF LA JOLLA,
a California corporation

By: [Signature]

Its: EXECUTIVE VICE PRESIDENT

Approved as to form and legality	
15 th	day of July, 1986
JOHN W. WITT City Attorney	
By	<u>[Signature]</u>
Assistant City Attorney	

3/11/85

FIRST AMENDMENT TO MEMORANDUM OF LEASE

This FIRST AMENDMENT TO MEMORANDUM OF LEASE is made as of the _____ day of March, 1985 by and between THE CITY OF SAN DIEGO as landlord ("City") and McKELLAR DEVELOPMENT OF LA JOLLA, a California corporation, as tenant ("Tenant"), with reference to the following facts:

A. Landlord and Tenant's predecessor in interest entered into that certain Agreement for Ground Lease, Development and Use of Real Property as of the 23rd day of January, 1985 ("Lease"). The lessee's interest in the Ground Lease was assigned to Tenant. Pursuant to the Lease, Tenant leased from the City the real property more particularly described on Exhibit A attached hereto and incorporated herein by reference ("Property").

B. A Memorandum of Lease was recorded in the Official Records of San Diego County, California, on _____, 1985, as Instrument No. _____, in order to provide notice of the existence of the Lease.

C. The City and Tenant have entered into a First Amendment to Lease and desire to record this First Amendment to Memorandum of Lease to provide notice of such Amendment.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. The Lease is hereby amended by that certain First Amendment to Agreement for Ground Lease, Development and Use of Real Property, entered into as of even date herewith.

2. The terms of the Amendment are more particularly set forth therein. All the terms, conditions, provisions and covenants of the Amendment are incorporated in this First Amendment of Memorandum of Lease by reference, as though written out herein, and the Amendment to Lease and this Amendment to Memorandum of Lease shall be deemed to constitute a single instrument.

IN WITNESS WHEREOF the parties hereto have executed this First Amendment to Memorandum of Lease as of the date first set forth above.

CITY OF SAN DIEGO,
a municipal corporation

By: _____

Its: _____

McKELLAR DEVELOPMENT OF LA JOLLA,
a California corporation

By: _____

Its: _____

Approved as to form and legality

this 10 day of April, 1985

JOHN W. WITT, City Attorney

By: _____

Deputy City Attorney

EXHIBIT "A"

Parcel 1 of Parcel Map 9813 in the City of San Diego,
County of San Diego, State of California.

State of _____)
County of _____) SS.

On this the _____ day of _____,
19____, before me, _____,
the undersigned Notary Public, personally appeared

☐ personally known to me
☐ proved to me on the basis of satisfactory evidence
to be the person(s) who executed the within instrument as
_____ or on behalf of the
corporation therein named, and acknowledged to me that
the corporation executed it.

WITNESS my hand and official seal.

Notary's Signature



STATE OF CALIFORNIA } S.S.
COUNTY OF San Diego

On this the 18th day of March 1985 before me,
the undersigned, a Notary Public in and for said County and State,
personally appeared Christopher J. McKellar

_____, personally
known to me or proved to me on the basis of satisfactory evidence to be
the _____ President, and _____

_____, personally
known to me or proved to me on the basis of satisfactory evidence to be
_____, Secretary of the corporation that executed the within
instrument on behalf of the corporation therein named, and acknow-
ledged to me that such corporation executed the within instrument
pursuant to its by-laws or a resolution of it's board of directors.

Signature Kay E Klass

FOR NOTARY SEAL OR STAMP



3/11/85

FIRST AMENDMENT TO
AGREEMENT FOR GROUND LEASE, DEVELOPMENT
AND USE OF REAL PROPERTY

This FIRST AMENDMENT TO AGREEMENT FOR GROUND LEASE, DEVELOPMENT AND USE FOR REAL PROPERTY is entered into as of the 4 day of March, 1985 by and between THE CITY OF SAN DIEGO, a municipal corporation ("City") and MCKELLAR DEVELOPMENT OF LA JOLLA ("Tenant") with reference to the following facts:

A. On or about January 23, 1985, City and Tenant's predecessor in interest, Scripps Clinic and Research Foundation ("Scripps"), entered into that certain Agreement for Ground Lease, Development and Use of Real Property ("Ground Lease") relating to property more particularly described therein ("Property");

B. Scripps' interest in the Lease was assigned to Tenant pursuant to an Assignment of Lease approved by the City;

C. The City and Tenant desire to amend the Ground Lease in order to provide for various protections to Tenant's leasehold mortgagee ("Tenant's Mortgagee"), which amendment the City has agreed to enter into pursuant to the terms of the Ground Lease.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. The City and Tenant hereby confirm that Section 6.09(a) of the Ground Lease is intended to provide that the structural, permanent improvements affixed to the Property ("Project") will become the property of the City upon expiration or earlier termination of the Ground Lease, and Tenant will not be required to remove the Project from the Property at such time.

2. The Ground Lease, and any extensions, renewals or replacement thereof, and any sublease entered into by Tenant as Sublessor under the Ground Lease, and any encumbrance recorded by Tenant's Mortgagee shall be superior to any mortgages, deeds of trust, or similar encumbrances placed by the City on its fee interest in the Property. The City agrees to cause any encumbrancer of its fee interest in the Property to execute any documents reasonably requested by Tenant to effectuate such superiority.

3. Tenant's Mortgagee shall not be liable to perform the Tenant's obligations under the Ground Lease unless and until Tenant's Mortgagee acquires Tenant's leasehold interest, by foreclosure, by power of sale, or otherwise, or by deed in lieu of foreclosure, and Tenant's Mortgagee shall not be liable for such obligations following its assignment of its interest under the Ground Lease to any other approved transferee.

4. City agrees to deliver to Tenant's Mortgagee copies of all notices ~~to be~~ delivered to Tenant under the Ground Lease, including, without limitation, all notices of default. For Tenant's initial Tenant's Mortgagee, such notice shall be delivered to the following address:

Union Bank

525 B Street

San Diego, CA 92101

Attn: Glen Yaeckel

INITIAL
HERE

INITIAL
HERE

INITIAL
HERE

and shall be delivered in the same manner as that set forth in Section 7.01 of the Ground Lease. No notice delivered to Tenant shall be valid or effective unless and until also delivered to Tenant's Mortgagee.

5. After Tenant's receipt of a notice of default under the Ground Lease, and the expiration of any applicable period of cure given to Tenant under the Ground Lease, the City shall deliver an additional notice to Tenant's Mortgagee, stating that Tenant's period of cure has expired. Tenant's Mortgagee shall thereupon have an additional period of time equal to the period of time originally provided to Tenant to cure any default, to cure any uncured default. The City shall not terminate the Ground Lease (a) if within such additional period of time Tenant's Mortgagee cures the default, or, if the default reasonably requires more than 30 days to cure, commences to cure said default, and diligently prosecutes the same to completion, or, (b) if the default cannot be cured, Tenant's Mortgagee initiates foreclosure or other appropriate proceedings. In either such event, the Ground Lease shall not terminate, provided in the event Tenant's Mortgagee exercises option (b) above, Tenant's Mortgagee cures all other defaults reasonably capable of cure, and complies with all other covenants and conditions of the Ground Lease. The City agrees to accept performance by Tenant's Mortgagee of all cures and conditions as though performed by Tenant, and agrees to permit Tenant's Mortgagee access to the Property to take all such actions as may be necessary or useful to perform any condition of the Ground Lease or to cure any default of Tenant.

If Tenant's Mortgagee elects either of the above-mentioned options, upon Tenant's Mortgagee's acquisition of the leasehold by foreclosure, whether by power of sale or otherwise or by deed in lieu of foreclosure, or if a receiver be appointed, the Ground Lease shall continue in full force and effect provided that if Tenant's Mortgagee elects option (b) above, upon Tenant's Mortgagee's acquisition of the leasehold by foreclosure, whether by power of sale or otherwise or by deed in lieu of foreclosure, Tenant's Mortgagee shall cure all prior defaults of Tenant under the Ground Lease that are capable of being cured by Tenant's Mortgagee and the City shall treat Tenant's Mortgagee as the Tenant under the Ground Lease. In the event Tenant's Mortgagee cures all defaults by Tenant, and does not acquire the leasehold herein created, or in the event Tenant's Mortgagee commences action as set forth in option (b) above, and thereafter Tenant cures such defaults (which cure the City shall be obligated to accept) and Tenant's Mortgagee

then terminates all proceedings under option (b) above, the Ground Lease shall remain in full force and effect between the City and Tenant.

In the event that the Ground Lease is terminated for any reason prior to the end of the Lease Term (it being the intent that the Ground Lease will remain in full force and effect if Tenant's Mortgagee performs), the City shall enter into a new lease with Tenant's Mortgagee covering the Property, provided that the Tenant's Mortgagee (i) requests such new lease by written notice to the City within sixty (60) days after termination, and (ii) cures all prior defaults of the Tenant that are capable of being cured by Tenant's Mortgagee. The new lease shall be for the remainder of the Lease Term, effective at the date of such termination, and at the rent and on the covenants, agreements, conditions, provisions, restrictions and limitations contained in the Ground Lease.

6. If the City's and Tenant's estates in the Property become vested in the same owner, this Lease shall nonetheless not be destroyed by application of the doctrine of merger, unless agreed to by the City, Tenant, and Tenant's Mortgagee. This provision applies even if the fee and leasehold estates in the Property become vested in the City or the Tenant pursuant to the rights of first refusal contained in the Ground Lease.

7. The Ground Lease shall not be amended, modified or in any other way affected, nor the interest of Tenant assigned or released, without the prior written consent of Tenant's Mortgagee.

8. Section 4.05(d) of the Ground Lease is amended to provide that any condemnation award to which Tenant is entitled shall be paid directly to Tenant's Mortgagee. In the event the condemnation is a partial taking, Tenant's Mortgagee shall disburse, in a construction loan type manner, the proceeds of the condemnation award necessary to effectuate repairs to the Project. The parties agree that Tenant shall be entitled to receive that part of any award attributable to Tenant's leasehold estate and interest in the Property taken, and to that part of any award attributable to Tenant's interest in any improvements on the Property for the then remaining term of the lease. Such award shall be payable to Tenant's Mortgagee. Tenant's Mortgagee shall have the right to participate in all condemnation award proceedings held by the condemning authority, and the allocation of such award.

9. Section 5.02(b) of the Ground Lease is amended to provide that any insurance proceeds payable thereunder shall be paid to Tenant's Mortgagee. Tenant's Mortgagee agrees to disburse such proceeds in a construction loan type manner in order to effectuate repairs to the Property required by the Ground Lease.

10. Except as modified herein, the Ground Lease is hereby ratified and confirmed, and the status of McKellar

Development of La Jolla as Tenant under the Ground Lease,
as assignee of Scripps, is hereby confirmed by the City.

IN WITNESS WHEREOF, the parties hereto have entered
into this First Amendment to Agreement for Ground Lease,
Development and Use of Real Property as of the date and
year first set forth above.

CITY OF SAN DIEGO,
a municipal corporation

By: [Signature]
Its: Deputy City Manager

Approved as to form:

By: _____
Its: _____

McKELLAR DEVELOPMENT OF LA JOLLA,
a California corporation

By: [Signature]
Its: PRESIDENT

The foregoing is hereby
acknowledged and agreed to:

UNION BANK

By: [Signature]
Jack P. Webster
Its: Vice President

By: [Signature]
Glen Yaeckel
Its: Vice President

Approved as to form and legality

this 10 day of April, 1951

JOHN W. WITTT, City Attorney

By: [Signature]
Deputy City Attorney