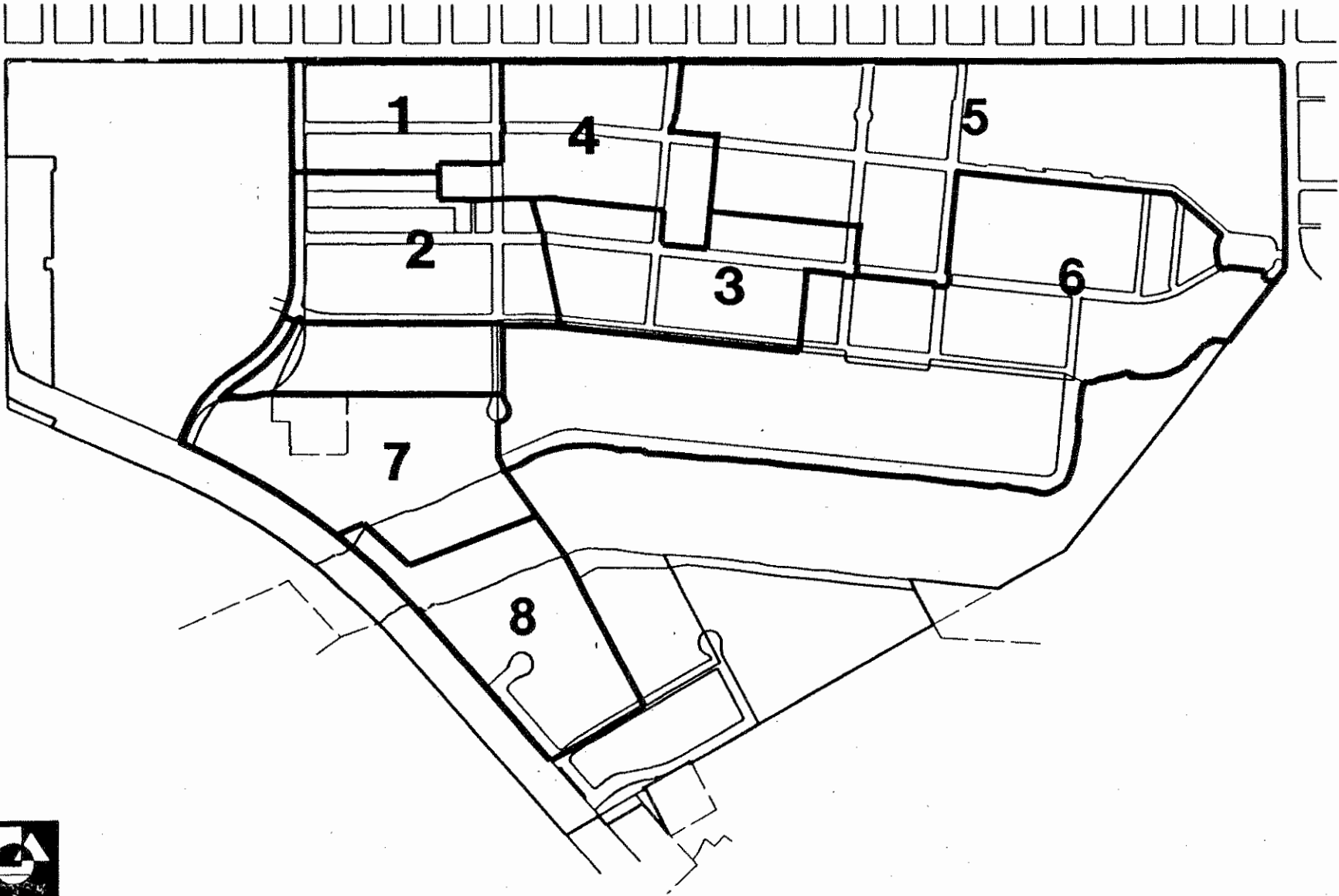


ATTACHMENT NO. 1-A

NTC MASTER TM/FINAL MAP EXHIBIT
(PREPARED BY RICK ENGINEERING DATED 4-21-00)

[BEHIND THIS PAGE

NTC PROPOSED MAPS 1 THROUGH 8



000138

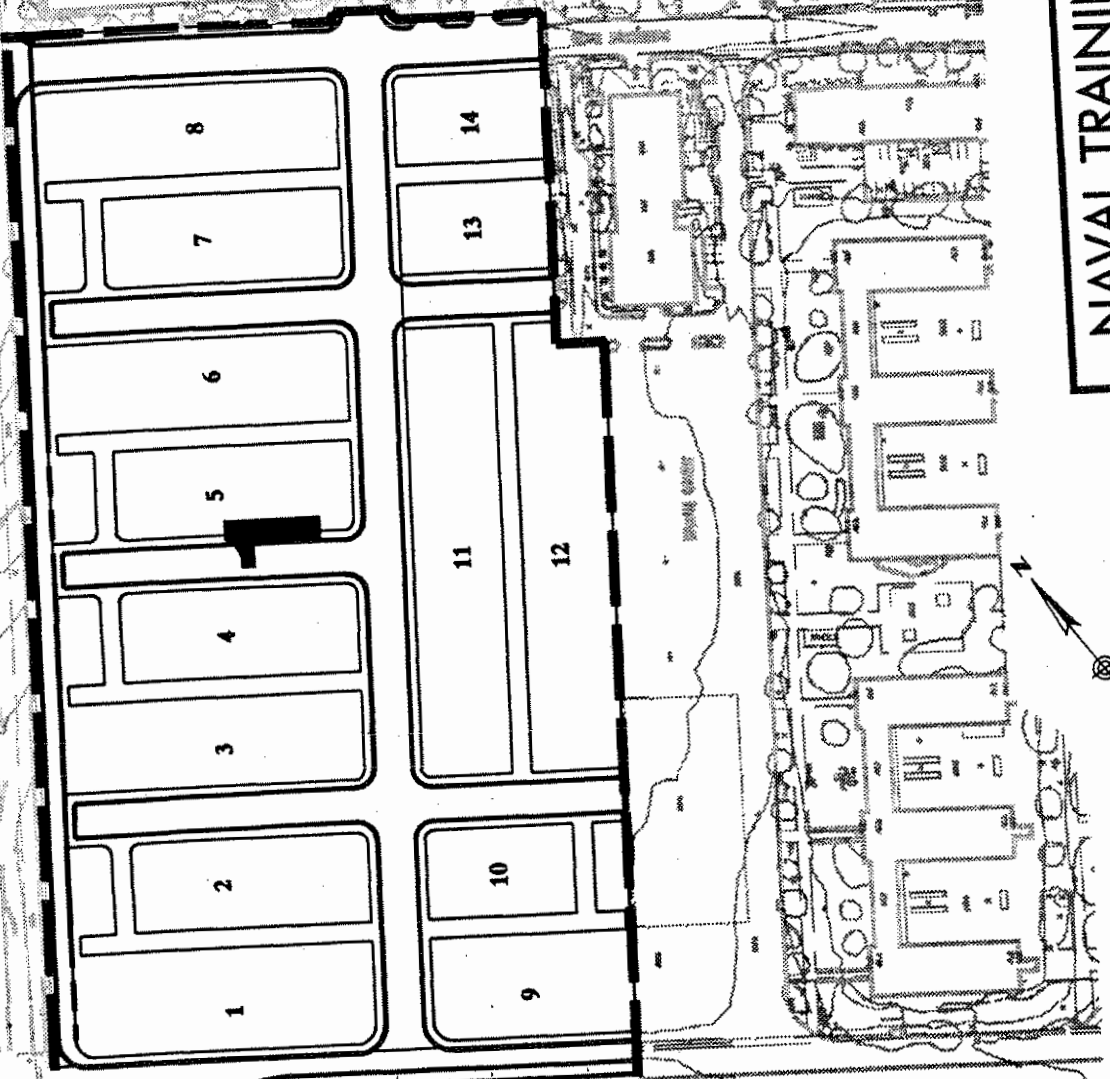


RICK ENGINEERING COMPANY
3637 Ridge Road
San Diego
California 92108-3800
PH: 619 594 8900

SCALE 1" = 800

**NAVAL TRAINING CENTER
PHASING MAP**
JN. 13586 4/21/2000

MAP #1 AREA 1 THROUGH 14



NAVAL TRAINING CENTER PHASE 1 DEVELOPMENT

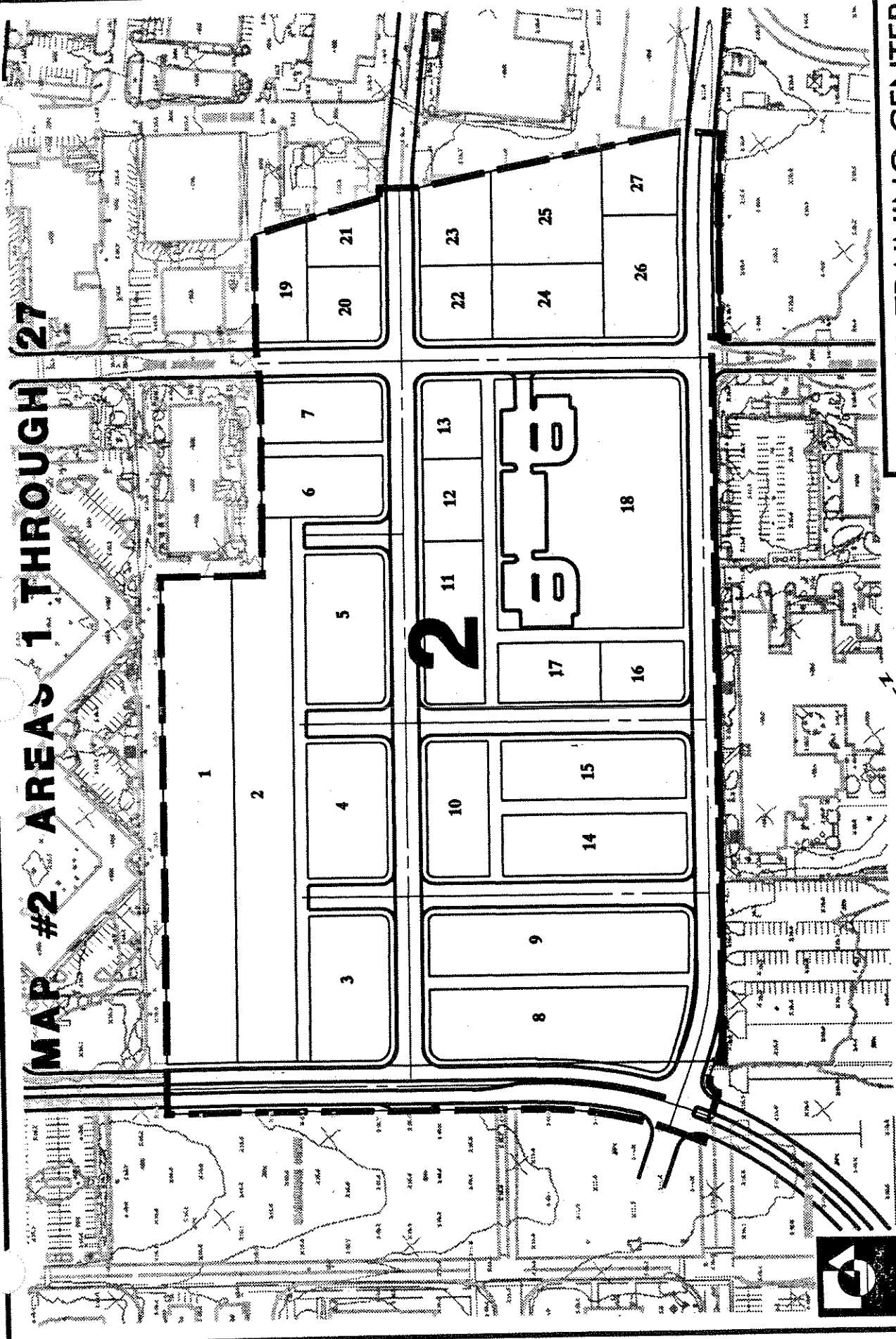
JN. 13586 4/21/2000

SCALE 1" = 200'

RICK ENGINEERING COMPANY



MAP #2 AREAS 1 THROUGH 27



NAVAL TRAINING CENTER PHASE 2 DEVELOPMENT

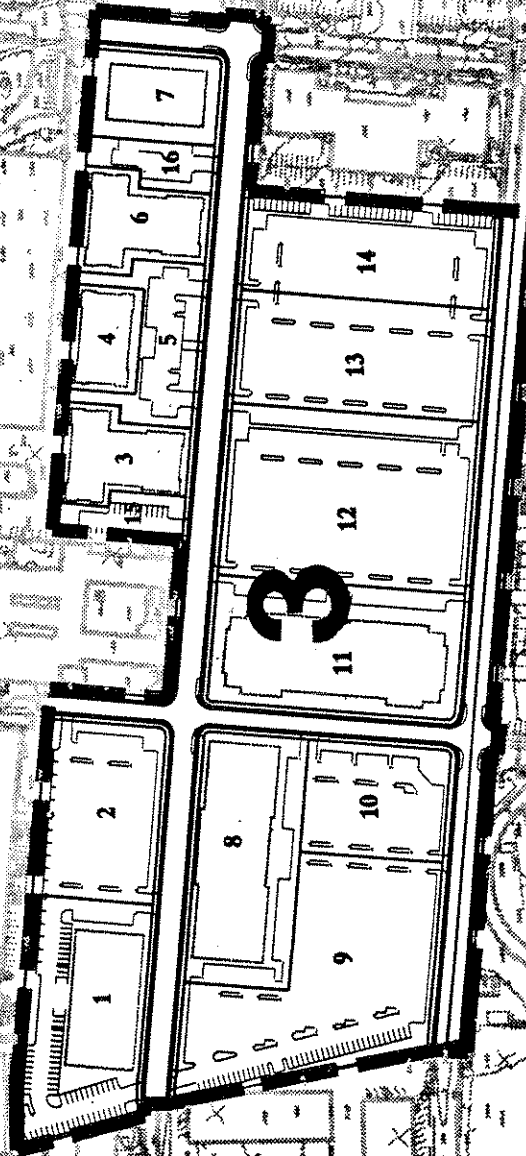
JN. 13586 4/21/2000

SCALE 1" = 200'

RIK ENGINEERING COMPANY



MAP #3 AREA 1 THROUGH 16



NAVAL TRAINING CENTER PHASE 3 DEVELOPMENT

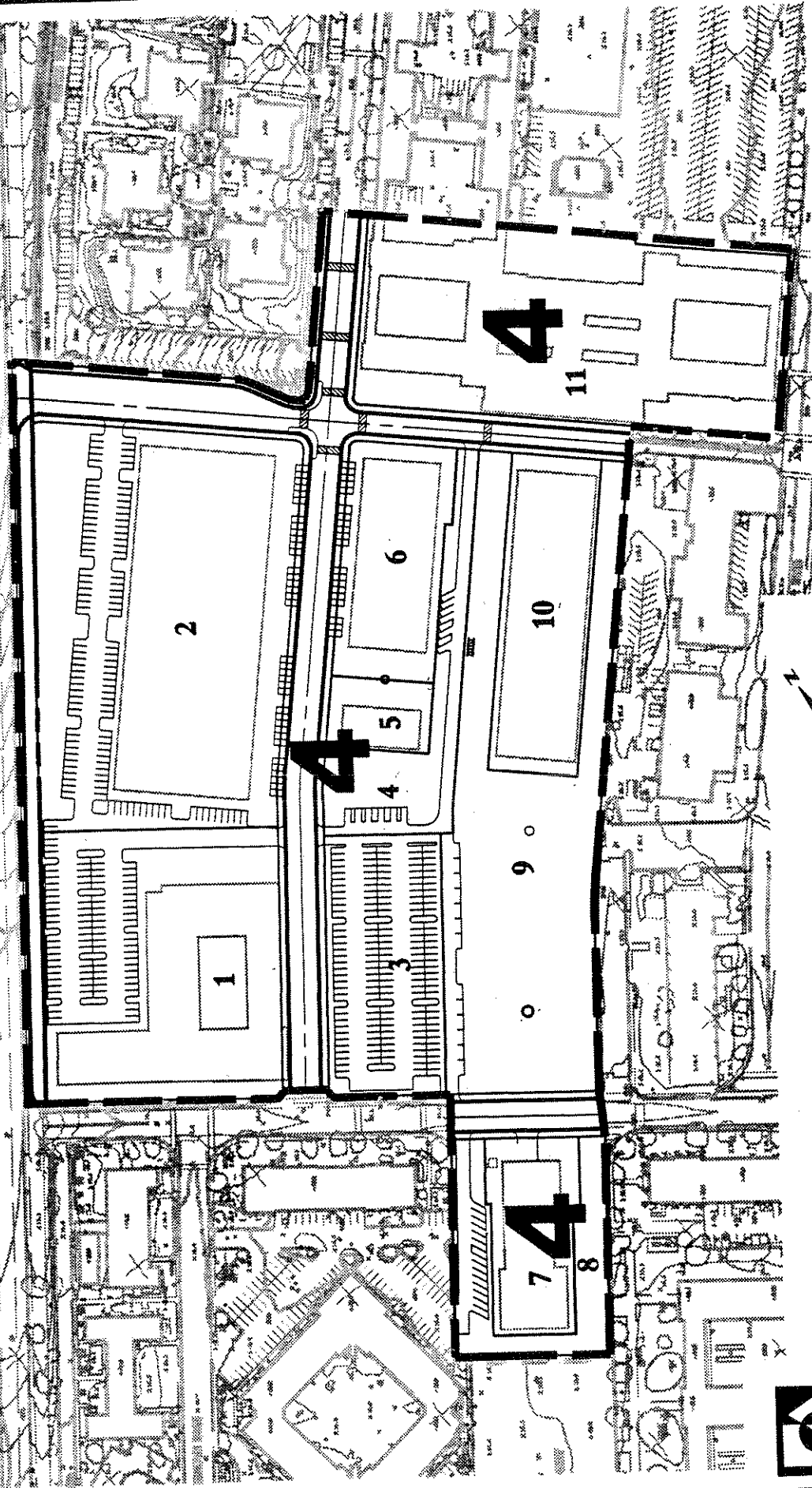
JN. 13586 4/21/2000

SCALE 1" = 300'

RICK ENGINEERING COMPANY



MAP #4 AREAS 1 THROUGH 11



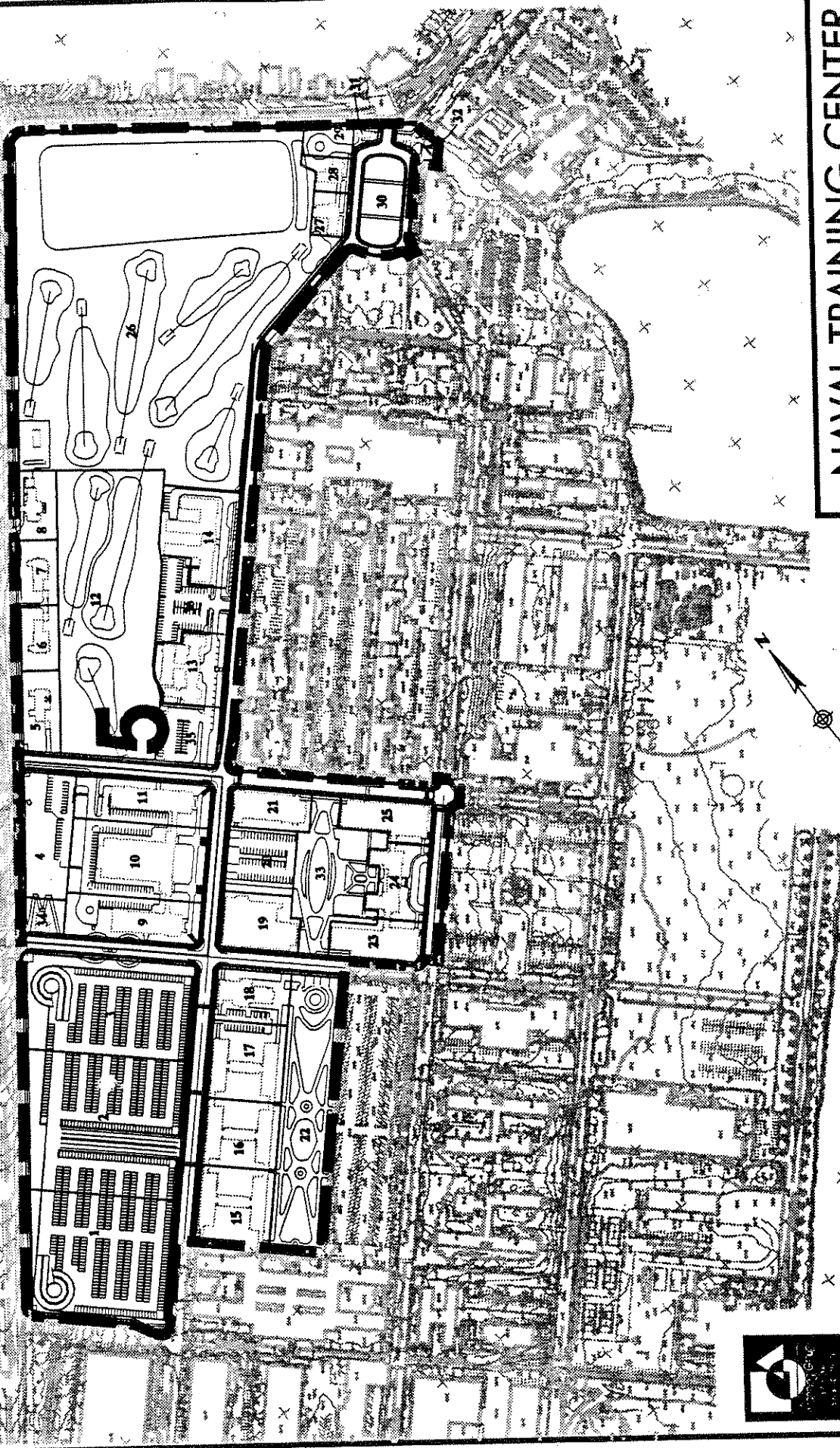
NAVAL TRAINING CENTER
PHASE 4 DEVELOPMENT
JN. 13586 4/21/2000

SCALE 1" = 200

RICK ENGINEERING COMPANY

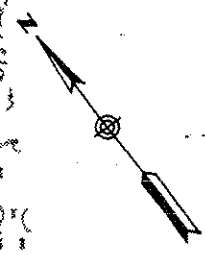


MAP #5 AREAS 1 THROUGH 36



**NAVAL TRAINING CENTER
PHASE 5 DEVELOPMENT**

JN. 13586 4/21/2000



SCALE 1" = 400'

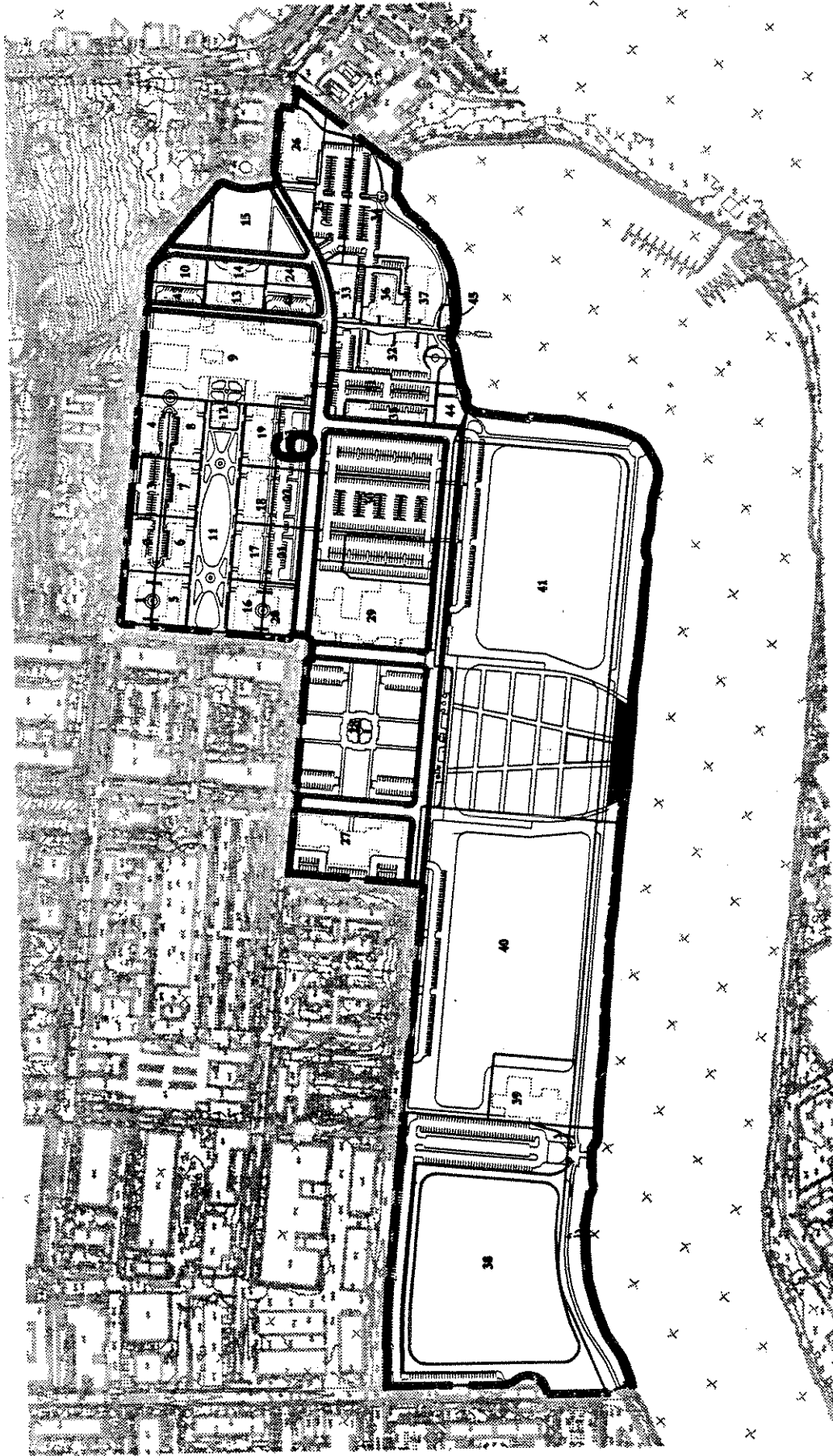


RICK ENGINEERING COMPANY

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11000
11000



MAP #6 AREAS 1 THROUGH 45



NAVAL TRAINING CENTER
PHASE 6 DEVELOPMENT
JN. 13586 4/21/2000

SCALE 1" = 500

RICK ENGINEERING COMPANY



MAP #7 AREAS THROUGH 7

**NAVAL TRAINING CENTER
PHASE 7 DEVELOPMENT**

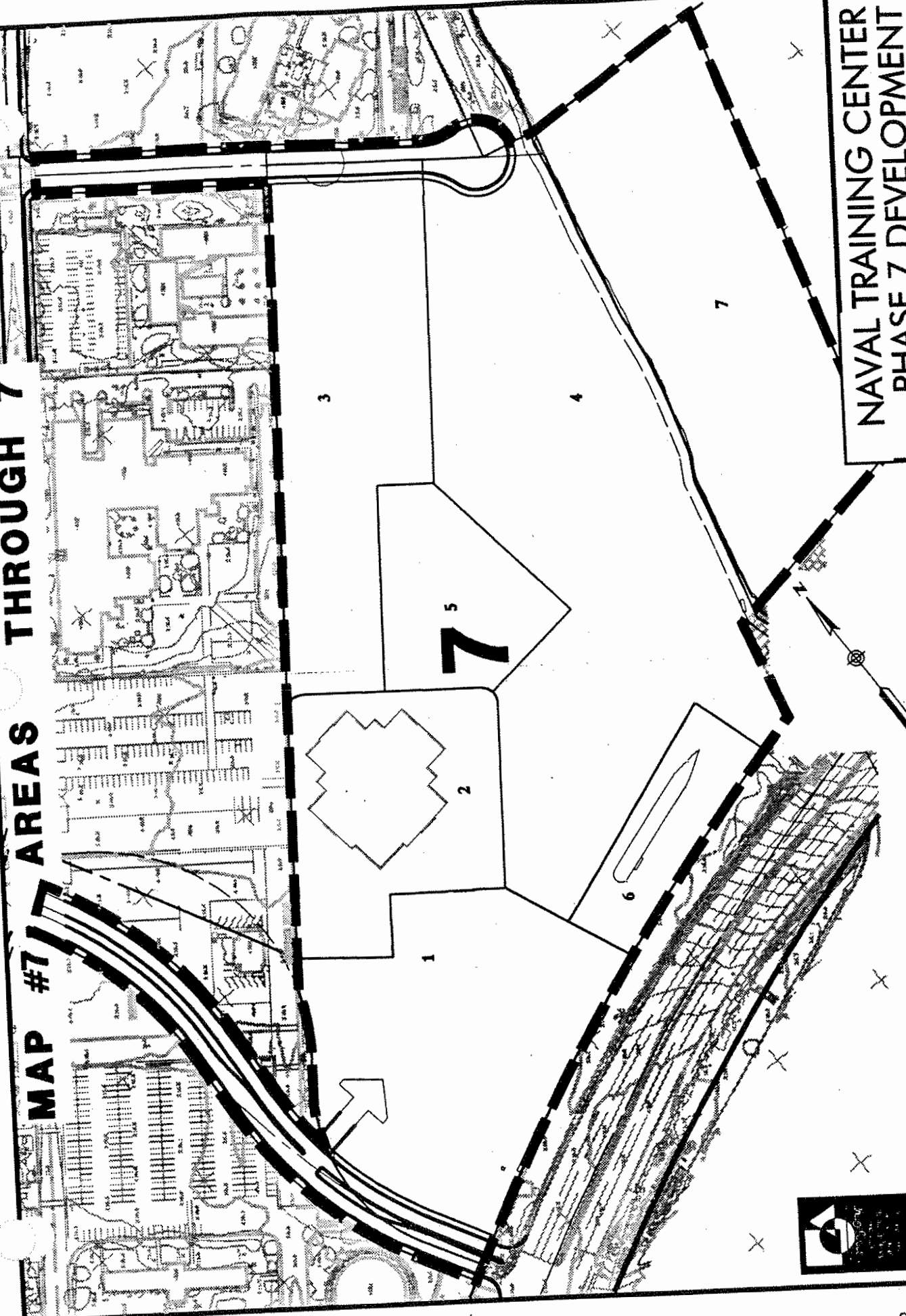
JN. 13586 4/21/2000

SCALE 1" = 200'

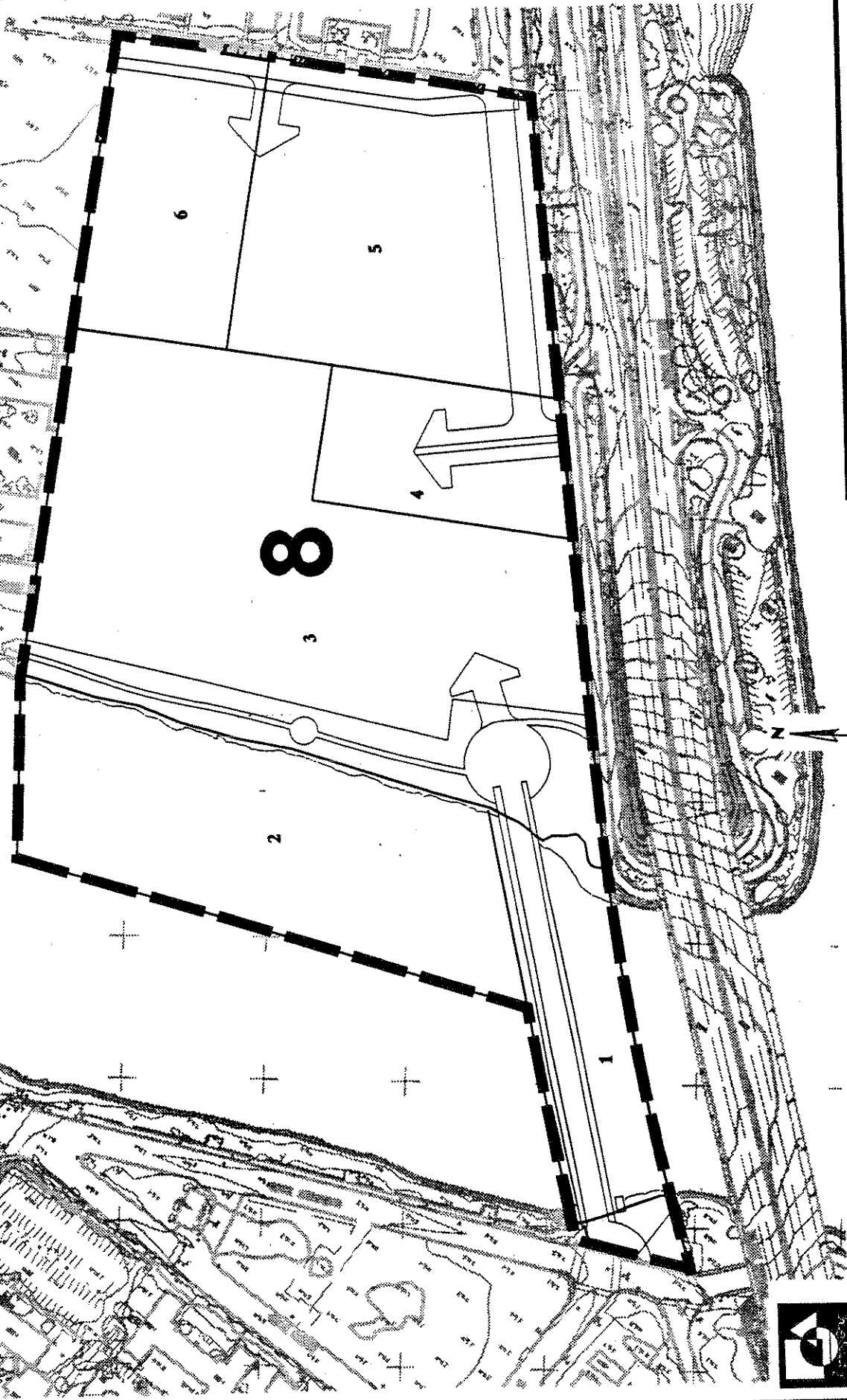
RICK ENGINEERING COMPANY



21855 10th St
Pittsburg, MO 64571
Ph: 816/837-7300
Fax: 816/837-7300
www.rickeng.com



MAP #8 AREAS 1 THROUGH 6



**NAVAL TRAINING CENTER
PHASE 8 DEVELOPMENT**

JN. 13586 4/21/2000
SCALE 1" = 200'

RICK ENGINEERING COMPANY
1401 S. 10th St.
Tulsa, Oklahoma 74119
918.438.8800



ATTACHMENT NO. 1-B

NTC MASTER LAND DISPOSITION MAP
(FIGURE 2.2, DATED 7-28-99)

[BEHIND THIS PAGE]

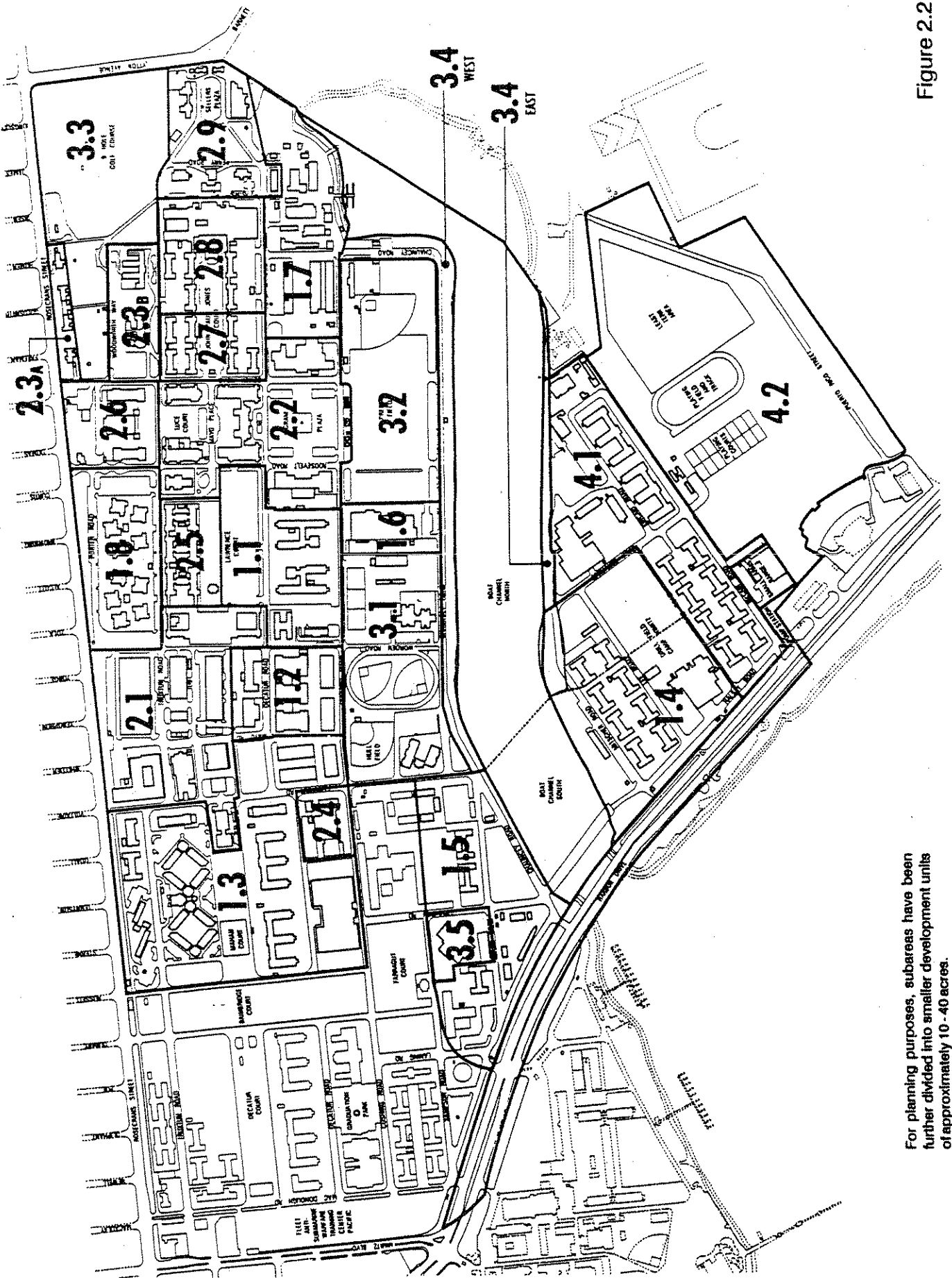


Figure 2.2
Development Phasing Units

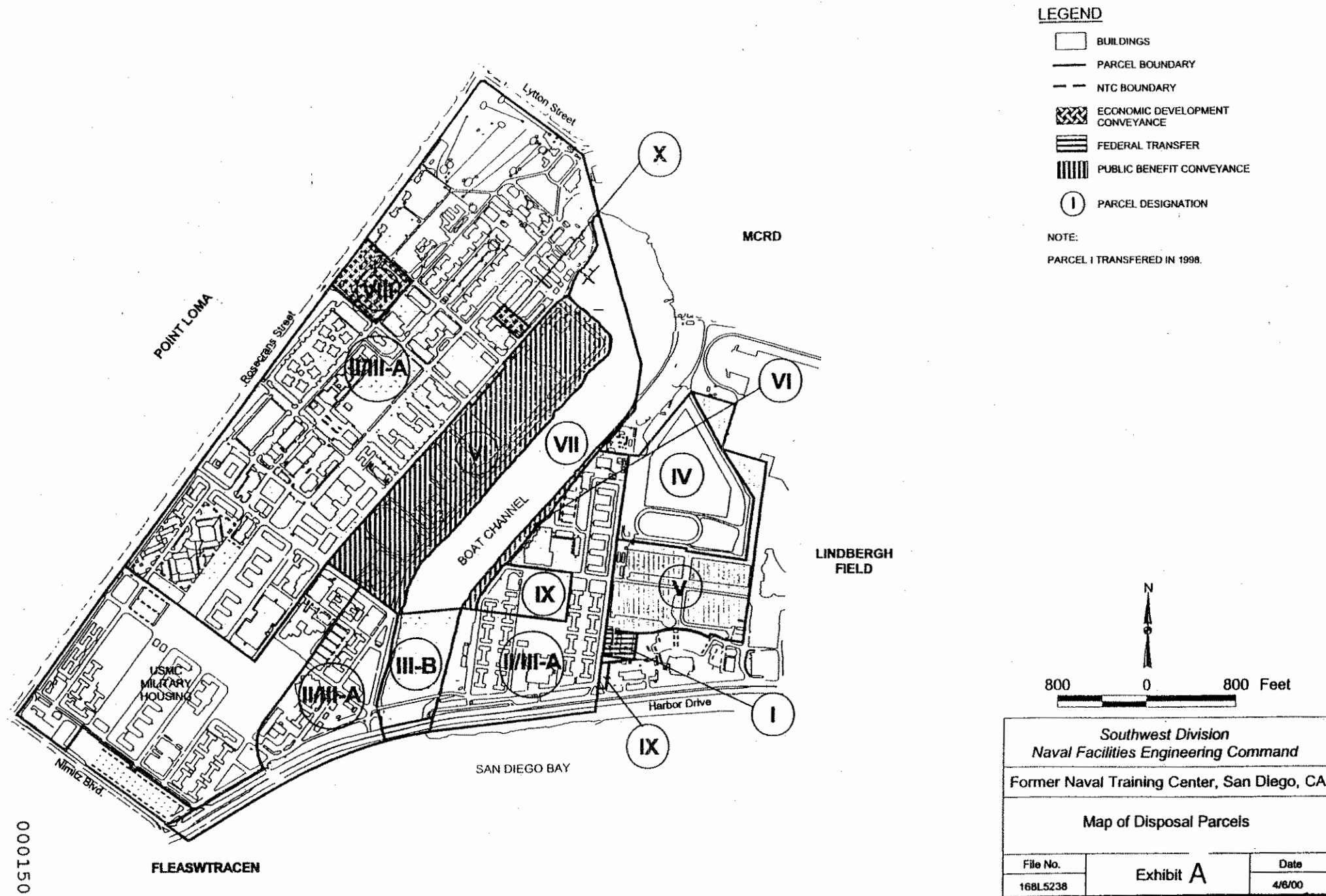
For planning purposes, subareas have been further divided into smaller development units of approximately 10 - 40 acres.

ATTACHMENT NO. 1-C








MAP OF DISPOSAL PARCELS

(SOUTHWEST DIVISION NAVAL FACILITIES
ENGINEERING COMMAND, DATED 4-6-00)

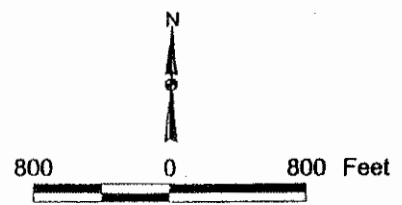
[BEHIND THIS PAGE]



LEGEND

-  BUILDINGS
-  PARCEL BOUNDARY
-  NTC BOUNDARY
-  ECONOMIC DEVELOPMENT CONVEYANCE
-  FEDERAL TRANSFER
-  PUBLIC BENEFIT CONVEYANCE
-  PARCEL DESIGNATION

NOTE:
PARCEL I TRANSFERRED IN 1998.



Southwest Division Naval Facilities Engineering Command		
Former Naval Training Center, San Diego, CA		
Map of Disposal Parcels		
File No.	Exhibit A	Date
168L5238		4/6/00

000150

NNA

ATTACHMENT NO. 2
LEGAL DESCRIPTION
[BEHIND THIS PAGE]



LEGAL DESCRIPTION

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

Parcel "A"

Those portions of the United States Naval Training Center, in the City of San Diego, County of San Diego, State of California as shown on Record of Survey Map No. 15213 filed in the Office of the County Recorder of San Diego County on June 14, 1996 as File No. 1996-0298882 of Official Records, being more particularly described as follows:

Beginning at the Northwestern terminus of that certain line designated as "North 54°15'14" West 1087.60 feet" of said Record of Survey; thence along said line South 54°15'14" East 1087.60 feet; thence continuing along the Northeasterly line of said Record of Survey the following courses: North 35°45'46" East 0.37 feet; thence South 15°38'02" East 501.45 feet to the Westerly Top of Bank of the boat Channel as shown on Record of Survey No. 15840 filed in the Office of said County Recorder; thence leaving said Northeasterly line along said Westerly Top of Bank line the following courses: South 40°42'25" West 88.21 feet; thence South 18°34'27" East 7.79 feet; thence South 01°29'46" East 17.22 feet; thence South 09°53'16" West 41.03 feet; thence South 18°36'23" East 26.69 feet; thence South 11°31'11" East 43.54 feet; thence South 88°41'28" West 6.81 feet; thence South 09°37'33" East 37.10 feet; thence South 09°04'34" East 39.01 feet; thence South 12°40'44" West 57.17 feet; thence South 12°40'21" West 41.43 feet; thence South 27°59'53" West 69.28 feet; thence South 32°18'07" West 59.18 feet; thence South 42°55'57" West 45.85 feet; thence South 66°35'38" West 10.51 feet; thence South 87°48'19" West 4.69 feet; thence South 35°55'16" West 6.43 feet; thence North 49°24'33" West 5.88 feet; thence South 38°27'13" West 35.82 feet; thence South 06°20'34" West 22.92 feet; thence South 26°09'17" West 68.03 feet; thence South 25°51'52" West 56.78 feet; thence South 07°00'49" West 32.16 feet; thence South 29°54'19" West 13.38 feet; thence South 58°05'23" West 16.58 feet; thence South 10°18'17" West 18.01 feet; thence leaving said Westerly Top of Bank line South 59°49'48" West 117.08 feet to Point "A"; thence South 41°48'36" West 731.18 feet; thence South 48°10'45" East 40.05 feet to the beginning of a tangent 20.43 foot radius curve concave Westerly; thence Southerly along the arc of said curve through a central angle of 90°00'00" a distance of 32.09 feet; thence South 41°49'16" West 419.25 feet to the beginning of a tangent 20.43 foot radius curve concave Northerly; thence Westerly along the arc of said curve through a central angle of 90°00'00" a distance of 32.09 feet; thence North 48°10'45" West 40.46 feet; thence South 41°50'55" West 1528.66 feet to the beginning of a tangent 2399.99 foot radius curve concave Southeasterly; thence Southwesterly along the arc of said curve through a central angle of 05°32'44" a distance of 232.29 feet; thence South 36°18'11" West 121.60 feet; thence South 53°43'30" East 16.18 feet to



Point "B"; thence South 36°18'40" West 1080.03 feet; thence North 53°43'54" West 1427.91 feet to the Northwesterly line of said Record of Survey No. 15213; thence along said Northwesterly line North 36°16'06" East 3087.79 feet; thence leaving said Northwesterly line South 48°10'22" East 523.19 feet; thence North 41°50'33" East 500.13 feet; thence North 48°09'51" West 572.01 feet to said Northwesterly line; thence along said Northwesterly line North 36°16'06" East 1697.53 feet to the beginning of a tangent 37.00 foot radius curve concave Southerly; thence Easterly along the arc of said curve through a central angle of 89°28'40" a distance of 57.78 feet to the Point of Beginning.

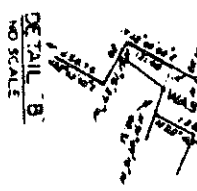
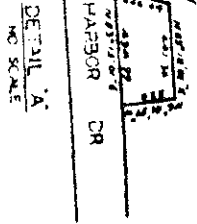
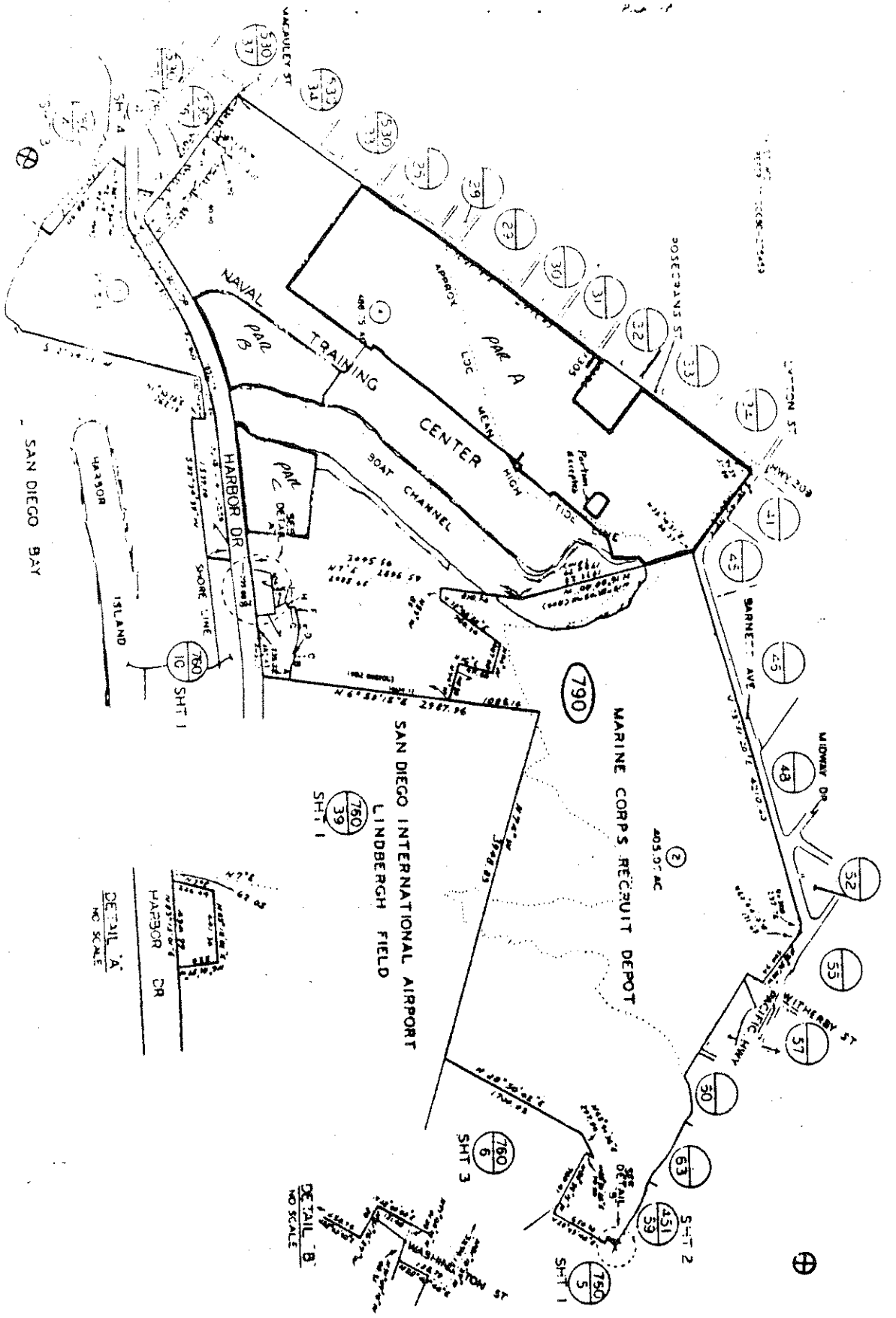
EXCEPTING THEREFROM the following: Beginning at the above-mentioned Point "A"; thence South 41°48'36" West 468.86 feet; thence North 48°11'24" West 37.88 feet to the TRUE POINT OF BEGINNING; thence North 48°04'05" West 253.65 feet; thence North 10°22'33" West 36.09 feet; thence North 41°38'01" East 114.39 feet; thence South 47°56'11" East 284.35 feet; thence South 42°34'59" West 135.81 feet to the TRUE POINT OF BEGINNING.

Parcel "B"

Beginning at the above-mentioned Point "B"; thence South 53°43'30" East 375.81 feet; thence South 36°16'00" West 29.98 feet to the TRUE POINT OF BEGINNING; thence South 53°44'05" East 335.08 feet; thence South 78°01'08" East 81.56 feet to Point "C" being a point on the Westerly Top of Bank of the Boat Channel as shown on said Record of Survey No. 15840; thence along said Westerly Top of Bank the following courses: South 23°59'50" West 19.19 feet; thence South 07°52'37" West 41.67 feet; thence South 11°58'23" West 41.96 feet; thence South 14°05'04" West 70.52 feet; thence South 10°46'32" West 75.21 feet; thence South 11°51'10" West 65.38 feet; thence South 07°11'37" West 73.82 feet; thence South 13°11'54" West 66.08 feet; thence South 16°49'21" West 96.63 feet; thence South 29°20'17" West 42.73 feet; thence South 13°53'42" West 107.62 feet; thence South 14°39'08" West 90.69 feet; thence South 13°40'46" West 32.67 feet; thence South 18°12'20" East 47.19 feet; thence South 25°35'02" East 23.50 feet; thence South 19°58'03" East 45.00 feet; thence South 00°16'48" East 12.96 feet to the Northerly Right-of-way of North Harbor Drive per document recorded April 18, 1962 as File No. 66681 of Official Records; as said point being the beginning of a non-tangent 4100.00 foot radius curve concave Southeasterly, to which a radial line bears North 14°48'14" West; thence leaving said Westerly top of Bank Southwesterly along said Northerly Right-of-way through a central angle of 14°55'28" a distance of 1067.85 feet; thence leaving said Northerly Right-of-way North 30°28'07" West 98.45 feet to the beginning of a tangent 266.00 foot radius curve concave Easterly; thence Northerly along the arc of said curve through a central angle of 66°44'13" a distance of 309.83 feet; thence North 36°16'06" East 43.44 feet to the beginning of a tangent 334.00 foot radius curve concave Northwesterly; thence Northeasterly along the arc of said curve through a central angle of 18°30'28" a distance of 107.89 feet; thence North 36°16'00" East 1277.98 feet to the TRUE POINT OF BEGINNING.

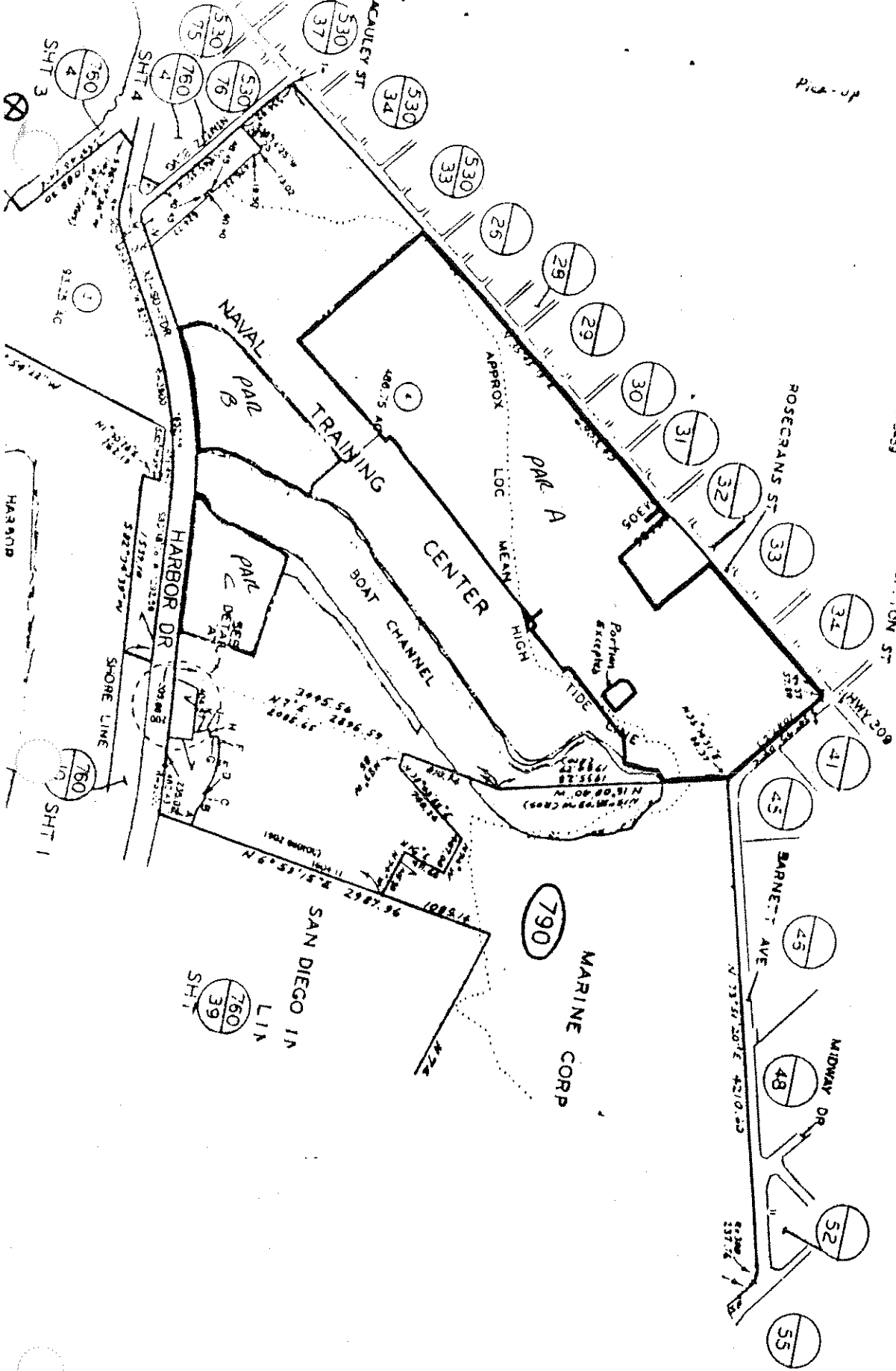
Parcel "C"

Beginning at the above-mentioned Point "C"; thence South $89^{\circ}29'35''$ East 567.89 feet to the TRUE POINT OF BEGINNING; thence South $82^{\circ}29'41''$ East 907.51 feet; thence South $07^{\circ}31'19''$ West 587.34 feet to the Northerly Right-of-way of North Harbor Drive per document recorded April 18, 1962 as File No. 66681 of Official Records; thence along said Northerly Right-of-way South $83^{\circ}48'36''$ West 947.73 feet to the beginning of a tangent 4100.00 foot radius curve concave Southerly; thence continuing along said Northerly Right-of-way Westerly along the arc of said curve through a central angle of $02^{\circ}26'08''$ a distance of 174.28 feet to the Easterly Top of Bank of Boat Channel per said Record of Survey No. 15840; thence leaving said Northerly Right-of-way along said Easterly Top of Bank North $27^{\circ}30'14''$ East 8.44 feet; thence North $85^{\circ}23'53''$ East 25.32 feet; thence North $06^{\circ}04'38''$ East 10.02 feet; thence North $24^{\circ}43'12''$ East 8.14 feet; thence North $62^{\circ}50'55''$ East 8.72 feet; thence North $81^{\circ}30'52''$ East 24.20 feet; thence North $44^{\circ}19'56''$ East 16.88 feet; thence North $11^{\circ}54'56''$ West 12.47 feet; thence North $01^{\circ}25'44''$ East 17.94 feet; thence North $31^{\circ}14'27''$ West 15.80 feet; thence North $30^{\circ}17'28''$ East 12.89 feet; thence North $43^{\circ}59'07''$ East 10.78 feet; thence North $36^{\circ}43'23''$ East 19.30 feet; thence North $25^{\circ}14'51''$ East 12.30 feet; thence North $24^{\circ}58'11''$ East 18.05 feet; thence North $27^{\circ}58'31''$ East 14.68 feet; thence North $14^{\circ}26'50''$ East 86.45 feet; thence North $16^{\circ}12'24''$ East 204.87 feet; thence North $09^{\circ}38'37''$ East 77.34 feet; thence North $15^{\circ}34'49''$ East 86.37 feet; thence North $21^{\circ}39'11''$ East 62.28 feet; thence North $10^{\circ}29'44''$ East 59.12 feet; thence North $17^{\circ}18'59''$ East 81.81 feet; thence North $15^{\circ}00'45''$ East 27.45 feet to the TRUE POINT OF BEGINNING.



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Pick-up

ST AND REFER TO DOCUMENT 23459



ATTACHMENT NO. 3

SCHEDULE OF OUTSIDE PERFORMANCE DATES

[BEHIND THIS PAGE]

ATTACHMENT NO. 3

SCHEDULE OF OUTSIDE PERFORMANCE DATES

PERFORMANCE OBLIGATION

OUTSIDE DATE FOR PERFORMANCE

- | | |
|---|---|
| 1. <u>Precise Plan Approval</u> . Agency and Master Developer, as appropriate, shall submit all documents and take such other actions as may be necessary to (a) obtain from the City approval of the Precise Plan and Development Permits for the Site, and (b) obtain from the Coastal Commission certification of the Precise Plan as an amendment to the Local Coastal Plan (as described in Section 2.2.b.). | Submit to City Council - not later than 6 months after mutual execution of the DDA;
Submit to Coastal Commission - not later than 12 months after mutual execution of the DDA. |
| 2. <u>Site Clearance Plans</u> . Master Developer shall prepare and submit to the Agency the Site Clearance Plans (as described in Section 5.1.b.). | Not later than 30 days prior to the scheduled date for recording of any Final Map. |
| 3. <u>Residential Parcels (Map Areas 1 and 2)</u> . | |
| A. Record Final Map and satisfy all other Phase Three Conditions Precedent (Map Areas 1 and 2). | Not later than 18 months after Precise Plan Approval. |
| B. Complete all Horizontal Improvements (Map Areas 1 and 2). | Not later than 18 months after recordation of Final Map. |

- C. Submit to the Agency a method of financing for Vertical Improvements to be constructed in Map Areas 1 and 2 (as described in Section 4.1.b). Not later than 2 months prior to scheduled date for satisfaction of Phase Four Conditions Precedent.
- D. Satisfy all Phase Four Conditions Precedent and start Vertical Improvements (Map Areas 1 and 2). First 24 units, not later than 18 months after recordation of Final Map; another 24 units every 3 months thereafter.
- E. Complete all Vertical Improvements (Map Areas 1 and 2). First 24 units, not later than 27 months after recordation of Final Map; another 24 months every 3 months thereafter.

3. Office and R&D (Map Area 3)

- A. Record Final Map and satisfy all other Phase Three Conditions Precedent (Map Area 3). Not later than 18 months after Precise Plan Approval.
- B. Complete all Horizontal Improvements (Map Area 3). Not later than 18 months after recordation of Final Map.
- C. Submit to the Agency a proposed method of financing for the Vertical Improvements to be constructed in Map Area 3 (as described in Section 4.1.b). Not later than 2 months prior to the outside date for satisfaction of Phase Four Conditions Precedent.
- D. Satisfy all Phase Four Conditions Precedent and start Vertical Improvements (Map Area 3). Not later than 18 months after recordation of Final Map.

E. Complete all Vertical Improvements (Map Area 3).

The first 200,000 square feet of Improvements, not later than 36 months after recordation of the Final Map; the remaining 185,000 (for a total of 385,000) square feet of Improvements, not later than 60 months after recordation of the Final Map.

4. Educational Core (Map Area 4)

A. Record Final Map and satisfy all other Phase Three Conditions Precedent (Map Area 4).

Not later than 30 months after Precise Plan Approval.

B. Complete all Horizontal Improvements (Map Area 4).

Not later than 18 months after recordation of the Final Map.

C. Submit to the Agency a proposed method of financing for the Vertical Improvements to be rehabilitated in Map Area 4 - not including Building 83 (as described in Section 4.1.b).

Not later than 2 months prior to the outside date for satisfaction of Phase Four Conditions Precedent.

D. Satisfy all Phase Four Conditions Precedent and start Vertical Improvements (Map Area 4 - not including Building 83). Note: the following square footage represents minimum thresholds; the maximum allocations will be established in the Precise Plan.

On the following schedule:

Not less than 24,000 square feet of Improvements - Not later than 24 months after recordation of the Final Map.

Not less than an additional 113,688 (for a total of 137,688) square feet of Improvements - Not later than 36 months after recordation of the Final Map.

SCHEDULE OF OUTSIDE PERFORMANCE DATES

Not less than an additional 29,000
(for a total of 166,688) square feet of
Improvements - Not later than 48
months after recordation of the Final
Map.

Not less than an additional 25,000
(for a total of 191,688) square feet of
Improvements - Not later than 60
months after recordation of the Final
Map.

Not less than an additional 55,979
(for a total of 247,667) square feet of
Improvements - Not later than 72
months after recordation of the Final
Map.

E. Complete Vertical
Improvements (Map Area 4 -
not including Building 83).

On the following schedule:

Not less than 24,000 square feet of
Improvements - Not later than 36
months after recordation of the Final
Map.

Not less than an additional 113,688
(for a total of 137,688) square feet of
Improvements - Not later than 48
months after recordation of the Final
Map.

Not less than an additional 29,000
(for a total of 166,688) square feet of
Improvements - Not later than 60
months after recordation of the Final
Map.

Not less than an additional 25,000
(for a total of 191,688) square feet of
Improvements - Not later than 72
months after recordation of the Final
Map.

Not less than an additional 55,979 (for a total of 247,667) square feet of Improvements - Not later than 96 months after recordation of the Final Map.

5. Mixed Use and Civic, Arts and Cultural Center of the Historic Core (Map Area 5).

- | | | |
|----|--|--|
| A. | Record Final Map and satisfy all other Phase Three and Phase Three (Foundation) Conditions Precedent, as the case may be (Map Area 5). | Not later than 18 months after Precise Plan Approval. |
| B. | Complete all Horizontal Improvements (Map Area 5). | Not later than 18 months after recordation of Final Map. |
| C. | Submit to the Agency a proposed method of financing for the Map Area 5 Mixed Use Vertical Improvements (as described in Section 4.1.b). | Not later than 2 months prior to the outside date for satisfaction of Phase Four Conditions. |
| D. | Satisfy all Phase Four Conditions Precedent (for Mixed Use Area) and start all Vertical Improvements (Map Area 5). Note: at least 50% of the following square footage, shall be allocated to Civic, Arts and Cultural Center uses. | On the following schedule:

33,751 square feet of Improvements - Not later than 12 months after recordation of the Final Map.

An additional 27,808 (for a total of 61,559) square feet of Improvements - Not later than 24 months after |

SCHEDULE OF OUTSIDE PERFORMANCE DATES

recordation of the Final Map.

An additional 74,722 (for a total of 136,281) square feet of Improvements - Not later than 36 months after recordation of the Final Map.

An additional 89,135 (for a total of 225,416) square feet of Improvements - Not later than 48 months after recordation of the Final Map.

An additional 51,168 (for a total of 276,584) square feet of Improvements - Not later than 60 months after recordation of the Final Map.

- E. Complete Vertical Improvements (Map Area 5).
Note: at least 50% of the following square footage shall be allocated to Civic, Arts and Cultural Center uses.

33,751 square feet of Improvements - Not later than 24 months after recordation of the Final Map.

An additional 27,808 (for a total of 61,559) square feet of Improvements - Not later than 36 months after recordation of the Final Map.

An additional 74,722 (for a total of 136,281) square feet of Improvements - Not later than 48 months after recordation of the Final Map.

An additional 89,135 (for a total of 225,416) square feet of Improvements - Not later than 60 months after recordation of the Final Map.

An additional 51,168 (for a total of 276,584) square feet of Improvements - Not later than 72 months after recordation of the Final Map.

6. Mixed Use and Civic, Arts and Cultural Center of the Historic Core (Map Area 6)

- A. Record Final Map and satisfy all other Phase Three and Phase Three (Foundation) Conditions Precedent (Map Area 6). Not later than 36 months after Precise Plan Approval.
- B. Complete all Horizontal Improvements (Map Area 6). Not later than 24 months after recordation of Final Map.
- C. Submit to the Agency a proposed method of financing for the Map Area 6 Mixed Use Vertical Improvements (as described in Section 4.1.b). Not later than 2 months prior to the outside date for satisfaction of all Phase Four Conditions Precedent.
- D. Satisfy all Phase Four Conditions Precedent (for Mixed Use Area) and start all Vertical Improvements (Map Area 6). Note: the following allotments of Improvements, calculated by square footage, shall be allocated approximately 50/50 between Mixed Use and Civic, Arts and Cultural Center uses.
 - On the following schedule:
 - 33,000 square feet of Improvements - Not later than 12 months after recordation of the Final Map.
 - An additional 27,000 (for a total of 60,000) square feet of Improvements - Not later than 24 months after recordation of the Final Map.
 - An additional 73,000 (for a total of 133,000) square feet of Improvements - Not later than 36 months after recordation of the Final

Map.

An additional 88,000 (for a total of 221,000) square feet of Improvements - Not later than 48 months after recordation of the Final Map.

An additional 50,000 (for a total of 271,000) square feet of Improvements - Not later than 60 months after recordation of the Final Map.

An additional 20,000 (for a total of 291,000) square feet of Improvements - Not later than 72 months after recordation of the Final Map.

- E. Complete Vertical Improvements (Map Area 6).
Note: the following allotments of Improvements, calculated by square footage, shall be allocated approximately 50/50 between Mixed Use and Civic, Arts and Cultural Center uses.

On the following schedule:

33,000 square feet of Improvements - Not later than 24 months after recordation of the Final Map.

An additional 27,000 (for a total of 60,000) square feet of Improvements - Not later than 36 months after recordation of the Final Map.

An additional 73,000 (for a total of 133,000) square feet of Improvements - Not later than 48 months after recordation of the Final Map.

An additional 88,000 (for a total of 221,000) square feet of Improvements - Not later than 60 months after recordation of the Final Map.

An additional 50,000 (for a total of 271,000) square feet of Improvements - Not later than 72 months after recordation of the Final Map.

An additional 20,000 (for a total of 291,000) square feet of Improvements - Not later than 84 months after recordation of the Final Map.

7. Hotel Parcel (Map Area 7)

- | | | |
|----|---|--|
| A. | Record Final Map and satisfy all other Phase Three Conditions Precedent (Map Area 7). | Not later than 24 months after Precise Plan Approval. |
| B. | Complete all Horizontal Improvements (Map Area 7). | Not later than 18 months after recordation of the Final Map. |
| C. | Submit to the Agency a proposed method of financing for the Map Area 7 Vertical Improvements (as described in Section 4.1.b). | Not later than 2 months prior to the outside date for satisfaction of Phase Four Conditions Precedent. |
| D. | Satisfy all Phase Four Conditions Precedent and start all Vertical Improvements (Map Area 7). | Not later than 24 months after recordation of the Final Map. |
| E. | Complete all Vertical Improvements (Map Area 7). | Not later than 48 months after recordation of the Final Map. |

8. Hotel Parcel (Map Area 8)

- | | | |
|----|---|---|
| A. | Record Final Map and satisfy all other Phase Three Conditions Precedent (Map Area 8). | Not later than 36 months after Precise Plan Approval. |
|----|---|---|

- B. Complete all Horizontal Improvements (Map Area 8). Not later than 18 months after recordation of the Final Map.
- C. Submit to the Agency a proposed method of financing for the Map Area 8 Vertical Improvements (as described in Section 4.1.b). Not later than 2 months prior to the outside date for satisfaction of Phase Four Conditions Precedent.
- D. Satisfy all Phase Four Conditions Precedent and start all Vertical Improvements (Map Area 8). Not later than 36 months after recordation of the Final Map.
- E. Complete all Vertical Improvements (Map Area 8). Not later than 60 months after recordation of the Final Map.

9. Golf Course (Lots 12, 26-29 of Map Area 5)

- A. Record Final Map and satisfy all other Phase Three Conditions Precedent (Golf Course). Not later than 18 months after Precise Plan Approval.
- B. Complete all Horizontal Improvements (Golf Course) Not later than 18 months after recordation of the Final Map.
- C. Submit to the Agency a proposed method of financing for the Golf Course Vertical Improvements (as described in Section 4.1.b). Not later than 2 months prior to the outside date for satisfying Phase Four Conditions Precedent.
- D. Satisfy all Phase Four Not later than 24 months after recordation of

- | | | |
|-----|---|--|
| | Conditions Precedent and start all Vertical Improvements (Golf Course). | the Final Map. |
| E. | Complete all Vertical Improvements (Golf Course). | Not later than 48 months after recordation of the Final Map. |
| 10. | <u>Parking Parcel (Lots 1-3 of Map Area 5)</u> | |
| A. | Record Final Map and satisfy all other Phase Three Conditions Precedent (Map Area 5 Parking Parcel). | Not later than 18 months after Precise Plan Approval. |
| B. | Complete all Horizontal Improvements (Map Area 5 Parking Parcel) | Not later than 18 months after recordation of the Final Map. |
| C. | Submit to the Agency a proposed method of financing for the Map Area 5 Parking Vertical Improvements (as described in Section 4.1.b). | Not later than 2 months prior to the outside date for satisfaction of Phase Four Conditions Precedent. |
| D. | Satisfy all Phase Four Conditions Precedent and start all Vertical Improvements (Map Area 5 Parking Parcel). | Surface parking - Not later than 18 months after recordation of the Final Map;
Structure parking - Not later than 48 months after recordation of the Final Map. |
| E. | Complete all Vertical Improvements (Map Area 5 Parking Parcel). | Surface parking - Not later than 30 months after recordation of the Final Map;
Structure parking - Not later than 60 months after recordation of the Final Map. |

11. Parking Parcel (Lot 30 of Map Area 6)

- | | | |
|----|---|--|
| A. | Record Final Map and satisfy all other Phase Three Conditions Precedent (Map Area 6 Parking Parcel). | Not later than 36 months after Precise Plan Approval. |
| B. | Complete all Horizontal Improvements (Map Area 6 Parking Parcel) | Not later than 24 months after recordation of the Final Map. |
| C. | Submit to the Agency a proposed method of financing for the Map Area 6 Parking Vertical Improvements (as described in Section 4.1.b). | Not later than 2 months prior to the outside date for satisfaction of the Phase Four Conditions Precedent. |
| D. | Satisfy all Phase Four Conditions Precedent and start all Vertical Improvements (Map Area 6 Parking Parcel). | Not later than 24 months after recordation of the Final Map. |
| E. | Complete all Vertical Improvements (Map Area 6 Parking Parcel). | Not later than 30 months after recordation of the Final Map. |

ATTACHMENT NO. 4

PROJECT BUDGET

[BEHIND THIS PAGE]

ATTACHMENT NO. 4
 NAVAL TRAINING CENTER
 SOURCES AND USES OF FUNDS
 (Dollars in Thousands)

Sources of Revenue		Total Revenue	
1	Land Sales & Capitalized Leases	\$	91,441
2	Interim Leases	\$	611
3	Interest Income	\$	466
4	CFD Bond Proceeds	\$	13,524

Total Gross Revenue		\$	106,042
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Development Costs			
5	Entitlements/Consulting/Fees	\$	(11,393)
6	Site Management/Agency Admin Costs	\$	(3,640)
7	Marketing/Promotions	\$	(900)
8	Direct Construction Costs:		
9	Offsite Horizontal Improvements	\$	(6,000)
10	Onsite Horizontal Improvements	\$	(56,417)
11	Seed Funds - Civic, Arts & Cultural Center	\$	(2,000)
12	Financing Costs/Developer Fee	\$	(9,628)

Total Development Costs		\$	(89,978)
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Project Cash Flow		\$	16,064
Master Developer Preferred Return @ 12% of Gross Revenue		\$	(12,725)

Cash Available for Distribution		\$	3,339
Master Developer 50% Share		\$	1,669
Agency 50% Share		\$	1,669

ATTACHMENT NO. 5-A

FORM OF GRANT DEED
(ALL SALE PARCELS EXCEPT OFFICERS' HOUSES)

[BEHIND THIS PAGE]

OFFICIAL BUSINESS
Document entitled to free
recording per Government Code
Section 6103.

Recording Requested By:
THE REDEVELOPMENT AGENCY OF THE CITY
OF SAN DIEGO
City Administration Building
202 C Street
San Diego, California 92101
Attention: NTC Project Manager.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

[THIS FORM APPLICABLE TO ALL SALE
PARCELS EXCEPT OFFICERS' HOUSES]

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body corporate and politic of the State of California, herein called "Grantor," acting to carry out the Redevelopment Plan for the Naval Training Center Redevelopment Project, herein called "Redevelopment Plan," under the Community Redevelopment Law of the State of California, hereby grants to McMILLIN-NTC, LLC, a Delaware limited liability company, herein called "Grantee," the real property, hereinafter referred to as the "Property," described in the document attached hereto, labeled Exhibit A and incorporated herein by this reference.

1. Grantor excepts (to the extent now or hereafter validly excepted and reserved by the parties named in deeds, leases and other documents of record) all oil, gas, hydrocarbon substances and minerals of every kind and character lying more than 500 feet below the surface, together with the right to drill into, through, and to use and occupy all parts of the Property lying more than 500 feet below the surface thereof for any and all purposes incidental to the exploration for and production of oil, gas, hydrocarbon substances or minerals from the Property, but without, however, any right to use or disturb either the surface of the Property or any portion thereof within 500 feet of the surface for any purpose or purposes whatsoever.

2. Said Property is conveyed in accordance with and subject to the Redevelopment Plan for the Naval Training Center Redevelopment Project which was approved and adopted by the City Council of the

City of San Diego on May 13, 1997 by Ordinance No. 18405, and that certain Disposition and Development Agreement (the "DDA") entered into by and between Grantor ("Agency" therein) and Grantee ("Master Developer" therein) on [DATE OF DDA TO BE INSERTED], both of which documents are public records on file in the offices of the City Clerk of the City of San Diego and the Secretary of Grantor, and are by reference thereto incorporated herein as though fully set forth herein. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the DDA.

3. The Property is conveyed to Grantee at a purchase price herein called "Purchase Price", determined in accordance with the uses permitted and the conditions, covenants and development costs required by the DDA. Therefore, Grantee hereby covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property that the Property shall be devoted only to the development permitted and the uses specified in the Redevelopment Plan, the Precise Plan, the Agreement Affecting Real Property executed by Grantor and Grantee and recorded on or about the date hereof (the "Agreement Affecting Real Property"), and this Grant Deed. Without limiting the generality of the foregoing, Grantee shall use the Property for the uses that are described in the Agreement Affecting Real Property.

4. Grantee covenants and agrees for itself, its successors, its assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall Grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property. The foregoing covenants shall run with the land.

5. All deeds, leases or contracts made relative to the Property, improvements thereon, or any part thereof, shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

- a. In deeds: "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the

sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

- b. In leases: "The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

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

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

6. Prior to the recordation of a Certificate of Completion pursuant to the DDA, Grantee shall not make any sale, transfer, conveyance or assignment of the Property or any part thereof or the buildings or structures thereon, without the prior written approval of Grantor, except as provided in this Section 6. In the event that the Grantee does sell, transfer, convey or assign any part of the Property or buildings or structures thereon, prior to the recordation of a Certificate of Completion, in violation of this Section 6, the Grantor shall be entitled to increase the Purchase Price paid by the Grantee by the amount that the consideration payable for such sale, transfer, conveyance or assignment is in excess of the Purchase Price paid by the Grantee, plus the cost of improvements and development, including carrying charges and costs related thereto. The consideration payable for such sale, transfer, conveyance or assignment to the extent it is in excess of the amount so authorized shall belong and be paid to the Grantor and until paid the Grantor shall have a lien on the Property and any part involved for such amount. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Property, nor shall it apply to any Permitted Mortgage or other Permitted Transfer authorized by the DDA.

a. Grantee represents and agrees that its undertakings pursuant to the DDA and this Deed are for the purpose of redevelopment of the Property and not for speculation in land holding. Grantee further recognizes that the qualifications and identity of Grantee are of particular concern to Grantor, in light of the following: (1) the importance of the redevelopment of the Property to the general welfare of the community; (2) the public assistance that has been made available by law and by the government for the purpose of making such redevelopment possible; and (3) the fact that a change in ownership or control of Grantee is for practical purposes a transfer or disposition of the property then owned by Grantee. Grantee further recognizes that it is because of such qualifications and identity that Grantor is conveying the Property to Grantee. Therefore, no voluntary or involuntary successor in interest of Grantee shall acquire any rights or powers under the DDA or this Deed except as expressly set forth herein.

b. Prior to the recordation of a Certificate of Completion pursuant to the DDA, Grantee shall not assign or transfer any portion of the Property, or interest therein, except as provided in the DDA.

c. The restrictions of this Section 6 shall terminate upon the recordation of the Certificate of Completion with respect to the Property pursuant to the DDA.

7. RIGHT OF REVERTER. Prior to the issuance of the Agency Certificate of Completion for the Vertical Improvements (as defined in the DDA) to be constructed or rehabilitated on the Property, the following shall apply:

a. Subject to the notice and cure provisions of Section 9.1 of the DDA, Grantor shall have the right, at its option, to reenter and take possession of the Property (or any portion thereof) with all improvements thereon, and to terminate and revest in Grantor the estate theretofore conveyed to Grantee, as provided in California Health and Safety Code Section 33437, in the event of an uncured default described in this paragraph a., below:

(1) Grantee or Assignee fails to commence construction of any Improvements as required by the DDA for a period of ninety (90) days after written notice from Grantor, which shall be subject to force majeure delay; or

(2) Grantee or Assignee abandons or substantially suspends construction of any Improvements for a period of ninety (90) days after written notice from Grantor, which shall be subject to force majeure delay; or

(3) Grantee or Assignee assigns or attempts to assign the DDA, or any rights therein, or transfer, or suffer any involuntary transfer of the Property or such party's interest in the Property, or any part thereof, in violation of the DDA or this Deed, and such breach is not cured within thirty (30) days after the date of written notice thereof; or

(4) Grantee or Assignee otherwise materially breaches the DDA, and such breach is not cured within the time provided in Section 9.1 of the DDA.

b. Prior to Satisfaction of Phase Four Conditions. Prior to the satisfaction of all Phase Four Conditions Precedent applicable to the Property, the Grantor's right of reverter established in this Section 7 shall be senior in priority to any lien, including Permitted Mortgages and Permitted Leasehold Mortgages, such that if Grantor exercises its right of reverter, all such liens, mortgages and leasehold mortgages will be extinguished and the Grantor will be revested of title to the Property free and clear of all such liens, mortgages and leasehold mortgages.

c. Conditions of Subordination to Senior Obligations. Subject to this paragraph c., following satisfaction in full of all Phase Four Conditions Precedent applicable to the Property, the Grantor shall subordinate its right of reverter to the lien of any Community Financing District or other financing bonds issued with respect to the Property and the lien of any Permitted Mortgagee or Permitted Leasehold Mortgagee (collectively, a "Senior Obligation"). The Grantor's agreement to subordinate its right of reverter to Senior Obligations is subject to the holder of any Senior Obligation to which the Grantor's right of reverter is to be subordinated, shall agree, in writing, to provide to the Grantor the following rights:

(1) Upon the occurrence of an event of default under any of the Senior Obligation documents, the holder of the Senior Obligation shall promptly notify Grantor of the occurrence of such event of default, which notification shall be provided to Grantor contemporaneously with the delivery to Master Developer or Assignee of any notice of default under any of the Senior Obligation documents;

(2) The Grantor shall have the right, during the cure periods which apply to the Grantee or Assignee pursuant to the Senior Obligation documents and any cure period which may apply to the Grantor under applicable law, to cure Grantee or Assignee's default relative to the Senior Obligation; and

(3) After a default on any of the Senior Obligation documents but prior to a foreclosure sale or deed in lieu assignment of the Property, the Grantor shall have the right to take title to the Property and cure the default relative to the Senior Obligation documents, without the holder of the Senior Obligation exercising any right it might otherwise have to accelerate the Senior Obligation by reason of such title transfer, so long as Grantor promptly cures any such default upon taking title to the Property.

d. Following Satisfaction of Phase Four Conditions Precedent. Upon and after the satisfaction of all Phase Four Conditions Precedent, such right to reenter, repossess, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit, and Grantor's rights shall be subject and subordinate to any rights or interests provided in the DDA for the protection of any Mortgagee of a Permitted Mortgage Loan. To carry out this paragraph d, subject to the conditions set forth in paragraph c. of this Section 7, the Grantor shall execute such reasonable subordination agreements as may be requested by

Grantee or the maker of any Permitted Mortgage Loan or Permitted Leasehold Mortgage Loan.

e. Disposition of Property Following Reversion. If such reversion occurs following the satisfaction of all Phase Four Conditions Precedent and subordination of the Grantor's Right of Reverter to the lien of a Permitted Mortgage Loan or Permitted Leasehold Mortgage Loan, upon the reversion in Grantor of title to the Property, or any part thereof, as provided in this Section 7, Grantor shall, pursuant to its responsibilities under state law, use its best efforts to resell the Property, or any part thereof, as soon and in such manner as Grantor shall find feasible and consistent with the objectives of the Community Redevelopment Law, the Reuse Plan and the Redevelopment Plan to a qualified and responsible party or parties (as determined by Grantor), who will assume the obligation of making or completing the improvements, or such other improvements in their stead, as shall be satisfactory to Grantor and in accordance with the uses specified for the Property, or any part thereof, in the Redevelopment Plan. Upon such resale of the Property, or any part thereof, the proceeds thereof, if any, shall be applied:

(1) First (but only if such reversion occurs following the satisfaction of all Phase Four Conditions Precedent and subordination of the Grantor's Right of Reverter to the lien of any Permitted Mortgage Loan or Permitted Leasehold Mortgage Loan), repayment in full of the outstanding balance of any Permitted Mortgage Loan;

(2) next, to reimburse Grantor on its own behalf or on behalf of the City of San Diego of all costs and expenses incurred by Grantor, including salaries of personnel engaged in such action, in connection with the recapture, management and resale of the Property, or any part thereof (but less any income derived by Grantor from the sale of the Property, or any part thereof, in connection with such management); all taxes, assessments and water and sewer charges with respect to the Property or any part thereof (or, in the event the Property, or any part thereof, is exempt from taxation or assessment or such charges during the period of ownership, then such taxes, assessments or charges, as would have been payable if the Property, or part thereof, were not so exempt); any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Grantee, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the agreed improvements or

any part thereof on the Property, or any part thereof; and any amounts otherwise owing to the Grantor by Grantee and its successor or transferee; and

(3) Third, to reimburse Grantee, its successor or transferee, up to the amount equal to: the sum of the Purchase Price paid to the Grantor for the Property (or allocable to the part thereof) and the costs incurred for the development of the Property, or any part thereof, or for the construction of the agreed improvements thereon, less (subject to the satisfaction of all Phase Four Conditions Precedent) the Permitted Mortgage Loan.

(4) Any balance remaining after such reimbursements shall be retained by Grantor as its property.

f. Rules of Interpretation. To the extent that the right established in this Section 7 involves a forfeiture, it must be strictly interpreted against Grantor, the party for whose benefit it is created. The rights established in this Section 7 are to be interpreted in light of the fact that Grantor will convey the Property to Grantee for development and not for speculation.

g. Statutory Basis for Right of Reverter. The parties acknowledge that Grantor's right of reverter pursuant to this Section 7 is authorized by and is in furtherance of California Health and Safety Code Section 33437.

h. Expiration of Right of Reverter. The rights established in this Section 7 shall not apply to the Property after the recordation of the Agency Certificate of Completion with respect to the Property.

8. All conditions, covenants and restrictions contained in this Grant Deed shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by Grantor, its successors and assigns, and the City of San Diego and its successors and assigns, against Grantee, its successors and assigns, to or of the Property conveyed herein or any portion thereof or any interest therein, and any party in possession or occupancy of said Property or portion thereof.

9. Except as provided in this Section 9, every covenant and condition and restriction contained in this Grant Deed shall remain in effect until the expiration of the time limit on the effectiveness of the Redevelopment Plan (determined as provided in Section 1000.1 of the Redevelopment Plan). The covenants against

discrimination set forth in Section 4 and Section 5 of this Grant Deed shall remain in perpetuity. The covenants set forth in Section 6 and Section 7 of this Grant Deed shall terminate upon the recordation of the Agency Certificate of Completion by Grantor pursuant to the DDA.

10. In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that Grantor shall be deemed a beneficiary of the agreements and covenants provided hereinabove both for and in its own right and also for the purposes of protecting the interests of the community. All covenants without regard to technical classification or designation shall be binding for the benefit of the Grantor, and such covenants shall run in favor of the Grantor for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. Grantor shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant.

11. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest in the Property; provided, however, that any subsequent owner of the Property shall be bound by such remaining covenants, conditions, restrictions, limitations, and provisions, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized as of [DATE TO BE INSERTED].

Grantor:
REDEVELOPMENT AGENCY OF
THE CITY OF SAN DIEGO

By: _____
Hank Cunningham
Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY
ON THIS _____ day of
_____, _____.

CASEY GWINN
Agency General Counsel

By: _____
Richard A. Duvernay, Deputy

KANE, BALLMER AND BERKMAN
Agency Special Counsel

By: _____
Glenn F. Wasserman

The grantee hereby accepts the written deed, subject to all of the matters hereinbefore set forth.

Grantee:

McMILLIN-NTC, LLC, a Delaware
limited liability company

Dated: _____

By: _____

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

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

WITNESS my hand and official seal.

Signature _____

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

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

WITNESS my hand and official seal.

Signature _____

Exhibit A

LEGAL DESCRIPTION

[TO BE ADDED]

ATTACHMENT NO. 5-B

FORM OF GRANT DEED
(OFFICERS' HOUSES ONLY)

[BEHIND THIS PAGE]

OFFICIAL BUSINESS
Document entitled to free
recording per Government Code
Section 6103.

Recording Requested By:
THE REDEVELOPMENT AGENCY OF THE CITY
OF SAN DIEGO
City Administration Building
202 C Street
San Diego, California 92101
Attention: NTC Project Manager.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

[THIS FORM APPLICABLE ONLY TO OFFICERS' HOUSES]

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body corporate and politic of the State of California, herein called "Grantor," acting to carry out the Redevelopment Plan for the Naval Training Center Redevelopment Project, herein called "Redevelopment Plan," under the Community Redevelopment Law of the State of California, hereby grants to McMILLIN-NTC, LLC, a Delaware limited liability company, herein called "Grantee," the real property, hereinafter referred to as the "Property," described in the document attached hereto, labeled Exhibit A and incorporated herein by this reference.

1. a. Grantor excepts and reserves any existing street, proposed street, or portion of any street or proposed street lying outside the boundaries of the Property which might otherwise pass with a conveyance of the Property; and

b. Grantor excepts (to the extent now or hereafter validly excepted and reserved by the parties named in deeds, leases and other documents of record) all oil, gas, hydrocarbon substances and minerals of every kind and character lying more than 500 feet below the surface, together with the right to drill into, through, and to use and occupy all parts of the Property lying more than 500 feet below the surface thereof for any and all purposes incidental to the exploration for and production of oil, gas, hydrocarbon substances or minerals from the Property, but without, however, any right to use or disturb either the surface of the Property or any portion thereof within 500 feet of the surface for any purpose or purposes whatsoever.

Grant Deed (Officers' Houses)

Page 1 of 5

ntc\deedb4
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2. Said Property is conveyed in accordance with and subject to the Redevelopment Plan for the Naval Training Center Redevelopment Project which was approved and adopted by the City Council of the City of San Diego on May 13, 1997 by Ordinance No. 18405, and that certain Disposition and Development Agreement (the "DDA") entered into by and between Grantor ("Agency" therein) and Grantee ("Master Developer" therein) on [DATE OF DDA TO BE INSERTED], both of which documents are public records on file in the offices of the City Clerk of the City of San Diego and the Secretary of Grantor, and are by reference thereto incorporated herein as though fully set forth herein.

3. The Property is conveyed to Grantee at a purchase price herein called "Purchase Price", determined in accordance with the uses permitted and the conditions, covenants and development costs required by the DDA. Therefore, Grantee hereby covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property that the Property shall be devoted only to the uses specified in the Redevelopment Plan, the Precise Plan, the Agreement Affecting Real Property executed by Grantor and Grantee and recorded on or about the date hereof (the "Agreement Affecting Real Property"), and this Grant Deed. Without limiting the generality of the foregoing, Grantee shall use the Property for the uses that are described in the Agreement Affecting Real Property.

4. Grantee covenants and agrees for itself, its successors, its assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall Grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property. The foregoing covenants shall run with the land.

5. All deeds, leases or contracts made relative to the Property, improvements thereon, or any part thereof, shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

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

b. In leases: "The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

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

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

tenants, lessees, subtenants, sublessees, or vendees of the land."

6. All conditions, covenants and restrictions contained in this Grant Deed shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by Grantor, its successors and assigns, and the City of San Diego and its successors and assigns, against Grantee, its successors and assigns, to or of the Property conveyed herein or any portion thereof or any interest therein, and any party in possession or occupancy of said Property or portion thereof.

7. Except as provided in this Section 7, every covenant and condition and restriction contained in this Grant Deed shall remain in effect until the expiration of the time limit on the effectiveness of the Redevelopment Plan (determined as provided in Section 1000.1 of the Redevelopment Plan). The covenants against discrimination set forth in Section 4 and Section 5 of this Grant Deed shall remain in perpetuity.

8. In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that Grantor shall be deemed a beneficiary of the agreements and covenants provided hereinabove both for and in its own right and also for the purposes of protecting the interests of the community. All covenants without regard to technical classification or designation shall be binding for the benefit of the Grantor, and such covenants shall run in favor of the Grantor for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. Grantor shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant.

9. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest in the Property; provided, however, that any subsequent owner of the Property shall be bound by such remaining covenants, conditions, restrictions, limitations, and provisions, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized as of [DATE TO BE INSERTED].

Grantor:
REDEVELOPMENT AGENCY OF
THE CITY OF SAN DIEGO

By: _____
Hank Cunningham
Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY
ON THIS _____ day of

_____, _____.

CASEY GWINN
Agency General Counsel

By: _____
Richard A. Duvernay, Deputy

KANE, BALLMER AND BERKMAN
Agency Special Counsel

By: _____
Glenn F. Wasserman

The grantee hereby accepts the written deed, subject to all of the matters hereinbefore set forth.

Grantee:

McMILLIN-NTC, LLC, a Delaware
limited liability company

Dated: _____

By: _____

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

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

WITNESS my hand and official seal.

Signature _____

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

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

WITNESS my hand and official seal.

Signature _____

Exhibit A
LEGAL DESCRIPTION

[TO BE ADDED]

ATTACHMENT NO. 6

FORM OF GROUND LEASE
(ALL LEASE PARCELS EXCEPT FOUNDATION PARCELS)

[BEHIND THIS PAGE]

[FORM APPLIES TO ALL LEASE PARCELS
EXCEPT FOUNDATION PARCELS]

NAVAL TRAINING CENTER

GROUND LEASE

by and between

REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO,

and

McMILLIN-NTC, LLC,
a Delaware limited liability company

ntc/lease.8
6-3-00

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- EXHIBIT C - MEMORANDUM OF LEASE
- EXHIBIT D - FORM OF TENANT'S NONDISTURBANCE AND ATTORNMENT AGREEMENT
- EXHIBIT E - FORM OF LENDER'S NONDISTURBANCE AND LEASE RECOGNITION AGREEMENT

GROUND LEASE

This GROUND LEASE (the "Lease") is dated as of _____, between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO ("Landlord") and McMILLIN-NTC, LLC, a Delaware limited liability company ("Tenant"), who agree as follows:

ARTICLE 1 FUNDAMENTAL INFORMATION

1.1 Landlord: THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body, corporate and politic.

1.2 Tenant: McMILLIN-NTC, LLC, a Delaware limited liability company.

1.3 Commencement Date: The Commencement Date shall be the date set forth in the introductory paragraph, above.

1.4 The Premises: The property leased hereunder (the "Property") is that real property described as the "Lease Parcel" in the Legal Description attached hereto as Exhibit "A" and incorporated herein by this reference. The "Property" consists of the Lease Parcel and the Improvements now or hereinafter located on the Lease Parcel from time to time.

1.5 Term: The Lease term (the "Term") shall commence on the Commencement Date, and shall continue for sixty-six (66) Lease Years thereafter (as defined below), or on the date resulting from an earlier termination as hereinafter set forth. For purposes of this Lease, a "Lease Year" shall mean the partial calendar year commencing the first day of the month following the Commencement Date, and each full calendar year thereafter, including the full calendar year in which the 66th anniversary of the Commencement Date occurs.

1.6 Landlord's address for notices: City Administration Building, 202 C Street, San Diego, California 92101, Attention: NTC Project Manager.

1.7 Tenant's address for notices: 2727 Hoover Avenue, National City, California 91950.

1.8 Tenant's rent: As described in Sections 2.5 and 2.6., below.

1.9 The specified use of the Property: For the Term of this Lease, the Property shall be used for the following purposes and other additional uses as may be reasonably related thereto, and for no other purposes:

[TO BE ADDED]

1.10 Relation to the DDA. Reference is hereby made to that certain Disposition and Development Agreement dated _____ (the "DDA") by and between Landlord ("Agency" therein) and Tenant ("Master Developer" therein). It is contemplated that upon the satisfaction of Phase Four Conditions Precedent (as defined in the DDA), Tenant will assign Tenant's rights and obligations under the DDA as to the Property, and will sublease the Property or assign its rights under this Lease, to an assignee ("Assignee"), in accordance with and subject to the terms and conditions of the DDA. Until Tenant or such Assignee is entitled to the execution and recordation of the Agency Certificate of Completion for the Property as provided in Section 6.15 of the DDA, a default under the DDA by Tenant shall constitute a breach of the terms of this Lease, as specifically provided in Section 2.24 below. It is the intention of the parties that (a) prior to the recordation of the Agency Certificate of Completion for the Property, a breach or default under the DDA shall constitute a default under this Lease (provided, however, that following the satisfaction of all Phase Four Conditions Precedent related to the Property, Landlord may not terminate this Lease as the result of a Default under the DDA unless such Default relates specifically to the Property), and any notice provided pursuant to the DDA shall satisfy any notice requirement under this Lease, and (b) after the Agency Certificate of Completion for the Property is recorded, Landlord's rights and obligations with respect to the Property shall be as set forth in this Lease and any other recorded document, and the DDA shall no longer be applicable to the Property.

1.11 Definitions. For purposes of this Lease, the following capitalized terms shall have the respective definitions set forth in the corresponding section of this Lease:

"Additional Rent" shall have the meaning set forth in Section 2.6.

"Affiliate" shall have the meaning set forth in Section 2.14.c.

"Agency Certificate of Completion" shall have the meaning set forth in Section 1.10.

"Assignee" shall have the meaning set forth in Section 1.10.

"City" shall have the meaning set forth in Section 2.3.a.

"Consumer Price Index" shall have the meaning set forth in Section 2.11.d.

"DDA" shall have the meaning set forth in Section 1.10.

"Force Majeure Delay" shall have the meaning set forth in Section 2.31.e.(ii).

"Hazardous Materials" shall have the meaning set forth in Section 2.27.

"Improvements" shall mean and include the Horizontal Improvements and Vertical Improvements, as defined in the DDA.

"Lease Parcel" shall have the meaning set forth in Section 1.4.

"Lease Year" shall have the meaning set forth in Section 1.5.

"Leasehold Mortgage" and "Leasehold Mortgagee" shall have the meanings set forth in Section 2.30.a.(ii).

"Maintenance Costs" shall have the meaning set forth in Section 2.12.a.

"Permitted Alterations" shall have the meaning set forth in Section 2.11.a.

"Permitted Leasehold Mortgage" and "Permitted Leasehold Mortgagee" shall have the meanings set forth in Section 2.30.a.(iii).

"Permitted Transfer" shall have the meaning set forth in Section 2.14.c.(iii).

"Property" shall have the meaning set forth in Section 1.4.

"Qualified Lender" shall have the meaning set forth in Section 2.30.b.

"Term" shall have the meaning set forth in Section 1.5.

"Transfer" shall have the meaning set forth in Section 2.14.c.

ARTICLE 2 LEASE TERMS AND PROVISIONS

2.1 PURPOSE OF LEASE

Landlord has agreed to lease the Property to Tenant in accordance with this Lease, and Tenant will construct, manage and operate the Improvements for the uses permitted by this Lease.

2.2 AGREEMENT TO LEASE

a. Landlord hereby leases the Property to Tenant, and Tenant hereby leases the Property from Landlord, subject to the provisions and conditions herein set forth, for an amount of rental as described in Sections 2.5 and 2.6 hereof; together with all right, title and interest, if any, of Landlord, to the land lying in the streets and roads adjoining the Property, to the center line thereof, and in and to any and all easements and rights of way appurtenant to the Property, subject nevertheless to all public easements and rights of use of such streets, rights of way and easements; together with all awards, rents, issues and profits of whatsoever nature of or with respect to any of the Property and the Improvements, except as expressly reserved to Landlord herein.

b. Except as expressly provided to the contrary in this Lease, reference to the Property is to the land described as the "Lease Parcel" in the attached Exhibit "A" and any and all buildings, structures or other improvements either now or hereafter located on such land. The parties agree that during the Term of this Lease, all buildings, structures and other improvements located on the Property shall be owned in fee by Tenant (and to the extent necessary, Landlord hereby grants such fee to Tenant), but shall automatically vest in Landlord upon the expiration or earlier termination of this Lease.

2.3 ACCEPTANCE OF PROPERTY

a. Landlord makes no representations, express or implied, with respect to the legality, fitness, or desirability of the Property for Tenant's intended use or for any other uses. Tenant shall conduct its own investigation to its satisfaction with respect to zoning, local codes and regulations, and other matters affecting Tenant's ability to use and improve the Property for Tenant's intended use. It shall be Tenant's responsibility, at no cost to Landlord, to ensure that zoning of the Property, and all applicable City land use requirements are, as of the date of execution hereof, such as to permit development of the Property and construction of improvements thereon in accordance with the provisions of this Lease and the use, operation and maintenance of such improvements as provided in this Lease. Nothing contained herein shall be deemed to entitle Tenant to any City of San Diego (the "City") permit or other City approval necessary for the development of the Property, or waive any applicable City

requirements relating thereto. This Lease does not (1) grant any land use entitlement to Tenant, (2) supersede, nullify or amend any condition which may be imposed by the City in connection with any approval of the development, (3) guarantee to Tenant or any other party any profits from the development of the Property, or (4) amend any City laws, codes or rules. This is not a Development Agreement as provided in Government Code Section 65864.

b. The Property shall be leased in an "as is" condition, with no warranty or liability, express or implied, on the part of Landlord as to the condition of any buildings on the Property, the soil (or water), its geology, the existence of known or unknown faults or any other conditions relating to the Property. It shall be the sole responsibility of Tenant, at Tenant's expense, to investigate and determine the condition of any building, soil (and water) relating to the Property and the suitability of the Property for the uses contemplated by this Lease. If the condition of the Property, or any part thereof, is not in all respects entirely suitable for the use of the Property contemplated by this Lease, then it is the sole responsibility and obligation of Tenant to take such action as may be necessary to place the Property and the soil (and water) condition thereof in all respects in a condition that is suitable for such use.

2.4 TERM

a. Term. The Term of this Lease shall commence on the Commencement Date and shall continue for sixty-six (66) Lease Years, as set forth in Section 1.5, above unless terminated sooner pursuant to the provisions and conditions hereof. Upon the termination or expiration of this Lease, Tenant shall immediately surrender possession of the Property to Landlord and shall not allow delay in said transfer of possession for any reason.

b. Termination. Subject to the notice and cure provisions of Section 2.24, below, this Lease shall terminate after the Commencement Date, but prior to the end of the Term, in the event of any of the following:

(i) Landlord may terminate this Lease by giving written notice of termination to Tenant, in the event of any uncured failure of a condition set forth in the DDA as a Phase Four Condition Precedent applicable to the Property, except to the extent such condition is in the control of Landlord or the City of San Diego.

(ii) Prior to the issuance of the Agency Certificate of Completion for the Property pursuant to the DDA, Landlord may terminate this Lease by giving written notice of termination to Tenant, in the event of any Default under this Lease (as provided in Section 2.24 hereof) or the DDA that is not cured within the applicable cure period. Provided, however, that

following the satisfaction of all Phase Four Conditions Precedent applicable to the Property, Landlord may not terminate this Lease as the result of a Default under the DDA unless such Default relates specifically to the Property.

(iii) Following the issuance of the Agency Certificate of Completion for the Property pursuant to the DDA, Landlord may terminate this Lease by giving written notice of termination to Tenant, in the event of any Default under this Lease (as provided in Section 2.24 hereof) that is not cured within the applicable cure period.

c. Surrender. Subject to the damage and reconstruction provisions of Section 2.23, Tenant shall upon the expiration or sooner termination of this Lease surrender the Property to Landlord in good and clean condition, ordinary wear and tear excepted, including any buildings, structures, improvements or additions then located on the Property which are, during the Term of this Lease, owned in fee by Tenant.

2.5 BASIC RENT.

The Basic Rent shall be the sum of One Dollar (\$1.00) per year, payable annually in advance.

2.6 ADDITIONAL RENT

In addition to any Basic Rent that is due pursuant to this Lease, Tenant shall pay to Landlord, as additional consideration for the lease of the Property, any sums described in this Lease as "Additional Rent."

2.7 RENT GENERALLY

a. All Rent (both Basic and Additional) shall be paid absolutely net to Landlord, so that this Lease shall yield to Landlord the full amount of the Rent throughout the Term of this Lease. This Lease is and shall be a "Pure Net" or "Triple Net" lease, as such terms are commonly used in the real estate industry, it being intended that Tenant shall pay all costs, expenses and charges arising out of the use, occupancy and operation of the Property.

b. All payments of Rent and of other sums to be paid by Tenant to Landlord pursuant to this Lease shall be paid in lawful money of the United States of America, at Landlord's address set forth above, or at such other place within the United States or to such other person, firms or corporations as Landlord from time to time may designate in writing. Except as otherwise expressly provided by the terms of this Lease, Landlord and Tenant agree that all sums payable hereunder to or on behalf of Landlord shall be paid without notice or demand.

c. Should Tenant fail, for whatever reason, to make any rental payment required hereunder, then Tenant shall pay an Additional Rent equal to 4% per annum on the amount due, until paid; provided, however, that nothing in this subdivision c. shall be deemed to limit any of Landlord's other rights or remedies under this Lease or otherwise available at law or in equity.

2.8 TENANT WORK

Tenant shall, at its own cost and expense, undertake and complete or cause the completion of the initial construction and/or rehabilitation of the Improvements on the Property, as provided in the DDA. In the conduct of such work, Tenant shall comply with any and all rules, regulations, or requirements contained in the DDA. The parties to this Lease contemplate that Tenant shall be responsible for and shall undertake and complete all Horizontal Improvements relating to the Property subject to the provisions of the DDA, and, subject to the satisfaction of all Phase Four Conditions Precedent for the Property, Tenant shall cause to be undertaken and completed all Vertical Improvements on the Property. This Section 2.8 shall terminate upon execution and recordation of a Agency Certificate of Completion for the Property by Landlord pursuant to the DDA.

2.9 USE

a. Tenant shall use the Property only for the specified uses set forth in Section 1.9., above, and other additional uses as may be reasonably related thereto, and shall not use or permit the Property to be used for any other purposes. Tenant shall not cause, maintain, or permit any nuisance or waste in, on, or about the Property, normal wear and tear excepted.

b. Tenant covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall Tenant itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property.

c. Tenant shall refrain from restricting the rental, sale or lease of the Property on the basis of race, color, creed, religion, sex, sexual orientation, marital status, ancestry or national origin of any person. All deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

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

2. In leases: "The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

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

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

d. On fifteen (15) business days' prior notice, but no more than once in any 12 month period, Tenant shall make available in the County of San Diego full and accurate books and accounts, records, cash receipts and other pertinent data reasonably satisfactory to Landlord relating to its operation of the Property. Such books of account, records, cash receipts and other pertinent data shall be kept by Tenant for a five- (5) year period after the applicable Lease Year. Landlord shall be entitled during such period to inspect, examine and to copy at Landlord's expense, Tenant's books of account, records, cash receipts and other pertinent data relating to the Property as necessary or appropriate for the purpose of this Lease. Tenant shall cooperate fully with Landlord during any such inspection.

2.10 COMPLIANCE WITH LAW

a. Tenant shall not use the Property or permit anything to be done in or about the Property which will in any way conflict with any applicable law, statute, ordinance, or governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated. Tenant shall, at its sole cost and expense, promptly comply with all applicable laws, statutes, ordinances, and governmental rules, regulations or requirements now in force or which may hereafter be enacted or promulgated, and any applicable requirements of any board of fire insurance underwriters or other similar bodies now or hereafter constituted, relating to the condition, use, or occupancy of the Property. Tenant shall have the right, by appropriate proceedings, to protest or contest in good faith the application to Tenant and/or the Property of any law, statute, ordinance, or governmental rule, regulation or requirement or the validity of any such law, statute, ordinance, or governmental rule, regulation or requirement; provided, Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all costs, expenses, claims, demands, damages, actions, causes of action, or liabilities of any kind which may arise at any time in connection with any such proceedings, protest or contest.

b. The judgment of any court of competent jurisdiction after all applicable appeals have been exhausted or appeal periods have expired or the admission of Tenant in any action against Tenant, whether Landlord be a party thereof or not, that Tenant has violated any law, statute, ordinance, or governmental rule, regulation, or requirement, shall be conclusive of that fact as between Landlord and Tenant.

2.11 ALTERATIONS AND ADDITIONS

a. Except for Permitted Alterations (as hereinafter defined), Tenant shall not make or suffer to be made any alterations, additions, or improvements to or on the Property or any building or structure thereon or any part thereof without the

prior written consent of Landlord, which consent will not be unreasonably withheld, conditioned or delayed. Any request for consent shall be accompanied by plans and specifications for the proposed work in reasonable detail (including component materials and finish items) to enable Landlord to consider whether or not to grant approval. Landlord may condition its approval in any way reasonably deemed necessary by Landlord to protect its interest in the Property. The term "Permitted Alterations" shall mean, and Tenant shall not be required to obtain the consent of Landlord for, either of the following, to the extent they comply with all applicable City procedures and requirements: (i) any alterations, additions, improvements, exterior painting or landscaping (provided such alterations, additions, improvements, exterior painting or landscaping do not require a Coastal Development Permit and cost less than 15% of the after-rehabilitation value of the Property; or (ii) any tenant improvements within tenant or subtenant spaces or signs for any tenants or subtenants.

b. All alterations, additions, or improvements by Tenant shall be made without cost or expense to Landlord, by responsible and licensed contractors. All improvements and equipment shall be designed, built, and installed in accordance with all applicable building codes and regulations, and Tenant shall obtain all necessary building permits.

c. Tenant shall give notice to Landlord within a reasonable time prior to commencement of any work, to enable Landlord, if required, to review the plans and specifications and to enable Landlord to post notices of non-responsibility or take other actions deemed necessary by Landlord.

d. For all alterations costing in excess of \$200,000, as increased annually to reflect increases, if any, in the Consumer Price Index measured from the second anniversary of the Commencement Date, Tenant shall obtain and keep in effect "Builder's All Risk Insurance" during the period of construction and installation of any improvements being made by Tenant, including completed operations coverage, with coverage in the amount of at least \$2,000,000, increased every fifth anniversary of the Commencement Date by the percentage increase, if any, in the Consumer Price Index from the Commencement Date of this Lease to the anniversary thereof most recently preceding the start of such construction, naming Landlord as an additional insured. Tenant shall deliver to Landlord a Certificate of Insurance evidencing such insurance coverage prior to commencement of the alterations. As used in this Lease, the "Consumer Price Index" shall mean the Consumer Price Index - all Urban Consumers, San Diego, published by the Bureau of Labor Statistics, or such comparable index as may be acceptable to Landlord.

e. Tenant shall keep the Property free and clear of any and all liens and encumbrances which may arise at any time in connection with any improvement work by Tenant or its agents and contractors. Any mechanic's liens that have been recorded or stop notices that have been delivered shall be paid, settled or otherwise extinguished, discharged, released, waived or bonded around within ten (10) days after notice thereof to Tenant. In addition, Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all costs, expenses, claims, demands, damages, actions, causes of action, or liabilities of any kind which may arise at any time in connection with any improvement work by Tenant or its agents and contractors, including without limitation the design and installation of equipment and the renovation of the Property, except to the extent such costs, expenses, claims, demands, damages, actions, causes of action, or liabilities relate to the design of offsite improvements provided by Landlord or the negligence or willful misconduct of Landlord, its agents, representatives, employees or contractors.

f. Nothing contained herein shall prohibit Tenant from disputing the correctness or validity of any mechanics lien upon the Property or any Improvement thereon, provided Tenant records in the office of the county recorder either before or after the commencement of an action to enforce such claim or lien, a lien release bond pursuant to Civil Code Section 3143.

g. Notwithstanding any provision of this Section 2.11, construction or rehabilitation of the initial Improvements shall be governed by the applicable provisions of the DDA.

2.12 MAINTENANCE AND REPAIRS

a. Tenant shall maintain the Property in the same aesthetic and sound condition (or better) as the condition of the Property at the time Agency issues a Agency Certificate of Completion for the Property pursuant to the DDA, reasonable wear and tear excepted. The parties acknowledge that over the course of the Term of this Lease, various Improvements on the Property are likely to become obsolete and will need to be demolished, removed, disposed of and/or replaced, and agree that the standard of "reasonable" wear and tear as set forth in the first sentence of this paragraph a. includes and incorporates this understanding. Subject to the foregoing, this standard for the quality of maintenance of the Property shall be met whether or not a specific item of maintenance is listed below. However, representative items of maintenance shall include frequent and regular inspection for graffiti or damage or deterioration or failure, and immediate repainting or repair or replacement of all surfaces, fencing, walls, equipment, etc., as necessary; emptying of trash receptacles and removal of litter; sweeping of public sidewalks adjacent to the Improvements, on-site walks and paved areas and washing-down as necessary to maintain clean surfaces; maintenance of all

landscaping in a healthy and attractive condition, including trimming, fertilizing and replacing vegetation as necessary; cleaning windows on a regular basis; painting the buildings on a regular program and prior to the deterioration of the painted surfaces; conducting a roof inspection on a regular basis and maintaining the roof in a leak-free and weather-tight condition; maintaining security devices in good working order. In the event Tenant fails to maintain the Property in accordance with the standard for the quality of maintenance, Landlord or its designee shall have the right but not the obligation to enter the Property upon reasonable notice to Tenant, correct any violation, and hold Tenant responsible for the cost thereof ("Maintenance Cost"). Tenant shall, upon demand, pay all Maintenance Cost, with interest, as Additional Rent.

b. Tenant shall, at Tenant's sole cost and expense, (i) keep and maintain any buildings on the Property in good condition and repair, ordinary wear and tear excepted; and (ii) undertake such maintenance of the Property from time to time as may be reasonable and customary under the circumstances or as required by paragraph a. of this Section 2.12.

c. Landlord shall not under any circumstances be obligated to undertake any maintenance, repair, or replacement of any portions of the Property. Tenant understands that Landlord is not obligated to maintain the structural portions of any building or structure, including the roof, exterior walls, and foundations of said building or structure; Landlord shall not be liable for any failure to make any such repairs or to perform any maintenance, whether by reason of any injury to or interference with Tenant's business or otherwise. Tenant waives any obligations which Landlord may have with respect to the tenantability of the Property and the right to make repairs at Landlord's expense under any law, statute, or ordinance now or hereafter in effect, including without limitation the provisions of California Civil Code sections 1941 and 1942.

2.13 TAXES

a. Payment by Tenant. Tenant shall promptly pay, at least five (5) days prior to delinquency, all real estate and real property taxes, or possessory interest tax, assessed against the Property, including such added assessment or omitted assessment which may be levied against the Property from time to time by the applicable governmental taxing authority for periods commencing upon the Commencement Date, and any increase in the assessment from time to time based on improvements to the Property. Notwithstanding the foregoing, any assessment or impositions for capital or public improvements which may be payable by law at the option of the taxpayer in installments may be so paid by Tenant in installments, together with any required interest. Tenant shall furnish in writing to Landlord before the applicable delinquency date for the

tax evidence of payment of all taxes and assessments required to be paid by Tenant during the Term hereof. If Landlord does not receive reasonable evidence of payment prior to the tax delinquency date, Landlord may, at its option, pay the tax for Tenant. In such case, Tenant shall reimburse Landlord immediately upon demand, plus interest at the rate of ten percent (10%) per annum, as Additional Rent. If Tenant shall be obligated to pay any taxes, assessments, and charges hereunder during a partial year, the amount of any such taxes, assessments, and charges shall be prorated according to the length of time Tenant's obligation shall be in effect during the relevant tax period.

b. Contest. Tenant shall have the right, by appropriate proceedings, to protest or contest in good faith any assessment or re-assessment of taxes, any special assessment, or the validity of any taxes or of any change in assessment or tax rate; provided, however, prior to any such challenge Tenant must either: (i) pay the taxes alleged to be due in their entirety and seek a refund from the appropriate authority; (ii) post a bond in an amount sufficient to insure full payment of the taxes; or (iii) provide such other security or take such other actions as may reasonably be required by Landlord's Executive Director or designee to insure full payment of the taxes. In any event, upon a final determination with respect to such contest or protest, Tenant shall promptly pay all sums found to be due with respect thereto. In any such protest or contest, Tenant may act in its own name; and at the request of Tenant, Landlord shall cooperate with Tenant in any way Tenant may reasonably require in connection with such contest or protest, including signing such documents as Tenant shall reasonably request, provided that such contest or protest shall be at Tenant's sole expense, and in the event any penalties, interest, or late charges become payable with respect to the taxes as a result of such contest or protest, Tenant shall pay the same. In the event Tenant obtains a refund as the result of Tenant's protest or contest and subject to Tenant's obligation to pay Landlord's costs (if any) associated therewith, Tenant shall be entitled to such refund to the extent it relates to the Property during the Term of this Lease.

c. Personal Property Taxes. Tenant shall pay any and all personal property taxes assessed against equipment, trade fixtures, inventory, or other personal property located in, on, or about the Property. Tenant shall indemnify, defend, and hold Landlord and the Property harmless from and against any such personal property taxes.

d. Future Taxes. If at any time during the Lease Term under the laws of the United States, or any state, county, or city, or any political subdivision thereof in which the Property is situated, a tax or excise on rent or any other tax however described is levied or assessed by any such political body against Landlord on account of fee ownership of the Property, such tax or

excise shall be considered "taxes" for the purposes of this Section 2.13 and shall be paid by Tenant in the manner provided above, excluding, however, from such tax or excise to be paid by Tenant any amount assessed against Landlord as state or federal income tax, gift tax, excise tax or inheritance tax.

2.13.1 NOTICE OF POSSESSORY INTEREST; PAYMENT OF TAXES AND ASSESSMENTS ON VALUE OF ENTIRE PROPERTY

a. In accordance with California Revenue and Taxation Code Section 107.6(a), Landlord states that by entering into this Lease, a possessory interest subject to property taxes may be created. Tenant or other party in whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest.

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

2.14 ASSIGNMENT AND SUBLETTING

a. Landlord Consent Required. Except for Permitted Transfers, Tenant shall not, under any circumstances, without the express prior written approval of Landlord, Transfer the Property or any portion thereof, or attempt to Transfer all or any portion of its interest in this Lease. Provided Landlord has issued the Agency Certificate of Completion for the Property pursuant to the DDA, Landlord shall not unreasonably withhold, condition or delay its consent to any Transfer and shall give written notice of any disapproval, with reasonably specific reasons for such disapproval. Tenant shall submit to Landlord a reasonably current financial statement of the proposed transferee, a description of such proposed assignee's experience in operating similar properties and shall disclose to Landlord the proposed terms of such Transfer or Assignment. Landlord shall have the right to disapprove any Transfer on the basis of the relevant experience, financial capability and reputation of the proposed assignee or transferee. Any attempted Transfer of the Property, this Lease, or any portion or interest therein which is not authorized by this Lease or expressly approved in writing by Landlord shall be void and of no force or effect and, at the option of Landlord, shall terminate this Lease.

b. Operation of Law. Neither this Lease nor any interest therein shall be assignable by operation of law (including, without limitation, the transfer of this Lease by testacy or intestacy). Any involuntary assignment shall constitute a default by Tenant, and Landlord shall have the right to elect to terminate this Lease immediately and take immediate possession of the Property. In such event, this Lease shall not be treated as an asset of Tenant. The following is a non-exclusive list of acts which shall be considered an involuntary assignment:

(i) If Tenant is or becomes bankrupt or insolvent or if any involuntary proceeding is brought against Tenant (unless, in the case of a petition filed against Tenant, the same is dismissed within ninety (90) days), or Tenant makes an assignment for the benefit of creditors, or institutes a proceeding under or otherwise seeks the protection of Federal or State bankruptcy or insolvency laws, including but not limited to the filing of a petition for voluntary bankruptcy or instituting a proceeding for reorganization or arrangement;

(ii) If a writ of attachment or execution is levied on this Lease, where such writ is not discharged within ninety (90) days; or

(iii) If, in any proceeding or action in which Tenant is a party, a receiver is appointed with authority to take possession of the Property, where possession is not restored to Tenant within ninety (90) days.

c. Definition of Transfer. (i) As used herein, the term "Transfer" means the sale, transfer or conveyance of Tenant's leasehold interests in the Property, the Improvements thereon, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, or any agreement to do so; the execution of any installment land sale contract or similar instrument affecting all or a portion of the Property or Improvements; or the sublease of all or substantially all of the Property or Improvements (other than for occupancy).

(ii) "Transfer" shall also include the transfer, assignment, hypothecation or conveyance of legal or beneficial ownership of any interest in Tenant, or any conversion of Tenant to an entity form other than that of Tenant at the time of execution of this Lease, except that a cumulative change in ownership interest of any entity of less than fifty percent (50%) shall not be deemed a "Transfer" for purposes of this Lease. This definition shall not be construed to include commercial subleases or the rental of hotel rooms.

(iii) "Permitted Transfer" means any of the following: (a) any Permitted Leasehold Mortgage as provided in Section 2.30 hereof; (b) an assignment of this Lease and all of Tenant's leasehold interests in the Property to an Affiliate, as defined below; (c) the inclusion of equity participation in Tenant by transfer of limited liability shares, partnership interests or stock or addition of additional members, partners or shareholders to Tenant or similar mechanism; (d) the transfer of any ownership interests in Tenant from one principal to another principal; and (e) the leasing or subleasing for occupancy of all or any part of the Property. Any transfer described in clauses (a) through (c) of this subdivision (iii) shall be subject to the reasonable approval of Landlord's Executive Director or designee, which approval shall be promptly granted upon submission of such information as may reasonably be required to determine that the proposed transfer falls within one of the categories described in clauses (a) through (c). Any transfer described in clause (d) or (e) of this subdivision (iii) shall not require Landlord approval. For purposes of this Lease, "Affiliate" shall mean any partnership in which Tenant is a general partner and directly maintains managerial control, or another limited liability company, partnership or corporation under common control with Tenant or any other entity controlled by the party controlling Tenant.

d. No Unreasonable Withholding of Consent. Provided Landlord has issued the Agency Certificate of Completion for the Property pursuant to the DDA, Landlord shall not unreasonably withhold, condition or delay its approval of any matter for which its approval is required hereunder. Any disapproval shall be in writing and contain Landlord's reasons for disapproval.

e. Nondisturbance and Lease Recognition Agreements. Within fifteen (15) business days after request, Landlord shall execute a Tenant's Nondisturbance and Lease Recognition Agreement, substantially in the form of the instrument attached to this Lease as Exhibit "D", for the benefit of any tenant or subtenant, and a Lender's Nondisturbance and Attornment, Agreement substantially in the form of the instrument attached to this Lease as Exhibit "E", for the benefit of any Permitted Leasehold Mortgagee.

2.15 HOLD HARMLESS

a. Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all costs, claims, demands, actions, causes of action, liability, loss, or damage, including attorneys' fees and costs (collectively referred to as "Claims" and, Claims that are made by third parties, collectively referred to as "Third Party Claims") whether for injury to or death or persons or damage to real or personal property or otherwise, arising out of or in connection with Tenant's use or occupancy of the Property, any activity, work, or other thing done, permitted, or suffered by Tenant in or about the Property, or arising from any

reason or cause whatsoever in connection with the use or occupancy of the Property by any party during the Term of this Lease. The provisions of the preceding sentence shall not apply with respect to any negligent or intentional acts or omissions of Landlord, the City and their respective agents, servants, contractors and employees (collectively, "Landlord Parties"). Tenant shall further indemnify, defend, and hold Landlord harmless from and against any and all Third Party Claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease or arising from any act or negligence of Tenant or any officer, agent, employee, guest, or invitee of Tenant. In any case, action, or proceeding brought against Landlord or involving Landlord by reason of any such Claim, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon, or about the Property from any cause other than the negligent or intentional acts or omissions of Landlord Parties, and Tenant hereby waives all claims in respect thereof against Landlord. Tenant's obligation to indemnify under this paragraph shall include attorneys' fees, investigation costs, and other reasonable costs, expenses, and liabilities incurred by Landlord. If the ability of Tenant to use the Property is interrupted for any reason, Landlord shall not be liable to Tenant for any loss or damages occasioned by such loss of use unless caused by the negligent or intentional acts or omissions of Landlord Parties.

b. Landlord or its agents shall not be liable for loss or damage to any property by theft or otherwise, nor for any injury to or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, or rain which may leak from any part of the Property or from the pipes, appliances, or plumbing works therein or from the roof, street, or subsurface or from any other place resulting from dampness or any other cause whatsoever, unless caused by or due to the negligent or intentional acts or omissions of Landlord Parties. Tenant shall give prompt notice to Landlord in case of fire or accidents in the Property or of defects therein or in the fixtures or equipment.

c. Landlord shall indemnify, protect, defend and hold harmless Tenant and its assignees, and their respective officers, employees, contractors and agents, with counsel reasonably acceptable to the indemnified party, from and against any and all loss, liability, damage, claim, cost and expense (including reasonable attorneys' fees, court and litigation costs and fees of expert witnesses) resulting or arising from or in any way connected with any negligence or intentional misconduct of Landlord, the City or their respective officers, employees, contractors or agents which relate to the maintenance, management or operation of the Property during the period commencing upon the effective date of the master lease between the United States Government and the City

of San Diego for the Property, and ending upon the commencement of the Term of this Lease or upon assignment of the management of the Property to Tenant prior to conveyance, whichever occurs first, provided Landlord shall not be responsible for (and such indemnity shall not apply to) the negligence or willful misconduct of Tenant, any assignee or their respective officers, employees, contractors or agents.

2.16 OWNERSHIP OF PROPERTY DURING TERM AND UPON EXPIRATION OR TERMINATION OF LEASE

a. During the Term of this Lease, all buildings, structures, fixtures, additions and improvements located on the Property shall be owned in fee by Tenant, and Landlord hereby quitclaims its right, title and interest in and to such items to Tenant.

b. Upon the expiration or termination of this Lease, all buildings, structures, fixtures, additions, equipment, improvements, any subtenant security deposits then held by Tenant (upon delivery of which, Landlord shall assume all obligations to subtenants with respect thereto), and any other real property whatsoever located on the Property shall become part of the realty, become the property of Landlord, and shall be surrendered with the Property, but not including personal property or property that is donated to Tenant, which is removed from the Property by Tenant.

c. Upon termination of this Lease, whether by expiration of the Term or otherwise, the Improvements on the Property, and any personal property not removed by Tenant after fifteen (15) days' notice by Landlord, shall, without compensation to Tenant, become Landlord's property, free and clear of all claims to or against them by Tenant or any third person, firm or entity.

d. Notwithstanding any provision of this Lease to the contrary, upon termination of the Lease, Tenant shall have (i) no obligation to remove any Improvements from the Property, and (ii) no right to remove any Improvements from the Property without Landlord's consent.

2.17 LIENS

Except for Permitted Leasehold Mortgages, Tenant shall not create or permit any lien or encumbrance, including but not limited to a mechanics' lien, to be attached to or affect the Property by reason of any act or omission of Tenant. Tenant shall indemnify and hold harmless Landlord and the Property against any such lien, encumbrance, or claim of lien or encumbrance, and against any costs in connection therewith, including attorneys' fees. In the event any such lien or encumbrance is attached to, or any claim of lien or encumbrance is made against, the Property by reason of any act or omission of Tenant, Tenant shall, within twenty (20) days after

notice thereof to Tenant, cause the lien to be released or post with Landlord a cash bond in an amount reasonably satisfactory to Landlord, including costs and interest, or provide such other security or take such other actions as may reasonably be required by Landlord's Executive Director or designee to insure the timely release of such lien; provided, however, that if Tenant fails to do so, then Landlord may, in its sole discretion, either (i) pay and discharge the lien or encumbrance, whereupon Tenant shall immediately reimburse Landlord, as Additional Rent, for all costs and expenses which Landlord may incur in discharging such lien, encumbrance, or claim of lien or encumbrance, plus reasonable attorneys' fees, payable to Landlord upon demand, or (ii) Landlord may exercise such other remedies as may be available to it by reason of Tenant's failure to comply with its obligations under this Lease.

2.18 SUBROGATION

Neither Landlord nor Tenant shall be liable to the other or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure, or other tangible property, or any resulting loss of income, or losses under worker's compensation laws and benefits (even though such loss or damage might have been occasioned by the negligence of such party, its agents, or employees), to the extent any such loss or damage is covered by insurance proceeds received by the Party suffering the loss or damage. The foregoing waiver of the right to subrogation shall not apply to the extent insurance coverage for such loss or damage is not commercially available to Landlord or Tenant under such Party's insurance policies. Landlord and Tenant hereby mutually release each other from liability and waive all right to recover against each other or against officers, employees, agents or representatives of each other for any loss or damage to any person or property caused by or resulting from risks to the extent of proceeds paid against under any insurance policies carried by the parties; provided, however, this paragraph shall be inapplicable if it would have the effect, but only to the extent that it would have the effect, of invalidating any insurance coverage of Landlord or Tenant. The parties shall, to the extent available, cause each insurance policy obtained here under to provide a waiver of subrogation.

2.19 TENANT'S INSURANCE

a. Throughout the Term of this Lease, Tenant shall maintain, at its own cost and expense, and furnish or cause to be furnished to Landlord evidence of the following policies of insurance, naming Tenant as insured and, except for automobile insurance and Workers' Compensation insurance, the Landlord and the City as additional insureds.

(1) Fire Policies: Tenant shall maintain or cause to be maintained a policy or policies of insurance against loss or damage to the Property and the Improvements thereon and all property of an insurable nature located upon the Property, resulting from fire, lightning, vandalism, malicious mischief, riot and civil commotion, and such other perils ordinarily included in special causes of loss property coverage form policies. Such insurance shall be maintained in an amount not less than one hundred percent (100%) of the full insurable value of the Improvements on a Parcel, as defined in this Section 2.19 below, in paragraph c. The proceeds of any such policy or policies of insurance shall be held and utilized in accordance with the provisions of Section 2.23 of this Lease.

(2) Liability Insurance: Tenant shall maintain or cause to be maintained public liability insurance, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever on or about the Property and the business of the Tenant on the Property, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Tenant or its sublessees, or any person acting for Tenant, or under its respective control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person occurring on or about the Property, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of Tenant or its tenants, or any person acting for Tenant, or under its control or direction. Such property damage and personal injury insurance shall also provide for and protect Landlord against incurring any legal cost in defending claims for alleged loss. Such personal injury and property damage insurance shall be maintained in full force and effect during the Term in the following amounts: commercial general liability in a general aggregate amount of not less than Two Million Dollars (\$2,000,000), and not less than \$2,000,000 General Aggregate, \$2,000,000 Products and Completed Operations Aggregate, and \$2,000,000 Each Occurrence, which minimum amounts shall be increased every five years after the execution of this Agreement by an additional One Million Dollars (\$1,000,000), so that the minimum amounts of commercial general liability insurance and other insurance at the end of the fifth year after execution of this Agreement shall be not less than Three Million Dollars (\$3,000,000), and, at the end of the tenth year, Four Million Dollars (\$4,000,000). Tenant shall deliver to Landlord a Certificate of Insurance evidencing such insurance coverage prior to commencement of the alterations. Tenant agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Tenant may be held responsible for the indemnification of Landlord or the payment of damages to persons or property resulting from Tenant's activities, activities of its tenants or the activities of

any other person or persons for which Tenant is otherwise responsible.

(3) Automobile Insurance: Tenant shall maintain or cause to be maintained automobile insurance, maintained in full force and effect during the Term of this Lease in an amount of not less than One Million Dollars (\$1,000,000) per accident (subject to adjustment as provided in paragraph (2), above).

(4) Workers' Compensation Insurance: Tenant shall maintain or cause to be maintained workers' compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by Tenant in connection with the Property and shall cover liability within statutory limits for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Property or the operation thereof by Tenant. Notwithstanding the foregoing, Tenant may, in compliance with the laws of the State of California and in lieu of maintaining such insurance, self-insure for workers' compensation in which event Lessee shall deliver to Landlord evidence that such self-insurance has been approved by the appropriate State authorities.

b. All policies or certificates of insurance shall provide that such policies shall not be canceled, reduced in coverage or limited in any manner without at least thirty (30) days prior written notice to Landlord. All fire and liability insurance policies (not automobile and Workers' Compensation) policies may name the Landlord, City and Tenant as insureds, additional insureds, and/or loss payable parties as their interests may appear.

c. The term "full insurable value" as used in this Section 2.19 shall mean the cost (excluding the cost of excavation, foundation and footings below the lowest floor and without deduction for depreciation) of providing similar Improvements of equal size and providing the same habitability as the Improvements immediately before such casualty or other loss, but using readily-available contemporary components, including the cost of construction, architectural and engineering fees, and inspection and supervision. To ascertain the amount of coverage required, Tenant shall cause the full insurable value to be determined from time to time by appraisal by the insurer, by agreement between Tenant and Landlord or by an appraiser mutually acceptable to Landlord and Tenant, not less often than once every three years.

d. All insurance provided under this Section 2.19 shall be for the benefit of Tenant, Landlord and City. Tenant agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. Tenant agrees to submit binders or certificates evidencing such insurance to Landlord prior to the execution of this Lease. Within thirty (30) days, if practicable, but in any event prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof, shall be submitted to Landlord. All insurance herein provided for under this Section 2.19 shall be provided by insurers licensed to do business in the State of California and rated A-VII or better.

e. If Tenant fails or refuses to procure or maintain insurance as required by this Lease, Landlord shall have the right, at Landlord's election, and upon ten (10) days prior notice to Tenant, to procure and maintain such insurance. The premiums paid by Landlord shall be treated as a loan, due from Tenant, to be paid on the first day of the month following the date on which the premiums were paid. Landlord shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

2.20 UTILITIES

Tenant shall make all arrangements for and pay for all services and utilities to the Property; Landlord shall not be responsible or liable to Tenant for interruption or stoppages of utilities or other services to the Property except to the extent caused by the negligence or willful misconduct of Landlord.

2.21 HOLDING OVER

In the event Tenant fails to vacate the Property and fulfill all of its obligations hereunder at the end of the Term, Tenant shall be liable for all damages incurred by Landlord by reason of the inability to deliver possession of the Property or any portion thereof to any other person.

2.22 ENTRY BY LANDLORD

Landlord reserves and shall at any and all times have the right, but not the obligation, to enter the Property, for the following purposes: (a) to respond to any emergency situation; (b) to inspect the Property, provided such inspections shall take place during normal business hours and upon not less than 5 calendar days' notice, except for inspections deemed necessary by Landlord to respond to any emergency situation, which inspections may occur at any time, and for which no advance notice shall be required; (c) to show said Property to prospective purchasers and tenants, provided such showings shall occur only during the last six months

of the Term hereof; (d) to post notices of non-responsibility; and (e) to make repairs to the Property, without any obligation to do so, subject to notice to Tenant, and a reasonable opportunity to cure, as provided in Section 2.24.e. hereof, except for repairs deemed necessary by Landlord to respond to any emergency situation, for which no notice or opportunity to cure shall be required. Provided, however, that Landlord shall take all reasonable steps to ensure that the business of Tenant and its subtenants shall not be interfered with unreasonably. Landlord agrees to indemnify, defend and hold Tenant harmless for any and all claims, liability and damages arising out of any activity by Landlord on the Property pursuant to this Section 2.22, except to the extent caused by the negligence or willful misconduct of Tenant. Except to the extent such claim is based on the negligence or willful misconduct of Landlord in conducting its activities pursuant to this Section 2.22, Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Property, and any other loss which may occur, but only to the extent and as the result of Landlord's entry onto the Property and performance of Landlord's activities pursuant to this Section 2.22. Landlord shall have the right to use any and all means which Landlord may deem proper to open doors in an emergency in order to obtain entry to the Property, without liability to Tenant except for any failure to exercise due care for Tenant's property. Any entry to the Property obtained by Landlord by any means for the purposes specified above shall not under any circumstances be construed or deemed to be forcible or unlawful entry into, or a detainer of, the Property or an eviction of Tenant from the Property or any portion thereof.

2.23 DAMAGE, RECONSTRUCTION

a. Covered by Insurance. In the event the Property is damaged by fire or other perils covered by extended coverage insurance, Tenant shall have the right to use all available insurance proceeds to repair or rebuild the Improvements. If the estimated cost of repairs is not in excess of available insurance proceeds (including rent loss insurance proceeds, if any), then Tenant shall forthwith repair the same (using the insurance proceeds to pay the cost of such repair) and this Lease shall remain in full force and effect.

b. Not Covered by Insurance. (i) In the event the Property is damaged as a result of any cause other than the perils covered by fire and extended coverage insurance, or the estimated cost of repairs (including lost rent) is in excess of available insurance proceeds (including rent loss insurance proceeds), then Tenant shall notify Landlord in writing of the amount by which the estimated cost of repairs exceeds such proceeds (the "Shortfall"), and Tenant shall have the right, within ninety (90) days after receipt of such notice, to elect to provide the Shortfall and proceed with such repairs (using the insurance proceeds and such

other funds as Tenant may provide to pay the Shortfall), in which case this Lease shall continue in full force and effect.

(ii) If Tenant fails to notify Landlord within such ninety (90) day period that it will provide the Shortfall and conduct the repairs, then Landlord shall have the option, within thirty days from the end of the ninety (90) day period described in clause (i), either to (A) provide the Shortfall at Landlord's sole expense and direct Tenant to repair or restore such damage (using the insurance proceeds and such additional funds as Landlord may provide to pay the Shortfall), with this Lease continuing in full force and effect, or (B) give notice to Tenant terminating this Lease as of the date specified in such notice, which date shall be no less than thirty (30) and no more than sixty (60) days after the giving of such notice of termination. In the event of giving such notice of termination, this Lease shall expire and all interest of Tenant in the Property shall terminate on the date so specified in such notice.

c. Special Termination Rights. Notwithstanding anything to the contrary contained in this Section, Tenant shall have no obligation whatsoever to repair, reconstruct, or restore the Property, and Landlord shall have no right to instruct Tenant to do so, in either of the following circumstances: (i) the damage occurs during the last three (3) years of the Term of this Lease, or (ii) the damage cannot reasonably be expected to be repaired within one (1) year. In that event, Tenant may at its option terminate this Lease upon (30) days written notice to Landlord that Tenant elects not to repair, reconstruct, or restore the Property.

d. Excess Insurance Proceeds. If completion of required repair, reconstruction or restoration of the Property does not utilize all insurance proceeds, then Tenant may retain such unused proceeds. If, for any reason, Tenant does not repair, reconstruct or restore the Property, the insurance proceeds shall belong to Landlord as its property.

e. Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Property, Tenant's personal property, or any inconvenience or annoyance occasioned by such damage, repair, reconstruction, or restoration. Tenant waives the provisions of California Civil Code sections 1932(2) and 1933(4) with respect to any destruction of the Property.

2.24 DEFAULT

a. Subject to the notice and cure provisions of Section 2.24.d. and 2.24.e., the occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

(i) The failure by Tenant to pay Rent or observe or perform any other covenants, conditions, or provisions of this Lease or the Agreement Affecting Real Property to be observed or performed by Tenant; or

(ii) Until Tenant has satisfied all Phase Four Conditions Precedent (as defined in the DDA) applicable to the Property (after which this subparagraph (ii) shall no longer be applicable), (A) any default or breach of a material obligation required to be performed by Master Developer pursuant to the DDA, except a default or breach described in subparagraph (iii), which is not cured within the applicable cure period, or (B) any uncured failure of a condition set forth in the DDA as a Phase Three Condition Precedent or Phase Four Condition Precedent except to the extent such condition is either not within the control of Tenant as described in paragraph f. of Section 9.1 of the DDA, or is within the control of Landlord or City; or

(iii) Until Tenant is entitled to recordation of the Certificate of Completion for the Property (after which this subparagraph (iii) shall no longer be applicable), any default or breach of a material obligation required to be performed by Tenant pursuant to the DDA, but only to the extent it relates to the development of the Property pursuant to the DDA, which is not cured within the applicable cure period;

(iv) Any default or breach by Tenant pursuant to any Permitted Leasehold Mortgage or related document which is not cured within the applicable cure period, provided if there is a good faith dispute as to whether or not such a default exists, there shall be no default hereunder until such dispute is resolved and the expiration of the applicable cure period, provided further that in such event the notice and cure provisions of Section 2.24.d. and 2.24.e. shall not apply; or

(v) Any Transfer that is not approved by Landlord when and as required by this Lease; or

(vi) The abandonment of the Property by Tenant; or

(vii) The making by Tenant of any general assignment for the benefit of creditors; or the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt, or a petition or reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within one hundred fifty (150) days); or the appointment of a trustee or a receiver to take possession of substantially all of Tenant's assets located at the Property or of Tenant's interest in this Lease, where possession is not restored to Tenant within one hundred fifty (150) days; or the attachment, execution, or other judicial seizure of substantially all of Tenant's assets located at the Property or of Tenant's interest in this Lease, where such seizure is not discharged within one hundred fifty (150) days.

b. Subject to Force Majeure delay, failure or delay by Tenant to perform any term or provision of this Lease constitutes a default under this Lease. Tenant must immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence, and during any period of curing shall not be in default, so long as it endeavors to complete such cure, correction or remedy with reasonable diligence, and provided such cure, correction or remedy is completed within the applicable time period set forth herein after receipt of written notice (or such additional time as may be deemed by Landlord to be reasonably necessary to correct the default).

c. Landlord shall give written notice of default to Tenant, specifying the default complained of by Landlord. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Lease, any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

d. If a monetary event of default occurs, prior to exercising any remedies hereunder, Landlord shall give Tenant written notice of such default. Tenant shall have a period of seven (7) calendar days after such notice is received or deemed received within which to cure the default prior to exercise of remedies by Landlord. Notwithstanding the foregoing, if any payment is not received by Landlord within seven (7) calendar days

following the due date thereof, then in addition to the remedies conferred upon Landlord pursuant to this Lease, a late charge of ten percent (10%) of the amount due and unpaid will be added to the delinquent amount to compensate Landlord for the expense of handling the delinquency, computed from the date on which the amount was due and payable until paid. Without prejudice to the rights of Landlord hereunder, Tenant shall indemnify Landlord against, and shall pay Landlord on demand, any expense or loss which it may sustain or incur as a direct result of the failure by Tenant to pay when due any installment of Rent or other amounts payable to Landlord under this Lease, to the extent that any such expense or loss is not recovered pursuant to such foregoing provisions. A certificate of Landlord setting forth the basis for the determination of the amounts necessary to indemnify Landlord in respect of such expenses or direct loss, submitted to Tenant by Landlord shall be conclusive and binding for all purposes.

e. If a non-monetary event of default occurs, prior to exercising any remedies hereunder, Landlord shall give Tenant notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, Tenant shall have such period to effect a cure prior to exercise of remedies by Landlord. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Tenant (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then Tenant shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Landlord. In no event shall Landlord be precluded from exercising remedies if the security of its fee interest in the Lease Parcel becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within one hundred eighty (180) days after the first notice of default is given.

f. Any notice of default that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission, provided if such facsimile is received on a nonbusiness day or after 5:00 p.m. on a business day, receipt shall be deemed to have occurred on the next business day; any notice of default that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt by Tenant; and any notice of default that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

g. If any default or breach is not cured by Tenant within the respective period of time provided in paragraphs d. and e. of this Section 2.24, and if such default or breach is not cured by a Leasehold Mortgagee within the time provided in Section 2.30 hereof, then Landlord shall be entitled to exercise any and all rights or remedies which may be available at law or in equity, including terminating this Lease. Any and all rights or remedies available to Landlord shall be cumulative, and not alternative. Provided, however, Landlord shall not be required to deliver written notice to Tenant as a condition to Tenant's obligations to pay any rent hereunder, or as a condition to Tenant's obligations under any Leasehold Mortgage or related documents, so long as Landlord provides written notice to Tenant before exercising its remedies or terminating this Lease, as described in this subdivision h., above.

h. In any case where, after notice of default is given to Tenant pursuant to this Section 2.24 and any Permitted Leasehold Mortgagee pursuant to Section 2.30, and prior to Tenant's leasehold interest having become vested in the Permitted Leasehold Mortgagee, neither Tenant nor the Permitted Leasehold Mortgagee has cured such default within the respective times provided for such cure in this Lease, then Landlord shall have the following rights and remedies:

(i) Landlord shall have the right to seek money damages against Tenant;

(ii) Landlord shall have the right to seek injunctive relief and/or specific performance of any obligation of Tenant hereunder;

(iii) Landlord shall have the right to cure the default, in which case, Tenant shall reimburse all costs and expenses incurred by Landlord in connection therewith, immediately upon demand, plus interest at the rate of ten percent (10%) per annum.

(iv) Landlord shall have the right to terminate this Lease.

2.24A RIGHT OF REVERTER

a. Subject to the notice and cure provisions of Section 2.24.d. and 2.24.e., until Tenant is entitled to recordation of the Agency Certificate of Completion for the Property (after which this Section 2.24A shall no longer be applicable), Landlord shall have the additional right, at its option, to terminate the DDA and this Lease, and to reenter and take possession of the Property (or any portion thereof) with all improvements thereon, and to terminate and revest in Landlord the leasehold estate theretofore conveyed to Tenant, as provided in California Health and Safety Code Section

33437, in the event of an uncured default described in this Section 2.24A, below:

(i) Tenant or Assignee fails to commence construction of any Improvements as required by the DDA for a period of ninety (90) days after written notice from Landlord, which shall be subject to Force Majeure Delay; or

(ii) Tenant or Assignee abandons or substantially suspends construction of any Improvements for a period of ninety (90) days after written notice from Landlord, which shall be subject to Force Majeure delay; or

(iii) Tenant or Assignee assigns or attempts to assign the DDA, or any rights therein, or transfer, or suffer any involuntary transfer of the Property or such party's interest in the Property, or any part thereof, in violation of the DDA or this Deed, and such breach is not cured within thirty (30) days after the date of written notice thereof; or

(iv) Tenant or Assignee otherwise materially breaches the DDA, and such breach is not cured within the time provided in Section 9.1 of the DDA.

b. Prior to Satisfaction of Phase Four Conditions.

Prior to the satisfaction of all Phase Four Conditions Precedent applicable to the Property, the Landlord's right of reverter established in this Section 2.24A shall be senior in priority to any lien, including Permitted Leasehold Mortgages, such that if Landlord exercises its right of reverter, all such liens and leasehold mortgages will be extinguished and the Landlord will be re-vested of title to the Property free and clear of all such liens and leasehold mortgages.

c. Conditions of Subordination to Senior Obligations.

Subject to this paragraph c., following satisfaction in full of all Phase Four Conditions Precedent applicable to the Property, the Landlord shall subordinate its right of reverter to the lien of any Community Financing District or other financing bonds issued with respect to the Property and the lien of any Permitted Leasehold Mortgagee (collectively, a "Senior Obligation"). The Landlord's agreement to subordinate its right of reverter to Senior Obligations is subject to the holder of any Senior Obligation to which the Landlord's right of reverter is to be subordinated, shall agree, in writing, to provide to the Landlord the following rights:

(i) Upon the occurrence of an event of default under any of the Senior Obligation documents, the holder of the Senior Obligation shall promptly notify Landlord of the occurrence of such event of default, which notification shall be provided to Landlord contemporaneously with the delivery to Tenant or Assignee of any notice of default under any of the Senior Obligation documents;

(ii) The Landlord shall have the right, during the cure periods which apply to the Tenant or Assignee pursuant to the Senior Obligation documents and any cure period which may apply to the Landlord under applicable law, to cure Tenant or Assignee's default relative to the Senior Obligation; and

(iii) After a default on any of the Senior Obligation documents but prior to a foreclosure sale or deed in lieu assignment of the leasehold interest in the Property, the Landlord shall have the right to take title to the Property and cure the default relative to the Senior Obligation documents, without the holder of the Senior Obligation exercising any right it might otherwise have to accelerate the Senior Obligation by reason of such title transfer, so long as Landlord promptly cures any such default upon taking title to the Property.

d. Following Satisfaction of Phase Four Conditions Precedent. Upon and after the satisfaction of all Phase Four Conditions Precedent for the Property, such right to reenter, repossess, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit, and Landlord's rights shall be subject and subordinate to any rights or interests provided in the DDA for the protection of any Mortgagee of a Permitted Leasehold Mortgage Loan. To carry out this paragraph d, subject to the conditions set forth in paragraph c. of this Section 2.24A, the Landlord shall execute such reasonable subordination agreements as may be requested by Tenant or the maker of any Permitted Leasehold Mortgage Loan.

e. Disposition of Property Following Reversion. If such reversion occurs following the satisfaction of all Phase Four Conditions Precedent for the Property and subordination of the Landlord's Right of Reverter to the lien of a Permitted Leasehold Mortgage Loan, upon the reversioning in Landlord of the leasehold estate theretofore conveyed to Tenant as provided in this Section 2.24A, Landlord shall, pursuant to its responsibilities under state law, use its best efforts to lease the Property, or any part thereof, as soon and in such manner as Landlord shall find feasible and consistent with the objectives of the Community Redevelopment

Law, the Reuse Plan and the Redevelopment Plan to a qualified and responsible party or parties (as determined by Landlord), who will assume the obligation of making or completing the improvements, or such other improvements in their stead, as shall be satisfactory to Landlord and in accordance with the uses specified for the Property, or any part thereof, in the Redevelopment Plan. Upon such conveyance of the Property, or any part thereof, the proceeds thereof, if any, shall be applied:

(i) First (but only if such reversion occurs following the satisfaction of all Phase Four Conditions Precedent and subordination of the Landlord's Right of Reverter to the lien of any Permitted Leasehold Mortgage Loan), repayment in full of the outstanding balance of any Permitted Leasehold Mortgage Loan;

(ii) next, to reimburse Landlord on its own behalf or on behalf of the City of San Diego of all costs and expenses incurred by Landlord, including salaries of personnel engaged in such action, in connection with the recapture, management and leasing of the Property, or any part thereof (but less any income derived by Landlord from the leasing of the Property, or any part thereof, in connection with such management); all taxes, assessments and water and sewer charges with respect to the Property or any part thereof (or, in the event the Property, or any part thereof, is exempt from taxation or assessment or such charges during the period of ownership, then such taxes, assessments or charges, as would have been payable if the Property, or part thereof, were not so exempt); any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Tenant, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the agreed improvements or any part thereof on the Property, or any part thereof; and any amounts otherwise owing to the Landlord by Tenant and its successor or transferee; and

(iii) Third, to reimburse Tenant, its successor or transferee, up to the amount equal to: the sum of the consideration paid to the Landlord for the lease of the Property (or allocable to the part thereof) and the costs incurred for the development of the Property, or any part thereof, or for the construction of the agreed improvements thereon,

less (subject to the satisfaction of all Phase Four Conditions Precedent) the Permitted Mortgage Loan.

(iv) Any balance remaining after such reimbursements shall be retained by Landlord as its property.

f. Rules of Interpretation. To the extent that the right established in this Section 2.24A involves a forfeiture, it must be strictly interpreted against Landlord, the party for whose benefit it is created. The rights established in this Section 2.24A are to be interpreted in light of the fact that Landlord will convey the leasehold interest in the Property to Tenant for development and not for speculation.

g. Statutory Basis for Right of Reverter. The parties acknowledge that Landlord's right of reverter pursuant to this Section 2.24A is authorized by and is in furtherance of California Health and Safety Code Section 33437.

h. Expiration of Right of Reverter. The rights established in this Section 2.24A shall not apply to the Property after the recordation of the Agency Certificate of Completion with respect to the Property.

2.25 EMINENT DOMAIN

a. If the Property or any portion thereof is taken under the power of eminent domain, or sold by Landlord under the threat of the exercise of such power, this Lease shall terminate as to the part so taken as of the date that the condemning authority takes possession of the Property. If a portion of the Property is taken or sold under such threat such that the commercial use of the Property is no longer reasonably viable, either Landlord or Tenant may terminate this Lease as of the date that the condemning authority takes possession by delivery of written notice of such election within twenty (20) days after such party has been notified of the taking or, in the absence thereof, within twenty (20) days after the condemning authority shall have taken possession.

b. If this Lease is not terminated by Landlord or Tenant, it shall remain in full force and effect as to the portion of the Property remaining. In such event, Tenant shall, at Tenant's own expense, restore the Property to a complete unit of like quality and character, except as to size, as existed prior to the date on which the condemning authority took possession.

c. Except as provided in paragraph d., below, all awards for the taking of any part of the Property or proceeds from the sale made under the threat of the exercise of the power of eminent domain shall be paid directly to Tenant; provided, however, that Landlord shall be entitled to any award which is specifically

made for the value of the fee as encumbered by this Lease (including any residual value after the Term).

d. During the last twenty (20) years of the Term, all awards for the taking of any part of the Property or proceeds from the sale made under the threat of the exercise of the power of eminent domain shall be paid directly to Landlord (except as provided in paragraph e., below), whether made as compensation for diminution of value of the leasehold estate, for the taking of the fee, or as severance damages; provided, however, that Tenant shall be entitled to any award which is specifically made for the value of the leasehold estate created by this Lease, Tenant's interest in the Improvements and any loss of or damage to Tenant's trade fixtures and removable personal property.

e. Notwithstanding any provision of this Section 2.25, in the event Landlord exercises its power of eminent domain with respect to the Property or any portion thereof or interest therein, Tenant shall be entitled to such awards as may be authorized by applicable law, including bonus value, if any, without regard to this Section 2.25.

2.26 ESTOPPEL OFFSET STATEMENT

a. Tenant shall, at any time and from time to time upon not less than twenty (20) days' prior written notice from Landlord, execute, acknowledge, and deliver to Landlord a statement in writing certifying that this Lease is unmodified and in full force and effect (or, if modified, is in full force and effect, and stating the modifications) and acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder (or specifying such defaults if any are claimed) and such other matters as may be reasonable and customary or as needed to clarify any provision of this Lease. Tenant's failure to deliver such statement to Landlord within twenty (20) days after receipt of Landlord's notice shall be conclusively deemed to be Tenant's acknowledgment that this Lease is unmodified except as reflected in recorded instruments and that, to Tenant's knowledge, there are no uncured defaults on the part of Landlord hereunder.

b. Landlord shall, at any time and from time to time upon not less than twenty (20) days' prior written notice from Tenant, execute, acknowledge, and deliver to Tenant a statement in writing certifying that this Lease is unmodified and in full force and effect (or, if modified, is in full force and effect, and stating the modifications) and acknowledging that there are not, to Landlord's knowledge, any uncured defaults on the part of Tenant hereunder (or specifying such defaults if any are claimed), the last date Landlord received rent under this Lease, the date such rent was due and the amount thereof, acknowledging that the recipient will rely on the certificate, and such other matters as may be reasonable and customary or as needed to clarify any

provision of this Lease. Landlord's failure to deliver such statement to Tenant within twenty (20) days after receipt of Tenant's notice shall be conclusively deemed to be Landlord's acknowledgment that this Lease is unmodified except as reflected in recorded instruments and that, to Landlord's knowledge, there are no uncured defaults on the part of Tenant hereunder.

2.27 HAZARDOUS MATERIALS

a. For purposes of this Lease, the term "Hazardous Materials" shall mean and include the following:

- (1) a "Hazardous Substance", "Hazardous Material", "Hazardous Waste", or "Toxic Substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101, et seq., or the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.;
- (2) an "Extremely Hazardous Waste", a "Hazardous Waste", or a "Restricted Hazardous Waste", under §§ 25115, 25117 or 25122.7 of the California Health and Safety Code, or is listed or identified pursuant to §§ 25140 or 44321 of the California Health and Safety Code;
- (3) a "Hazardous Material", "Hazardous Substance", "Hazardous Waste", "Toxic Air Contaminant", or "Medical Waste" under §§ 25281, 25316, 25501, 25501.1, 117690 or 39655 of the California Health and Safety Code;
- (4) "Oil" or a "Hazardous Substance" listed or identified pursuant to § 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321, as well as any other hydrocarbonic substance or by-product;
- (5) listed or defined as a "Hazardous Waste", "Extremely Hazardous Waste", or an "Acutely Hazardous Waste" pursuant to Chapter 11 of Title 22 of the California Code of Regulations;

- (6) listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to § 25249.9(a) of the California Health and Safety Code;
- (7) a material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, damages or threatens to damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or public agency requires in order for the property to be put to any lawful purpose;
- (8) any material whose presence would require remediation pursuant to the guidelines set forth in the State of California Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank;
- (9) pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.;
- (10) asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.;
- (11) any radioactive material including, without limitation, any "source material", "special nuclear material", "by-product material", "low-level wastes", "high-level radioactive waste", "spent nuclear fuel" or "transuranic waste", and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. §§ 2011 et seq., the Nuclear Waste Policy Act, 42 U.S.C. §§ 10101 et seq., or pursuant to the California Radiation Control Law, California Health and Safety Code §§ 114960 et seq.;
- (12) regulated under the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq., or the California Occupational Safety and Health Act, California Labor Code §§ 6300 et seq.; and/or

(13) regulated under the Clean Air Act, 42 U.S.C. §§ 7401 et seq. or pursuant to Division 26 of the California Health and Safety Code.

b. The term "Pre-existing Site Conditions" shall mean the existence, release, presence or disposal on, in, under, about or adjacent to the Property, of any Hazardous Materials which occurred before the delivery of possession of the Property to Tenant.

c. Tenant shall not, except in compliance with law:

- (1) Make, or permit to be made, any use of the Property, or any portion thereof, which emits, or permits the emission of dust, sweepings, dirt, cinders, fumes, or odors into the atmosphere, the ground, or any body of water, whether natural or artificial, in violation of applicable law; or
- (2) Discharge, leak, or emit, or permit to be discharged, leaked, or emitted, any liquid, solid, or gaseous matter, or any combination thereof, into the atmosphere, the ground, or any body of water, in violation of applicable law.
- (3) Use, store or dispose of any Hazardous Materials on the Property.

d. Tenant shall not keep any trash, garbage, waste, or other refuse on the Property except in sanitary containers and shall regularly and frequently remove the same from the Property. Tenant shall keep all incinerators, containers, and other equipment used for the storage or disposal of such matter in a clean and sanitary condition. Tenant shall surrender the Property at the expiration or termination of this Lease free of any Hazardous Materials or contamination caused by Tenant's activities, and free and clear of all judgements, liens, or encumbrances caused by Tenant's activities and shall, at its own cost and expense, repair all damage and clean up or perform any remedial action necessary relating to any Hazardous Materials or contamination caused by Tenant's activities. Tenant shall, at its sole cost and expense remediate in accordance with law and/or remove any alterations or improvements that may be contaminated or may contain Hazardous Materials caused by Tenant's activities.

e. Tenant shall indemnify, defend, and hold harmless Landlord, the City of San Diego and their respective officers, employees, contractors and agents (collectively referred to as the "Indemnified Parties"), with counsel reasonably acceptable to Agency, from and against any and all loss, liability, damage, claim, cost and expense (including reasonable attorneys' fees, court and litigation costs and fees of expert witnesses) resulting or arising from or in any way connected with the following: the existence, release, presence or disposal on, in, under, about or adjacent to the Property, at any time after the delivery of possession and conveyance of the Property to Tenant, of any Hazardous Materials, except to the extent of (and in no event shall Tenant be responsible for) any loss, liability, damage, claim, cost or expense caused by: (1) Pre-existing Conditions; and (2) the negligence or willful misconduct of any Indemnified Party or any Assignee or any tenant or subtenant of the City of San Diego prior to the effective date of this Lease or the assignment of the management of the Property to Tenant prior to the effective date of this Lease, whichever occurs first.

f. Notwithstanding the expiration or termination of this Lease, Tenant's obligations and liabilities under this Section shall continue so long as Landlord continues to own the Property or any portion thereof or otherwise remains responsible for any Hazardous Materials on the Property; provided, however, that nothing contained in this provision is intended to or shall have the effect of relieving any party of liability under any applicable statutory or common law.

2.28 TENANT'S SIGNAGE

Tenant shall have the right to place signs on the Property in accordance with applicable City requirements.

2.29 MEMORANDUM OF LEASE

Concurrently with the execution of this Ground Lease, Landlord and Tenant shall execute in recordable form a Memorandum of Lease, substantially in the form attached hereto as Exhibit "C" which is incorporated herein by this reference, which either party is authorized to record.

2.30 MORTGAGEE PROTECTION PROVISIONS

a. DEFINITIONS.

(i) For purposes of this Lease, the term "mortgage" shall include whatever security instruments are used in the locale of the Property, such as, without limitation, deeds of trust security deeds, and conditional deeds. The term "mortgage" shall also include any instruments required in connection with a sale-leaseback transaction. The term "mortgagee" shall include the

holder of the secured position under each of the foregoing types of instruments, including but not limited to the beneficiary under a deed of trust, the secured party under a security agreement and the lessor in a sale-leaseback transaction.

(ii) For purposes of this Lease, the term "Leasehold Mortgage" means a conveyance of a security interest in this Lease and all of Tenant's interests in the Property (collectively referred to as "Tenant's Leasehold Interests") to a lender (a "Leasehold Mortgagee") to secure any loan (which shall include, among other things, bond financing) to finance any construction, improvement or alteration of the Property, or, to secure any refinancing of any such loan (or bond financing).

(iii) For purposes of this Lease, the terms "Permitted Leasehold Mortgage" and "Permitted Leasehold Mortgagee" shall mean, respectively, a Leasehold Mortgage and a Leasehold Mortgagee satisfying all of the conditions set forth in paragraph b. of this Section 2.30.

b. RIGHT TO ENCUMBER. At any time and from time to time during the Term, Tenant shall have the right to enter into a Leasehold Mortgage upon and subject to each and all of the following terms and conditions, subject to the reasonable consent of Landlord, which Landlord shall grant provided the proposed Leasehold Mortgage satisfies all of the following conditions:

(i) The Leasehold Mortgage shall contain an aggregate principal amount which, when combined with the principal balance of all other Permitted Leasehold Mortgages then outstanding, shall not exceed eighty percent (80%) of the fair market value of Tenant's interests in this Lease. The fair market value of Tenant's interests in this Lease shall be determined by an appraisal conducted on behalf of the Leasehold Mortgagee by a disinterested real estate appraiser having the qualifications for appraisers required by the Leasehold Mortgagee's underwriting criteria.

(ii) The Leasehold Mortgage shall cover all of Tenant's interest in the Lease, the Property, the Improvements and, without the prior express consent of Landlord, which Landlord shall not unreasonably withhold, condition or delay, shall cover no interest in any other real property.

(iii) The Leasehold Mortgage shall be without subordination of the fee simple title of the Property. The term of any Leasehold Mortgage shall expire prior to the expiration of the term of this Lease.

(iv) No such Leasehold Mortgage shall be binding upon Landlord in the enforcement of its rights and remedies herein, unless and until Tenant delivers or causes to be delivered to

Landlord a certified copy of the fully executed original Leasehold Mortgage bearing the date and recording information and a certified copy of the original note secured by the Leasehold Mortgage, together with written notice of the address of the Leasehold Mortgagee to which notices may be sent; and in the event of an assignment of such Leasehold Mortgage, such assignment shall not be binding upon Landlord unless and until a certified copy thereof, bearing the date and recording information together with written notice of the address of the assignee thereof to which notices may be sent, have been delivered to Landlord.

(v) No Leasehold Mortgage permitted by this Lease shall cover more than one indebtedness; that is, there shall be no cross-collateralization permitted.

(vi) A Leasehold Mortgage is to be originated only by a Qualified Lender. For the purposes hereof, the term "Qualified Lender" shall consist of:

(aa) the mortgagee of any purchase money financing of a Permitted Transfer or other Transfer approved by Landlord; or

(bb) any one or a combination of the following lending institutions authorized under applicable California law to make mortgage loans and not under any order or judgment of any court or administrative agency restricting or impairing its operation as a lender, and having a net worth in the amount of not less than Twenty-Five Million Dollars (\$25,000,000), increased by the percentage increase, if any, in the Consumer Price Index from the Commencement Date of this Lease to the date of anniversary thereof most recently preceding the date of calculation, and is regularly engaged in business in the State of California: a commercial or savings bank; a trust company; an insurance company; a savings and loan association; a building and loan association;

(cc) any company engaged in the ordinary course of business as a lender with a net worth of not less than Twenty-Five Million Dollars (\$25,000,000), increased by the percentage increase, if any, in the Consumer Price Index from the Commencement Date of this Lease to the date of anniversary thereof most recently preceding the date of calculation, which is duly licensed or registered (if legally required) with any regulatory agency having jurisdiction over its operation, and is not under any order or judgment of any court or administrative agency restricting or impairing its operation as a lender, including, without limitation, the following: a real estate investment trust; a pension, retirement or welfare fund; an endowment fund or foundation authorized to make loans in the State of California; or

(dd) any other person or company approved by the Landlord's Executive Director or designee, which approval may be granted or withheld in his or her sole discretion.

Landlord acknowledges that the identity and nature of lending institutions changes over time, and agrees that Landlord's approval of any proposed mortgage lender that is not a "Qualified Lender" as defined in this paragraph (6) shall not be unreasonably withheld, conditioned or delayed.

(vii) All rights acquired by the Leasehold Mortgagee under the Leasehold Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Landlord hereunder. Landlord shall not be deemed to waive any covenants, conditions and restrictions contained in this Lease by reason of Tenant's grant of a Leasehold Mortgage.

(viii) No extension, modification, change or amendment to a Leasehold Mortgage shall be effective, or binding upon Landlord, unless and until approved by Landlord, which approval shall be granted so long as such extension, modification, change or amendment satisfies the applicable requirements of paragraphs (i) through (vii), above.

c. LANDLORD'S RIGHT TO CURE DEFAULTS. In the event of a default or breach by Tenant of any Permitted Leasehold Mortgage, Landlord shall have the right to cure the default provided such cure is completed at least five (5) business days before the date of foreclosure. In such event, Landlord shall be entitled to reimbursement by Tenant of all costs and expenses incurred by Landlord in curing the default, with interest at the highest rate permitted by law, as Additional Rent (collectively, "Landlord's Cure Payments"), provided in the event of a subsequent foreclosure of a Permitted Leasehold Mortgage, the party acquiring Tenant's Leasehold interests shall not be obligated to pay Landlord any of Landlord's Cure Payments.

d. RIGHTS OF PERMITTED LEASEHOLD MORTGAGEE: If Tenant and/or Tenant's successors and assigns (including, but not limited to, any sublessee of Tenant) shall mortgage its interest in this Lease and its leasehold estate in the Property, or any part or parts thereof as permitted by this Section 2.30, above, the following provisions shall apply:

(i) No Amendment. There shall be no amendment, cancellation, termination, surrender or modification of this Lease by joint action of Landlord and Tenant without the prior consent in writing of any Permitted Leasehold Mortgagee.

(ii) Right to Notice of Default. Landlord shall, upon serving Tenant with any notice of default, simultaneously serve a copy of the notice of default upon any Permitted Leasehold Mortgagee.

(iii) Right to Cure. Any Permitted Leasehold Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Lease, to pay all of the rents due hereunder, to effect any insurance, to pay any taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Tenant hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Lease. Any Permitted Leasehold Mortgagee and its agents and contractors shall have full access to the Property for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Permitted Leasehold Mortgagee shall be as effective to prevent a termination of this Lease as the same would have been if done by Tenant.

(iv) Additional Cure Period. Anything contained in this Lease notwithstanding, if any default shall occur which, pursuant to any provision of this Lease, purportedly entitles Landlord to terminate this Lease, Landlord shall not be entitled to terminate this Lease as to any Permitted Leasehold Mortgagee, nor to disturb the right of possession of any subtenant of Tenant, and the notice shall be rendered void as to such parties, if the Permitted Leasehold Mortgagee, within sixty (60) days after expiration of the period within which Tenant was permitted to cure the default (but in no event later than ninety (90) days after receipt by the Leasehold Mortgagee of the notice of default referred to in paragraph d. (ii) of this Section 2.30, above), shall both:

(aa) either (1) cure the default if the same can be cured by the expenditure of money, or (2) if the default or breach is not so curable, commence, or cause any trustee under the mortgage to commence, and thereafter to diligently pursue to completion steps and proceedings to foreclose on the interests covered by the mortgage; and

(bb) perform or cause the performance of all of the covenants and conditions of this Lease requiring the expenditure of money by Tenant until such time as the leasehold shall be sold upon foreclosure pursuant to the mortgage, or shall be released or reconveyed thereunder, or shall be transferred upon judicial foreclosure or by deed or assignment in lieu of foreclosure.

(v) Condition of Termination. All right of Landlord to terminate this Lease as the result of the occurrence of any default shall be subject to, and conditioned upon, Landlord having first given to each Permitted Leasehold Mortgagee written notice of the default as required under Section 2.30.d.(ii), above, and each Permitted Leasehold Mortgagee having failed to remedy such default or acquire Tenant's leasehold estate hereunder or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in Section 2.30.d.(iv), above.

(vi) Suspension of Cure Period. If any Permitted Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court, or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant, the times specified in paragraph (iv) above, for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition, so long as the Permitted Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant under this Lease and shall continue to pay currently those monetary obligations as and when the same fall due, subject to any applicable notice and grace periods.

(vii) Loss Payable Endorsement. Landlord and Tenant agree that the name of the Permitted Leasehold Mortgagee shall, at its request, be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Tenant under this Lease on condition that the insurance proceeds are to be applied in the manner specified in this Lease.

(viii) No Consent to Foreclosure. Foreclosure of any leasehold mortgage, 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 Tenant to any Leasehold Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance, Landlord shall recognize in writing the purchaser or other transferee referred to in the preceding sentence in connection therewith as the Tenant hereunder. Further, following such foreclosure or conveyance, any assignment or subleasing by the purchaser or other transferee shall not require the consent of Landlord, despite any other provisions of this Lease to the contrary.

(ix) Proceeds of Insurance and Condemnation. The proceeds from any insurance policies or arising from a condemnation award to Tenant shall be paid to and held by the Permitted Leasehold Mortgagee of highest priority and distributed pursuant to the provisions of this Lease, except that the Permitted Leasehold Mortgagee may reserve the right to apply to the mortgagee debt (in the order of priority) all, or any part, of the proceeds not used to repair or restore the Property and the Improvements.

(x) Notice of Proceedings. The parties hereto shall give to any Permitted Leasehold Mortgagee notice of any arbitration proceedings or condemnation proceedings involving Tenant's interest in the Property, or of any pending adjustment of insurance claims, and any Permitted Leasehold Mortgagee shall have the right to intervene therein and shall be made a party to such proceedings. The parties hereto do hereby consent to such intervention. In the event that any Permitted Leasehold Mortgagee shall not elect to intervene or become a party to the proceedings, that Permitted Leasehold Mortgagee shall receive notice and a copy of any award or decision made in connection therewith.

(xi) Further Protections. Landlord and Tenant shall cooperate in including in this Lease, by suitable amendment from time to time, any provision which may be reasonably requested by any proposed Permitted Leasehold Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Section 2.30 and allowing that Permitted Leasehold Mortgagee reasonable means to protect or preserve the lien of its leasehold mortgage upon the occurrence of a default under the terms of this Lease. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that no such amendment shall in any way affect the term or rent under this Lease, nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.

(xii) Additional Agreement. Landlord shall, upon request, execute, acknowledge and deliver to each Leasehold Mortgagee, an agreement prepared by a Permitted Leasehold Mortgagee and reviewed by Landlord at the sole cost and expense of Tenant, in form satisfactory to Permitted Leasehold Mortgagee, between Landlord, Tenant and the Permitted Leasehold Mortgagee, agreeing to all of the provisions of this Lease.

e. NOTICE: If Tenant and/or Tenant's successors and assigns shall mortgage its interest in this Lease or its leasehold estate in the Property, or any part or parts thereof, Tenant shall send to Landlord a true copy thereof, together with written notice specifying the name and address of the leasehold mortgagee(s) and the pertinent recording data with respect to such mortgage(s).

f. NEW LEASE:

(i) Landlord agrees that in the event of termination of this Lease by reason of any default by Tenant, or by reason of the disaffirmance hereof by a receiver, liquidator or trustee for Tenant or its property, Landlord if requested by any Permitted Leasehold Mortgagee will enter into a new lease of the Property, with the Permitted Leasehold Mortgagee requesting a new lease or its designee, for the remainder of the Term, effective as of the date of such termination, at the rent and additional rent and upon the terms, provisions, covenants and agreements as herein contained and subject to the rights, if any, of any parties then in possession of any part of the Property, provided:

(aa) The Permitted Leasehold Mortgagee shall make written request upon Landlord for the new lease within one hundred twenty (120) days after the date of termination:

(bb) Within thirty (30) days after receipt of the new lease from Landlord complying with the terms of this paragraph (f), the Permitted Leasehold Mortgagee shall execute and deliver the new lease to Landlord and shall pay any and all sums which would, at the time of the execution and delivery thereof, be due and unpaid pursuant to this Lease but for its termination.

(cc) The Permitted Leasehold Mortgagee shall perform and observe all covenants herein contained on Tenant's part to be performed, and shall further remedy any other conditions which Tenant under the terminated Lease was obligated to perform under its terms, in each instance as and to the extent the same are curable or may be performed by the Permitted Leasehold Mortgagee:

(dd) The tenant under the new lease shall have the same right, title and interest in and to the buildings and improvements on the Property as Tenant had under the terminated Lease immediately prior to its termination; and

(ee) Notwithstanding anything to the contrary expressed or implied elsewhere in this Lease, any new lease made pursuant to this Section 2.30.f.(i) shall enjoy the same priority in time as the Lease over any mortgage, deed of trust, or other lien, charge, or encumbrance on the Property.

(ii) Any new lease made pursuant to Section 2.30.f.(i) shall be accompanied by a conveyance from Landlord to the new tenant of title to the Improvements (free of any mortgage, deed of trust, lien, charge, or encumbrance created by Landlord) for a term of years equal to the term of the new lease, subject to the reversion in favor of Landlord upon expiration or sooner termination of the new lease.

(iii) Nothing herein contained shall require any Permitted Leasehold Mortgagee to enter into a new lease pursuant to Section 2.30.f.(i), above, nor to cure any default of Tenant referred to above.

(iv) If a Permitted Leasehold Mortgagee shall elect to demand a new lease, Landlord agrees, at the request of, on behalf of and at the expense of the Permitted Leasehold Mortgagee, to institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or remove the original Tenant from the Property, but not any subtenants of Tenant actually occupying the Property, or any part thereof.

(v) Unless and until Landlord has received notice from any Permitted Leasehold Mortgagee that the Permitted Leasehold Mortgagee elects not to demand a new lease as provided in Section 2.30.f.(i), or until the period therefor has expired, Landlord shall not cancel or agree to the termination or surrender of any existing subleases nor enter into any new subleases hereunder without the prior written consent of the Permitted Leasehold Mortgagee.

g. LENDER'S LIABILITY: In the event any Permitted Leasehold Mortgagee or any designee of it becomes the Tenant under this Lease or under any new lease obtained pursuant to Section 2.30.f.(i), above, and subject to Section 2.24(j), the Permitted Leasehold Mortgagee or its designee shall be personally liable for the obligations of Tenant under this Lease or a new sublease only for the period of time that the Permitted Leasehold Mortgagee or its designee remains the actual beneficial holder of the leasehold estate hereunder.

h. QUIET ENJOYMENT: Absent an uncured default by Tenant, Landlord agrees not to disturb the possession, interest or quiet enjoyment of Tenant in the Property for any reason, or in a manner which would materially adversely affect any Permitted Leasehold Mortgagee.

i. APPROVAL OF MODIFICATIONS: Landlord (through its Executive Director or designee) shall approve reasonable modifications to the terms of this Lease which are reasonably requested by a proposed Leasehold Mortgagee as a condition of financing contemplated by this Lease, and which are limited to procedures, notice provisions or similar mechanical matters relating to lenders' remedies which the Executive Director or designee determines, in his sole discretion, will not adversely affect Landlord's rights.

j. THE PROVISIONS OF THIS LEASE DO NOT GIVE TO TENANT OR ANY PERSON WHATSOEVER OTHER THAN LANDLORD THE RIGHT TO MORTGAGE, HYPOTHECATE OR OTHERWISE TO ENCUMBER OR TO CAUSE ANY LIENS TO BE PLACED AGAINST THE FREEHOLD ESTATE OF LANDLORD, NOR SHALL SAID PROVISIONS BE CONSTRUED AS RESULTING IN A SUBORDINATION IN WHOLE OR IN PART OF THE FREEHOLD ESTATE OF LANDLORD OR LANDLORD'S RIGHT TO RECEIVE RENT TO ANY INDEBTEDNESS OF TENANT.

2.31 GENERAL PROVISIONS

a. Waivers. The waiver by either party of any term, covenant, or condition herein contained shall not be a waiver of such term, covenant, or condition on any subsequent breach.

b. Notices. Formal notices, demands and communications between Landlord and Tenant shall be deemed sufficiently given if dispatched by first class mail, registered or certified mail, postage prepaid, return receipt requested, or by electronic facsimile transmission followed by delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), to the addresses of Landlord and Tenant as set forth in Sections 1.6 and 1.7 hereof. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail. Any notice that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission, provided that if such transmission is delivered after 5:00 p.m., notice shall be deemed given on the next business day; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

c. Time is of the Essence. Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

d. Binding on Successors and Assigns. This Lease, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and assigns.

e. Force Majeure.

(i) Performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation brought by a third party (but only to the extent performance is enjoined by a court of competent jurisdiction as the result of such litigation) unusually severe weather, reasonably unforeseeable site conditions including the presence of Hazardous Materials, inability to secure necessary labor, material or tools, delays of any contractor, sub-contractor or supplier, acts of the other party, acts or failure to act of the City of San Diego or any other public or governmental agency or entity (except that acts or failure to act of Landlord shall not excuse performance of Landlord), or any causes beyond the control or without the fault of the party claiming an extension of time to perform. Provided, however, in the event Tenant reasonably determines (and Landlord's Executive Director or designee concurs with such determination, which concurrence shall not be unreasonably withheld) that litigation brought by a third party is the cause of Tenant or any assignee's inability to obtain necessary entitlements or financing despite the best efforts of such party to do so, the failure to timely perform any obligation hereunder as the result of such litigation shall not be a default so long as Tenant or such assignee continues to perform its obligations to the maximum extent possible.

(ii) An extension of time for any such cause (a "Force Majeure Delay") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom. Any party claiming a Force Majeure Delay shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event. Times of performance under this Agreement may also be extended in writing by Landlord and Tenant.

(iii) Notwithstanding any provision of this Agreement, Landlord agrees that in the event Tenant fails to perform any obligation to be performed by Tenant hereunder as the result of adverse changes in market conditions affecting the development, sale or lease of any part of the Property, the Landlord Executive Director shall not terminate this Agreement or exercise the Landlord's right of reverter without first providing

Tenant a reasonable opportunity to address the governing body of the Landlord at a public meeting.

f. Costs of Proceedings and Attorneys' Fees. If any action or proceeding is brought by either party against the other under this Lease or by a Leasehold Mortgagee against any such party, whether for interpretation, enforcement, recovery of possession, or otherwise, the prevailing party shall be entitled to recover all costs and expenses, including the fees of its attorney in such action or proceeding. This provision shall also apply to any postjudgment action by either party, including without limitation efforts to enforce a judgment.

g. Severability. Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

h. No Exclusive Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

i. Laws of California. This Lease shall be governed by the laws of the State of California. Proper venue for any action shall be in San Diego, California.

j. No Partnership. Nothing contained in this Lease shall be deemed or construed as creating a partnership, joint venture, or any other relationship between the parties hereto other than Landlord and Tenant according to the provisions contained herein, or cause Landlord to be responsible in any way for the debts or obligations of Tenant, or any other party.

k. Final Agreement. This Lease, including any document or instrument incorporated therein or herein by reference, contains a complete and final expression of the agreement between Landlord and Tenant, and there are no promises, representations, agreements, warranties, or inducements either express or implied other than as are set forth in this Lease. Any and all previous discussions or agreements between Landlord and Tenant with respect to the premises, whether oral or written, are superseded by the DDA and this Lease.

l. Language of Lease. When the context so requires when used in this Lease, the masculine gender shall be deemed to include the feminine and neuter gender and the neuter gender shall be deemed to include the masculine and feminine gender. When the context to requires when used in this Lease, the singular shall be deemed to include the plural. The term "including" shall mean "including but not limited to."

m. Waiver. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being lawfully evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the Property by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise.

n. Requirement of a Writing. No amendment, change, or addition to, or waiver of termination of, this Lease or any part hereof shall be valid unless in writing and signed by both Landlord and Tenant.

o. No Third Party Beneficiaries. The parties acknowledge and agree that the provisions of this Lease are for the sole benefit of Landlord and Tenant, and not for the benefit, directly or indirectly, of any other person or entity, except as otherwise expressly provided herein.

p. Authority of Tenant. The party executing this Lease on behalf of Tenant has full authority to do so and to bind Tenant to perform pursuant to the terms and conditions of this Lease.

q. Incorporation by Reference. Each of the attachments and exhibits attached hereto is incorporated herein by this reference.

r. Interpretation.

(i) The language in all parts of this Lease shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Lease has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Lease with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Lease, this Lease shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

(ii) If any term or provision of this Lease, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each other term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties hereto that in lieu of each clause or

provision of this Lease that is illegal, invalid, or unenforceable, there be added as a part of this Lease an enforceable clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible.

(iii) The captions of the articles, sections, and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

(iv) References in this instrument to this "Lease" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation, and/or undertaking "herein," "hereunder," or "pursuant hereto" (or language of like import) shall mean, refer to, and include the covenants, obligations, and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, and attachments or other documents affixed to or expressly incorporated by reference in this instrument.

s. Merger. So long as any Leasehold Mortgagee holds a Leasehold Mortgage, the fee title to the Property and the leasehold estate created by this Lease shall not merge unless all Leasehold Mortgagees expressly consent to the merger in writing. This provision shall apply even if Tenant or Landlord or any third party acquires both the fee title and this Lease.

t. Priority. This Lease, and any extensions, renewals or replacements thereof, and any sublease entered into by Tenant as sublessor, and any Leasehold Mortgage or other encumbrance recorded by Leasehold Mortgagee shall be superior to any mortgages, deeds of trust or similar encumbrances placed by Landlord on the Property (except for the Agreement Affecting Real Property being recorded concurrently with the Memorandum of Lease) and to any lien right, if any, of Landlord on the buildings, and any furniture, fixtures, equipment or other personal property of Tenant upon the Property.

u. Counterparts. This Lease may be executed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

By: _____
Hank Cunningham
Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY
Casey Gwinn
Agency General Counsel

By: _____
Richard A. Duvernay

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Glenn F. Wasserman

McMILLIN-NTC, LLC

By: McMillin Companies, LLC, a
Delaware limited liability
company, its managing member

By: _____

By: _____

Exhibit "A"
LEGAL DESCRIPTION
[TO BE ADDED]

Exhibit "B"

MAP OF THE LEASED PROPERTY

[TO BE ADDED]

Exhibit "C"
MEMORANDUM OF LEASE
[BEHIND THIS PAGE]

OFFICIAL BUSINESS
Document entitled to free
recording per Government
Code Section 6103

Recording Requested by

REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

When Recorded Return to:
Redevelopment Agency of the
City of San Diego
202 C Street
San Diego, California 92101
Attn: NTC Project Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NAVAL TRAINING CENTER REDEVELOPMENT PROJECT

MEMORANDUM OF LEASE

This Memorandum of Lease (the "Memorandum") is made as of _____, by and between THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, CALIFORNIA ("Landlord") and McMILLIN-NTC, LLC, a California limited liability company ("Tenant"), who agree as follows:

1. Concurrently herewith, Landlord and Tenant have entered into that certain Ground Lease (the "Lease") with respect to the real property (the "Property") described as set forth in Exhibit "A" attached hereto and incorporated herein by this reference. Pursuant to the Lease, Landlord hereby leases the Property to Tenant and Tenant hereby accepts tenancy of the Property from Landlord.
2. The provisions of the Lease to be performed by Tenant, whether affirmative or negative in nature, are intended to and shall bind Tenant and its successors and assigns at any time, and shall inure to the benefit of Landlord and its successors and assigns.
3. The provisions of the Lease to be performed by Landlord, whether affirmative or negative in nature, are intended to and shall bind Landlord and its successors and assigns at any time, and shall inure to the benefit of Tenant and its successors and assigns.

4. This Memorandum is prepared for the purpose of recordation only and it in no way modifies the provisions of the Lease.

5. Reference is hereby made to the entire Lease for any and all purposes. A true copy of the Lease is on file in the offices of the Redevelopment Agency of the City of San Diego, California, at its offices located in the City Administration Building, Community Concourse, San Diego, California 92101.

REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

By: _____
Hank Cunningham
Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY
Casey Gwinn
Agency General Counsel

By: _____
Richard Duvernay

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Glenn F. Wasserman

McMILLIN-NTC, LLC

By: McMillin Companies, LLC, a
Delaware limited liability
company, its managing member

By: _____

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

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

WITNESS my hand and official seal.

Signature _____

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

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

WITNESS my hand and official seal.

Signature _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[TO BE ADDED]

Exhibit "D"

FORM OF LENDER'S NONDISTURBANCE AND ATTORNMENT AGREEMENT

[BEHIND THIS PAGE]

[Attachment No. 10-A to DDA]

000258

Exhibit "E"

FORM OF TENANT'S NONDISTURBANCE AND LEASE RECOGNITION AGREEMENT

[BEHIND THIS PAGE]

[Attachment No. 11 to DDA]

ATTACHMENT NO. 7

FORM OF PARTICIPATION AGREEMENT

[BEHIND THIS PAGE]

PARTICIPATION AGREEMENT

This Participation Agreement (this "Agreement") is entered into by and between the Redevelopment Agency of the City of San Diego ("Agency") and McMillin-NTC LLC, a Delaware limited liability company ("Master Developer"). The Agency and the Master Developer are sometimes referred to herein individually as a "Party" and collectively as the "Parties". This Agreement is dated as of _____, 2000.

RECITALS

- A. Concurrently with this Agreement, the Agency and Master Developer have executed or are executing that certain Disposition and Development Agreement ("DDA") relating to the San Diego Naval Training Center Redevelopment Project ("NTC Redevelopment Project"). The DDA is incorporated herein by this reference. Any capitalized term not otherwise defined in this Agreement shall have the meaning ascribed to such term in the DDA.
- B. Pursuant to the DDA, the Agency has agreed to convey to Master Developer that certain real property acquired by the City of San Diego from the United States Government described in the DDA as the "Site" and Master Developer has agreed to cause the redevelopment of the Site by, among other things, obtaining all entitlements necessary for the redevelopment of the Site, constructing the infrastructure necessary for the redevelopment of the Site, causing certain improvements to be made to the Historic Core and Educational Core areas of the Site, and selling or ground leasing parcels in the Site to Master Developer's Affiliates or third parties who will rehabilitate or construct the buildings and other improvements on the Site, all as more particularly described in the DDA.
- C. Pursuant to the DDA, the Agency has agreed to sell or ground lease the parcels in the Site to Master Developer for a purchase price consisting of (1) the nominal sum of \$1.00, plus (2) an amount equal to fifty percent (50%) of the Cash Available For Distribution hereinafter defined.
- D. The purpose of this Agreement is to set forth the agreement of the Parties relating to the use of the revenues to be derived from the sale or lease of parcels by Master Developer, and the allocation of the net amount of such proceeds between the Master Developer and the Agency.

NOW, THEREFORE, the Agency and Master Developer hereby agree as follows:

1. **Agency's Share of Cash Available for Distribution.** Master Developer agrees to pay to Agency fifty percent (50%) of the Cash Available for Distribution generated by the NTC Redevelopment Project on the terms and conditions which follow in this agreement.

PARTICIPATION AGREEMENT

Page 1 of 13

2.

Defined Terms.

(a) **"Affiliate"** means (1) any Person directly or indirectly controlling, controlled by or under common control with another Person; (2) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of such other Person; and (3) if that other Person is an officer, director, member or partner, any company for which such Person acts in any such capacity. The term "control," as used in the immediately preceding sentence shall mean the power to direct the management. It shall be a presumption that control with respect to a corporation or limited liability company is the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, control is the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.

(b) **"Capitalized Amount"** means the value attributed to any Capitalized Lease for the purpose of calculating the Gross Revenues based on the following formula: Upon execution of each Capitalized Lease, the Capitalized Amount of the applicable Capitalized Lease shall be calculated by (i) dividing the first twelve (12) months annualized rent by (ii) ten one-hundredths (.10).

(c) **"Capitalized Lease"** means any ground leasehold interest entered into by Master Developer with respect to any portion of the Site.

(d) **"Cash Available for Distribution"** means Cash Flow excluding amounts set aside in the Working Capital Reserve and after Master Developer receives the Preferred Return.

(e) **"Completion of the Project"** means when all improvements are completed and all development sites have been sold by Master Developer to Affiliates or third parties and all residual obligations of the Master Developer such as landscape maintenance agreements and bonds (except for a 10% retention amount) have been extinguished.

(f) **"Cash Flow"** means Gross Revenues less Development Costs before Master Developer's Preferred Return and before Working Capital Reserve which Gross Revenues are held as liquid funds (notes and other promises to pay shall be treated as Cash Flow at such time as they become liquid but in no event longer than 24 months after execution of such notes or other instruments).

(g) **"DDA"** means that certain Disposition and Development Agreement dated on or about the date hereof by and between Agency and Master Developer.

(h) **"Development Costs"** means the following direct and indirect costs of the NTC Project, including:

(i) The cost of any and all labor including actual cost plus fringe benefits of employees of Master Developer, materials, tools and equipment actually furnished in connection with the design, engineering and construction of the improvements, including but not limited to all contracts, subcontracts, consultant agreements, supplies relating to the development of the Redevelopment Site.

(ii) Pre-Development costs, including the securing of entitlements incurred by Master Developer from the date of selection, and any interim expenses incurred by the Master Developer in managing the Redevelopment Site prior to Completion of the Project, including funds advanced or reimbursed to the City of San Diego by Master Developer to pay management costs.

(iii) The cost of all non-reimbursed deposits, permits, fees and licenses required by local governmental agencies in order to undertake and complete the development (not including the \$250,000 deposit paid to Agency).

(iv) The premium for any completion and/or labor and material bonds required by any local governmental agencies and/or construction lender and all insurance premiums together with any deductible on a matter covered by insurance paid by Master Developer.

(v) All costs of advertising and promotional expenses.

(vi) All costs for sales, leasing and other marketing expenses, including leasing commissions.

(vii) All sales and leasing office expenses, including supplies, telephone, telegraphic and communication expenses located on the Redevelopment Site.

(viii) All sales processing, title insurance and escrow costs.

(ix) All costs of financing, including but not limited to payments of principal and interest on any loans or bonds which finance Development Costs, including but not limited to repayment to Master Developer or Investors for advances to pay Development Costs.

(x) All legal and accounting fees.

(xi) All other costs and expenses incurred by Master Developer with respect to fulfilling its duties and obligations for development of the NTC Project pursuant to the provisions of the DDA.

(xii) The Developer Fee.

(i) "Developer Fee" means compensation equal to 5.0% of Gross Revenues for

day to day management of the NTC Project.

(j) **"Direct Construction Costs"** means all "hard" construction costs such as demolition, grading, site preparation, construction of infrastructure and related costs and rehabilitation in the Historic Core and the Educational Core actually incurred and paid for by Master Developer.

(k) **"Investor"** means any Person other than Master Developer who invests funds for the development of the NTC Project at the request of Master Developer including but not limited to any Affiliate of Master Developer.

(l) **"Gross Revenues"** means all revenues paid to Master Developer from any source which are generated from the land development of the NTC Project as provided in the DDA, including sales of property plus the Capitalized Amount for each Capitalized Lease when calculated (in lieu of including rent payments in the Gross Revenue calculation), the proceeds from the sale of infrastructure bonds, interim lease revenue paid to Master Developer and any interest earned on project accounts.

(m) **"Notice" ("Notify")** means notice delivered in writing. All Notices, requests, demands and other communications required to or permitted to be delivered under this Agreement shall be in writing and shall be conclusively deemed to have been duly delivered and received (a) when hand delivered to the recipient; or (b) when received when sent by telex or facsimile at the address and number reflected in this Agreement unless either Party is notified of a different address and number (provided, however, that Notices sent by facsimile shall not be effective unless either (i) a duplicate copy of such facsimile Notice is promptly sent by depositing the Notice in the United States mail with first-class postage prepaid and addressed to the recipient, or (ii) the recipient delivers a written confirmation of receipt of such Notice either by facsimile or any other method permitted under this provision); additionally, any Notice sent by telex or facsimile shall be deemed received on the next Business Day if such Notice is received after 5:00 p.m. (recipient's time) or is received on a non-Business Day; or (c) two (2) Business Days after the Notice has been deposited in the United States mail with first-class or certified mail return receipt requested postage prepaid and addressed to the recipient; or (d) the next Business Day after the Notice has been deposited with a national overnight delivery service reasonably approved by the parties (UPS, Airborne Express, Federal Express and DHL WorldWide Express being deemed approved by the Parties), delivery charges prepaid, addressed to the recipient with next Business Day delivery guaranteed, provided that the sender receives a confirmation of delivery from delivery service.

(n) **"NTC Project"** means land development and infrastructure relating to the NTC Redevelopment Project as required and contemplated by the DDA.

(o) **"Person"** means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company or other entity, domestic or foreign.

(p) **"Preferred Return"** means compensation equal to 12% of Gross Revenues paid to Master Developer from Cash Flow.

(q) **"Redevelopment Site"** means that certain real property which is the subject of the DDA.

(r) **"Sale"** means sale, lease or any other means of conveyance of any real property interest for value.

(s) **"Stabilization"** means the period commencing no longer than six (6) months after Certificate of Occupancy.

(t) **"Working Capital Reserve"** means a reserve fund into which Master Developer in its good faith discretion shall set aside all or a portion of Cash Flow (before payment of Preferred Return). Funds in this Working Capital Reserve will only be used for Master Developer's Development Costs at NTC. Funds may be withdrawn in the Master Developer's good faith discretion for distribution provided that sufficient capital for payment of future Development Costs remains. At the Completion of the Project, any funds remaining in the Working Capital Reserve shall be distributed in accordance with the calculation of Cash Available for Distribution.

3. **Allowable Development Costs.** Development Costs shall be paid by Master Developer from Gross Revenues in the following order of priority:

(a) First, to pay all Development Costs relating to the NTC Project expended by Master Developer pursuant to the DDA other than the Developer Fee.

(b) Payment of a Developer Fee in the amount of five percent (5.0%) of total Gross Revenues.

4. **Cash Flow.** The following shall be paid by the Master Developer from Cash Flow in the following order of priority: a) Working Capital Reserve and b) Preferred Return.

5. **Payment of Cash Available for Distribution.** With respect to Cash Available for Distribution, fifty percent (50%) shall be distributed to the Agency concurrently with any distribution to Master Developer or any Investors.

6. **Compensation to Master Developer.** Compensation to the Master Developer shall be limited to a) the Developer Fee, b) the Preferred Return and c) 50% of the Cash Available for Distribution as illustrated on Exhibit "A".

7. **Sales Price of Property.** Any property sold to third parties or Affiliates of Master Developer shall be sold at the property's fair market value. Within thirty (30) days after Master Developer has closed an escrow for the sale of property on the Redevelopment Site

("Designated Property"), it shall deliver Notice ("Notice of Sale") to the Agency of the details of the sale of the Designated Property including the legal description, the sale price ("Sale Price") and the Cost of Sale. The Agency shall have sixty (60) days after the delivery of the Notice of Sale to determine for itself whether the property sold as disclosed in the Notice of Sale was sold at its fair market value. If the Agency determines that the Sale Price is below fair market value for the Designated Property, the Agency may deliver Notice ("Appraisal Notice") to Master Developer that it believes the Designated Property was sold for less than the fair market value of the Designated Property in which event the Appraisal Procedure shall commence pursuant to the terms of Section 8 of this Agreement. If through the Appraisal Procedure it is determined that the Sales Price of the Designated Property was below Fair Market Value, Master Developer shall include in Gross Revenues a number for purposes of calculating net cash flow distribution, representing fair market value for the Designated Property substituting the Sale Price, and Master Developer shall pay the entire cost of the Appraisal Procedure including the cost of the appraisers. If the fair market value is equal to or less than the Sale Price, there shall be no change to the Sale Price which is included in the Gross Revenues, and the Agency shall pay the entire cost of the Appraisal Procedure including the cost of the appraisers.

8. **Appraisal Procedure.** If the Agency delivers an Appraisal Notice pursuant to the terms of this Agreement, to Master Developer, the Designated Property shall be appraised by an independent appraiser ("**Qualified Appraiser**") experienced in conducting appraisals of assets similar to the Designated Property and selected from the Agency's list of approved appraisers. The appraiser shall conduct an appraisal of the Designated Property to determine the fair market value of the Designated Property ("**First Appraisal**"). If Master Developer does not object to the First Appraisal value as determined in the First Appraisal, then this value shall be the Appraised Value of the Designated Property for calculation of net cash flow distribution purposes. If Master Developer disputes the value as determined by the First Appraisal, such dispute shall be documented by delivering Notice the Agency of its disapproval within ten (10) Business Days after delivery of the First Appraisal by the appraiser to Master Developer and to the Agency. Master Developer shall obtain a second appraisal ("**Second Appraisal**") of the Designated Property by a Qualified Appraiser selected from the Agency's approved appraisers. If, within ten (10) business days after delivery by the appraiser of the Second Appraisal to Master Developer and to the Agency, the parties agree, the Second Appraisal shall be used to determine the Appraised Value of the designated property. If the two appraisals are completed and the values determined by each of the First and Second Appraisals are within the following ranges for the three groups of properties at NTC, then the two appraisals shall be averaged to determine fair market value.

New Residential, office and R&D	7.5%
Hotels on tidelands	12%
Historic Core, Educational Core and Golf Course	15%

If the two appraiser's values are outside of the above percentage ranges and the two appraisers cannot agree with ten (10) Business Days which of the appraisals accurately reflects the Appraised Value of the Designated Property, then the two appraisers selected under this

PARTICIPATION AGREEMENT

Section shall select a Qualified Third Appraiser to conduct a third appraisal of the Designated Property. The Appraised Value of the Designated Property established by the averaging of the three appraisals shall be the final and binding Appraised Value of the Designated Property in all respects on all parties. Both the Second Appraiser (selected by the Master Developer) and the Third Appraiser (selected by the two appraisers) must be on the Agency's list of approved appraisers.

9. **Appraisal Instructions** shall be developed and reported in strict compliance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). Depending on property type being appraised, all three traditional approaches to value (Cost, Comparable Sales, Income) shall be fully developed and employed when possible. The reporting format shall be a "Complete, Summary Report" as defined under USPAP guidelines unless otherwise agreed to by the Parties.

10. **Intentionally Omitted**

11. **Records To Be Maintained.** Master Developer shall maintain the following books and records relating to the NTC Project for a minimum of five (5) years at its principal office:

(a) The books and records of Master Developer as they relate to the internal affairs of Master Developer relating to the NTC Project.

(b) Copies of the Company's federal, state, local and foreign income tax returns and reports, if any, for the six (6) most recent fiscal years.

(c) Any financial statements of Master Developer relating to the NTC Project.

(d) A writing, or other data compilation from which information can be obtained through retrieval devices into reasonably usable form, setting forth the following:

(i) The amount of money and a description and statement of the agreed value of any other property or services contributed by Master Developer or its Investors are to be made.

(ii) The times at which or events on the happening of which any additional commitments agreed to be made by Master Developer or its Investors are to be made.

(iii) Any right of, Master Developer its Investors and the Agency to receive, or of Master Developer to make, distributions to itself, its Investors and the Agency.

12. **Reports to the Agency.** Master Developer shall deliver or cause to be delivered the following periodic reports to the Agency:

(a) Not less frequently than annually an update of the business plan as prepared by Master Developer.

(b) Annual audited financial statements relating to all financial matters relating to the NTC Project, including income and loss, cash flow and balance sheet, and distributions, if any, made to the Agency. The annual financial statements (commencing with financial statements for the year 1999) shall be audited by a nationally recognized certified public accounting firm selected by Master Developer.

13. INSPECTION AND AUDIT.

(a) Agency shall be entitled from time to time as it may request to inspect, examine and copy, at Agency's expense, all of Master Developer's books and records relating to the NTC Project as necessary or appropriate for the purpose of this Participation Agreement, provided that such inspection, examining and copying shall be upon 24 hours prior written notice to Mater Developer, during usual business hours, and at such place as Master Developer may reasonably designate within San Diego County. Master Developer shall cooperate fully with Agency in making such inspection.

(b) Agency shall also be entitled at Agency's expense, at any time after the end of the year, but no later than one (1) year after Completion of the Project, to an independent audit of Master Developer's records for the applicable year, by a nationally recognized public accountancy firm, which shall be selected by Agency. Any such audit shall be conducted upon 24 hours prior written notice to Master Developer and during usual business hours. Agency shall provide Master Developer with a copy of said audit report prepared by the certified public accountant selected by Agency promptly after Agency's receipt thereof. Agency shall also provide Master Developer with a copy of the internal findings of the auditors promptly after the preparation of such findings. If the audit shows that there is a discrepancy in Gross Revenues, Development Costs and/or Cash Available for Distribution from those set forth in Master Developer's certified annual audited financial statement, which discrepancy shows a deficiency in the payment of Cash Available for Distribution, the deficiency shall be addressed as follows:

(i) If the deficiency does not exceed five percent (5%) of the Agency's share of the Cash Available for Distribution as determined by the audit, Master Developer shall immediately remit to Agency an amount equal to one-half of the deficiency, with interest at the highest rate of interest permitted by law from the date such deficiency should have been paid until such deficiency is paid in full; or

(ii) If the deficiency exceeds five percent (5%) of the Agency's share of Cash Available for Distribution as determined by the audit, and if Master Developer and Agency cannot promptly resolve the discrepancy by normal contract negotiations, the matter shall be referred to a another nationally recognized public accountancy firm mutually acceptable to the Agency and Master Developer (the "Mediator") for prompt resolution. Except as provided below, Agency and Master Developer shall

share equally the cost and expenses of the Mediator. To the extent the Mediator determines that there was a deficiency in the payment to Agency of Cash Available for Distribution, the deficiency shall become immediately due and payable to Agency, together with interest at the highest rate of interest permitted by law from the date such deficiency should have been paid until such deficiency is paid in full. If the deficiency exceeds five percent (5%) of the Agency's share of the Cash Available for Distribution as determined by the Mediator, Master Developer shall reimburse Agency for the cost of the Agency's audit and Agency's share of the cost and expenses of the Mediator.

(c) In the event any audit by Agency discloses an overpayment to Agency of any Cash Available for Distribution, the same shall become immediately due and payable to Master Developer (without interest), and Master Developer may, at its election, deduct the amount of such overpayment from the installments of Cash Available for Distribution next to become due, or may request Agency to return promptly to Master Developer the full amount of such overpayment.

(d) Agency hereby covenants, warrants and represents that neither Agency nor Agency's designated agents shall disclose or use the information contained in Master Developer's books and records for any purpose other than for enforcement of Agency's rights as permitted under this Participation Agreement. To the extent permitted by law, Agency and its agents shall keep such books and records, or copies thereof, confidential and shall take all steps reasonable necessary to assert and enforce such confidentiality without prejudice to Agency's rights under this Participation Agreement.

14. Enforcement. In the event Master Developer fails to timely perform any obligation to be performed by Master Developer under this Participation Agreement, in addition to any other rights or remedies the Agency may have under the DDA, the Agency may institute legal action to cure, correct, or remedy such failure to perform, to recover all amounts due to Agency, with interest at the highest rate of interest which would not constitute usury, or to obtain any other remedy consistent with purpose of this Participation Agreement, including specific performance. In the event that Agency shall bring or commence an action or legal proceeding to enforce the terms and conditions of this Participation Agreement, then the prevailing party shall be entitled to and shall be paid reasonable attorneys' fees and court costs as may be fixed by the court or jury therefor.

15. Payment of Site Management Costs and Agency Administrative Costs.

(a) Subject to the terms and conditions of this Section 15, Master Developer shall reimburse Agency for: (1) normal property management costs for the Site ("Site Management Costs") incurred by the City of San Diego or the Agency for the period commencing upon mutual execution and delivery of the DDA and terminating upon the close of escrow as to a particular portion for the Site, to the extent such Site Management Costs are not covered by revenues from the Site ("Net Site Management Costs"); and (2) the Agency's administrative costs and expenses in administering the NTC Redevelopment Project and the

DDA ("Agency Administrative Costs"), including salaries and fringe benefits of City and Agency employees, out-of-pocket expenses and the costs and fees of consultants and attorneys equal to the actual amounts paid by the Agency or City for such expenses, costs and fees, commencing upon the mutual execution and delivery of the DDA and terminating upon Completion of the Project.

(b) Master Developer's obligation to Agency pursuant to paragraph (a) of this Section 15 shall be limited to reimbursing the Agency the actual Site Management Costs incurred by the City or San Diego or the Agency, and Agency Administrative Costs, which shall be subject to audit pursuant to this Section 15, not to exceed a total sum, which when added to Site Management Costs incurred by Master Developer (or an affiliate) pursuant to an interim lease of the Site from the City, and not recovered from revenues from the Site, equal to \$4,200,000.

(c) If, at any time, the aggregate amount of Site Management Costs incurred by the Master Developer (or affiliate) pursuant to an interim lease of the Site from the City, plus Site Management Costs incurred by the City of San Diego or the Agency, plus Agency Administrative Costs exceeds \$4,200,000, payments to Agency pursuant to this Section 15 shall be charged against and shall be limited by the Agency's 50% share of Cash Available for Distribution, if any.

(d) To implement this Section 15, from and after the mutual execution of the DDA, Agency shall have the right to submit statements of expenses and/or invoices to Master Developer, not more often than monthly, for Site Management Costs and Administrative Costs. Master Developer shall pay the requested amounts within thirty (30) days after submission of such statements or invoices.

(e) Master Developer shall be entitled from time to time as it may request to inspect, examine and copy, at Master Developer's expense, all of Agency and City's books and records relating to the Site Management Costs and Agency's Administrative, provided that such inspection, examining and copying shall be upon 24 hours prior written notice to Agency, during usual business hours, and at such place as Agency may reasonably designate within the City of San Diego. Agency and City shall cooperate fully with Master Developer in making such inspection.

(f) Master Developer shall also be entitled at Master Developer's expense, at any time after the end of the year, but no later than one (1) year after Completion of the Project, to an independent audit of Agency and City's records relating to the Site Management Costs and Agency's Administrative Costs for the applicable year, by a nationally recognized public accountancy firm, which shall be selected by Master Developer. Any such audit shall be conducted upon 24 hours prior written notice to Agency and during usual business hours. Master Developer shall provide Agency with a copy of said audit report prepared by the certified public accountant selected by Master Developer promptly after Master Developer's receipt thereof. Master Developer shall also provide Agency with a copy of the internal findings of the auditors promptly after the preparation of such findings. If the audit shows that there was an

PARTICIPATION AGREEMENT

overpayment to Agency of Site Management Costs or Agency's Administrative Costs, the overpayment shall be addressed as follows:

(i) If the overpayment does not exceed five percent (5%) of the Site Management Costs and Agency's Administrative Costs as determined by the audit, Agency shall immediately remit to Master Developer an amount equal to one-half of the overpayment, with interest at the highest rate of interest allowed by law without it becoming usury, from the date of the overpayment until such overpayment is repaid in full; or

(ii) If the overpayment exceeds five percent (5%) of the Site Management Costs and Agency's Administrative Costs as determined by the audit, and if Master Developer and Agency cannot promptly resolve the discrepancy by normal contract negotiations, the matter shall be referred to a another nationally recognized public accountancy firm mutually acceptable to the Agency and Master Developer (the "Mediator") for prompt resolution. Except as provided below, Agency and Master Developer shall share equally the cost and expenses of the Mediator. To the extent the Mediator determines that there was a overpayment to Agency for Site Management Costs or Agency's Administrative Costs, the overpayment shall become immediately due and payable to Master Developer, together with interest at the highest rate of interest allowed without it becoming usury, from the date of the overpayment until such amount is repaid in full. If the overpayment exceeds five percent (5%) of the Site Management Costs and Agency's Administrative Costs as determined by the Mediator, Master Developer shall reimburse Master Developer for the cost of the Master Developer's audit and Master Developer's share of the cost and expenses of the Mediator.

IN WITNESS WHEREOF, Agency and Master Developer have signed this Agreement as of the date first set forth above.

**REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO**

By: _____
Hank Cunningham
Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY
Casey Gwinn
Agency General Counsel

By: _____
Richard A. Duvernay

KANE, BALLMER, BERKMAN
Agency Special Counsel

By: _____
Glenn F. Wasserman

(signatures continue on next page)

**McMILLIN-NTC, LLC, a Delaware
Limited liability company**

By: McMillin Companies, LLC, a
Delaware limited liability
company, its managing member

By: Walter Herzig

By: Kimberly K. Elliott

EXHIBIT A

Illustration of Cash Available for Distribution

Total Gross Revenues	\$ 108,000,000
(Less) Development Costs (1)	\$ (90,000,000)
Cash Flow	\$ 18,000,000
(Less) Master Developer Preferred Return @ 12% of Gross Revenues	\$ (12,720,000)
Cash Available for Distribution	\$ 3,280,000
Master Developer Share @ 50%	\$ 1,640,000
Agency Share @ %0%	\$ 1,640,000

(1) As defined in Section 2H of the Participation Agreement. Includes Developer's actual labor costs and a Developer fee of 5% of Gross Revenues.

ATTACHMENT NO. 8

FORM OF AGREEMENT AFFECTING REAL PROPERTY

[BEHIND THIS PAGE]

OFFICIAL BUSINESS
Document entitled to free
recording per Government
Code Section 6103

Recording Requested By:
THE REDEVELOPMENT AGENCY OF THE CITY
OF SAN DIEGO
City Administration Building
202 C Street
San Diego, California 92101
Attention: NTC Project Manager.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AGREEMENT AFFECTING REAL PROPERTY

THIS AGREEMENT is entered into as of [DATE OF THIS AGREEMENT TO BE INSERTED], by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body corporate and politic (herein referred to as "Agency") and McMILLIN-NTC, LLC, a California limited liability company (hereinafter referred to as "Owner").

A. Owner owns fee title or a leasehold interest in the real property (the "Property") located in the City of San Diego, County of San Diego, State of California, legally described in the "Legal Description" attached hereto and incorporated herein as Exhibit A.

B. The Property is within the Naval Training Center Redevelopment Project area (the "Project") in the City of San Diego and is subject to the provisions of the Redevelopment Plan for the Project adopted by Ordinance No. 18405 on May 13, 1997 by the City Council of the City of San Diego.

C. Owner intends to develop or cause the development of the Property by the [construction of buildings and other structures on the Property] [rehabilitation of existing structures and other improvements on the Property] (the "Improvements") in accordance with that certain Disposition and Development Agreement entered into between the Agency and Owner, on [DATE OF DDA TO BE INSERTED] (the "DDA"), which DDA is incorporated herein by reference.

[ALTERNATIVE RECITAL C. FOR OFFICERS' HOUSES ONLY: Owner intends to sell the Property for [single family residential use] or ["bed and breakfast" use] and occupancy pursuant to the Redevelopment Plan and the DDA.]

D. This Agreement is entered into and recorded in accordance with the Redevelopment Plan and the DDA.

Agreement Affecting Real Property
Page 1 of 7

NOW, THEREFORE, THE AGENCY AND THE OWNER AGREE AS FOLLOWS:

1. Owner, on behalf of itself and its successors, assigns, and each successor in interest to the Property or any part thereof, hereby covenants and agrees as follows:

a. Owner, its successors and assigns, shall use the Property and the Improvements now or hereafter constructed only for the development permitted and the uses specified in the DDA and this Agreement, namely, [DESCRIPTION OF PERMITTED USES FOR THE SUBJECT PROPERTY TO BE INSERTED].

b. Owner and its successors and assigns shall maintain the Property and the Improvements thereon in the same aesthetic and sound condition (or better) as the condition of the Property at the time Agency issues a Certificate of Completion pursuant to the DDA, reasonable wear and tear excepted. The parties acknowledge that over the period of time during which this Agreement will be effective, various Improvements on the Property are likely to become obsolete and will need to be demolished, removed, disposed of and/or replaced, and agree that the standard of "reasonable" wear and tear as set forth in the first sentence of this paragraph b. includes and incorporates this understanding. Subject to the foregoing, this standard for the quality of maintenance shall be met whether or not a specific item of maintenance is listed below. However, representative items of maintenance shall include frequent and regular inspection for graffiti or damage or deterioration or failure, and immediate repainting or repair or replacement of all surfaces, fencing, walls, equipment, etc., as necessary; emptying of trash receptacles and removal of litter; sweeping of public sidewalks adjacent to the Property, on-site walks and paved areas and washing-down as necessary to maintain clean surfaces; maintenance of all landscaping in a healthy and attractive condition, including trimming, fertilizing and replacing vegetation as necessary; cleaning windows on a regular basis; painting the buildings on a regular program and prior to the deterioration of the painted surfaces; conducting a roof inspection on a regular basis and maintaining the roof in a leak-free and weather-tight condition; maintaining security devices in good working order. In the event Owner, its successors or assigns fails to maintain the Improvements in accordance with the standard for the quality of maintenance, Agency or its designee shall have the right but not the obligation to enter the Property upon reasonable notice to the then record owner of the Property, correct any violation, and hold Owner, or its successors or assigns responsible for the cost thereof, and such cost, until paid, shall constitute a lien on the Property. The Owner and each successor and assign shall be liable for maintenance of the Property pursuant to this paragraph only for the respective period of time during which such entity holds an ownership interest in the Property.

c. Except for Permitted Alterations (as hereinafter defined), Owner shall not make or suffer to be made any alterations, additions, or improvements to or on the Property or any building or structure thereon or any part thereof without the prior written consent of Agency, which consent will not be unreasonably withheld, conditioned or delayed. Any request for consent shall be accompanied by plans and specifications for the proposed work in reasonable detail (including component materials and finish items) to enable Agency to consider whether or not to grant approval. Agency may condition its approval in any way reasonably deemed necessary by Agency to protect its interest in the Property. The term "Permitted Alterations" shall mean (and Owner shall not be required to obtain the consent of Agency for either of the following, to the extent they comply with all applicable City procedures and requirements: (aa) any alterations, additions, improvements, exterior painting or landscaping (provided such alterations, additions, improvements, exterior painting or landscaping do not require a Coastal Development Permit and cost less than 15% of the after-rehabilitation value of the Property; or (bb) any tenant improvements within tenant or subtenant spaces or signs for any tenants or subtenants. All alterations, additions, or improvements by Owner shall be made without cost or expense to Agency, by responsible and licensed contractors. All improvements and equipment shall be designed, built, and installed in accordance with all applicable building codes and regulations, and Owner shall obtain all necessary building permits. Notwithstanding any provision of this paragraph c., prior to the recordation of an Agency Certificate of Completion for the Property, construction or rehabilitation of the initial Improvements shall be governed by the applicable provisions of the DDA.

d. Owner herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through them, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation marital status, national origin or ancestry in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the Property, nor shall Owner itself, or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessee, subtenants, or vendees in the Property.

e. Owner, its successors and assigns, shall refrain from restricting the rental, sale, or lease of the Property or any portion thereof, on the basis of race, color, creed, religion, sex, sexual orientation, marital status, national origin, or ancestry of any person. Every deed, lease, and contract entered into with respect to the Property, or any portion thereof, after the date of this Agreement shall contain or be subject to substantially the

following nondiscrimination or nonsegregation clauses:

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

(2) In leases: "The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, or ancestry in the leasing, subleasing, transferring, use or enjoyment of the land herein leased nor shall the lease itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants or vendees in the land herein leased."

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

2. All conditions, covenants and restrictions contained in this Agreement shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by Agency, its successors and assigns, and the City of San Diego (the "City") and its successors and assigns, against Owner, its successors and assigns, to or of the Property or any portion thereof or any interest therein, and any party in possession or occupancy of said Property or portion thereof. Agency and the City shall be deemed the beneficiaries of the covenants, conditions and restrictions of this Agreement both for and in their own rights and for the purposes of protecting the interests of the community. The covenants, conditions, and restrictions shall run in favor of the Agency and the City, without regard to whether the Agency or City has been, remains, or is an owner of any land or interest therein in the Property or the Project area. Except as provided in the preceding sentence, the covenants, conditions and restrictions contained in this Agreement shall not benefit nor be enforceable by any owner of any other real property within or outside the Project area or any person or entity having any interest in any such other real property.

3. Agency shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant.

4. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any permitted deed of trust recorded on the Property, provided, however, that any subsequent owner of the Property shall be bound by the covenants, conditions, restrictions, limitations and provisions of this Agreement, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

5. The covenants against discrimination set forth in subsections 1.d and 1.e of this Agreement shall remain in effect in perpetuity. Every other covenant and condition and restriction contained in this Agreement shall remain in effect until the expiration of the time limit on the effectiveness of the Redevelopment Plan (determined as provided in Section 1000.1 of the Redevelopment Plan).

6. If a violation of any of the foregoing covenants occurs or is attempted, and such occurrence or attempt is uncorrected for a period of thirty (30) days or more, Agency and its successors and assigns, without regard to whether Agency or its successors and assigns is an owner of any land or interest therein to which these covenants relate, may institute and prosecute any proceedings at law or in equity to abate, prevent or enjoin any such violation or attempted violation or to compel specific performance by Owner of its obligations hereunder. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violations or any similar breach or violation hereof at any later time.

IN WITNESS WHEREOF, the Agency and the Owner have signed this Agreement as of the date set forth above.

REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

By: _____
Hank Cunningham
Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY
Casey Gwinn
Agency General Counsel

By: _____
Richard A. Duvernay, Deputy

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Glenn F. Wasserman

McMILLIN-NTC, LLC, a Delaware
limited liability company

By: McMillin Companies, LLC, a
Delaware limited liability
company, its managing member

By: _____
Eliot Alport
Executive Vice President

By: _____
Walter Heiberg
Vice President

Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

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

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

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

WITNESS my hand and official seal.

Signature _____

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

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

WITNESS my hand and official seal.

Signature _____

ATTACHMENT NO. 9-A

FORM OF ENVIRONMENTAL INDEMNITY (McMILLIN)

[BEHIND THIS PAGE]

ENVIRONMENTAL INDEMNITY

THIS ENVIRONMENTAL INDEMNITY (this "Indemnity"), dated as of [DATE TO BE INSERTED], made by McMILLIN-NTC, LLC, a Delaware limited liability company ("McMillin"), whose address for purposes of giving notices is 2424 Hoover Avenue, National City, California 91950, in favor of the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, whose address for purposes of giving notices is City Administration Building, 202 C Street, San Diego, California 92101, Attention: NTC Project Manager (the "Agency").

WITNESSETH

WHEREAS, Agency and McMillin entered into that certain Disposition and Development Agreement, dated as of [DATE OF DDA TO BE INSERTED] (the "DDA"), pursuant to which the Agency agreed to convey to McMillin, by grant deed or by lease, fee title or a leasehold interest, as the case may be, in certain real property in the City of San Diego described in Exhibit "A" attached hereto (the "Property"), and to convey to a nonprofit corporation described in the DDA as the "Foundation" a leasehold interest in that certain real property in the City of San Diego described in Exhibit "B" attached hereto (the "Foundation Property"), and McMillin agreed to cause the Property and the Foundation Property to be redeveloped in accordance with the DDA (the DDA and the documents and instruments referred to therein which are being executed by McMillin concurrently herewith are referred to collectively as the "Agency Documents");

WHEREAS, McMillin has agreed to execute and deliver to the Agency this Indemnity to induce the Agency to convey the Property [convey a leasehold interest in the Property] to McMillin [and to convey the Foundation Property to the Foundation].

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual agreements hereinafter set forth, McMillin hereby agrees with the Agency as follows:

Section 1. DEFINITIONS

For the purpose of this Indemnity, the following terms are defined to mean the following:

"Hazardous Materials" shall mean and include the following:

- a. a "Hazardous Substance", "Hazardous Material", "Hazardous Waste", or "Toxic Substance" under the

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McMillin's Environmental Indemnity
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Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101, et seq., or the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.;

- b. an "Extremely Hazardous Waste", a "Hazardous Waste", or a "Restricted Hazardous Waste", under §§ 25115, 25117 or 25122.7 of the California Health and Safety Code, or is listed or identified pursuant to §§ 25140 or 44321 of the California Health and Safety Code;
- c. a "Hazardous Material", "Hazardous Substance", "Hazardous Waste", "Toxic Air Contaminant", or "Medical Waste" under §§ 25281, 25316, 25501, 25501.1, 117690 or 39655 of the California Health and Safety Code;
- d. "Oil" or a "Hazardous Substance" listed or identified pursuant to § 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321, as well as any other hydrocarbonic substance or by-product;
- e. listed or defined as a "Hazardous Waste", "Extremely Hazardous Waste", or an "Acutely Hazardous Waste" pursuant to Chapter 11 of Title 22 of the California Code of Regulations;
- f. listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to § 25249.9(a) of the California Health and Safety Code;
- g. a material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, damages or threatens to damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or public agency requires in order for the property to be put to any lawful purpose;

- h. any material whose presence would require remediation pursuant to the guidelines set forth in the State of California Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank;
- i. pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.;
- j. asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.;
- k. any radioactive material including, without limitation, any "source material", "special nuclear material", "by-product material", "low-level wastes", "high-level radioactive waste", "spent nuclear fuel" or "transuranic waste", and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. §§ 2011 et seq., the Nuclear Waste Policy Act, 42 U.S.C. §§ 10101 et seq., or pursuant to the California Radiation Control Law, California Health and Safety Code §§ 114960 et seq.;
- l. regulated under the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq., or the California Occupational Safety and Health Act, California Labor Code §§ 6300 et seq.; and/or
- m. regulated under the Clean Air Act, 42 U.S.C. §§ 7401 et seq. or pursuant to Division 26 of the California Health and Safety Code.

"Pre-existing Site Conditions" shall mean the existence, release, presence or disposal on, in, under, about or adjacent to the Property or the Foundation Property, of any Hazardous Materials which occurred before the delivery of possession of the Property to McMillin or the Foundation Property to the Foundation.

Other capitalized terms used in this Indemnity shall have the meanings ascribed to them in the DDA with the same force and effect as if set forth in full below.

Section 2. COVENANTS AND INDEMNITY

The following covenants, and indemnities are hereby given and made by McMillin:

2.1 Covenants.

(a) McMillin covenants that it shall comply with any and all laws, regulations, and/or orders which may be promulgated, from time to time, with respect to the discharge and/or removal of Hazardous Materials, to pay or cause other parties to pay immediately when due the costs of the removal of, or any other action required by law with respect to, any such Hazardous Materials, and to keep or cause other parties to keep the Property free of any lien imposed pursuant to any such laws, regulations, or orders.

(b) McMillin covenants that the Property will not, while McMillin is the owner thereof, be used for any activities involving, directly or indirectly, the use, generation, treatment, storage, release, or disposal of any Hazardous Materials, except in accordance with law.

(c) McMillin further agrees that McMillin shall not release or dispose of any Hazardous Materials at the Property without the express written approval of the Agency and that any such release or disposal shall be effected in strict compliance with all applicable laws and all conditions, if any, established by the Agency.

(d) The Agency shall have the right, at any time, to conduct an environmental audit of the Property at the Agency's expense (unless unlawful Hazardous Materials are found, in which case such audit shall be at McMillin's sole cost and expense), and McMillin shall cooperate in the conduct of any such environmental audit but in no event shall such audit be conducted unless the Agency believes that such audit is warranted. Other than in an emergency, such audit shall be conducted only after prior notice has been given to McMillin and only in the presence of a representative of McMillin. McMillin shall give the Agency and its agents and employees access to the Property to remove, or otherwise to mitigate against the effects of, Hazardous Materials.

(e) McMillin shall not install, or permit to be installed, on the Property friable asbestos or lead-based paint or any substance containing asbestos or lead-based paint and deemed hazardous by federal or state regulations respecting such material, and, with respect to any such material currently present in the

Property, McMillin shall be responsible at its expense for compliance with all applicable Governmental Requirements (as defined in the DDA) in the removal of asbestos and lead-based paint as part of the Site Clearance (as defined in the DDA), to the extent such costs are not paid by the Federal Government. McMillin agrees to and shall defend, indemnify and hold harmless Agency, the City and their respective officers, employees and agents from and against all claims, liability, loss, damage, costs or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of McMillin's removal from the Site or remediation of any asbestos or lead-based paint, or McMillin's failure to remove from the Site or remediate any asbestos or lead-based paint required to be removed or remediated pursuant to any applicable laws and Governmental Requirements. McMillin shall not be responsible for (and such indemnity shall not apply to) any acts, errors or omissions of Agency, the City or their respective officers, employees or agents.

(f) McMillin shall immediately advise the Agency in writing of any of the following, to the extent they do not currently apply to the Property: (i) any pending or threatened environmental claim against McMillin or the Property or (ii) any condition or occurrence on the Property that (A) results in noncompliance by McMillin with any applicable environmental law, (B) could reasonably be anticipated to cause the Property to be subject to any restrictions on the ownership, occupancy, use or transferability of the Property under any environmental law, or (C) could reasonably be anticipated to form the basis of an environmental claim against the Property or McMillin.

2.2 Indemnity. McMillin shall indemnify, protect, defend and hold the Agency, the City of San Diego and their respective officers, employees, contractors and agents (collectively referred to as the "Indemnified Parties"), with counsel reasonably acceptable to Agency, harmless from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements, or expenses (including, without limitation, attorneys' and experts' fees and disbursements) of any kind or of any nature whatsoever (collectively, the Obligations) which may at any time be imposed upon, incurred by or asserted or awarded against the Agency and arising from or out of:

(a) effective upon the Close of Escrow as to any particular portion or portions of the Property, the following:

(1) the existence, release, presence or disposal on, in, under, about or adjacent such portion or portions of the Property, at any time after the delivery of possession and conveyance of title to McMillin, of any Hazardous Materials, except to the extent of (and, in no event shall Master Developer be responsible for) any loss, liability, damage, claim, cost or expense caused by: (A) Pre-existing Site Conditions; or (B) the negligence or willful misconduct of the Indemnified Parties, the Foundation or any other Assignee, or any tenant or subtenant of the City of San Diego prior to the effective date of the Interim Lease; and

(2) the existence, release, presence or disposal on, in, under, about or adjacent to the Foundation Property, at any time prior to the delivery of possession and conveyance of leasehold title to the Foundation, of any Hazardous Materials, except to the extent it is due to the negligence or willful misconduct of the Indemnified Parties, the Foundation or any other Assignee, or any tenant or subtenant of the City of San Diego prior to the effective date of the Interim Lease;

(b) The breach of any covenant made by McMillin in Section 2.1 hereof; or

(c) The enforcement by the Agency of any of the provisions of this Section 2.2 or the assertion by McMillin or McMillin of any defense to its obligations hereunder.

Section 3. McMILLIN'S UNCONDITIONAL OBLIGATIONS

3.1 Unconditional Obligations. McMillin hereby agrees that the Obligations will be paid and performed strictly in accordance with the terms of this Indemnity, regardless of any law, regulation, or order now or hereafter in effect in any jurisdiction affecting any of the Agency Documents or affecting any of the rights of the Agency with respect thereto. The obligations of McMillin hereunder shall be absolute and unconditional irrespective of:

(a) The validity, regularity, or enforceability of the Agency Documents or any other instrument or document executed or delivered in connection therewith;

(b) Any alteration, amendment, modification, release, termination, or cancellation of any of the Agency Documents, or any change in the time, manner, or place of payment of, or in any other term in respect of, all or any of the obligations of any party contained in any of the Agency Documents;

(c) Any extension, waiver of, or consent to any departure from, any provision contained in any of the Agency Documents;

(d) Any exculpatory provision in any of the Agency Documents limiting the Agency's recourse to property encumbered by a deed of trust or to any other security, or limiting the Agency's rights to a deficiency judgment against any party;

(e) Any exchange, addition, subordination, or release of, or nonperfection of any lien on or security interest in, any collateral, or any release, amendment, waiver of, or consent to any departure from any provision of, any other guarantee given in respect of the Agency Documents;

(f) The insolvency or bankruptcy of McMillin, McMillin, or of any indemnitor or guarantor under any other indemnity or guarantee given in respect of the Agency Documents; or

(g) Any other circumstance that might otherwise constitute a defense available to, or a discharge of, McMillin, McMillin or any other indemnitor or guarantor with respect to the Loan or any or all of the Obligations.

3.2 Continuation. This Indemnity (a) is a continuing indemnity and shall remain in full force and effect until the satisfaction in full of all of the Obligations (notwithstanding the termination of the DDA); and (b) shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment of any of the Obligations is rescinded or must otherwise be returned by the Agency upon the insolvency, bankruptcy, or reorganization of McMillin, McMillin or otherwise, all as though such payment had not been made.

3.3 Termination. Notwithstanding the payment (and performance) in full of all of the Obligations and the payment (or performance) in full of all of McMillin's obligations under the Agency Documents, this Indemnity shall not terminate to the extent an environmental claim arises from or relates to any of the following contingencies or events:

(a) The Agency has at any time or in any manner participated in the management or control of, taken possession of (whether personally, by agent or by appointment of a receiver), or taken title to the Property or any portion thereof, whether by exercise of its right of reverter, foreclosure, deed in lieu of foreclosure, sale under power of sale or otherwise; or

(b) There has been a change, between the date hereof and the date on which all of the Obligations are paid and performed in full, in any Hazardous Materials laws, the effect of which may be to make a lender or mortgagee liable in respect of any of the Obligations, notwithstanding the fact that no event, circumstance, or condition of the nature described in paragraph (a) above ever occurred.

Section 4. WAIVER

McMillin hereby waives the following:

- (a) Promptness and diligence;
- (b) Notice of acceptance and notice of the incurrence of any obligation by McMillin;
- (c) Notice of any action taken by the Agency, McMillin or any other interested party under any Agency Document or under any other agreement or instrument relating thereto;
- (d) All other notices, demands, and protests, and all other formalities of every kind, in connection with the enforcement of the Obligations, the omission of or delay in which, but for the provisions of this Section 4, might constitute grounds for relieving McMillin of its Obligations hereunder;
- (e) The right to a trial by jury with respect to any dispute arising under, or relating to, this Indemnity;

(f) Any requirement that the Agency protect, secure, perfect, or insure any security interest or lien in or on any property subject thereto;

(g) Any requirement that the Agency exhaust any right or take any action against McMillin or any other person or collateral; and

(h) Any defense that may arise by reason of:

(1) The incapacity, lack of authority, death or disability of, or revocation hereof by, any person or persons;

(2) The failure of the Agency to file or enforce any claim against the estate (in probate, bankruptcy, or any other proceedings) of any person or persons; or

(3) Any defense based upon an election of remedies by the Agency, including, without limitation, an election to proceed by nonjudicial foreclosure or which destroys or otherwise impairs the subrogation rights of McMillin or any other right of McMillin to proceed against any person or entity.

Section 5. NOTICES

Any notice, demand, statement, request, or consent made hereunder shall be in writing and shall be personally served, mailed by first-class registered mail, return receipt requested, to the address set forth in the first paragraph of this Indemnity, above, or given by telecopier to the telecopier numbers stated below, with confirmations mailed by first class registered mail, return receipt requested to the address set forth above, of the party to whom such notice is to be given (or to such other address as the parties hereto, shall designate in writing):

In the case of the Agency: 619-236-6512

In the case of McMillin: 619-336-3568

Any notice that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy shall be deemed delivered upon its transmission; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be

deemed received on the date of receipt thereof.

Section 6. MISCELLANEOUS

6.1 McMillin shall make any payment required to be made hereunder in lawful money of the United States of America, and in same day funds, to the Agency at its address specified in the first paragraph hereof.

6.2 No amendment of any provision of this Indemnity shall be effective unless it is in writing and signed by McMillin and Agency, and no waiver of any provision of this Indemnity, and no consent to any departure by McMillin from any provision of this Indemnity, shall be effective unless it is in writing and signed by the Agency, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

6.3 No failure on the part of the Agency to exercise, and no delay in exercising, any right hereunder or under any other Agency Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Agency provided herein and in the other Agency Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the Agency under any Agency Document against any party thereto are not conditional or contingent on any attempt by the Agency to exercise any of its rights under any other Agency Document against such party or against any other person or collateral.

6.4 Any provision of this Indemnity that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof and without affecting the validity or enforceability of such provision in any other jurisdiction.

6.5 This Indemnity shall (a) be binding upon McMillin, and its successors and assigns; and (b) inure, together with all rights and remedies of the Agency hereunder, to the benefit of the Agency, its respective directors, officers, employees and agents and any successor to the Agency's powers and interests in the Property. Without limiting the generality of clause (b) of the immediately preceding sentence, the Agency may, subject to, and in accordance with, the provisions of the Agency Documents, assign or otherwise transfer all or any portion of its rights and obligations under any other Agency Document, to the City of San Diego or any other

person, and the City or such other person shall thereupon become vested with all of the rights and obligations in respect thereof that were granted to the Agency herein or otherwise. None of the rights or obligations of McMillin or McMillin hereunder may be assigned or otherwise transferred without the prior written consent of the Agency.

6.6 McMillin hereby (a) irrevocably submits to the jurisdiction of any California or federal court sitting, in each instance, in San Diego County in any action or proceeding arising out of or relating to this Indemnity, (b) waives any defense based on doctrines of venue or forum non convenient or similar rules or doctrines, and (c) irrevocably agrees that all claims in respect of any such action or proceeding may be heard and determined in such California or federal court. McMillin irrevocably consents to the service of any and all process which may be required or permitted in any such action or proceeding to the address specified in the first paragraph of this Indemnity, above. McMillin agrees that a final judgment in any such action or proceeding shall be inclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

6.7 The title of this document and the captions used herein are inserted only as a matter of convenience and for reference and shall in no way define, limit, or describe the scope or the intent of this Indemnity or any of the provisions hereof.

6.8 This Indemnity shall be governed by, and construed and interpreted in accordance with, the laws of the State of California applicable to contracts made and to be performed therein, except to the extent that the laws of the United States preempt the laws of the State of California.

6.9 This Indemnity may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, McMillin has duly executed this Indemnity as of the date first set forth above.

McMILLIN-NTC, LLC

By: McMillin Companies, LLC, a Delaware limited liability company, its managing member

By: _____

By: _____

EXHIBIT "A"
LEGAL DESCRIPTION

ATTACHMENT NO. 9-B

FORM OF ENVIRONMENTAL INDEMNITY
(McMILLIN'S ASSIGNEES OTHER THAN FOUNDATION)

[BEHIND THIS PAGE]

ENVIRONMENTAL INDEMNITY

THIS ENVIRONMENTAL INDEMNITY (this "Indemnity"), dated as of [DATE TO BE INSERTED], made by [NAME OF ASSIGNEE TO BE INSERTED] ("Owner"), on behalf of itself, its successors and assigns [and subtenants], whose address for purposes of giving notices is [ADDRESS OF ASSIGNEE TO BE INSERTED], in favor of the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, whose address for purposes of giving notices is City Administration Building, 202 C Street, San Diego, California 92101, Attention: NTC Project Manager (the "Agency").

WITNESSETH

WHEREAS, Agency and McMillin-NTC, LLC ("McMillin") entered into that certain Disposition and Development Agreement, dated as of [DATE OF DDA TO BE INSERTED] (the "DDA"), pursuant to which the Agency agreed to convey to McMillin [a leasehold interest in] certain real property in the City of San Diego, described in Exhibit "A" attached hereto (the "Property"), and McMillin agreed to cause the Property to be redeveloped in accordance with the DDA (the DDA and the documents and instruments referred to therein which were executed by McMillin and are being assigned to Owner concurrently herewith are referred to collectively as the "Agency Documents");

WHEREAS, McMillin and Owner have agreed to enter into an Assignment and Assumption Agreement, whereby McMillin will convey [its leasehold interest in] the Property to Owner, and assign to Owner, and Owner will assume, McMillin's obligations to construct certain improvements on the Property under the DDA and the Agency Documents.

WHEREAS, Owner has agreed to execute and deliver to the Agency this Indemnity to induce the Agency to consent to McMillin's conveyance of [a leasehold interest in] the Property to Owner and the Assignment and Assumption Agreement.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual agreements hereinafter set forth, Owner, on behalf of itself, its successors and assigns [and subtenants] hereby agrees with the Agency as follows:

Section 1. DEFINITIONS

For the purpose of this Indemnity, the following terms are defined to mean the following:

"Hazardous Materials" shall mean and include the following:

- a. a "Hazardous Substance", "Hazardous Material", "Hazardous Waste", or "Toxic Substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101, et seq., or the Resource Conservation and Recovery Act, 42 U.S.C. §§ et seq.;
- b. an "Extremely Hazardous Waste", a "Hazardous Waste", or a "Restricted Hazardous Waste", under §§ 25115, 25117 or 25122.7 of the California Health and Safety Code, or is listed or identified pursuant to §§ 25140 or 44321 of the California Health and Safety Code;
- c. a "Hazardous Material", "Hazardous Substance", "Hazardous Waste", "Toxic Air Contaminant", or "Medical Waste" under §§ 25281, 25316, 25501, 25501.1, 117690 or 39655 of the California Health and Safety Code ;
- d. "Oil" or a "Hazardous Substance" listed or identified pursuant to § 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321, as well as any other hydrocarbonic substance or by-product;
- e. listed or defined as a "Hazardous Waste", Extremely Hazardous Waste", or an "Acutely Hazardous Waste" pursuant to Chapter 11 of Title 22 of the California Code of Regulations;
- f. listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to § 25249.9(a) of the California Health and Safety Code;

- g. a material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, damages or threatens to damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or public agency requires in order for the property to be put to any lawful purpose;
- h. any material whose presence would require remediation pursuant to the guidelines set forth in the State of California Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank;
- i. pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.;
- j. asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.;
- k. any radioactive material including, without limitation, any "source material", "special nuclear material", "by-product material", "low-level wastes", "high-level radioactive waste", "spent nuclear fuel" or "transuranic waste", and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. §§ 2011 et seq., the Nuclear Waste Policy Act, 42 U.S.C. §§ 10101 et seq., or pursuant to the California Radiation Control Law, California Health and Safety Code §§ 114960 et seq.;
- l. regulated under the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq., or the California Occupational Safety and Health Act, California Labor Code §§ 6300 et seq.; and/or
- m. regulated under the Clean Air Act, 42 U.S.C. §§ 7401 et seq. or pursuant to Division 26 of the California Health and Safety Code.

"Pre-existing Site Conditions" shall mean the existence, release, presence or disposal on, in, under, about or adjacent to the Property, of any Hazardous Materials which occurred before the

delivery of possession of the Property to McMillin.

For the purpose of this Indemnity, all references to "Owner" shall mean the Owner as of the date hereof, and its successors and assigns [and subtenants] as to the Property. Other capitalized terms used in this Indemnity shall have the meanings ascribed to them in the DDA with the same force and effect as if set forth in full below.

Section 2. COVENANTS AND INDEMNITY

The following covenants, and indemnities are hereby given and made by Owner:

2.1 Covenants.

(a) Owner covenants that it shall comply with any and all laws, regulations, and/or orders which may be promulgated, from time to time, with respect to the discharge and/or removal of Hazardous Materials, to pay or cause other parties to pay immediately when due the costs of the removal of, or any other action required by law with respect to, any such Hazardous Materials, and to keep or cause other parties to keep the Property free of any lien imposed pursuant to any such laws, regulations, or orders.

(b) Owner covenants that the Property will not, while Owner is the owner thereof, be used for any activities involving, directly or indirectly, the use, generation, treatment, storage, release, or disposal of any Hazardous Materials, except in accordance with law.

(c) Owner further agrees that Owner shall not release or dispose of any Hazardous Materials at the Property without the express written approval of the Agency and that any such release or disposal shall be effected in strict compliance with all applicable laws and all conditions, if any, established by the Agency.

(d) The Agency shall have the right, at any time, to conduct an environmental audit of the Property at the Agency's expense (unless unlawful Hazardous Materials are found, in which case such audit shall be at Owner's sole cost and expense), and Owner shall cooperate in the conduct of any such environmental audit but in no event shall such audit be conducted unless the Agency believes that such audit is warranted. Other than in an emergency, such audit shall be conducted only after prior notice has been given to Owner and only in the presence of a representative of Owner. Owner shall give the Agency and its agents

and employees access to the Property to remove, or otherwise to mitigate against the effects of, Hazardous Materials.

(e) Owner shall not install, or permit to be installed, on the Property friable asbestos or any substance containing asbestos and deemed hazardous by federal or state regulations respecting such material. If Owner shall fail to remove or cause to be removed any such material that such regulations deem hazardous and require to be removed, within the cure period permitted under applicable law, regulation, or order, the Agency may do whatever is necessary to eliminate said substances from the premises or to otherwise comply with the applicable law, regulation, or order, and the costs thereof shall be added to the Obligations (as hereinafter defined) under this Section 2.

(f) Owner shall immediately advise the Agency in writing of any of the following: (i) any pending or threatened environmental claim against Owner or the Property or (ii) any condition or occurrence on the Property that (A) results in noncompliance by Owner with any applicable environmental law, (B) could reasonably be anticipated to cause the Property to be subject to any restrictions on the ownership, occupancy, use or transferability of the Property under any environmental law, or (C) could reasonably be anticipated to form the basis of an environmental claim against the Property or Owner.

2.2 Indemnity. Owner shall indemnify, protect, defend and hold the Agency, the City of San Diego and their respective officers, employees, contractors and agents (collectively referred to as the "Indemnified Parties"), with counsel reasonably acceptable to Agency, harmless from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements, or expenses (including, without limitation, attorneys' and experts' fees and disbursements) of any kind or of any nature whatsoever (collectively, the Obligations) which may at any time be imposed upon, incurred by or asserted or awarded against the Agency and arising from or out of:

(a) The existence, release, presence or disposal on, in, under, about or adjacent to the Property, at any time after the delivery of possession and conveyance of title to Owner, of any Hazardous Materials, except to the extent it is due to the negligence or willful misconduct of the Indemnified Parties or any tenant or subtenant of the City prior to the effective date of the Interim Lease between the City of San Diego and McMillin affecting the Property;

(b) The breach of any covenant made by Owner in Section 2.1 hereof; or

(c) The enforcement by the Agency of any of the provisions of this Section 2.2 or the assertion by Owner or Owner of any defense to its obligations hereunder.

Section 3. OWNER'S UNCONDITIONAL OBLIGATIONS

3.1 Unconditional Obligations. Owner hereby agrees that the Obligations will be paid and performed strictly in accordance with the terms of this Indemnity, regardless of any law, regulation, or order now or hereafter in effect in any jurisdiction affecting any of the Agency Documents or affecting any of the rights of the Agency with respect thereto. The obligations of Owner hereunder shall be absolute and unconditional irrespective of:

(a) The validity, regularity, or enforceability of the Agency Documents or any other instrument or document executed or delivered in connection therewith;

(b) Any alteration, amendment, modification, release, termination, or cancellation of any of the Agency Documents, or any change in the time, manner, or place of payment of, or in any other term in respect of, all or any of the obligations of any party contained in any of the Agency Documents;

(c) Any extension, waiver of, or consent to any departure from, any provision contained in any of the Agency Documents;

(d) Any exculpatory provision in any of the Agency Documents limiting the Agency's recourse to property encumbered by a deed of trust or to any other security, or limiting the Agency's rights to a deficiency judgment against any party;

(e) Any exchange, addition, subordination, or release of, or nonperfection of any lien on or security interest in, any collateral, or any release, amendment, waiver of, or consent to any departure from any provision of, any other guarantee given in respect of the Agency Documents;

(f) The insolvency or bankruptcy of Owner, Owner, or of any indemnitor or guarantor under any other indemnity or guarantee given in respect of the Agency Documents; or

(g) Any other circumstance that might otherwise constitute a defense available to, or a discharge of, Owner, Owner or any other indemnitor or guarantor with respect to the Loan or any or all of the Obligations.

3.2 Continuation. This Indemnity (a) is a continuing indemnity and shall remain in full force and effect until the satisfaction in full of all of the Obligations (notwithstanding the termination of the DDA); and (b) shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment of any of the Obligations is rescinded or must otherwise be returned by the Agency upon the insolvency, bankruptcy, or reorganization of Owner, Owner or otherwise, all as though such payment had not been made.

3.3 Termination. Notwithstanding the payment (and performance) in full of all of the Obligations and the payment (or performance) in full of all of Owner's obligations under the Agency Documents, this Indemnity shall not terminate to the extent an environmental claim arises from or relates to any of the following contingencies or events:

(a) The Agency has at any time or in any manner participated in the management or control of, taken possession of (whether personally, by agent or by appointment of a receiver), or taken title to the Property or any portion thereof, whether by exercise of its right of reverter, foreclosure, deed in lieu of foreclosure, sale under power of sale or otherwise; or

(b) There has been a change, between the date hereof and the date on which all of the Obligations are paid and performed in full, in any Hazardous Materials laws, the effect of which may be to make a lender or mortgagee liable in respect of any of the Obligations, notwithstanding the fact that no event, circumstance, or condition of the nature described in paragraph (a) above ever occurred.

Section 4. WAIVER

Owner hereby waives the following:

(a) Promptness and diligence;

(b) Notice of acceptance and notice of the incurrence of any obligation by Owner;

(c) Notice of any action taken by the Agency, Owner or any other interested party under any Agency Document or under any other agreement or instrument relating thereto;

(d) All other notices, demands, and protests, and all other formalities of every kind, in connection with the enforcement of the Obligations, the omission of or delay in which, but for the provisions of this Section 4, might constitute grounds for relieving Owner of its Obligations hereunder;

(e) The right to a trial by jury with respect to any dispute arising under, or relating to, this Indemnity;

(f) Any requirement that the Agency protect, secure, perfect, or insure any security interest or lien in or on any property subject thereto;

(g) Any requirement that the Agency exhaust any right or take any action against Owner or any other person or collateral; and

(h) Any defense that may arise by reason of:

(1) The incapacity, lack of authority, death or disability of, or revocation hereof by, any person or persons;

(2) The failure of the Agency to file or enforce any claim against the estate (in probate, bankruptcy, or any other proceedings) of any person or persons; or

(3) Any defense based upon an election of remedies by the Agency, including, without limitation, an election to proceed by nonjudicial foreclosure or which destroys or otherwise impairs the subrogation rights of Owner or any other right of Owner to proceed against any person or entity.

Section 5. NOTICES

Any notice, demand, statement, request, or consent made hereunder shall be in writing and shall be personally served, mailed by first-class registered mail, return receipt requested, to the address set forth in the first paragraph of this Indemnity, above, or given by telecopier to the telecopier numbers stated below, with confirmations mailed by first class registered mail,

return receipt requested to the address set forth above, of the party to whom such notice is to be given (or to such other address as the parties hereto, shall designate in writing):

In the case of the Agency: 619-236-6512

In the case of Owner: [FAX NUMBER TO BE INSERTED]

Any notice that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

Section 6. MISCELLANEOUS

6.1 Owner shall make any payment required to be made hereunder in lawful money of the United States of America, and in same day funds, to the Agency at its address specified in the first paragraph hereof.

6.2 No amendment of any provision of this Indemnity shall be effective unless it is in writing and signed by Owner and Agency, and no waiver of any provision of this Indemnity, and no consent to any departure by Owner from any provision of this Indemnity, shall be effective unless it is in writing and signed by the Agency, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

6.3 No failure on the part of the Agency to exercise, and no delay in exercising, any right hereunder or under any other Agency Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Agency provided herein and in the other Agency Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the Agency under any Agency Document against any party thereto are not conditional or contingent on any attempt by the Agency to exercise any of its rights under any other Agency Document against such party or against any other person or collateral.

6.4 Any provision of this Indemnity that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction,

be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof and without affecting the validity or enforceability of such provision in any other jurisdiction.

6.5 This Indemnity shall (a) be binding upon Owner, and its successors and assigns [and subtenants]; and (b) inure, together with all rights and remedies of the Agency hereunder, to the benefit of the Agency, its respective directors, officers, employees, and agents and any successor to the Agency's powers and interests in the Property. Without limiting the generality of clause (b) of the immediately preceding sentence, the Agency may, subject to, and in accordance with, the provisions of the Agency Documents, assign or otherwise transfer all or any portion of its rights and obligations under any other Agency Document, to the City of San Diego or any other person, and the City or such other person shall thereupon become vested with all of the rights and obligations in respect thereof that were granted to the Agency herein or otherwise. None of the rights or obligations of Owner or Owner hereunder may be assigned or otherwise transferred without the prior written consent of the Agency.

6.6 Owner hereby (a) irrevocably submits to the jurisdiction of any California or federal court sitting, in each instance, in San Diego County in any action or proceeding arising out of or relating to this Indemnity, (b) waives any defense based on doctrines of venue or forum non convenient or similar rules or doctrines, and (c) irrevocably agrees that all claims in respect of any such action or proceeding may be heard and determined in such California or federal court. Owner irrevocably consents to the service of any and all process which may be required or permitted in any such action or proceeding to the address specified in the first paragraph of this Indemnity, above. Owner agrees that a final judgment in any such action or proceeding shall be inclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

6.7 The title of this document and the captions used herein are inserted only as a matter of convenience and for reference and shall in no way define, limit, or describe the scope or the intent of this Indemnity or any of the provisions hereof.

6.8 This Indemnity shall be governed by, and construed and interpreted in accordance with, the laws of the State of California applicable to contracts made and to be performed therein, except to the extent that the laws of the United States preempt the laws of the State of California.

6.9 This Indemnity may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, Owner has duly executed this Indemnity as of the date first set forth above.

[SIGNATURE BLOCK OF OWNER TO BE INSERTED]

By: _____

EXHIBIT "A"

LEGAL DESCRIPTION

ATTACHMENT NO. 9-C

FORM OF ENVIRONMENTAL INDEMNITY
(FOUNDATION)

[BEHIND THIS PAGE]

000312

ENVIRONMENTAL INDEMNITY

THIS ENVIRONMENTAL INDEMNITY (this "Indemnity"), dated as of [DATE TO BE INSERTED], made by [NAME OF FOUNDATION TO BE INSERTED] ("Foundation"), whose address for purposes of giving notices is [ADDRESS OF FOUNDATION TO BE INSERTED], in favor of the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, whose address for purposes of giving notices is City Administration Building, 202 C Street, San Diego, California 92101, Attention: NTC Project Manager (the "Agency").

WITNESSETH

WHEREAS, Agency and McMillin-NTC, LLC ("McMillin") entered into that certain Disposition and Development Agreement, dated as of [DATE OF DDA TO BE INSERTED] (the "DDA"), pursuant to which the Agency agreed to lease directly to Foundation that certain real property in the City of San Diego, described in Exhibit "A" attached hereto (the "Property"), and McMillin agreed to cause the Property to be redeveloped in accordance with the DDA (the DDA and the documents and instruments referred to therein which were executed by McMillin and which are being assigned to Foundation concurrently herewith are referred to collectively as the "Agency Documents");

WHEREAS, McMillin and Foundation have agreed to enter into an Assignment and Assumption Agreement, whereby McMillin will assign to Foundation, and Foundation will assume, McMillin's obligations to redevelop certain improvements on the Property under the DDA and Agency Documents, and Agency will lease the Property directly to the Foundation.

WHEREAS, Foundation has agreed to execute and deliver to the Agency this Indemnity to induce the Agency to consent to the Assignment and Assumption Agreement.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual agreements hereinafter set forth, Foundation hereby agrees with the Agency as follows:

Section 1. DEFINITIONS

For the purpose of this Indemnity, the following terms are defined to mean the following:

"Hazardous Materials" shall mean and include the following:

- a. a "Hazardous Substance", "Hazardous Material", "Hazardous Waste", or "Toxic Substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101, et seq., or the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.;
- b. an "Extremely Hazardous Waste", a "Hazardous Waste", or a "Restricted Hazardous Waste", under §§ 25115, 25117 or 25122.7 of the California Health and Safety Code, or is listed or identified pursuant to §§ 25140 or 44321 of the California Health and Safety Code;
- c. a "Hazardous Material", "Hazardous Substance", "Hazardous Waste", "Toxic Air Contaminant", or "Medical Waste" under §§ 25281, 25316, 25501, 25501.1, 117690 or 39655 of the California Health and Safety Code ;
- d. "Oil" or a "Hazardous Substance" listed or identified pursuant to § 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321, as well as any other hydrocarbonic substance or by-product;
- e. listed or defined as a "Hazardous Waste", Extremely Hazardous Waste", or an "Acutely Hazardous Waste" pursuant to Chapter 11 of Title 22 of the California Code of Regulations;
- f. listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to § 25249.9(a) of the California Health and Safety Code;
- g. a material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, damages or threatens to damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or public agency requires in order for the property to be put to any lawful purpose;

- h. any material whose presence would require remediation pursuant to the guidelines set forth in the State of California Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank;
- i. pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.;
- j. asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.;
- k. any radioactive material including, without limitation, any "source material", "special nuclear material", "by-product material", "low-level wastes", "high-level radioactive waste", "spent nuclear fuel" or "transuranic waste", and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. §§ 2011 et seq., the Nuclear Waste Policy Act, 42 U.S.C. §§ 10101 et seq., or pursuant to the California Radiation Control Law, California Health and Safety Code §§ 114960 et seq.;
- l. regulated under the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq., or the California Occupational Safety and Health Act, California Labor Code §§ 6300 et seq.; and/or
- m. regulated under the Clean Air Act, 42 U.S.C. §§ 7401 et seq. or pursuant to Division 26 of the California Health and Safety Code.

For the purpose of this Indemnity, all references to "Foundation" shall mean the Foundation, and its successors and assigns and subtenants as to the Property. Other capitalized terms used in this Indemnity shall have the meanings ascribed to them in the DDA with the same force and effect as if set forth in full below.

Section 2. COVENANTS AND INDEMNITY

The following covenants, and indemnities are hereby given and made by Foundation:

2.1 Covenants.

(a) Foundation covenants that it shall comply with any and all laws, regulations, and/or orders which may be promulgated, from time to time, with respect to the discharge and/or removal of Hazardous Materials, to pay or cause other parties to pay immediately when due the costs of the removal of, or any other action required by law with respect to, any such Hazardous Materials, and to keep or cause other parties to keep the Property free of any lien imposed pursuant to any such laws, regulations, or orders.

(b) Foundation covenants that the Property will not, while Foundation is the lessee thereof, be used for any activities involving, directly or indirectly, the use, generation, treatment, storage, release, or disposal of any Hazardous Materials, except in accordance with law.

(c) Foundation further agrees that Foundation shall not release or dispose of any Hazardous Materials at the Property without the express written approval of the Agency and that any such release or disposal shall be effected in strict compliance with all applicable laws and all conditions, if any, established by the Agency.

(d) The Agency shall have the right, at any time, to conduct an environmental audit of the Property at the Agency's expense (unless unlawful Hazardous Materials are found, in which case such audit shall be at Foundation's sole cost and expense), and Foundation shall cooperate in the conduct of any such environmental audit but in no event shall such audit be conducted unless the Agency believes that such audit is warranted. Other than in an emergency, such audit shall be conducted only after prior notice has been given to Foundation and only in the presence of a representative of Foundation. Foundation shall give the Agency and its agents and employees access to the Property to remove, or otherwise to mitigate against the effects of, Hazardous Materials.

(e) Foundation shall not install, or permit to be installed, on the Property friable asbestos or any substance containing asbestos and deemed hazardous by federal or state regulations respecting such material. If Foundation shall fail to remove or cause to be removed any such material that such

regulations deem hazardous and require to be removed within the cure period permitted under applicable law, regulation, or order, the Agency may do whatever is necessary to eliminate said substances from the premises or to otherwise comply with the applicable law, regulation, or order, and the costs thereof shall be added to the Obligations (as hereinafter defined) under this Section 2.

(f) Foundation shall immediately advise the Agency in writing of any of the following: (i) any pending or threatened environmental claim against Foundation or the Property or (ii) any condition or occurrence on the Property that (A) results in noncompliance by Foundation with any applicable environmental law, (B) could reasonably be anticipated to cause the Property to be subject to any restrictions on the ownership, occupancy, use or transferability of the Property under any environmental law, or (C) could reasonably be anticipated to form the basis of an environmental claim against the Property or Foundation.

2.2 Indemnity. Foundation shall indemnify, protect, defend and hold the Agency, the City of San Diego and their respective officers, employees, contractors and agents (collectively referred to as the "Indemnified Parties"), with counsel reasonably acceptable to Agency, harmless from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements, or expenses (including, without limitation, attorneys' and experts' fees and disbursements) of any kind or of any nature whatsoever (collectively, the Obligations) which may at any time be imposed upon, incurred by or asserted or awarded against the Agency and arising from or out of:

(a) The existence, release, presence or disposal on, in, under, about or adjacent to the Property, at any time after the delivery of possession and conveyance of leasehold title to the Foundation, of any Hazardous Materials, except to the extent it is due to the negligence or willful misconduct of the Indemnified Parties or any tenant or subtenant of the City of San Diego prior to the effective date of the Interim Lease between the City and McMillin affecting the Property;

(b) The breach of any covenant made by Foundation in Section 2.1 hereof; or

(c) The enforcement by the Agency of any of the provisions of this Section 2.2 or the assertion by Foundation or Foundation of any defense to its obligations hereunder.

Section 3. FOUNDATION'S UNCONDITIONAL OBLIGATIONS

3.1 Unconditional Obligations. Foundation hereby agrees that the Obligations will be paid and performed strictly in accordance with the terms of this Indemnity, regardless of any law, regulation, or order now or hereafter in effect in any jurisdiction affecting any of the Agency Documents or affecting any of the rights of the Agency with respect thereto. The obligations of Foundation hereunder shall be absolute and unconditional irrespective of:

(a) The validity, regularity, or enforceability of the Agency Documents or any other instrument or document executed or delivered in connection therewith;

(b) Any alteration, amendment, modification, release, termination, or cancellation of any of the Agency Documents, or any change in the time, manner, or place of payment of, or in any other term in respect of, all or any of the obligations of any party contained in any of the Agency Documents;

(c) Any extension, waiver of, or consent to any departure from, any provision contained in any of the Agency Documents;

(d) Any exculpatory provision in any of the Agency Documents limiting the Agency's recourse to property encumbered by a deed of trust or to any other security, or limiting the Agency's rights to a deficiency judgment against any party;

(e) Any exchange, addition, subordination, or release of, or nonperfection of any lien on or security interest in, any collateral, or any release, amendment, waiver of, or consent to any departure from any provision of, any other guarantee given in respect of the Agency Documents;

(f) The insolvency or bankruptcy of Foundation, Foundation, or of any indemnitor or guarantor under any other indemnity or guarantee given in respect of the Agency Documents; or

(g) Any other circumstance that might otherwise constitute a defense available to, or a discharge of, Foundation, Foundation or any other indemnitor or guarantor with respect to the Loan or any or all of the Obligations.

3.2 Continuation. This Indemnity (a) is a continuing indemnity and shall remain in full force and effect until the satisfaction in full of all of the Obligations (notwithstanding the termination of the DDA); and (b) shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment of any of the Obligations is rescinded or must otherwise be returned by the Agency upon the insolvency, bankruptcy, or reorganization of Foundation, Foundation or otherwise, all as though such payment had not been made.

3.3 Termination. Notwithstanding the payment (and performance) in full of all of the Obligations and the payment (or performance) in full of all of Foundation's obligations under the Agency Documents, this Indemnity shall not terminate to the extent an environmental claim arises from or relates to any of the following contingencies or events:

(a) The Agency has at any time or in any manner participated in the management or control of, taken possession of (whether personally, by agent or by appointment of a receiver), or taken title to the Property or any portion thereof, whether by exercise of its right of reverter, foreclosure, deed in lieu of foreclosure, sale under power of sale or otherwise; or

(b) There has been a change, between the date hereof and the date on which all of the Obligations are paid and performed in full, in any Hazardous Materials laws, the effect of which may be to make a lender or mortgagee liable in respect of any of the Obligations, notwithstanding the fact that no event, circumstance, or condition of the nature described in paragraph (a) above ever occurred.

Section 4. WAIVER

Foundation hereby waives the following:

- (a) Promptness and diligence;
- (b) Notice of acceptance and notice of the incurrence of any obligation by Foundation;
- (c) Notice of any action taken by the Agency, Foundation or any other interested party under any Agency Document or under any other agreement or instrument relating thereto;
- (d) All other notices, demands, and protests, and all other formalities of every kind, in connection with the enforcement of the Obligations, the omission of or delay in which, but for the provisions of this Section 4, might constitute grounds for relieving Foundation of its Obligations hereunder;
- (e) The right to a trial by jury with respect to any dispute arising under, or relating to, this Indemnity;
- (f) Any requirement that the Agency protect, secure, perfect, or insure any security interest or lien in or on any property subject thereto;
- (g) Any requirement that the Agency exhaust any right or take any action against Foundation or any other person or collateral; and
- (h) Any defense that may arise by reason of:
 - (1) The incapacity, lack of authority, death or disability of, or revocation hereof by, any person or persons;
 - (2) The failure of the Agency to file or enforce any claim against the estate (in probate, bankruptcy, or any other proceedings) of any person or persons; or
 - (3) Any defense based upon an election of remedies by the Agency, including, without limitation, an election to proceed by nonjudicial foreclosure or which destroys or otherwise impairs the subrogation rights of Foundation or any other right of Foundation to proceed against any person or entity.

Section 5. NOTICES

Any notice, demand, statement, request, or consent made hereunder shall be in writing and shall be personally served, mailed by first-class registered mail, return receipt requested, to the address set forth in the first paragraph of this Indemnity, above, or given by telecopier to the telecopier numbers stated below, with confirmations mailed by first class registered mail, return receipt requested to the address set forth above, of the party to whom such notice is to be given (or to such other address as the parties hereto, shall designate in writing):

In the case of the Agency: 619-236-6512

In the case of Foundation: [FAX NUMBER TO BE INSERTED]

Any notice that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

Section 6. MISCELLANEOUS

6.1 Foundation shall make any payment required to be made hereunder in lawful money of the United States of America, and in same day funds, to the Agency at its address specified in the first paragraph hereof.

6.2 No amendment of any provision of this Indemnity shall be effective unless it is in writing and signed by Foundation and Agency, and no waiver of any provision of this Indemnity, and no consent to any departure by Foundation from any provision of this Indemnity, shall be effective unless it is in writing and signed by the Agency, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

6.3 No failure on the part of the Agency to exercise, and no delay in exercising, any right hereunder or under any other Agency Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Agency provided herein and in the other Agency

Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the Agency under any Agency Document against any party thereto are not conditional or contingent on any attempt by the Agency to exercise any of its rights under any other Agency Document against such party or against any other person or collateral.

6.4 Any provision of this Indemnity that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof and without affecting the validity or enforceability of such provision in any other jurisdiction.

6.5 This Indemnity shall (a) be binding upon Foundation, and its successors and assigns; and (b) inure, together with all rights and remedies of the Agency hereunder, to the benefit of the Agency, its respective directors, officers, employees, and agents and any successor to the Agency's powers and interests in the Property. Without limiting the generality of clause (b) of the immediately preceding sentence, the Agency may, subject to, and in accordance with, the provisions of the Agency Documents, assign or otherwise transfer all or any portion of its rights and obligations under any other Agency Document, to the City of San Diego or any other person, and the City or such other person shall thereupon become vested with all of the rights and obligations in respect thereof that were granted to the Agency herein or otherwise. None of the rights or obligations of Foundation or Foundation hereunder may be assigned or otherwise transferred without the prior written consent of the Agency.

6.6 Foundation hereby (a) irrevocably submits to the jurisdiction of any California or federal court sitting, in each instance, in San Diego County in any action or proceeding arising out of or relating to this Indemnity, (b) waives any defense based on doctrines of venue or forum non convenient or similar rules or doctrines, and (c) irrevocably agrees that all claims in respect of any such action or proceeding may be heard and determined in such California or federal court. Foundation irrevocably consents to the service of any and all process which may be required or permitted in any such action or proceeding to the address specified in the first paragraph of this Indemnity, above. Foundation agrees that a final judgment in any such action or proceeding shall be inclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

6.7 The title of this document and the captions used herein are inserted only as a matter of convenience and for reference and shall in no way define, limit, or describe the scope or the intent of this Indemnity or any of the provisions hereof.

6.8 This Indemnity shall be governed by, and construed and interpreted in accordance with, the laws of the State of California applicable to contracts made and to be performed therein, except to the extent that the laws of the United States preempt the laws of the State of California.

6.9 This Indemnity may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, Foundation has duly executed this Indemnity as of the date first set forth above.

[SIGNATURE BLOCK OF FOUNDATION TO BE
INSERTED]

By: _____

EXHIBIT "A"
LEGAL DESCRIPTION

ATTACHMENT NO. 10-A

FORM OF LENDER'S NONDISTURBANCE AND ATTORNMENT AGREEMENT
(McMILLIN AS AGENCY'S TENANT)

[BEHIND THIS PAGE]

LENDER'S NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS LENDER'S NONDISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made as of _____, by and among THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO (hereinafter referred to as "Agency"), McMILLIN-NTC, LLC, a Delaware limited liability company (hereinafter referred to as "McMillin") and _____, a _____ (hereinafter referred to as "Lender").

RECITALS

A. Agency and McMillin have heretofore entered into a Disposition and Development Agreement, dated _____ (the "DDA"), which provides for the disposition of certain property (described in the DDA as the "Site") by the Agency to McMillin.

B. Pursuant to the DDA, the Agency and McMillin have entered (or are entering) into a Ground Lease substantially in the form attached to the DDA as Attachment No. 6 (the "Ground Lease"), pursuant to which Agency has demised (will demise) and leased (will lease) to McMillin a portion of the Site which is described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").

C. Concurrently with the execution of this Agreement, McMillin, as borrower, and Lender, as lender, have executed and entered into a loan agreement and other agreements and instruments pursuant to which Lender will provide financing to McMillin (the "Lender Loan Documents"), secured by a deed of trust and other security instruments on McMillin's leasehold interest in the Property (the "Lender Deed of Trust").

D. The parties hereto now desire to enter into this Agreement so as to clarify their rights, duties and obligations under the Ground Lease and the Lender Loan Documents and to further provide for various contingencies as hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreement of the parties hereto to the terms and conditions hereinafter contained, the parties hereto agree as follows:

1. In the event McMillin shall default in its obligations under the Lender Loan Documents which results in a foreclosure of the Lender Deed of Trust by Lender or a transfer by deed in lieu of foreclosure or other conveyance, as provided therein, then Agency, McMillin and Lender do hereby agree that the Ground Lease and all terms, provisions, covenants and agreements thereof shall survive

Lender's Nondisturbance
and Attornment Agreement (McMillin)

any such default in and foreclosure of the Lender Deed of Trust, and the Ground Lease shall remain in full force and effect, in accordance with and subject to all of its terms, provisions, agreements and covenants as a direct lease between Agency (as lessor) and Lender, any purchaser at foreclosure or any assignee of Lender (as lessee). Lender agrees, in that event, to attorn to Agency and to recognize Agency as the lessor under the Ground Lease. Agency shall, in such event, exercise and undertake all of the rights and obligations of the lessor in and under the Ground Lease. From and after the time of attornment, Lender, such purchaser at foreclosure or such assignee, as lessee, shall keep, observe and perform as to Agency all of the terms, covenants and conditions to be kept by the lessee pursuant to the Ground Lease, and Agency shall have the same remedies for nonperformance or default of any agreement or term of the Ground Lease as it would had or would have had as lessor under the Ground Lease if Lender had not foreclosed on the Lender Deed of Trust.

2. In the event Lender, a purchaser at foreclosure or any assignee of Lender becomes the lessee as provided in Section 1 of this Agreement, Lender, such purchaser or such assignee, as the case may be, shall thereupon have the option to obtain a new lease by providing the Agency with a written request for a new lease. Within thirty (30) days after receipt of written request by Lender, such purchaser or such assignee for a new lease, the Agency shall enter into a new lease with respect to the Property with Lender, such purchaser or such assignee. Such new lease shall be effective as of the date of execution by the Agency and shall be for the remainder of the term of the Ground Lease, and upon the agreements, terms, covenants and conditions thereof.

3. For and during the term of the Ground Lease, Agency agrees that, prior to terminating the Ground Lease or taking any proceedings to enforce any such termination thereof for any reason other than the expiration of the term of the Ground Lease, Agency shall give Lender, at the same time it gives McMillin notice thereof, prior notice in writing of such termination, specifying the reason for such termination. Such notice shall be given to Lender in the manner provided in the Ground Lease at the following address:

or at such other address as Lender shall provide Agency in writing in the same manner.

Lender's Nondisturbance
and Attornment Agreement (McMillin)

Page 2 of 4

4. For and during the term of the Lender Loan Documents, Lender agrees that, prior to foreclosing on the Lender Deed of Trust or taking any proceedings to enforce any such foreclosure thereof for any reason, Lender shall give to Agency, at the same time it gives such notice to McMillin, a copy of all notices of default and notices of sale. Such notices shall be given to Agency in the manner provided in the Ground Lease at the following address:

Redevelopment Agency of the City of San Diego
City Administration Building
202 C Street
San Diego, California 92101
Attention: NTC Project Manager

or at such other address as Agency shall provide Lender in writing in the same manner.

5. Subject only to the due execution and delivery of documents, Agency hereby approves of the Lender Deed of Trust, and Lender hereby approves of the Ground Lease.

6. No provision contained herein shall be deemed an amendment or modification of any provisions contained in any Lender Loan Document or the Ground Lease, including, without limiting the generality of the foregoing, any rights given thereunder to McMillin to terminate the Ground Lease.

7. Upon the execution of this Agreement, the Ground Lease and the Lender Deed of Trust, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors, transferees and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove set forth.

McMillin:

McMILLIN-NTC, LLC,
a Delaware limited liability company

By: _____

Lender:

[NAME OF LENDER TO BE INSERTED]

By: _____

Agency:

REDEVELOPMENT AGENCY OF THE CITY OF
SAN DIEGO

By: _____
Hank Cunningham
Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY:
CASEY GWINN
Agency General Counsel

By: _____
Richard A. Duvernay

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Glenn F. Wasserman

Lender's Nondisturbance
and Attornment Agreement (McMillin)
Page 4 of 4

Exhibit "A"
Legal Description

ATTACHMENT NO. 10-B

FORM OF LENDER'S NONDISTURBANCE AND ATTORNMENT AGREEMENT
(FOUNDATION AS AGENCY'S TENANT)

[BEHIND THIS PAGE]

000331

LENDER'S NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS LENDER'S NONDISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made as of _____, by and among THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO (hereinafter referred to as "Agency"), [NAME OF FOUNDATION TO BE INSERTED] (hereinafter referred to as "Foundation") and _____, a _____ (hereinafter referred to as "Lender").

RECITALS

A. Agency and McMillin-NTC, LLC ("McMillin") have heretofore entered into a Disposition and Development Agreement, dated _____ (the "DDA"), which provides for the disposition of certain property (described in the DDA as the "Site") by the Agency to McMillin.

B. Pursuant to that certain Assignment and Assumption Agreement dated _____, McMillin has assigned certain of its rights and obligations under the DDA as to a portion of the Site which is described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property") to the Foundation, Foundation has assumed such rights and obligations and Agency has consented to such assignment and assumption.

C. Pursuant to the DDA, the Agency has leased the Property directly to the Foundation, pursuant to a Ground Lease substantially in the form attached to the DDA as Attachment No. 20 (the "Ground Lease").

D. Concurrently with the execution of this Agreement, Foundation, as borrower, and Lender, as lender, have executed and entered into a loan agreement and other agreements and instruments pursuant to which Lender will provide financing to Foundation (the "Lender Loan Documents"), secured by a deed of trust and other security instruments on Foundation's leasehold interest in the Property (the "Lender Deed of Trust").

E. The parties hereto now desire to enter into this Agreement so as to clarify their rights, duties and obligations under th Ground Lease and the Lender Loan Documents and to further provide for various contingencies as hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreement of the parties hereto to the terms and conditions hereinafter contained, the parties hereto agree as follows:

Lender's Nondisturbance
and Attornment Agreement (Foundation)

Page 1 of 4

1. In the event Foundation shall default in its obligations under the Lender Loan Documents which results in a foreclosure of the Lender Deed of Trust by Lender or a transfer by deed in lieu of foreclosure or other conveyance, as provided therein, then Agency, Foundation and Lender do hereby agree that the Ground Lease and all terms, provisions, covenants and agreements thereof shall survive any such default in and foreclosure of the Lender Deed of Trust, and the Ground Lease shall remain in full force and effect, in accordance with and subject to all of its terms, provisions, agreements and covenants as a direct lease between Agency (as lessor) and Lender, any purchaser at foreclosure or any assignee of Lender (as lessee). Lender agrees, in that event, to attorn to Agency and to recognize Agency as the lessor under the Ground Lease. Agency shall, in such event, exercise and undertake all of the rights and obligations of the lessor in and under the Ground Lease. From and after the time of attornment, Lender, such purchaser at foreclosure or such assignee, as lessee, shall keep, observe and perform as to Agency all of the terms, covenants and conditions to be kept by the lessee pursuant to the Ground Lease, and Agency shall have the same remedies for nonperformance or default of any agreement or term of the Ground Lease as it would had or would have had as lessor under the Ground Lease if Lender had not foreclosed on the Lender Deed of Trust.

2. In the event Lender, a purchaser at foreclosure or any assignee of Lender becomes the lessee as provided in Section 1 of this Agreement, Lender, such purchaser or such assignee, as the case may be, shall thereupon have the option to obtain a new lease by providing the Agency with a written request for a new lease. Within thirty (30) days after receipt of written request by Lender, such purchaser or such assignee for a new lease, the Agency shall enter into a new lease with respect to the Property with Lender, such purchaser or such assignee. Such new lease shall be effective as of the date of execution by the Agency and shall be for the remainder of the term of the Ground Lease, and upon the agreements, terms, covenants and conditions thereof.

3. For and during the term of the Ground Lease, Agency agrees that, prior to terminating the Ground Lease or taking any proceedings to enforce any such termination thereof for any reason other than the expiration of the term of the Ground Lease, Agency shall give Lender, at the same time it gives Foundation notice thereof, prior notice in writing of such termination, specifying the reason for such termination. Such notice shall be given to Lender in the manner provided in the Ground Lease at the following address:

Lender's Nondisturbance
and Attornment Agreement (Foundation)

Page 2 of 4

or at such other address as Lender shall provide Agency in writing in the same manner.

4. For and during the term of the Lender Loan Documents, Lender agrees that, prior to foreclosing on the Lender Deed of Trust or taking any proceedings to enforce any such foreclosure thereof for any reason, Lender shall give to Agency, at the same time it gives such notice to Foundation, a copy of all notices of default and notices of sale. Such notices shall be given to Agency in the manner provided in the Ground Lease at the following address:

Redevelopment Agency of the City of San Diego
City Administration Building
202 C Street
San Diego, California 92101
Attention: NTC Project Manager

or at such other address as Agency shall provide Lender in writing in the same manner.

5. Subject only to the due execution and delivery of documents, Agency hereby approves of the Lender Deed of Trust, and Lender hereby approves of the Ground Lease.

6. No provision contained herein shall be deemed an amendment or modification of any provisions contained in any Lender Loan Document or the Ground Lease, including, without limiting the generality of the foregoing, any rights given thereunder to Foundation to terminate the Ground Lease.

7. Upon the execution of this Agreement, the Ground Lease and the Lender Deed of Trust, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors, transferees and assigns.

Lender's Nondisturbance
and Attornment Agreement (Foundation)

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove set forth.

Foundation:

[FOUNDATION SIGNATURE BLOCK TO BE INSERTED]

By: _____

Lender:

[NAME OF LENDER TO BE INSERTED]

By: _____

Agency:

REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO

By: _____
Hank Cunningham
Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY:
CASEY GWINN
Agency General Counsel

By: _____
Richard A. Duvernay

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Glenn F. Wasserman

Lender's Nondisturbance
and Attornment Agreement (Foundation)
Page 4 of 4

Exhibit "A"

Legal Description

ATTACHMENT NO. 11

FORM OF TENANT'S NONDISTURBANCE
AND LEASE RECOGNITION AGREEMENT

[BEHIND THIS PAGE]

**TENANT'S NONDISTURBANCE
AND LEASE RECOGNITION AGREEMENT**

THIS TENANT'S NONDISTURBANCE AND LEASE RECOGNITION AGREEMENT (this "Agreement") is made as of _____, by and among THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO (hereinafter referred to as "Agency"), McMILLIN-NTC, LLC, a Delaware limited liability company (hereinafter referred to as "Tenant") and _____, a _____ (hereinafter referred to as "Subtenant").

1. Recitals.

1.1 Agency and Tenant have entered into a ground lease dated _____ for premises legally described on Exhibit A attached hereto and made a part hereof (the "Ground Lease").

1.2 Tenant is executing an agreement of sublease with Subtenant for a portion of the premises leased under the Ground Lease (the "Sublease").

1.3 The parties desire to set forth their respective rights and obligations in the event of the termination of the Ground Lease.

2. Nondisturbance.

2.1 In the event that the Ground Lease is terminated before its expiration, Agency hereby agrees to recognize the Sublease as a direct lease between Agency and Subtenant, and Subtenant agrees to attorn to Agency, subject to the following:

(a) Agency shall retain all rights under the Sublease in the event of any default by Subtenant.

(b) Agency shall not be liable to Subtenant for any default under the Sublease by Tenant as sublandlord.

(c) Agency shall not be required to return to Subtenant any security deposit not received by Agency.

(d) Agency shall not be obligated to credit Subtenant with any rent paid under the Sublease more than one month in advance.

3. Miscellaneous Provisions.

3.1 Applicable Law and Venue. This Agreement is made in, and shall be governed, enforced and construed under the laws of, the State of California. Venue for any action brought regarding this Agreement or the transaction contemplated herein shall be in San Diego County, California.

3.2 Binding Upon Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, estates, personal representatives, successors, and assigns. No assignment shall relieve the assignor of any liability accruing under this Agreement either before or after the assignment.

3.3 Entire Agreement; Integration. This Agreement constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof, and shall supersede and replace all prior understandings and agreements, whether verbal or in writing. The parties confirm and acknowledge that there are no other promises, covenants, understandings, agreements, representations, or warranties with respect to the subject matter of this Agreement except as expressly set forth herein, or in any instrument executed by the parties of even date herewith.

3.4 Amendments Only in Writing. This Agreement may not be modified, terminated, or amended in any respect, except pursuant to an instrument in writing duly executed by all of the parties hereto.

3.5 Attorneys' Fees. In the event that any party hereto shall bring any legal action or other proceeding with respect to the breach, interpretation, or enforcement of this Agreement, or with respect to any dispute relating to any transaction covered by this Agreement, or in connection with any bankruptcy proceeding relating to a party, the losing party or parties (or the debtor party involved in the bankruptcy) in such action or proceeding shall reimburse the prevailing party or parties therein for all reasonable costs of litigation, including the reasonable non-contingent fees of attorneys, paralegals and other professionals, in such amount as may be determined by the court or other tribunal having jurisdiction, including matters on appeal.

3.6 Interpretation. The language of this agreement shall not be construed against any party, since all parties have participated in the negotiation and drafting of this Agreement. The term "including" shall mean "including but not limited to" All captions and headings herein are for convenience and ease of reference only, and shall not be used or referred to in any way in

connection with the interpretation or enforcement of this Agreement. As used herein, the masculine, feminine or neuter gender, and the singular and plural numbers, shall each be deemed to include the others, whenever and wherever the context so indicates.

3.7 Counterparts. This Agreement may be executed in one or more counterpart copies, and each of which so executed, irrespective of the date of execution and delivery, shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove set forth.

Tenant:

McMILLIN-NTC, LLC,
a Delaware limited liability company

By: _____

Subtenant:

[NAME OF SUBTENANT TO BE INSERTED]

By: _____

Agency:

REDEVELOPMENT AGENCY OF THE CITY OF
SAN DIEGO

By: _____

Hank Cunningham
Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY:
CASEY GWINN
Agency General Counsel

By: _____

Richard A. Duvernay

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____

Glenn F. Wasserman

Tenant's Nondisturbance and
Lease Recognition Agreement
Page 4 of 4

ntc\tenantno.2
5-2-00

000341

Exhibit "A"

Legal Description

ATTACHMENT NO. 12-A

FORM OF PAYMENT AND PERFORMANCE BONDS

- * NTC PARK IMPROVEMENTS PERFORMANCE BOND
- * NTC PARK IMPROVEMENTS LABOR AND MATERIALS PAYMENT BOND
- * NTC PRIVATE (VERTICAL) IMPROVEMENTS PERMIT PERFORMANCE BOND
- * NTC PRIVATE (VERTICAL) IMPROVEMENTS PERMIT LABOR AND MATERIALS PAYMENT BOND
- * NTC SUBDIVISION (HORIZONTAL) IMPROVEMENTS LABOR AND MATERIALS PAYMENT BOND
- * NTC SUBDIVISION (HORIZONTAL) IMPROVEMENTS PERFORMANCE BOND
- * NTC EDUCATIONAL CORE (VERTICAL) IMPROVEMENTS PERMIT PERFORMANCE BOND
- * NTC EDUCATIONAL CORE (VERTICAL) IMPROVEMENTS PERMIT LABOR AND MATERIAL PAYMENT BOND
- * NTC HISTORIC CORE (VERTICAL) IMPROVEMENTS LABOR AND MATERIAL PAYMENT BOND
- * NTC HISTORIC CORE (VERTICAL) IMPROVEMENTS PERFORMANCE BOND

[BEHIND THIS PAGE]

Agency _____

Address _____

Bond No. _____

Premium \$ _____

NTC PARK IMPROVEMENTS

PERFORMANCE BOND

(For Park (Horizontal) Improvements)

KNOW ALL MEN BY THESE PRESENTS: That

Whereas, The Redevelopment Agency of the City of San Diego (the "Agency"), and McMillin NTC, LLC, have entered into an agreement known as Naval Training Center Disposition and Development Agreement, dated _____, 2000, which is on file in the Offices of the Redevelopment Agency of the City of San Diego as Document No. _____ (the "Development Agreement"); and

Whereas, the Agency and McMillian NTC, LLC (hereinafter designated as "Principal") have entered into a NTC Park Improvement Agreement, dated _____, 2000 ("Park Agreement") whereby Principal agrees to install and complete certain designated park improvements, described as _____ (the "Work"); and

Whereas, the Principal is required under the terms of the Park Agreement to furnish a bond for the faithful performance of that Work;

Now, therefore, we, the Principal and _____, as Surety, are held and firmly bound unto the Agency and the City of San Diego in the aggregate sum not to exceed _____ dollars (\$ _____) lawful money of the United States, for the payment of which sum will and truly to be made, we bind ourselves, our successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT if the above bounded Principal, his successors or assigns, shall perform the Work described in the Park Agreement in a timely and workman like manner, and shall indemnify and save harmless the Agency and the City, their officers, agents and employees, for any loss or damage directly caused by the failure of the Principal to perform the Work, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees incurred by Agency in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The Surety hereby stipulates and agrees that no reasonable change, extension of time, alteration or addition to the terms of the Park Agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

No cause of action shall accrue on this bond to or for the use of any person or entity other than the Obligees named herein.

In witness whereof, this instrument has been duly executed by the Principal and surety above named, on _____, 200_.

(Principal)

By _____

(Print Name & Title)

(Surety)

By _____

Attorney in Fact

APPROVED as to form and legality:

CASEY GWINN, City Attorney

By _____
Agency General Counsel

APPROVED:

Redevelopment Agency of the City of San Diego

By _____
Agency Executive Director

Agency _____

Address _____

Bond No. _____

Premium \$ _____

NTC PARK IMPROVEMENTS

LABOR AND MATERIALS PAYMENT BOND

(For Park (Horizontal) Improvements)

KNOW ALL MEN BY THESE PRESENTS: That

Whereas, The Redevelopment Agency of the City of San Diego (the "Agency"), and McMillin NTC, LLC, have entered into an agreement known as Naval Training Center Disposition and Development Agreement, dated _____, 2000, which is on file in the Offices of the Redevelopment Agency of the City of San Diego as Document No. _____ (the "Development Agreement"); and

Whereas, the Agency and McMillian NTC, LLC (hereinafter designated as "Principal") have entered into a NTC Park Improvement Agreement, dated _____, 2000 ("Park Agreement") whereby Principal agrees to install and complete certain designated park improvements, described as _____, (the "Work"); and

Whereas, under the terms of the Park Agreement, the Principal is required before entering upon the performance of the Work, to file a good and sufficient payment bond with the Agency and the City of San Diego to secure the claims to which reference is made in Civil Code Section 3082.

NOW, THEREFORE, McMillin LLC, as Principal and _____, as Surety, are bound unto the Agency and the City of San Diego and all contractors, subcontractors, laborers, materialmen and other persons employed in the performance of the Work and referred to in Civil Code § 3082, in an amount not to exceed in the aggregate sum of _____ (\$_____), such that if the Principal or its subcontractors fails to pay for materials or labor of any kind used in the performance of the Work, or for amounts due under the Unemployment Insurance Act with respect to such labor, that said Surety will pay the same in an amount not exceeding in the aggregate the face amount set forth above, and also in case suit is brought upon this bond, will pay, in addition to the face amount, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the Agency or the City of San Diego in successfully enforcing such obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Civil Code Section 3082, so as to give a right of action to them or their assigns in any suit brought upon this bond.

THE CONDITION OF THIS BOND IS THAT if the Principal and its subcontractors and assigns shall promptly make payment to those persons entitled to make claims under Civil Code § 3082, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

In witness whereof, this instrument has been duly executed by the Principal and Surety above named, on _____, 200_.

(Principal)

By _____

(Print Name & Title)

(Surety)

By _____
Attorney in Fact

APPROVED as to form and legality:

CASEY GWINN, City Attorney

By _____
Agency General Counsel

APPROVED:

Redevelopment Agency of the City of San Diego

By _____
Agency Executive Director

Agency _____

Address _____

Bond No. _____

Premium \$ _____

NTC PRIVATE (VERTICAL) IMPROVEMENTS

PERMIT PERFORMANCE BOND

(For Office, Hotel, or Residential Building Permits)

KNOW ALL MEN BY THESE PRESENTS:

That _____, as Principal and _____
_____, as Surety, are held and firmly bound unto The Redevelopment Agency
of the City of San Diego, and the City of San Diego, as Obligees, for an aggregate amount not to
exceed the sum of _____ (\$ _____), for the payment of which
Principal and Surety bind themselves, their successors and assigns, firmly by these presents.

Whereas, The Redevelopment Agency of the City of San Diego (the "Agency"), and McMillin
NTC, LLC, have entered into an agreement known as Naval Training Center Disposition and
Development Agreement, dated _____, 2000, which is on file in the Offices of the Redevelopment
Agency of the City of San Diego as Document No. _____ (the "Development Agreement"); and

Whereas, Principal has applied for a building permit to construct improvements on the NTC site,
consisting of _____, and as
more fully described in the drawings, plans and/or specifications submitted with the permit application
approved by the Agency dated _____ and entitled "_____
_____" (the Work);

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall perform the Work in accordance with the specified drawings, plans, and/or specifications in a timely and workman like manner, and perform the covenants and conditions contained in the permit about to be issued to the Principal by the City of San Diego for the Work, or reimburse the Obligee for any loss or damage directly caused by the failure of the Principal to perform the Work and the covenants and conditions of the permit, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Surety hereby stipulates and agrees that no reasonable change, extension of time, alteration or addition to the Work shall in any way affect the Principal's and Surety's obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

In any action brought to enforce the terms of this bond, the prevailing party shall recover its costs, including reasonable attorneys fees.

No cause of action shall accrue on this bond to or for the use of any person or entity other than the Obligees named herein.

In witness whereof, this instrument has been duly executed by the Principal and Surety above named, on _____, 200_.

(Principal)

By _____

(Print Name & Title)

(Surety)

By _____
Attorney in Fact

APPROVED as to form and legality:

CASEY GWINN, City Attorney

By _____
Agency General Counsel

APPROVED:

Redevelopment Agency of the City of San Diego

By _____
Agency Executive Director

Agency _____

Address _____

Bond No. _____

Premium \$ _____

NTC PRIVATE (VERTICAL) IMPROVEMENTS
PERMIT LABOR & MATERIAL PAYMENT BOND
(For Office, Hotel, or Residential Building Permits)

KNOW ALL MEN BY THESE PRESENTS:

That _____, as Principal and _____
_____, as Surety, are held and firmly bound unto The Redevelopment Agency
of the City of San Diego, and the City of San Diego, as Obligees, for an aggregate amount not to
exceed the sum of _____ (\$ _____), for the payment of which
Principal and Surety bind themselves, their successors and assigns, firmly by these presents.

Whereas, The Redevelopment Agency of the City of San Diego (the "Agency"), and McMillin
NTC, LLC, have entered into an agreement known as Naval Training Center Disposition and
Development Agreement, dated _____, 2000, which is on file in the Offices of the Redevelopment
Agency of the City of San Diego as Document No. _____ (the "Development Agreement"); and

Whereas, Principal has applied for a building permit to construct improvements on the NTC site,
consisting of _____, and as
more fully described in the drawings, plans and/or specifications submitted with the permit application
approved by the Agency dated _____ and entitled "
_____ " (the Work);

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal and its subcontractors shall promptly make payment to all persons supplying labor and material directly to the Principal or its subcontractors in the performance of the Work covered by the permit, then this obligation will be null and void, otherwise to remain in full force and effect.

This bond shall inure to the benefit of the persons supplying labor and materials to the Principal or its subcontractors for the work so as to give them a right of action on this bond.

Surety hereby stipulates and agrees that no reasonable change, extension of time, alteration or addition to the Work shall in any way affect the Principal's and Surety's obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

In any action brought to enforce the terms of this bond, the prevailing party shall recover its costs, including reasonable attorneys fees.

In witness whereof, this instrument has been duly executed by the Principal and Surety above named, on _____, 200_.

(Principal)

By _____

(Print Name & Title)

(Surety)

By _____
Attorney in Fact

APPROVED as to form and legality:

CASEY GWINN, City Attorney

By _____
Agency General Counsel

APPROVED:

Redevelopment Agency of the City of San Diego

By _____
Agency Executive Director

Agency _____

Address _____

Bond No. _____

Premium \$ _____

NTC SUBDIVISION (HORIZONTAL) IMPROVEMENTS

LABOR AND MATERIALS PAYMENT BOND

(For Streets, Water, Sewer Improvements on Subdivision Final Map)

(Government Code § 66499)

KNOW ALL MEN BY THESE PRESENTS: That

Whereas, The Redevelopment Agency of the City of San Diego (the "Agency"), and McMillin NTC, LLC, have entered into an agreement known as Naval Training Center Disposition and Development Agreement, dated _____, 2000, which is on file in the Offices of the Redevelopment Agency of the City of San Diego as Document No. _____ (the "Development Agreement"); and

Whereas, the Agency and McMillian NTC, LLC (hereinafter designated as "Principal") have entered into a Subdivision Improvement Agreement, dated _____, 2000 ("Improvement Agreement") whereby Principal agrees to install and complete certain designated public improvements, in Map Area _____, referred to as _____, (the "Work"); and

Whereas, under the terms of the Improvement Agreement, the Principal is required before entering upon the performance of the Work, to file a good and sufficient payment bond with the Agency and the City of San Diego to secure the claims to which reference is made in Civil Code Section 3082.

NOW, THEREFORE, McMillin LLC, as Principal and _____, as Surety, are bound unto the Agency and the City of San Diego and all contractors, subcontractors, laborers, materialmen and other persons employed in the performance of the Work and referred to in Civil Code § 3082, in an amount not to exceed in the aggregate sum of _____ (\$ _____), such that if the Principal or its subcontractors fails to pay for materials or labor of any kind used in the performance of the Work, or for amounts due under the Unemployment Insurance Act with respect to such labor, that said Surety will pay the same in an amount not exceeding in the aggregate the face amount set forth above, and also in case suit is brought upon this bond, will pay, in addition to the face amount, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the Agency or the City of San Diego in successfully enforcing such obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Civil Code Section 3082, so as to give a right of action to them or their assigns in any suit brought upon this bond.

THE CONDITION OF THIS BOND IS THAT if the Principal and its subcontractors and assigns shall promptly make payment to those persons entitled to make claims under Civil Code § 3082, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

In witness whereof, this instrument has been duly executed by the Principal and Surety above named, on _____, 200_.

(Principal)

By _____

(Print Name & Title)

(Surety)

By _____

Attorney in Fact

APPROVED as to form and legality:

CASEY GWINN, City Attorney

By _____
Agency General Counsel

APPROVED:

Redevelopment Agency of the City of San Diego

By _____
Agency Executive Director

Agency _____

Address _____

Bond No. _____

Premium \$ _____

NTC SUBDIVISION (HORIZONTAL) IMPROVEMENTS

PERFORMANCE BOND

(For Streets, Water, Sewer Improvements on Subdivision Final Map)

(Government Code § 66499)

KNOW ALL MEN BY THESE PRESENTS: That

Whereas, The Redevelopment Agency of the City of San Diego (the "Agency"), and McMillin NTC, LLC, have entered into an agreement known as Naval Training Center Disposition and Development Agreement, dated _____, 2000, which is on file in the Offices of the Redevelopment Agency of the City of San Diego as Document No. _____ (the "Development Agreement"); and

Whereas, the Agency and McMillian NTC, LLC (hereinafter designated as "Principal") have entered into a Subdivision Improvement Agreement, dated _____, 2000 ("Improvement Agreement") whereby Principal agrees to install and complete certain designated public improvements, in Map Area _____, referred to as _____ (the "Work"); and

Whereas, the Principal is required under the terms of the Improvement Agreement to furnish a bond for the faithful performance of that Improvement Agreement;

Now, therefore, we, the Principal and _____, as Surety, are held and firmly bound unto the Agency and the City of San Diego in the aggregate sum not to exceed _____ dollars (\$ _____) lawful money of the United States, for the payment of which sum will and truly to be made, we bind ourselves, our successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT if the above bounded Principal, his successors or assigns, shall perform the Work described in the Improvement Agreement in a timely and workman like manner, and shall indemnify and save harmless the Agency and the City, their officers, agents and employees, for any loss or damage directly caused by the failure of the Principal to perform the Work, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees incurred by Agency in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The Surety hereby stipulates and agrees that no reasonable change, extension of time, alteration or addition to the terms of the Improvement Agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

No cause of action shall accrue on this bond to or for the use of any person or entity other than the Obligees named herein.

In witness whereof, this instrument has been duly executed by the Principal and surety above named, on _____, 200_.

(Principal)

By _____

(Print Name & Title)

(Surety)

By _____
Attorney in Fact

APPROVED as to form and legality:

CASEY GWINN, City Attorney

By _____
Agency General Counsel

APPROVED:

Redevelopment Agency of the City of San Diego

By _____
Agency Executive Director

Agency _____

Address _____

Bond No. _____

Premium \$ _____

NTC EDUCATIONAL CORE (VERTICAL) IMPROVEMENTS

PERMIT PERFORMANCE BOND

(For Educational Core Improvements)

KNOW ALL MEN BY THESE PRESENTS:

That _____, as Principal and _____
_____, as Surety, are held and firmly bound unto The Redevelopment Agency
of the City of San Diego, and the City of San Diego, as Obligees, for an aggregate amount not to
exceed the sum of _____ (\$ _____), for the payment of which
Principal and Surety bind themselves, their successors and assigns, firmly by these presents.

Whereas, The Redevelopment Agency of the City of San Diego (the "Agency"), and McMillin
NTC, LLC, have entered into an agreement known as Naval Training Center Disposition and
Development Agreement, dated _____, 2000, which is on file in the Offices of the Redevelopment
Agency of the City of San Diego as Document No. _____ (the "Development Agreement"); and

Whereas, Principal has agreed to construct certain improvements in the Educational Core area
of the NTC site, consisting of _____, and as more fully
described in the drawings, plans and/or specifications submitted with the permit application approved
by the Agency dated _____ and entitled "_____
_____" (the Work);

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall perform the Work in accordance with the specified drawings, plans, and/or specifications in a timely and workman like manner, and guarantee the Work for one year after its acceptance by the Agency or owner, or reimburse the Obligee for any loss or damage directly caused by the failure of the Principal to perform the Work or warranty, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Surety hereby stipulates and agrees that no reasonable change, extension of time, alteration or addition to the Work shall in any way affect the Principal's and Surety's obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

In any action brought to enforce the terms of this bond, the prevailing party shall recover its costs, including reasonable attorneys fees.

No cause of action shall accrue on this bond to or for the use of any person or entity other than the Obligees named herein.

In witness whereof, this instrument has been duly executed by the Principal and Surety above named, on _____, 200_.

(Principal)

By _____

(Print Name & Title)

(Surety)

By _____
Attorney in Fact

APPROVED as to form and legality:

CASEY GWINN, City Attorney

By _____
Agency General Counsel

APPROVED:

Redevelopment Agency of the City of San Diego

By _____
Agency Executive Director

Agency _____

Address _____

Bond No. _____

Premium \$ _____

NTC EDUCATIONAL CORE (VERTICAL) IMPROVEMENTS

PERMIT LABOR & MATERIAL PAYMENT BOND

(For Educational Core Improvements)

KNOW ALL MEN BY THESE PRESENTS:

That _____, as Principal and _____
_____, as Surety, are held and firmly bound unto The Redevelopment Agency
of the City of San Diego, and the City of San Diego, as Obligees, for an aggregate amount not to
exceed the sum of _____ (\$ _____), for the payment of which
Principal and Surety bind themselves, their successors and assigns, firmly by these presents.

Whereas, The Redevelopment Agency of the City of San Diego (the "Agency"), and McMillin
NTC, LLC, have entered into an agreement known as Naval Training Center Disposition and
Development Agreement, dated _____, 2000, which is on file in the Offices of the Redevelopment
Agency of the City of San Diego as Document No. _____ (the "Development Agreement"); and

Whereas, Principal has agreed to construct certain improvements in the Educational Core area
on the NTC site, consisting of _____, and as
more fully described in the drawings, plans and/or specifications submitted with the permit application
approved by the Agency dated _____ and entitled "_____
_____" (the Work);

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal and its subcontractors shall promptly make payment to all persons supplying labor and material directly to the Principal or its subcontractors in the performance of the Work, then this obligation will be null and void, otherwise to remain in full force and effect.

This bond shall inure to the benefit of the persons supplying labor and materials to the Principal or its subcontractors for the Work so as to give them a right of action on this bond.

Surety hereby stipulates and agrees that no reasonable change, extension of time, alteration or addition to the Work shall in any way affect the Principal's and Surety's obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

In any action brought to enforce the terms of this bond, the prevailing party shall recover its costs, including reasonable attorneys fees.

In witness whereof, this instrument has been duly executed by the Principal and Surety above named, on _____, 200_.

(Principal)

By _____

(Print Name & Title)

(Surety)

By _____
Attorney in Fact

APPROVED as to form and legality:

CASEY GWINN, City Attorney

By _____
Agency General Counsel

APPROVED:

Redevelopment Agency of the City of San Diego

By _____
Agency Executive Director

Agency _____

Address _____

Bond No. _____

Premium \$ _____

NTC HISTORIC CORE (VERTICAL) IMPROVEMENTS

LABOR AND MATERIAL PAYMENT BOND

(For Historic Core Rehabilitation and Improvements)

KNOW ALL MEN BY THESE PRESENTS:

That _____, as Principal and _____
_____, as Surety, are held and firmly bound unto The Redevelopment
Agency of the City of San Diego, and the City of San Diego, as Obligees, for an aggregate amount not
to exceed the sum of _____ (\$ _____), for the payment of which
Principal and Surety bind themselves, their successors and assigns, firmly by these presents.

Whereas, The Redevelopment Agency of the City of San Diego (the "Agency"), and McMillin
NTC, LLC, have entered into an agreement known as Naval Training Center Disposition and
Development Agreement, dated _____, 2000, which is on file in the Offices of the Redevelopment
Agency of the City of San Diego as Document No. _____ (the "Development Agreement"); and

Whereas, Principal has agreed to construct certain improvements in the Historic Core area on
the NTC site, consisting of _____, referred
to in part ____, section ____ of the Development Agreement as more fully described in the drawings,
plans and/or specifications approved by the Agency dated _____ and entitled
" _____ " (the Work); and

Whereas, the Principal is required by California Civil Code Section 3247 to provide a payment bond consistent with Section 3248;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal or its subcontractors fail to pay any of the persons named in Section 3181, or amounts due under the Unemployment Insurance Code with respect to labor performed on the Work, or any amounts required to be deducted, withheld, and paid over to the Employment Development Department from wages of employees of the Principal and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to the Work, that the Surety will pay for the same, and also, in case suit is brought upon the bond, a reasonable attorney's fee, to be fixed by the court.

This bond shall inure to the benefit of any of the persons named in Civil Code Section 3181, so as to give a right of action to those persons or their assigns in any suit brought upon this bond.

Surety hereby stipulates and agrees that no reasonable change, extension of time, alteration or addition to the Work shall in any way affect the Principal's and Surety's obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

In witness whereof, this instrument has been duly executed by the Principal and Surety above named, on _____, 200__.

(Principal)

By _____

(Print Name & Title)

(Surety)

By _____
Attorney in Fact

APPROVED as to form and legality:

CASEY GWINN, City Attorney

By _____
Agency General Counsel

APPROVED:

Redevelopment Agency of the City of San Diego

By _____
Agency Executive Director

Agency _____

Address _____

Bond No. _____

Premium \$ _____

NTC HISTORIC CORE (VERTICAL) IMPROVEMENTS

PERFORMANCE BOND

(For Historic Core Rehabilitation and Improvements)

KNOW ALL MEN BY THESE PRESENTS:

That _____, as Principal and _____
_____, as Surety, are held and firmly bound unto The Redevelopment Agency
of the City of San Diego, and the City of San Diego, as Obligees, for an aggregate amount not to
exceed the sum of _____ (\$ _____), for the payment of which
Principal and Surety bind themselves, their successors and assigns, firmly by these presents.

Whereas, The Redevelopment Agency of the City of San Diego (the "Agency"), and McMillin
NTC, LLC, have entered into an agreement known as Naval Training Center Disposition and
Development Agreement, dated _____, 2000, which is on file in the Offices of the Redevelopment
Agency of the City of San Diego as Document No. _____ (the "Development Agreement"); and

Whereas, Principal has agreed to construct certain improvements in the Historic Core area on
the NTC site, consisting of _____,
referred to in part ____, section ____ of the Development Agreement as more fully described in the
drawings, plans and/or specifications approved by the Agency dated _____ and entitled
" _____ " (the Work);

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall perform the Work in accordance with the specified drawings, plans, and/or specifications in a timely and workman like manner, and guarantee the Work for one year after notice of completion or acceptance of the Work by the Agency or owner, or reimburse the Obligee for any loss or damage directly caused by the failure of the Principal to perform the Work or warranty, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Surety hereby stipulates and agrees that no reasonable change, extension of time, alteration or addition to the Work shall in any way affect the Principal's and Surety's obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

In any action brought to enforce the terms of this bond, the prevailing party shall recover its costs, including reasonable attorneys fees.

No cause of action shall accrue on this bond to or for the use of any person or entity other than the Obligees named herein.

In witness whereof, this instrument has been duly executed by the Principal and Surety above named, on _____, 200__.

(Principal)

By _____

(Print Name & Title)

(Surety)

By _____
Attorney in Fact

APPROVED as to form and legality:

CASEY GWINN, City Attorney

By _____
Agency General Counsel

APPROVED:

Redevelopment Agency of the City of San Diego

By _____
Agency Executive Director

ATTACHMENT NO. 12-B
FORM OF NTC PARK IMPROVEMENT AGREEMENT
[BEHIND THIS PAGE]

NTC PARK IMPROVEMENT AGREEMENT

THIS AGREEMENT is made and entered into between the Redevelopment Agency of The City of San Diego (the "Agency"), The City of San Diego (the "City"), and McMillin NTC, LLC, a Delaware limited liability company (the "Master Developer").

RECITALS

- A. Master Developer and Agency have entered into a certain Disposition and Development Agreement (the "DDA") on file in the Office of the Agency as Document No. D-_____. The DDA provides for the disposition of certain real property within the Naval Training Center ("NTC") Redevelopment Project to the Master Developer in exchange for the construction and installation of public infrastructure, the construction of new buildings and improvements, including public Park Improvements, and the rehabilitation and reuse of existing buildings within a "Historic Core" area, all in a manner which is specifically described in the DDA.
- B. In the DDA, Master Developer has agreed to complete Park Improvements in the amount of \$14,779,800 at the location shown on Exhibit A to this Agreement and within a time frame and upon a schedule as set forth in section 8.2 of the DDA.
- C. In section 6.11 of the DDA, Master Developer has agreed to secure performance of the obligations described above in Recital B above in three phases. Security for the Phase One Park Improvements consists of posting of a performance bond for the construction of \$5,000,000 of Phase One Park Improvements, to be provided upon the first occurrence of: (a) recordation of the Final Map for any of Map Areas 1, 2, 3, or 5; or (b) twenty-one months after Precise Plan Approval. Security for the Phase Two Park Improvements consists of posting a performance bond for the construction of an additional \$5,000,000 of Park Improvements (for a total of \$10,000,000), to be provided upon the first occurrence of: (a) issuance of building permits for more than 119 housing units (single family or rental) in Map Area 1 or Map Area 2; or (b) issuance of a building permit for the third or fourth office or research and development building to be constructed in Map Area 3; or (c) twenty-seven (27) months after the recordation of the Final Map for Map Area 1, 2, 3 or 5, whichever occurs first; or (d) forty-eight (48) months after Precise Plan Approval. Security for the Phase Three Park Improvements consists of posting a performance bond for the construction of an additional \$4,779,800 of Park Improvements (for a total of \$14,779,800), to be provided upon the first occurrence of: (a) approval of building permits for more than 179 housing units (single family or rental) in Map Area 1 or Map Area 2; or (b) issuance of a building permit for the fifth or sixth office or research and development building to be constructed in Map Area 3; or (c) issuance of a building permit for the second hotel to be constructed in Map Area 7 or Map Area 8; or (d) thirty-

six months after the recordation of the Final Map for Map Area 1, 2, 3 or 5, whichever occurs first; or (e) fifty-seven months after Precise Plan Approval.

- D. In section 8.2 of the DDA, Master Developer has agreed to complete construction of the Park Improvements in accordance with the following schedule of performance: Subject to approval of a General Development Plan for the Park, and in accordance with this Agreement, Master Developer shall commence and diligently complete the design and construction of the Park Improvements in accordance with the following schedule, or sooner if required by the Precise Plan and the Development Permits or any condition of Map approval (with "Year 1" signifying the end of the twelve-month period following the date Master Developer satisfies all Phase Three Conditions with respect to either Map Area 5 or Map Area 6, whichever occurs first; provided, however, that recordation of the Final Map for Map Area 5 or Map Area 6 shall not be required, so long as: (1) Master Developer has satisfied all requirements and has made all submittals requested by the appropriate City staff for the recordation of the Map for Map Area 5 or Map Area 6; (2) Master Developer is making diligent and continuous efforts towards the recordation of such Map; and (3) Master Developer has also satisfied all requirements for the recordation of the Final Map for any of Map Areas 1, 2, 3, 4, 7 or 8):

<u>Area of Park</u>	<u>Commence</u>	<u>Complete</u>
14 Acres	Year 2	36 months after Commencement
13 Acres	Year 4	36 months after Commencement
13 Acres	Year 6	36 months after Commencement

- E. The purpose of this Agreement is to describe the obligations of Master Developer for the construction of the Park Improvements.

ARTICLE I - OBLIGATIONS AND DURATION

- 1.1 The DDA is incorporated by reference into this Agreement, including all defined terms contained within the DDA, unless specifically defined differently in this Agreement. This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and it shall be effective until the Park Improvements are completed. Notwithstanding the forgoing commitment by Master Developer to complete the Park Improvements, this Agreement is not intended, nor shall it be interpreted or applied in a manner which would alter, supercede or compromise the rights of the Parties under Part 9 of the DDA with respect to remedies and termination. The mutual covenants of the Parties with regard to remedies and termination under the DDA are specifically incorporated by reference into this Agreement and apply as a qualification to Master Developer's obligations herein.

- 1.2. Master Developer agrees to secure performance of and complete the Total Park Improvements in accordance with the time schedule described in sections 6.11 and 8.2 of the DDA.

ARTICLE II - PROJECT COST

- 2.1 **Estimated Design and Construction Cost.** The estimated design and construction cost of the Park Improvements is approximately \$14,779,800 ("Estimated Design and Construction Cost"), which amount shall include a 10% contingency for design and construction cost overruns. It is acknowledged by the Parties that the Estimated Design and Construction Cost is based upon preliminary cost estimates, and is not the result of competitive bids, and is subject to change. Any excess contingency monies not expended on design or construction cost overruns, shall be utilized to fund additive or deductive alternates not originally included in the base bid.
- 2.2 **Obligation to Deliver Park.** Master Developer agrees to deliver the Park Improvements (hereinafter referred to as the "Project") to Agency and City upon and subject to the provisions and conditions of this Agreement as follows:
 - 2.2.1 **Park Design.** Master Developer agrees to design a GDP and prepare an Estimated Budget for the Project which shall include all Park Improvements identified and incorporated into the Project pursuant to the park planning and approval process described below in Section 3.4 of this Agreement.
 - 2.2.2 **Master Developer's Financial Commitment.** Master Developer's financial commitment for the project, pursuant to obligations set forth in the DDA and this Agreement, is to fund construction of those Park Improvements identified in the Estimated Budget. However, Master Developer shall only be financially responsible for Park Improvements identified in the Estimated Budget up to \$14,779,800, plus 10% advancement of funds (subject to reimbursement) for any Additional Requirements imposed as a consequence of the park planning and approval process described below in Section 3.4 of this Agreement. City must undertake, with its own separate funds, to finance and construct other portions of the Project which may be added to the Estimated Budget and which otherwise cause the Estimated Budget to exceed the total funds committed by Master Developer in the DDA and this Agreement.
 - 2.2.3 **Master Developer's Construction Commitment.** Master Developer's commitment to construct Park Improvements is qualified by the financial commitment described above in Section 2.2.2. City must undertake, on its own, to construct other portions of the Project which may be added to the Estimated

Budget and which otherwise cause the Estimated Budget to exceed the total funds committed by Master Developer in the DDA and this Agreement.

2.3 Actual Design and Construction Cost. The actual design and construction cost shall include, as hereinafter provided, Indirect Costs, Direct Costs, costs of Change Orders, and Other Cost Increases defined below ("Actual Design and Construction Costs") which are incurred by Master Developer.

2.3.1 Indirect Costs. Indirect Costs include, but shall not be limited to, any costs actually incurred by Master Developer for the Park's environmental CEQA review, engineering, design, soils testing, insurance premiums, bonds, preparing plans and specifications and bid documents, and soliciting and reviewing bids for the construction of the Park Improvements, and awarding and administering all contracts related to the construction of the Park (including contract supervision by Developer in an amount equal to 5 percent of Construction Costs, which shall be excluded from Construction Costs when calculating such amount), City's Project administration, all inspection costs (excluding building department but including all special inspections) not to exceed 2 ½ percent of all direct costs (as defined below in section 2.3.2 of this Agreement).

2.3.2 Direct Costs. Direct Costs shall include, but are not limited to, costs related to all costs of labor, materials, rough and final grading, surveying, equipment, deconstruction/demolition of existing structures, and costs associated with the provision of public water and sewer to serve the Park from the closest public point of connection.

2.3.3 Change Orders. A "Change Order" is a written order, approved by the City, from any Master Developer authorized representative ("Master Developer's Agent") to the contractor performing the work authorizing a change in the work to be performed. Change Orders may be needed where changes in the Project are made necessary due to unanticipated conditions arising during construction or changes in the plans and specifications after construction begins. City must approve all Change Orders in writing and deliver such Change Orders to Master Developer's Agent as identified in section 9.1 herein.

2.3.3.a Approval of Change Orders. Master Developer's Agent shall notify City's Project Manager, described below, of the need for a Change Order and City's Project Manager shall either approve or reject said Change Order within five working days of receiving Master Developer's Agent's written notice. City staff may approve Change Orders. City's approval shall not be unreasonably withheld. City shall exercise good faith, and best efforts to grant approval(s) promptly. Should the City fail to respond to Master Developer's Agent's request for a Change Order within the

prescribed period of time, following proper notice by Master Developer's Agent, the Change Order request shall be deemed approved by the City. For purposes of notification with regard to Change Orders, the City's Project Manager shall mean the person responsible for overseeing Project design and construction.

2.3.3.b Minor Changes. Notwithstanding the above, Master Developer shall have the authority, without City or Agency consent, to order minor changes in the work which do not cost more than \$1,000 per change, and do not lengthen the Project's construction period by more than three days. Master Developer shall, within twenty-four hours prior to implementation of any such change, notify the City's Project Manager (or Supervisor if Project Manager is not available) of the nature and cost of the change. The total amount of minor changes permitted pursuant to this section shall not exceed \$10,000 without City's prior written approval.

2.3.4 Other Cost Increases. Notwithstanding anything herein which may provide to the contrary, the Parties acknowledge that the Actual Design and Construction Cost may be increased (a) due to actual bids received exceeding the Estimated Budget; (b) due to acts of God, acts of any governmental authority, the elements, war, litigation, shortages of material, labor strikes, inflation, later commonly accepted or adopted higher standards and specifications of construction, concealed or unknown conditions encountered in the completion of the Project, or other cause beyond Master Developer's control, (c) due to Direct or Indirect Costs being greater than estimated, or (d) due to other factors not the result of unreasonable conduct by Master Developer. The Estimated Budget may be increased by the amount of such increases, subject to approval by City and Agency, which approval shall not be unreasonably withheld.

2.3.4.a Increases of 10% or less. If an increase in the Estimated Budget is caused as result of a change to the General Development Plan ("GDP") imposed by the City or the California Coastal Commission, and such changes cause the Estimated Budget to exceed \$14,779,800 by 10% or less, then such amount shall be treated as an Additional Requirement, as more fully described below in section 5.1 of this Agreement. If any such increase will cause the Actual Design and Construction Cost, as defined herein, to exceed the total funds committed by Master Developer in the DDA for the Project (\$14,779,800), then Agency shall treat such increase as an Additional Requirement as defined in section 9.15 of the DDA and shall reimburse Master Developer for such additional costs in the manner described in Article V of this Agreement and section 9.15 of the DDA.

2.3.4(b) Increases of more than 10%. If an increase in the Estimated Budget is caused as result of a change to the GDP imposed by the City or the California Coastal Commission, and such changes cause the Estimated Budget to exceed \$14,779,800 by more than 10%, then City must undertake, with its own separate funds, to finance and construct other portions of the Project which may be added to the Estimated Budget and which otherwise cause the Estimated Budget to exceed the total funds committed by Master Developer in the DDA and this Agreement.

ARTICLE III - PROJECT DESIGN AND BUDGET

- 3.1 Plans and Specifications.** This Agreement has been prepared precedent to the preparation of final Park site improvement and grading plans, landscaping and irrigation plans, and other construction-related plans and documents. Master Developer agrees to provide complete plans, specifications, and bid documents for the design and construction of the Project in three phases as described in Recitals D and E.
- 3.2 Selection of Consultant.** Within sixty days after approval of Precise Plan Approval, Master Developer shall select a Consultant to design the Project in three phases. Master Developer shall promptly deliver to City the Consultant's name and qualifications. Within ten days after receiving the Consultant's name and qualifications, the City shall notify Master Developer in writing of the acceptance or objections to the selected Consultant. If the City objects to the Consultant, the City and Master Developer shall mutually select a Consultant.
- 3.3 Preparation of General Development Plan and Estimated Budget.** Master Developer's Consultant shall complete a GDP and an Estimated Budget ("Estimated Budget") covering design and construction of the Project in three phases. The GDP and Estimated Budget shall be delivered to City within six months after Precise Plan Approval.
- 3.4 Final Approval of GDP and Estimated Budget.** Master Developer's Consultant shall present the GDP and Estimated Budget to the Park Planning Subcommittee of the Citizen's Implementation Advisory Committee, Environmental Analysis Section of City, applicable Area Committee, Design Review Committee, City's Park and Recreation Board, the City's Planning Commission, the City Council, the California Coastal Commission, and any other state and/or federal resource agency with jurisdiction to approve development of the Park.

3.4.1 Changes to GDP. As a result of any presentations described in section 3.4 above, City may request changes in the GDP, if applicable, and Master Developer shall make those changes.

3.4.2 Changes to Plans and Specifications. Promptly after the presentation of the GDP to the Park Planning Subcommittee of the Citizen's Implementation Advisory Committee, Environmental Analysis Section of City, applicable Area Committee, Design Review Committee, City's Park and Recreation Board, the City's Planning Commission, the City Council, and the California Coastal Commission, Master Developer's Consultant shall prepare and deliver to City working drawings and specifications ("Plans and Specifications") consistent with the approved GDP. City agrees to diligently review the Plans and Specifications and provide City's written comments to Master Developer within 60 days of the date such Plans and Specifications are delivered to the City in accordance with the notice provisions in Article IX of this Agreement. Approval shall not be unreasonably withheld. Plans and Specifications shall include the City's standard drawings and specifications. Master Developer's Consultant shall, if requested by City, make changes to the Plans and Specifications subject to the following:

3.4.2.a Increases of 10% or less. If an increase in the Estimated Budget Cost is caused as result of a change imposed by the City to the Plans and Specifications and such change causes the Estimated Budget to exceed \$14,779,800 by 10% or less, then such amount shall be treated as an Additional Requirement, as more fully described in section 5.1 of this Agreement. If any such increase will cause the Actual Design and Construction Cost, as defined herein, to exceed the total funds committed by Master Developer in the DDA for the Project (\$14,779,800), then Agency shall treat such increase as an Additional Requirement as defined in section 9.15 of the DDA and shall reimburse Master Developer for such additional costs in the manner described in Article V of this Agreement and section 9.15 of the DDA.

3.4.2(b) Increases of more than 10%. If an increase in the Estimated Budget is caused as result of a change imposed by the City to the Plans and Specifications and such change causes the Estimated Budget to exceed \$14,779,800 by more than 10%, then City must undertake, with its own separate funds, to finance and construct other portions of the Project which may be added to the Estimated Budget and which otherwise cause the Estimated Budget to exceed the total funds committed by Master Developer in the DDA and this Agreement.

3.4.3. Reallocation of Savings; Costs in Excess of Budget. Master Developer shall reallocate savings realized with respect to particular line items on the proposed

Project budget to pay for additive or deductive bid alternates (if any). Master Developer must obtain City's approval of any reallocation of savings. City shall respond to a request of any reallocation of savings by the Master Developer within thirty days.

3.5 Issuance of Necessary Permits. The Parties acknowledge that the construction work to be performed on the Project by Master Developer in compliance with this Agreement is subject to the prior issuance of building, land development, and/or public improvement permits. In the event that City, or any other governmental agency, unreasonably refuses to issue the permit(s) necessary to authorize the work to be performed or if the permit(s) is unreasonably canceled or suspended, then Master Developer's obligation to the Agency to complete construction of the Phase One, Phase Two, or Phase Three Park Improvements within the time frames set forth in Recital D of this Agreement and section 8.2 of the DDA may be delayed in accordance with the "Force Majeure Delay" provisions set forth in section 10.2 of the DDA.

3.5.1 Master Developer agrees to submit plans and specifications and to apply for any grading, demolition, or building permits required by the City to complete the work described in this Agreement.

ARTICLE IV - SOLICITATION OF BIDS

4.1 Solicitation of Bids. Other than for rough grading of the Project site, Master Developer shall solicit bids for the construction of each Phase of the Project. Bids shall be solicited from at least three qualified contractors and the bidding response time shall not be less than twenty working days.

4.2 Bid Opening and Award of Contract. The City's representative(s) shall be provided with a copy of the tabulation of bid results. Contract(s) for the construction of the Project shall be awarded by Master Developer to the qualified contractor(s) submitting the lowest responsible bid(s), as determined by Master Developer. Notwithstanding the foregoing bidding process, if the Park Improvements are funded by proceeds from the Community Facilities District, the bidding procedures set forth in this Article will be superceded and replaced by the bidding procedures set forth in the Acquisition and Funding Agreement approved in connection with formation of the Community Facilities District.

ARTICLE V - REIMBURSEMENT FOR ADDITIONAL REQUIREMENTS

5.1 Right to Reimbursement. Agency shall reimburse Master Developer for any amount of the Project Cost which qualifies as an Additional Requirement, as described in sections 2.2.2, 2.3.4.a, and 3.4.2.a of this Agreement.

- 5.2 Source and Method of Reimbursement.** Master Developer shall be entitled to reimbursement from the Agency for the amount specified above in section 5.1 from (a) future tax increment or the proceeds of tax increment financing from future tax increment generated within the NTC Redevelopment Project Area, or (b) the Agency's share of revenue participation. Reimbursement shall be distributed in accordance with section 9.15 in the DDA.
- 5.3 Priority of Reimbursement for Project.** Agency agrees that upon the date when any reimbursement obligation of the Agency has been established pursuant to implementation of this Agreement, from that date forward, the Agency's obligation to reimburse Master Developer from the sources of revenue set forth above in section 5.2 will take priority over any other non-committed use of those sources of revenue.
- 5.4 Record-keeping.** Master Developer shall keep an accurate record of the actual cost of the Project in accordance with generally accepted accounting procedures. Master Developer shall allow the City's authorized representatives to examine and provide copies of any records relevant to the verification of the actual cost of constructing the Project, including, without limitation, all contract bids and invoices. Any changes that occur during the course of construction shall be properly documented. Backup documentation shall be kept by Master Developer for five years after their completion of the Project and be provided to City, upon request, for its review.

ARTICLE VI - CONSTRUCTION

- 6.1 Standards of Construction.** All construction for the Project shall be accomplished in a good and workmanlike manner, lien free and in compliance with the approved plans (working drawings and specifications) and current editions of *Standard Specifications for Public Works Construction* (including the City of San Diego standard special provisions) ("Green Book") and City of San Diego Standard Drawings. In the event of conflict between the approved plans and the Green Book and/or standard drawings, the former will govern.
- 6.2 Construction Period.**
- 6.2.1 Preconstruction Meeting.** There shall be a pre-construction meeting to review the City's inspection requirements. The preconstruction meeting participants shall consist of representatives of the inspection team as set forth in section 6.3 herein.
- 6.2.2 Commencement.** Upon Precise Plan Approval and after award of the contract by Master Developer as provided herein in section 4.2, Master Developer shall cause construction to commence Phase One Park Improvements in accordance with the schedule set forth in Recital D of this Agreement.

6.2.3 Completion. The Project shall be deemed complete at such time as it is finally inspected and accepted by the inspection team identified below for each phase of the Project. Any minor correction items (the "Punch List") which are noted during the Walk-Through Inspection, described below, shall be corrected within sixty days after the Walk-Through Inspection or at a later time agreed upon by the Inspection Team Parties. As soon as practicable after Project acceptance by City, Master Developer shall provide as-built drawings by the Consultants verifying that the Project was constructed in accordance with the City approved plans. As soon as practicable, after the Project is complete, Agency shall file a Notice of Completion.

6.3 Inspection. The Project shall be inspected by a team composed of representatives from (a) the Engineering and Capital Projects Department, (b) the Park and Recreation Department, (c) Planning and Development Review Department, (d) Master Developer, and (e) the Project's Design Civil Engineer and/or Landscape Architect ("Consultants") at the stages listed below:

Park Inspection Stages

- A. Deconstruction/Demolition of Existing Structures.
- B. Rough grading and drainage certification.
- C. Mainline irrigation pressure test.
- D. Hardscape (staking and layout).
- E. Finish grading and soil preparation.
- F. Irrigation coverage test.
- G. Selection of plant material at nursery.
- H. Plant placement approval.
- I. Pre-assembled equipment and/or on-site construction facilities.
- J. A walk-through inspection shall be conducted within ten working days after notice to City by Master Developer of completion of the construction requirements for the Project ("Walk-Through Inspection"). This inspection will be conducted by the Inspector from the Park and Recreation Department, the Resident Engineer of the Engineering and Capital Projects Department, and

Master Developer's construction superintendent. The purpose of this inspection is to confirm that the Project is complete and ready for a Final Inspection. A list of items specifying corrections to be made ("Punch List"), if any, shall be prepared by the CITY during the Walk-Through Inspection. The Punch List shall be presented to Master Developer at the conclusion of the inspection. Master Developer shall cause the items listed on the Punch List to be corrected prior to the Final Inspection. The date the Walk-Through Inspection is conducted will start the plant maintenance period.

K. The "Final Inspection" for the Project shall be scheduled and conducted (provided Master Developer has corrected the Punch List Items) within sixty calendar days following the date of the Walk-Through Inspection.

6.4 Plant Maintenance Period. The plant maintenance period shall commence on the date the Walk-Through Inspection is conducted. Master Developer shall maintain the plants and continue plant maintenance until Acceptance of the Project by City or for ninety calendar days after the date of the Walk-Through Inspection, whichever event first occurs. Thereafter, the City shall be responsible for all maintenance as provided for below.

6.5 Acceptance. Upon completion of the work required on the Punch List, the Agency and City shall accept the Project as being complete. Acceptance by Agency and City of the completed Project shall not be unreasonably withheld. Upon completion of the work required by the Punch List, and Acceptance by the City, Agency will file a Notice of Completion with the County Recorder of San Diego County. Until such time as the City has accepted the Project and exonerated the bonds posted for the Project, the Project shall not be opened for use by the general public. If City, however, directs Master Developer to open the Project before these events have occurred, then the date of the City's correspondence directing the Project to be opened shall constitute the date of Acceptance, however Master Developer shall *only* be responsible for completing Punch List items pursuant to the satisfaction of the City and Agency.

6.6 City to Provide Maintenance. Upon Acceptance of the Project, the City shall be responsible for all irrigation and maintenance of plant material and Project improvements. Master Developer shall not be responsible for the repair of any of the Project improvements, the replacement of any plant material as a result of the City not performing its irrigation and maintenance responsibility, or for any damage resulting from the public's access to the Project. Should the City request that Master Developer perform the City's maintenance function for a certain period of time, a separate contract will be entered into for this purpose. The cost for performing this additional maintenance shall not be included in the Total Project Cost.

- 6.7 **Dedication Ceremony.** Master Developer shall have the opportunity to conduct and host a public groundbreaking and/or dedication ceremony or similar ceremony ("Ceremony") on the Project site at any time prior to commencement of construction or following the Final Inspection of the Project. Any groundbreaking or dedication ceremony shall be coordinated with City and Agency and shall be conducted consistent with published City guidelines which are applicable to such events. Master Developer shall be responsible to restore or repair any damage to the Project site attributable to a Master Developer sponsored Ceremony.
- 6.8 **Turnover of Documents and Bond Exoneration.** Upon Acceptance of the Project by the City and Agency, Master Developer shall provide to the City reproducible copies of the "as-built drawings" and related materials which would ordinarily be applicable to the City's operation and maintenance of the improvements. In addition, upon Acceptance, the City and/or Agency agree to expeditiously exonerate a partial release (90 percent) of all bonds associated with the Project. The remainder of the bond amount (10 percent) shall be released at the end of the warranty period, one year after Acceptance of the Project by City and Agency.

ARTICLE VII - INDEMNIFICATION, INSURANCE, AND WARRANTIES

- 7.1 Master Developer agrees to defend, indemnify, protect, and hold harmless the Agency and City, its agents, officers, and employees, from and against all claims, demands, causes of action, liability or loss asserted or established for damages or injuries to any person or property. The indemnification and hold harmless obligation contained in this section includes claims, demands, causes of action, liability or loss asserted or established by the Master Developer's employees, agents, or officers, or judgments arising directly or indirectly out of obligations, work, or services involved in the performance of this Agreement. Claims, demands, causes of action, liability, or loss that arise from, are connected with, or are caused or claimed to be caused by the acts or omissions of the Master Developer, the Master Developer's agents, officers, and employees are covered. Also covered are the claims, demands, causes of action, liability, or loss arising from, connected with, caused by, or claimed to be caused by the active or passive negligence acts or omissions of the City or Agency, its agents, officers, or employees which may be in combination with the negligence of the Master Developer, its employees, agents, or officers, or any third party. The Master Developer's duty to defend, indemnify, protect, and hold harmless shall not include any claims or liabilities arising from the established sole negligence or sole willful misconduct of the City or Agency, its agents, officers or employees.
- 7.2 Master Developer or its assignees shall, at their sole cost and expense, at all times during the term of this Agreement, maintain in full force and effect, for the joint benefit of Master Developer or its assignees and City as co-insureds, a broad form comprehensive coverage policy of public liability insurance. The policy shall name Master Developer or

its assignees and City as insureds and indemnify against liability for damage or injury to the property or person (including death) of any agent, employee, licensee, or invitee of Master Developer or any other person entering upon or using the Land or any part thereof, and arising from the use thereof. Such insurance policy or policies shall be maintained on the minimum basis of \$1,000,000 for damage to property or bodily injury to or death of any person. Such insurance policy or policies shall be in addition to the indemnification provision of section 7.1 above, and also shall be stated to be primary and non-contributing with any insurance which may be carried by City. Master Developer shall deliver to City the certificate of each insurance carrier as to each such insurance policy seven days prior to commencement of any grading or construction of the Park pursuant to the terms of this Agreement. Such insurance shall be kept in full force and effect until twelve months after completion of the Park.

- 7.3 Master Developer shall guarantee all work on the Project against defective workmanship and materials furnished by Master Developer for a period of one year, except that shrubs, turf and groundcover shall be guaranteed for a period of ninety days, from the date of Acceptance by City and Agency. Master Developer shall replace or repair any such defective work in a manner satisfactory to City and Agency after notice to do so from City and Agency and within the time specified in the notice.

ARTICLE VIII - MEDIATION

- 8.1 **Mandatory Non-binding Mediation.** If a dispute arises out of, or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the Parties agree to first endeavor to settle the dispute in an amicable manner, using mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association or any other neutral organization agreed upon before having recourse in a court of law.
- 8.2 **Mandatory Mediation Costs.** The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the Parties, unless they agree otherwise.
- 8.3 **Selection of Mediator.** A single mediator that is acceptable to both Parties shall be used to mediate the dispute. The mediator will be knowledgeable in construction aspects and may be selected from lists furnished by the American Arbitration Association ("AAA") or any other agreed upon mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party. If the mediator is selected from a list provided by AAA, the initiating party shall concurrently file with AAA a "Request for Mediation" along with the appropriate fees; a list of three requested mediators marked in preference order, and a preference for available dates.

8.3.1 If AAA is selected to coordinate the mediation ("Administrator"), within ten working days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order, after striking any Mediators to which they have any factual objection, and a preference for available dates. If the opposing party strikes all of initiating Party's preferred Mediators, opposing Party shall submit a list of three preferred Mediators listed in preference order to initiating Party and Administrator. Initiating Party shall file a list of preferred Mediators *listed* in preference order, after striking any Mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a Mediator.

8.3.2 The Administrator will appoint or the Parties shall agree upon the highest, mutually preferred, Mediator from the individual Parties' lists who is available to serve within the designated time frames.

8.3.3 If the Parties agree not to use AAA, then a mutually agreed upon mediator, date and place for the mediation shall be agreed upon.

8.4 **Conduct of Mediation Sessions.** Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

8.4.1 Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

8.4.2 Any agreements resulting from mediation shall be documented, in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

ARTICLE IX - NOTICES

9.1. **Notices.** Any demand upon or notice required or permitted to be given by one Party to the other Party shall be in writing. Except as otherwise provided by law, any demand upon or notice required or permitted to be given by one Party to the other Party shall be effective

(a) on personal delivery, (b) on the second business day after mailing by certified or registered U.S. Mail, return receipt requested, (c) on the succeeding business day after mailing by Express Mail or after deposit with a private delivery service of general use (e.g., Federal Express) postage or fee prepaid as appropriate, or (d) upon successful transmission of facsimile, addressed to the Party at the address shown below:

Notice to the City shall be addressed to:

Director, Park and Recreation Department
City of San Diego
City Administration Building
202 "C" Street, M.S. #9B
San Diego, California 92101
Facsimile No: (619) 236-6219

AND

Notice to the Master Developer shall be addressed to:

McMillin-NTC, LLC
2727 Hoover Avenue
National City, CA 91950

Notice to the Agency shall be addressed to:

Redevelopment Agency of the City of San Diego
Attn: NTC Project Manager
City Administration Building
202 C Street
San Diego, CA 92101

Notice of change of address shall be given by written notice in the manner set forth in this paragraph.

ARTICLE X - MISCELLANEOUS

- 10.1 Headings.** All article headings are for convenience only and shall not affect the interpretation of this Agreement.

- 10.2 Non-Assignment Except in Accordance with the DDA.** The Master Developer shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without the Agency's prior written approval and as provided for in the DDA. Any assignment in violation of this paragraph shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of the Agency. In no event shall any putative assignment create a contractual relationship between the Agency and any putative assignee.
- 10.3 Covenants and Conditions.** All provisions of this Agreement expressed as either covenants or conditions on the part of the City, Agency, or the Master Developer, shall be deemed to be both covenants and conditions.
- 10.4 Compliance with Controlling Law.** The Master Developer shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement. The laws of the State of California shall govern and control the terms and conditions of this Agreement.
- 10.5 Jurisdiction, Venue, and Attorney's Fees.** The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney's fees in addition to any other award made in such suit or proceeding.
- 10.6 Integration.** This Agreement and the exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties or an amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.
- 10.7 Counterparts.** This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all parties had executed the same page.
- 10.8 No Waiver.** No failure of the Agency, the City or the Master Developer to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term, or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

10.9 **Severability.** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

10.11 **Drafting Ambiguities.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this Agreement, and the decision of whether to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

10.12 **Signing Authority.** The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity, and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

IN WITNESS WHEREOF, this Agreement is executed by the Agency, the City, and the Master Developer on this _____ day of _____, 2000.

**Redevelopment Agency of
The City of San Diego**

DATED: _____

By: _____
Hank Cunningham
Deputy Executive Director

**McMillin-NTC, LLC,
a Delaware limited liability company**

DATED: 6-9-00

By: Walter Heine
By: Kimberly K. Elliott

**The City of San Diego,
a municipal corporation**

DATED: _____

By: _____
Marcia C. McLatchy
Director, Park and Recreation

(Attach notary certificates.)

Approved as to form and legality
this ____ day of _____, 2000.

CASEY GWINN
Agency General Counsel

By: _____
Richard A. Duvernay
Deputy General Counsel

RAD:lc - 6/6/00
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ATTACHMENT NO. 13-A

FORM OF AGENCY CERTIFICATE OF COMPLETION
(MCMILLIN'S ASSIGNEES OTHER THAN FOUNDATION)

[BEHIND THIS PAGE]

000393

OFFICIAL BUSINESS
Document entitled to free
recording per Government
Code Section 6103.

Recording Requested By:
THE REDEVELOPMENT AGENCY OF THE CITY
OF SAN DIEGO
City Administration Building
202 C Street
San Diego, California 92101
Attention: NTC Project Manager

SPACE ABOVE THIS LINE
FOR RECORDER'S USE

AGENCY CERTIFICATE OF COMPLETION

This Agency Certificate of Completion (hereinafter referred to as this "Certificate") is being executed by the Redevelopment Agency of the City of San Diego ("Agency"), a public body, corporate and politic, with reference to the following:

A. The Agency and McMillin-NTC, LLC (the "Master Developer") entered into that certain Disposition and Development Agreement dated [DATE OF DDA TO BE INSERTED] (the "DDA"), pursuant to which the Agency agreed to convey to the Master Developer certain real property in the City of San Diego described in the Legal Description which is attached hereto and incorporated herein by this reference (the "Property"), and the Master Developer agreed to cause the Property to be redeveloped pursuant to the DDA. The DDA is a public document, on file with the Secretary of the Agency, and is incorporated herein by this reference.

B. Agency, Master Developer and [INSERT NAME OF ASSIGNEE] ("Developer") entered into that certain Assignment and Assumption Agreement dated as of [INSERT DATE OF ASSIGNMENT AND ASSUMPTION AGREEMENT], pursuant to which Master Developer assigned to Developer certain of its rights and obligations as to the Property and Developer agreed to redevelop the Property pursuant to the DDA.

C. Pursuant to the Assignment and Assumption Agreement, Master Developer conveyed [a leasehold interest in] the Property to Developer and Developer has redeveloped the Property.

Certificate of Completion (Assignee)
Page 1 of 3

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5-2-00

000394

D. Section 6.15 of the DDA provides that the Agency shall issue a Certificate of Completion upon completion of all development of the Property required by the DDA, and that the Certificate shall be, and shall so state, conclusive determination of satisfactory completion of the construction or rehabilitation of such Property required by the DDA.

E. The Developer has requested the Agency to issue this Certificate.

NOW, THEREFORE, the Agency hereby certifies as follows:

1. The [construction of the improvements on] [rehabilitation of] the Property has been satisfactorily completed by Developer in accordance with the terms and conditions of the DDA.
2. This Certificate covers business of the Agency within the meaning of Section 6103 of the California Government Code.
3. Recordation of this Certificate is authorized by California Health and Safety Code Sections 33438 and 33439.
4. After issuance of this Certificate of Completion, the provisions of the DDA shall no longer apply to the Property covered by this Agency Certificate of Completion, with the exception that Developer, its successors and assigns shall use the Property only for those uses specified in the following documents: the Redevelopment Plan; the Reuse Plan, including the Scope of Development attached as Appendix "H"; the Precise Plan and all applicable Development Permits; the Entitlements; the applicable Grant Deed or Ground Lease for the Property, as the case may be; the Participation Agreement; and any applicable Agreement Affecting Real Property.

Certificate of Completion (Assignee)
Page 2 of 3

IN WITNESS WHEREOF, the Agency has executed this Certificate as of the date set forth below.

REDEVELOPMENT AGENCY
OF THE CITY OF SAN DIEGO

Dated: _____

By: _____
Hank Cunningham
Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY
ON THIS _____ day of

_____, _____

CASEY GWINN
Agency General Counsel

By: _____
Richard A. Duvernay, Deputy

KANE, BALLMER AND BERKMAN
Agency Special Counsel

By: _____
Glenn F. Wasserman

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

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

WITNESS my hand and official seal.

Signature _____

Exhibit "A"

LEGAL DESCRIPTION

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

ATTACHMENT NO. 13-B

FORM OF AGENCY CERTIFICATE OF COMPLETION (FOUNDATION)

[BEHIND THIS PAGE]

OFFICIAL BUSINESS
Document entitled to free
recording per Government
Code Section 6103.

Recording Requested By:
THE REDEVELOPMENT AGENCY OF THE CITY
OF SAN DIEGO
City Administration Building
202 C Street
San Diego, California 92101
Attention: NTC Project Manager

SPACE ABOVE THIS LINE
FOR RECORDER'S USE

AGENCY CERTIFICATE OF COMPLETION

This Agency Certificate of Completion (hereinafter referred to as this "Certificate") is being executed by the Redevelopment Agency of the City of San Diego ("Agency"), a public body, corporate and politic, with reference to the following:

A. The Agency and McMillin-NTC, LLC (the "Master Developer") entered into that certain Disposition and Development Agreement dated [DATE OF DDA TO BE INSERTED] (the "DDA"), pursuant to which the Agency agreed to lease directly to [NAME OF FOUNDATION TO BE INSERTED] (the "Foundation") certain real property in the City of San Diego described in the Legal Description which is attached hereto and incorporated herein by this reference (the "Property"), and the Master Developer agreed to cause the Property to be redeveloped pursuant to the DDA. The DDA is a public document, on file with the Secretary of the Agency, and is incorporated herein by this reference.

B. Agency, Master Developer and Foundation entered into that certain Assignment and Assumption Agreement dated as of [INSERT DATE OF ASSIGNMENT AND ASSUMPTION AGREEMENT], pursuant to which Master Developer assigned to Foundation certain of its rights and obligations as to the Property and Foundation agreed to redevelop the Property pursuant to the DDA.

C. Pursuant to the Assignment and Assumption Agreement, Agency conveyed a leasehold interest in the Property to Foundation and Foundation has redeveloped the Property.

Certificate of Completion (Foundation)

Page 1 of 3

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5-2-00

000400

D. Section 6.15 of the DDA provides that the Agency shall issue a Certificate of Completion upon completion of all development of the Property required by the DDA, and that the Certificate shall be, and shall so state, conclusive determination of satisfactory completion of the construction or rehabilitation of such Property required by the DDA.

E. The Foundation has requested the Agency to issue this Certificate.

NOW, THEREFORE, the Agency hereby certifies as follows:

1. The rehabilitation of the Property has been satisfactorily completed by Foundation in accordance with the terms and conditions of the DDA.
2. This Certificate covers business of the Agency within the meaning of Section 6103 of the California Government Code.
3. Recordation of this Certificate is authorized by California Health and Safety Code Sections 33438 and 33439.
4. After issuance of this Certificate of Completion, the provisions of the DDA shall no longer apply to the Property covered by this Agency Certificate of Completion, with the exception that Foundation, its successors and assigns shall use the Property only for those uses specified in the following documents: the Redevelopment Plan; the Reuse Plan, including the Scope of Development attached as Appendix "H"; the Precise Plan and all applicable Development Permits; the Entitlements; the Ground Lease for the Property; the Participation Agreement; and any applicable Agreement Affecting Real Property.

IN WITNESS WHEREOF, the Agency has executed this Certificate as of the date set forth below.

REDEVELOPMENT AGENCY
OF THE CITY OF SAN DIEGO

Dated: _____

By: _____

Hank Cunningham
Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY
ON THIS _____ day of

CASEY GWINN
Agency General Counsel

By: _____

Richard A. Duvernay, Deputy

KANE, BALLMER AND BERKMAN
Agency Special Counsel

By: _____

Glenn F. Wasserman

Exhibit "A"

LEGAL DESCRIPTION

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

OFFICIAL BUSINESS
Document entitled to free
recording per Government
Code Section 6103.

Recording Requested By:
THE REDEVELOPMENT AGENCY OF THE CITY
OF SAN DIEGO
City Administration Building
202 C Street
San Diego, California 92101
Attention: NTC Project Manager

SPACE ABOVE THIS LINE
FOR RECORDER'S USE

AGENCY CERTIFICATE OF COMPLETION

This Agency Certificate of Completion (hereinafter referred to as this "Certificate") is being executed by the Redevelopment Agency of the City of San Diego ("Agency"), a public body, corporate and politic, with reference to the following:

A. The Agency and McMillin-NTC, LLC (the "Master Developer") entered into that certain Disposition and Development Agreement dated [DATE OF DDA TO BE INSERTED] (the "DDA"), pursuant to which the Agency agreed to convey to the Master Developer certain real property in the City of San Diego described in the Legal Description which is attached hereto and incorporated herein by this reference (the "Property"), and the Master Developer agreed to cause the Property to be redeveloped pursuant to the DDA. The DDA is a public document, on file with the Secretary of the Agency, and is incorporated herein by this reference.

B. Agency, Master Developer and [INSERT NAME OF ASSIGNEE] ("Developer") entered into that certain Assignment and Assumption Agreement dated as of [INSERT DATE OF ASSIGNMENT AND ASSUMPTION AGREEMENT], pursuant to which Master Developer assigned to Developer certain of its rights and obligations as to the Property and Developer agreed to redevelop the Property pursuant to the DDA.

C. Pursuant to the Assignment and Assumption Agreement, Master Developer conveyed [a leasehold interest in] the Property to Developer and Developer has redeveloped the Property.

Certificate of Completion (Assignee)
Page 1 of 3

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5-2-00

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D. Section 6.15 of the DDA provides that the Agency shall issue a Certificate of Completion upon completion of all development of the Property required by the DDA, and that the Certificate shall be, and shall so state, conclusive determination of satisfactory completion of the construction or rehabilitation of such Property required by the DDA.

E. The Developer has requested the Agency to issue this Certificate.

NOW, THEREFORE, the Agency hereby certifies as follows:

1. The [construction of the improvements on] [rehabilitation of] the Property has been satisfactorily completed by Developer in accordance with the terms and conditions of the DDA.
2. This Certificate covers business of the Agency within the meaning of Section 6103 of the California Government Code.
3. Recordation of this Certificate is authorized by California Health and Safety Code Sections 33438 and 33439.
4. After issuance of this Certificate of Completion, the provisions of the DDA shall no longer apply to the Property covered by this Agency Certificate of Completion, with the exception that Developer, its successors and assigns shall use the Property only for those uses specified in the following documents: the Redevelopment Plan; the Reuse Plan, including the Scope of Development attached as Appendix "H"; the Precise Plan and all applicable Development Permits; the Entitlements; the applicable Grant Deed or Ground Lease for the Property, as the case may be; the Participation Agreement; and any applicable Agreement Affecting Real Property.

IN WITNESS WHEREOF, the Agency has executed this Certificate as of the date set forth below.

REDEVELOPMENT AGENCY
OF THE CITY OF SAN DIEGO

Dated: _____

By: _____
Hank Cunningham
Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY
ON THIS _____ day of
_____, _____

CASEY GWINN
Agency General Counsel

By: _____
Richard A. Duvernay, Deputy

KANE, BALLMER AND BERKMAN
Agency Special Counsel

By: _____
Glenn F. Wasserman

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

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

WITNESS my hand and official seal.

Signature _____

Exhibit "A"

LEGAL DESCRIPTION

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

ATTACHMENT NO. 13-B

FORM OF AGENCY CERTIFICATE OF COMPLETION (FOUNDATION)

[BEHIND THIS PAGE]

OFFICIAL BUSINESS
Document entitled to free
recording per Government
Code Section 6103.

Recording Requested By:
THE REDEVELOPMENT AGENCY OF THE CITY
OF SAN DIEGO
City Administration Building
202 C Street
San Diego, California 92101
Attention: NTC Project Manager

SPACE ABOVE THIS LINE
FOR RECORDER'S USE

AGENCY CERTIFICATE OF COMPLETION

This Agency Certificate of Completion (hereinafter referred to as this "Certificate") is being executed by the Redevelopment Agency of the City of San Diego ("Agency"), a public body, corporate and politic, with reference to the following:

A. The Agency and McMillin-NTC, LLC (the "Master Developer") entered into that certain Disposition and Development Agreement dated [DATE OF DDA TO BE INSERTED] (the "DDA"), pursuant to which the Agency agreed to lease directly to [NAME OF FOUNDATION TO BE INSERTED] (the "Foundation") certain real property in the City of San Diego described in the Legal Description which is attached hereto and incorporated herein by this reference (the "Property"), and the Master Developer agreed to cause the Property to be redeveloped pursuant to the DDA. The DDA is a public document, on file with the Secretary of the Agency, and is incorporated herein by this reference.

B. Agency, Master Developer and Foundation entered into that certain Assignment and Assumption Agreement dated as of [INSERT DATE OF ASSIGNMENT AND ASSUMPTION AGREEMENT], pursuant to which Master Developer assigned to Foundation certain of its rights and obligations as to the Property and Foundation agreed to redevelop the Property pursuant to the DDA.

C. Pursuant to the Assignment and Assumption Agreement, Agency conveyed a leasehold interest in the Property to Foundation and Foundation has redeveloped the Property.

Certificate of Completion (Foundation)
Page 1 of 3

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5-2-00

000411

D. Section 6.15 of the DDA provides that the Agency shall issue a Certificate of Completion upon completion of all development of the Property required by the DDA, and that the Certificate shall be, and shall so state, conclusive determination of satisfactory completion of the construction or rehabilitation of such Property required by the DDA.

E. The Foundation has requested the Agency to issue this Certificate.

NOW, THEREFORE, the Agency hereby certifies as follows:

1. The rehabilitation of the Property has been satisfactorily completed by Foundation in accordance with the terms and conditions of the DDA.
2. This Certificate covers business of the Agency within the meaning of Section 6103 of the California Government Code.
3. Recordation of this Certificate is authorized by California Health and Safety Code Sections 33438 and 33439.
4. After issuance of this Certificate of Completion, the provisions of the DDA shall no longer apply to the Property covered by this Agency Certificate of Completion, with the exception that Foundation, its successors and assigns shall use the Property only for those uses specified in the following documents: the Redevelopment Plan; the Reuse Plan, including the Scope of Development attached as Appendix "H"; the Precise Plan and all applicable Development Permits; the Entitlements; the Ground Lease for the Property; the Participation Agreement; and any applicable Agreement Affecting Real Property.

IN WITNESS WHEREOF, the Agency has executed this Certificate as of the date set forth below.

REDEVELOPMENT AGENCY
OF THE CITY OF SAN DIEGO

Dated: _____

By: _____
Hank Cunningham
Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY
ON THIS _____ day of
_____, _____

CASEY GWINN
Agency General Counsel

By: _____
Richard A. Duvernay, Deputy

KANE, BALLMER AND BERKMAN
Agency Special Counsel

By: _____
Glenn F. Wasserman

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

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

WITNESS my hand and official seal.

Signature _____

Exhibit "A"

LEGAL DESCRIPTION

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

ATTACHMENT NO. 14
FORM OF INTERIM LEASE AGREEMENT
[BEHIND THIS PAGE]

NAVAL TRAINING CENTER

INTERIM LEASE

by and between

THE CITY OF SAN DIEGO

and

NTC PROPERTY MANAGEMENT, LLC.

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- Exhibit A -- Legal Description
- Exhibit B -- Site Map

**CITY OF SAN DIEGO
NAVAL TRAINING CENTER
INTERIM LEASE**

THIS INTERIM LEASE ("Lease") is executed between THE CITY OF SAN DIEGO, a municipal corporation ("CITY") and NTC PROPERTY MANAGEMENT, LLC., a Delaware limited liability company ("LESSEE"), effective as of _____, 2000 [INSERT DATE NOT LATER THAN 90 DAYS AFTER MUTUAL EXECUTION OF DDA].

SECTION 1: PURPOSE; LEASE

1.1 Purpose. CITY and LESSEE acknowledge that the subject of this Lease is the real property commonly known as the San Diego Naval Training Center, which has been (or will be) conveyed by the United States Government (the "Federal Government") to the CITY, and which is the subject of a Disposition and Development Agreement ("DDA") between the Redevelopment Agency of the City of San Diego ("Agency") and McMillin-NTC, LLC ("Master Developer"), an affiliate of LESSEE. Pursuant to the DDA, Master Developer will cause the Premises (defined below) to be redeveloped. This Lease is intended to provide for the interim operation and management of the Premises by LESSEE until Master Developer has met certain conditions described in the DDA, whereupon CITY will convey the Premises to the Agency and the Agency will convey the Premises, by grant deed or by lease, to Master Developer or other parties, as provided in the DDA. The DDA contemplates that the Parcels (as defined in the DDA) will be conveyed to Master Developer or other parties in phases.

1.2 Lease. CITY hereby leases to LESSEE and LESSEE leases from CITY that certain real property situated in the City of San Diego, County of San Diego, State of California, described in the legal description attached hereto as Exhibit A and incorporated herein by this reference ("Premises" or "Leased Premises"). A site map of the Premises is attached hereto as Exhibit B and incorporated herein by this reference. The Premises consists of the real property and any improvements now or hereinafter located on the Premises from time to time. From time to time, CITY shall have the right to modify Exhibits A and B (a) to add the Remediation Parcels (as defined in the DDA), and (b) to delete certain Parcels as they are conveyed by CITY to the Agency and then by the Agency to Master Developer or third parties as contemplated in the DDA.

1.3 Related Council Actions. By the granting of this Lease, neither CITY nor the City Council is obligating itself to any other governmental agency, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes, but is not limited to, rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the Leased Premises.

1.4 Cooperation. CITY will actively cooperate with Master Developer and LESSEE in the transition of the Premises from the Federal Government.

1.5 Subtenants.

a. During the period between the mutual execution of the DDA and the commencement date of the term of this Lease, except as provided in subsection b. below, the CITY shall only enter into new leases or subleases with respect to the Premises after first reasonably consulting with LESSEE.

b. Following the Federal Government's conveyance of the Premises to CITY, the CITY shall enter into new leases or continue the CITY's subleases with the current subtenants of the Premises. CITY shall assign all such leases or subleases to LESSEE so that all tenants shall become subtenants of LESSEE and LESSEE shall become the sublandlord to all such subtenants as of the commencement date of the term of this Lease.

SECTION 2: TERM

2.1 Commencement. The term of this Lease shall commence upon its execution by CITY and LESSEE, not later than ninety (90) days after the mutual execution of the DDA.

2.2 Termination. This Lease may be terminated as follows:

a. As to any Parcel, immediately upon the Agency's conveyance to the Master Developer or other parties, either by deed or by lease, of such Parcel pursuant to the DDA;

b. As to any Parcel, immediately upon the termination of the DDA for any reason prior to the Agency's conveyance to the Master Developer or other parties, either by deed or by lease, of such Parcel pursuant to the DDA;

c. As set forth in Sections 5.1, 6.1, 8.6.b(2), 9.1, 10.6, 10.7, 11.2, 11.23.b.(2), and 11.24.

2.3 Holding Over. In the event LESSEE fails to vacate the Premises and fulfill all of its obligations hereunder at the end of the term, LESSEE shall be liable for all damages incurred by CITY by reason of the inability to deliver possession of the Premises or any portion thereof to any other person.

2.4 Condition of Leased Premises at Surrender. If this Lease terminates as to any Parcel for any reason other than the conveyance of such Parcel to the Master Developer or other parties pursuant to the DDA, LESSEE shall surrender the applicable Parcel to CITY free and clear of all liens and encumbrances caused or allowed by Lessee, and in the same or similar condition as when leased to Lessee pursuant to this Lease.

SECTION 3: RENT; PROPERTY MANAGEMENT COSTS

3.1 Rent. LESSEE shall not be obligated to pay any rent hereunder.

3.2 Property Management Costs. During the term of this Lease, LESSEE shall be obligated to pay all normal and customary property management costs for the Leased Premises prorated on an accrual basis from the commencement date of the term of this Lease ("Site Management Costs"). CITY shall pay all Site Management Costs that accrue prior to the commencement date of the term of this Lease and LESSEE shall pay all Site Management Costs accruing on the commencement date of the term of this Lease and thereafter. This Lease shall be a triple net lease. CITY shall not be obligated to pay for any Site Management Costs accruing after the commencement of the term regardless of whether the subtenant rent is sufficient to cover all of LESSEE's property management costs.

3.3 Subtenant Rent. LESSEE shall charge, collect and retain rent from any and all subtenants located on the Premises. LESSEE shall use said subtenant rent to help pay LESSEE's Site Management Costs.

3.4 Off-set. If despite using LESSEE's best, good faith efforts, the subtenant rent collected by LESSEE is not sufficient to cover LESSEE'S Site Management Costs, upon presenting evidence to the reasonable satisfaction of the City Manager or designee of this fact, the portion of the Site Management Costs actually paid by LESSEE which is not covered by the subtenant rent and which is reasonably verified by the City Manager or designee to be reasonable and customary Site Management Costs may be off-set by the Master Developer against the Master Developer's \$4,200,000 payment obligation set forth in the Participation Agreement (Attachment No. 7 to the DDA).

SECTION 4: CONDITION OF THE PREMISES

4.1 CITY makes no representations, express or implied, with respect to the legality, fitness, or desirability of the Premises for LESSEE's intended use or for any other uses. LESSEE shall conduct its own investigation to its satisfaction with respect to zoning, local codes and regulations, and other matters affecting LESSEE's ability to use the Premises for LESSEE's intended use.

4.2 The Premises shall be leased in an "as is" condition, with no warranty or liability, express or implied, on the part of CITY as to the condition of any buildings on the Premises, the soil (or water), its geology, the existence of known or unknown faults or any other conditions relating to the Premises. LESSEE shall not hold CITY responsible for any defects whether apparent or latent, in the Premises, including the presence of any Hazardous Materials.

4.3 LESSEE HEREBY GENERALLY, FULLY AND IRREVOCABLY RELEASES THE CITY, ITS AGENTS, OFFICERS, AND EMPLOYEES FROM ANY AND ALL CLAIMS THAT LESSEE MAY NOW HAVE OR HEREINAFTER ACQUIRE AGAINST THE CITY, ITS AGENTS, OFFICERS, OR EMPLOYEES FROM ANY CLAIM, SUIT, PENALTY, DEMAND, CAUSE OF ACTION, EXPENSE, LIABILITY, OR JUDGMENT OF ANY KIND OR NATURE WHATSOEVER (INCLUDING REASONABLE ATTORNEYS' FEES, COURT AND LITIGATION COSTS AND FEES OF EXPERT WITNESSES), WHETHER FORESEEN OR UNFORESEEN, KNOWN OR UNKNOWN, ARISING OUT OF OR RELATED TO THE PREMISES (INCLUDING, WITHOUT LIMITATION, ANY PATENT, LATENT OR OTHER DEFECTS IN THE PREMISES OR THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PREMISES), EXCEPT LESSEE SHALL NOT BE RESPONSIBLE FOR ANY CLAIM, SUIT, PENALTY, DEMAND, CAUSE OF ACTION, EXPENSE, LIABILITY, OR JUDGMENT CAUSED BY: (A) PRE-EXISTING SITE CONDITIONS; (B) ANY ACT OF THE CITY OR ANY TENANT OR SUBTENANT OF THE CITY RELATING TO THE LEASED PREMISES PRIOR TO THE COMMENCEMENT DATE OF THE TERM OF THIS LEASE; AND (C) ANY CONTRACTS RELATING TO THE LEASED PREMISES ENTERED INTO BY THE CITY OR AGENCY, OR CLAIMS BY THIRD PARTIES THAT THE CITY OR AGENCY HAS ENTERED INTO SUCH CONTRACTS, DURING THE PERIOD COMMENCING UPON THE EFFECTIVE DATE OF THE MASTER LEASE BETWEEN THE FEDERAL GOVERNMENT AND THE CITY FOR THE LEASED PREMISES AND ENDING UPON THE CONVEYANCE OF FEE OR LEASEHOLD TITLE, AS THE CASE MAY BE, OF ANY PARCEL OR TERMINATION OF THIS LEASE AS TO ANY PARCEL, WHICHEVER OCCURS FIRST. "PRE-EXISTING SITE CONDITIONS" SHALL MEAN THE EXISTENCE, RELEASE, PRESENCE OR DISPOSAL ON, IN, UNDER, ABOUT OR ADJACENT TO THE LEASED PREMISES, OF ANY HAZARDOUS MATERIALS WHICH OCCURRED BEFORE THE DELIVERY OF POSSESSION OF THE LEASED PREMISES TO LESSEE PURSUANT TO THIS LEASE.

WITH RESPECT TO THE RELEASES AND WAIVERS SET FORTH IN THIS SECTION, LESSEE EXPRESSLY WAIVES THE BENEFITS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE, WHICH PROVIDES AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE

MATERIALLY AFFECTED HIS SETTLEMENT
WITH THE DEBTOR.”

LESSEE HAS BEEN ADVISED BY ITS LEGAL COUNSEL AND UNDERSTANDS THE SIGNIFICANCE OF THIS WAIVER OF SECTION 1542 RELATING TO UNKNOWN, UNSUSPECTED AND CONCEALED CLAIMS. BY ITS INITIALS BELOW, LESSEE ACKNOWLEDGES THAT LESSEE FULLY UNDERSTANDS, APPRECIATES, AND ACCEPTS ALL OF THE TERMS OF THIS SECTION.

Lessee's Initials

SECTION 5: USE OF THE PREMISES

5.1 Uses. It is expressly agreed that the Premises are leased to LESSEE solely and exclusively for the purposes of operating and managing the Premises for the commercial and nonprofit uses currently being operated on the Premises, and for such other related or incidental purposes as may be first approved in writing by the City Manager or designee and for no other purpose whatsoever. The use of the Premises for any unauthorized purpose shall constitute a substantial default and subject this Lease to termination at the sole option of the CITY. LESSEE covenants and agrees to use the Premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof. The use of any portion of the Premises for purposes not expressly authorized herein, shall be grounds for termination by CITY.

5.2 Quiet Possession. LESSEE, performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold, and enjoy the Premises. If CITY for any reason cannot deliver possession of the Premises to LESSEE at the commencement of the term, or if during the Lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom.

5.3 Easements and Reservations.

a. CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Premises.

b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the Leased Premises for utilities, thoroughfares, or access as it deems advisable for the public good.

c. Upon 24 hours notice to LESSEE (except in cases of emergencies when no notice is required), CITY has the right to enter the Premises for the purpose of making repairs to or

developing municipal resources and services. The CITY shall defend, indemnify and hold LESSEE harmless from any and all liability from loss, damage, or injury to property or persons, including wrongful death, in any manner arising out of or incident to any negligent acts or willful misconduct of CITY in connection with CITY's entering onto the Premises for the purpose set forth in this subsection c.

d. However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the Premises and will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

5.4 Competent Property Management.

a. Throughout the term of this Lease, LESSEE shall provide, at LESSEE's sole cost and expense, competent property management of the Leased Premises to the satisfaction of the City Manager or designee. For the purposes of this Section, "competent property management" shall mean that LESSEE shall use its best, good faith efforts to continue the standard and quality of property management of the Premises at a level not lower than that maintained on the commencement date of the term.

b. LESSEE's obligation under this Section shall include, without limitation, the right to terminate subleases, collect rent from subtenants, enter into contracts for the maintenance and repair of the Premises or portions thereof, pay for various expenses and Site Management Costs. LESSEE's obligation shall not include, and LESSEE shall have no right under this Lease, to encumber the Premises, or provide major damage restoration or rehabilitation (see Sections 8.2 and 8.6).

c. LESSEE may contract with a third party to provide property management for the Premises upon the prior written reasonable approval of the City Manager or designee of the proposed property manager or property management company.

5.5 Political Activities. The Leased Premises shall be used exclusively for the purposes specified in Section 5.1. The Premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.

5.6 Utilities. LESSEE shall make all arrangements for and pay for all services and utilities to the Premises prorated on an accrual basis from the commencement date of the term of this Lease. CITY shall pay the costs for all such services and utilities which accrue prior to the commencement date of the term of this Lease and LESSEE shall pay all such costs accruing on the commencement date of the term of this Lease and thereafter. CITY shall not be responsible or liable to LESSEE for interruption or stoppages of utilities or other services to the Premises except to the

extent caused by the negligence or willful misconduct of CITY. All new utilities will be installed underground.

5.7 Taxes.

a. Payment by LESSEE. LESSEE shall promptly pay prorated on an accrual basis, at least five (5) days prior to delinquency, all real estate and real property taxes, or possessory interest tax, assessed against the Premises, including such added assessment or omitted assessment which may be levied against the Premises from time to time by the applicable governmental taxing authority for periods commencing upon the commencement date of the term, and any increase in the assessment from time to time based on improvements to the Premises. CITY shall pay all such taxes which accrue prior to the commencement date of the term of this Lease and LESSEE shall pay all such taxes accruing on the commencement date of the term of this Lease and thereafter. Notwithstanding the foregoing, any assessment or impositions for capital or public improvements which may be payable by law at the option of the taxpayer in installments may be so paid by LESSEE in installments, together with any required interest. LESSEE shall furnish in writing to CITY before the applicable delinquency date for the tax evidence of payment of all taxes and assessments required to be paid by LESSEE during the term hereof. If CITY does not receive reasonable evidence of payment prior to the tax delinquency date, CITY may, at its option, pay the tax for LESSEE. In such case, LESSEE shall reimburse CITY immediately upon demand, plus interest at the rate of ten percent (10%) per annum. If LESSEE shall be obligated to pay any taxes, assessments, and charges hereunder during a partial year, the amount of any such taxes, assessments, and charges shall be prorated according to the length of time LESSEE's obligation shall be in effect during the relevant tax period.

b. Contest. LESSEE shall have the right, by appropriate proceedings, to protest or contest in good faith any assessment or re-assessment of taxes, any special assessment, or the validity of any taxes or of any change in assessment or tax rate; provided, however, prior to any such challenge LESSEE must either: (1) pay the taxes alleged to be due in their entirety and seek a refund from the appropriate authority; (2) post a bond in an amount sufficient to insure full payment of the taxes; or (3) provide such other security or take such other actions as may reasonably be required by the City Manager or designee to insure full payment of the taxes. In any event, upon a final determination with respect to such contest or protest, LESSEE shall promptly pay all sums found to be due with respect thereto. In any such protest or contest, LESSEE may act in its own name; and at the request of LESSEE, CITY shall cooperate with LESSEE in any way LESSEE may reasonably require in connection with such contest or protest, including signing such documents as LESSEE shall reasonably request, provided that such contest or protest shall be at LESSEE's sole cost and expense, and in the event any penalties, interest, or late charges become payable with respect to the taxes as a result of such contest or protest, LESSEE shall pay the same. In the event LESSEE obtains a refund as the result of LESSEE's protest or contest and subject to LESSEE's obligation to pay CITY's costs (if any) associated therewith, LESSEE shall be entitled to such refund

to the extent it relates to the Premises during the term of this Lease.

c. Personal Property Taxes. LESSEE shall pay on a prorated accrual basis any and all personal property taxes assessed against equipment, trade fixtures, inventory, or other personal property located in, on, or about the Premises. CITY shall pay all such taxes which accrue prior to the commencement date of the term of this Lease and LESSEE shall pay all such taxes accruing on the commencement date of the term of this Lease and thereafter. LESSEE shall indemnify, defend, and hold City, its agents, officers and employees and the Premises harmless from and against any such personal property taxes.

d. Future Taxes. If at any time during the term under the laws of the United States, or any state, county, or city, or any political subdivision thereof in which the Premises is situated, a tax or excise on rent or any other tax however described is levied or assessed by any such political body against CITY on account of fee ownership of the Premises, such tax or excise shall be considered "taxes" for the purposes of this Section and shall be paid by LESSEE in the manner provided above, excluding, however, from such tax or excise to be paid by LESSEE any amount assessed against CITY as state or federal income tax, gift tax, excise tax or inheritance tax.

5.8 Notice of Possessory Interest: Payment of Taxes and Assessments on Value of Entire Premises.

a. In accordance with California Revenue and Taxation Code Section 107.6(a), CITY states that by entering into this Lease, a possessory interest subject to property taxes may be created. LESSEE or other party in whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest.

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

5.9 Signs. LESSEE shall have the right to place signs on the Premises in accordance with applicable CITY laws, rules, regulations and written policies.

5.10 Hazardous Materials.

a. For purposes of this Lease, the term "Hazardous Materials" shall mean and include the following:

(1) a "Hazardous Substance," "Hazardous Material," "Hazardous Waste," or "Toxic Substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., the Hazardous Materials Transportation Act, 49

U.S.C. §§ 5101, et seq., or the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.;

(2) an "Extremely Hazardous Waste," a "Hazardous Waste," or a "Restricted Hazardous Waste," under §§ 25115, 25117 or 25122.7 of the California Health and Safety Code, or is listed or identified pursuant to §§ 25140 or 44321 of the California Health and Safety Code;

(3) a "Hazardous Material," "Hazardous Substance," "Hazardous Waste," "Toxic Air Contaminant," or "Medical Waste" under §§ 25281, 25316, 25501, 25501.1, 117690 or 39655 of the California Health and Safety Code;

(4) "Oil" or a "Hazardous Substance" listed or identified pursuant to § 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321, as well as any other hydrocarbonic substance or by-product;

(5) listed or defined as a "Hazardous Waste," "Extremely Hazardous Waste," or an "Acutely Hazardous Waste" pursuant to Chapter 11 of Title 22 of the California Code of Regulations;

(6) listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to § 25249.9(a) of the California Health and Safety Code;

(7) a material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, damages or threatens to damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or public agency requires in order for the property to be put to any lawful purpose;

(8) any material whose presence would require remediation pursuant to the guidelines set forth in the State of California Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank;

(9) pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.;

(10) asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.;

(11) any radioactive material including, without limitation, any "source material," "special nuclear material," "by-product material," "low-level wastes," "high-level

radioactive waste," "spent nuclear fuel" or "transuranic waste," and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. §§ 2011 et seq., the Nuclear Waste Policy Act, 42 U.S.C. §§ 10101 et seq., or pursuant to the California Radiation Control Law, California Health and Safety Code §§ 114960 et seq.;

(12) regulated under the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq., or the California Occupational Safety and Health Act, California Labor Code §§ 6300 et seq.; and/or

(13) regulated under the Clean Air Act, 42 U.S.C. §§ 7401 et seq. or pursuant to Division 26 of the California Health and Safety Code.

b. The term "Pre-existing Site Conditions" shall mean the existence, release, presence or disposal on, in, under, about or adjacent to the Premises, of any Hazardous Materials which occurred before the delivery of possession of the Premises to LESSEE.

c. Except for Pre-existing Site Conditions, LESSEE shall not, except in compliance with law:

(1) Make, or permit to be made, any use of the Premises, or any portion thereof, which emits, or permits the emission of dust, sweepings, dirt, cinders, fumes, or odors into the atmosphere, the ground, or any body of water, whether natural or artificial, in violation of applicable law; or

(2) Discharge, leak, or emit, or permit to be discharged, leaked, or emitted, any liquid, solid, or gaseous matter, or any combination thereof, into the atmosphere, the ground, or any body of water, in violation of applicable law.

(3) Use, store or dispose of any Hazardous Materials on the Premises.

d. LESSEE shall not keep any trash, garbage, waste, or other refuse on the Premises except in sanitary containers and shall regularly and frequently remove the same from the Premises. LESSEE shall keep all incinerators, containers, and other equipment used for the storage or disposal of such matter in a clean and sanitary condition. LESSEE shall surrender the Premises at the termination of this Lease free of any Hazardous Materials or contamination caused by LESSEE's activities, and free and clear of all judgements, liens, or encumbrances caused by LESSEE's activities and shall, at its own cost and expense, repair all damage and clean up or perform any remedial action necessary relating to any Hazardous Materials or contamination caused by LESSEE's activities. LESSEE shall, at its sole cost and expense remediate in accordance with law and/or remove any alterations or improvements that may be contaminated or may contain Hazardous Materials caused by LESSEE's activities.

e. LESSEE shall indemnify, defend, and hold harmless the CITY, the Agency, and their respective officers, employees, contractors and agents (collectively referred to as the "Indemnified Parties"), with counsel reasonably acceptable to CITY, from and against any and all loss, liability, damage, claim, cost and expense (including reasonable attorneys' fees, court and litigation costs and fees of expert witnesses) resulting or arising from or in any way connected with the following: the existence, release, presence or disposal on, in, under, about or adjacent to the Leased Premises, at any time after the delivery of possession and lease of the Leased Premises to LESSEE, of any Hazardous Materials, except to the extent of (and in no event shall LESSEE be responsible for) any loss, liability, damage, claim, cost or expense caused by: (1) Pre-existing Site Conditions; and (2) the negligence or willful misconduct of any Indemnified Party or any tenant or subtenant of the CITY prior to the commencement date of the term of this Lease or the assignment of the management of the Leased Premises to LESSEE prior to the commencement date of the term of this Lease, whichever occurs first.

f. Notwithstanding the termination of this Lease, LESSEE's obligations and liabilities under this Section shall continue so long as CITY continues to own the Premises or any portion thereof or otherwise remains responsible for any Hazardous Materials on the Premises; provided, however, that nothing contained in this provision is intended to or shall have the effect of relieving any party of liability under any applicable statutory or common law.

5.11 Compliance with Law.

a. Subject to Section 8.2.d., LESSEE shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any applicable law, statute, ordinance, or governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated. LESSEE shall, at its sole cost and expense, promptly comply with all applicable laws, statutes, ordinances, and governmental rules, regulations or requirements now in force or which may hereafter be enacted or promulgated, and any applicable requirements of any board of fire insurance underwriters or other similar bodies now or hereafter constituted, relating to the condition, use, or occupancy of the Premises. LESSEE shall have the right, by appropriate proceedings, to protest or contest in good faith the application to LESSEE and/or the Premises of any law, statute, ordinance, or governmental rule, regulation or requirement or the validity of any such law, statute, ordinance, or governmental rule, regulation or requirement; provided, LESSEE shall indemnify, defend, and hold CITY, its agents, officers and employees harmless from and against any and all costs, expenses, claims, demands, damages, actions, causes of action, or liabilities of any kind which may arise at any time in connection with any such proceedings, protest or contest.

b. The judgment of any court of competent jurisdiction after all applicable appeals have been exhausted or appeal periods have expired or the admission of LESSEE in any action against LESSEE, whether CITY be a party thereof or not, that LESSEE has violated any law, statute, ordinance, or governmental rule, regulation, or requirement, shall be conclusive of that fact as between CITY and LESSEE.

SECTION 6: ASSIGNMENT AND SUBLETTING

6.1 Assignment and Subletting. LESSEE shall not assign this Lease or any interest therein and shall not enter into any new subleases of the Premises or any part thereof, or any right or privilege appurtenant thereto, without the prior written consent of the City Manager or designee. The City Manager or designee shall approve or disapprove proposed assignments of this Lease in his sole and absolute discretion. The City Manager or designee shall not unreasonably disapprove any proposed sublease. A consent to one assignment or sublease shall not be deemed to be a consent to any subsequent assignment or sublease. Any assignment or sublease without the prior written consent of the City Manager or designee shall be void and shall, at the option of CITY, terminate this Lease. This Lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the prior written consent of the City Manager or designee, in the City Manager's or designee's sole discretion.

6.2 Definition of Assignment. "Assignment" for the purposes of this Section shall include any transfer of any ownership interest in this Lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners, or principals.

6.3 Assumption. Approval of any assignment or sublease shall be conditioned upon the assignee or subtenant agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this Lease which are applicable to the rights acquired. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have an interest in this Lease as an assignee or subtenant.

SECTION 7: INDEMNITY; INSURANCE

7.1 Indemnity.

a. Lessee's Indemnification. LESSEE shall indemnify, defend, and hold CITY, its agents, officers and employees harmless from and against any and all costs, claims, demands, actions, causes of action, liability, loss, or damage, including attorneys' fees and costs (collectively referred to as "Claims" and, Claims that are made by third parties, collectively referred to as "Third Party Claims") whether for injury to or death of persons or damage to real or personal property or

otherwise, arising out of or in connection with LESSEE's use, occupancy, or property management of the Premises, any activity, work, or other thing done, permitted, or suffered by LESSEE in or about the Premises, or arising from any reason or cause whatsoever in connection with the use or occupancy of the Premises by any party during the term of this Lease. The provisions of the preceding sentence shall not apply with respect to any negligent or wilful misconduct of CITY, its agents, officers or employees (collectively, "CITY Parties"). LESSEE shall further indemnify, defend, and hold City, its agents, officers and employees harmless from and against any and all Third Party Claims arising from any breach or default in the performance of any obligation on LESSEE's part to be performed under the terms of this Lease or arising from any act or negligence of LESSEE or any officer, agent, employee, guest, or invitee of LESSEE. In any case, action, or proceeding brought against the CITY, its agents, officers or employees or involving CITY, its agents, officers or employees by reason of any such Claim, LESSEE, upon notice from CITY, its agents, officers or employees, shall defend the same at LESSEE's expense by counsel reasonably satisfactory to CITY, its agents, officers or employees. LESSEE, as a material part of the consideration to CITY, hereby assumes all risk of damage to property or injury to persons in, upon, or about the Premises from any cause other than the negligent or wilful misconduct of CITY Parties, and LESSEE hereby waives all claims in respect thereof against CITY. LESSEE's obligation to indemnify under this Section shall include attorneys' fees, investigation costs, and other reasonable costs, expenses, and liabilities incurred by CITY, its agents, officers and employees.

b. City's Indemnification. City shall indemnify, protect, defend and hold harmless Lessee and its officers, employees, contractors and agents, with counsel reasonably acceptable to Lessee, from and against any and all loss, liability, damage, claim, cost and expense (including reasonable attorneys' fees, court and litigation costs and fees of expert witnesses) resulting or arising from or in any way connected with the following:

- (1) any negligence or intentional misconduct of the City or its officers, employees, contractors, agents, lessees or sublessees which relate to the maintenance, management or operation of the Premises during the period commencing upon the effective date of the master lease between the Federal Government and the City for the Premises and ending upon execution of this Interim Lease, provided the City shall not be responsible for (and such indemnity shall not apply to) the negligence or willful misconduct of Lessee or its officers, employees, contractors or agents;
- (2) any contracts relating to the Premises entered into by the City or claims by third parties that the City has entered into such contracts, during the period commencing upon the effective date of the master lease between the Federal Government and the City for the Premises and ending upon the execution of this Interim Lease; and

- (3) any representations or warranties relating to the Premises made by the City, or claims by third parties that the City has made such representations or warranties, during the period commencing upon the effective date of the master lease between the Federal Government and the City for the Premises and ending upon the execution of this Interim Lease.

c.. CITY, its agents, officers and employees shall not be liable for loss or damage to any property by theft or otherwise, nor for any injury to or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, or rain which may leak from any part of the Premises or from the pipes, appliances, or plumbing works therein or from the roof, street, or subsurface or from any other place resulting from dampness or any other cause whatsoever, unless caused by or due to the negligent or wilful misconduct of CITY Parties. LESSEE shall give prompt notice to CITY in case of fire or accidents in the Premises or of defects therein or in the fixtures or equipment.

7.2 Insurance.

a. Beginning upon the commencement date of the term of this Lease and throughout the term of this Lease, LESSEE shall maintain, at its own cost and expense, and furnish or cause to be furnished to CITY evidence of the following policies of insurance, naming LESSEE as insured and, except for automobile insurance and Workers' Compensation insurance, the CITY and Agency as additional insureds.

(1) Fire Policies: LESSEE shall have no obligation to maintain insurance against loss or damage resulting from fire and similar causes. CITY shall continue to maintain its All-Peril Property Insurance, through CSAC acting as Excess Insurance Authority, covering the Leased Premises, as maintained by the CITY as of the date of the DDA.

(2) Liability Insurance: LESSEE shall maintain or cause to be maintained public liability insurance, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever on or about the Leased Premises and the business of the LESSEE on the Leased Premises, or in connection with the management thereof, resulting directly or indirectly from any acts or activities of LESSEE or its sublessees, or any person acting for LESSEE, or under its respective control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person occurring on or about the LESSEE, or in connection with the management thereof, caused directly or indirectly by or from acts or activities of LESSEE or its subtenants, or any person acting for LESSEE, or under its control or direction. Such property damage and personal injury insurance shall also provide for and protect CITY and Agency against incurring any legal cost in defending claims for alleged loss. Such personal injury and property damage insurance shall be maintained in full force and effect during the term in the following

amounts: commercial general liability in a general aggregate amount of not less than Two Million Dollars (\$2,000,000), and not less than \$2,000,000 General Aggregate, \$2,000,000 Products and Completed Operations Aggregate, and \$2,000,000 Each Occurrence, which minimum amounts shall be increased every five years after the execution of this Lease by an additional One Million Dollars (\$1,000,000), so that the minimum amounts of commercial general liability insurance at the end of the fifth year after execution of this Lease shall be not less than Three Million Dollars (\$3,000,000), and, at the end of the tenth year, Four Million Dollars (\$4,000,000). LESSEE shall deliver to CITY a Certificate of Insurance evidencing such insurance coverage prior to commencement of the alterations. LESSEE agrees that provisions of this Section as to maintenance of insurance shall not be construed as limiting in any way the extent to which LESSEE may be held responsible for the indemnification of CITY or Agency or the payment of damages to persons or property resulting from LESSEE's activities, activities of its subtenants or the activities of any other person or persons for which LESSEE is otherwise responsible.

(3) Automobile Insurance: LESSEE shall maintain or cause to be maintained automobile insurance, maintained in full force and effect during the term of this Lease in an amount of not less than One Million Dollars (\$1,000,000) per accident (subject to adjustment as provided in subsection (2), above).

(4) Workers' Compensation Insurance: LESSEE shall maintain or cause to be maintained workers' compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by LESSEE in connection with the Leased Premises and shall cover liability within statutory limits for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Leased Premises or the management thereof by LESSEE. Notwithstanding the foregoing, LESSEE may, in compliance with the laws of the State of California and in lieu of maintaining such insurance, self-insure for workers' compensation in which event LESSEE shall deliver to CITY evidence that such self-insurance has been approved by the appropriate State authorities.

b. All policies or certificates of insurance shall provide that such policies shall not be canceled, reduced in coverage or limited in any manner without at least thirty (30) days prior written notice to CITY. All fire and liability insurance policies (not automobile and Workers' Compensation) policies may name the CITY, Agency and LESSEE as insureds, additional insureds, and/or loss payable parties as their interests may appear.

c. Intentionally Omitted.

d. All insurance provided under this Section 7.2 shall be for the benefit of CITY, Agency, and LESSEE. LESSEE agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. LESSEE agrees to submit binders or certificates evidencing such insurance to CITY prior to the commencement date of the term of this Lease. Within thirty (30) days, if practicable, but in any event prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof, shall be submitted to CITY. All insurance herein provided for under this Section 7.2 shall be provided by insurers licensed to do business in the State of California and rated A-VII or better.

e. If LESSEE fails or refuses to procure or maintain insurance as required by this Lease, CITY shall have the right, at CITY's election, and upon ten (10) days prior notice to LESSEE, to procure and maintain such insurance. The premiums paid by CITY shall be treated as a loan, due from LESSEE, to be paid on the first day of the month following the date on which the premiums were paid. CITY shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

SECTION 8: IMPROVEMENTS

8.1 Entry by CITY.

a. CITY reserves and shall at any and all times have the right, but not the obligation, to enter the Premises, for the following purposes: (1) to respond to any emergency situation; (2) to inspect the Premises, provided such inspections shall take place during normal business hours and upon not less than 5 calendar days' notice, except for inspections deemed necessary by CITY to respond to any emergency situation, which inspections may occur at any time, and for which no advance notice shall be required; (3) to post notices of non-responsibility; and (4) to make repairs to the Premises, without any obligation to do so, subject to notice to LESSEE, and a reasonable opportunity to cure, as provided in Section 8.2, except for repairs deemed necessary by CITY to respond to any emergency situation, for which no notice or opportunity to cure shall be required. Provided, however, that CITY shall take all reasonable steps to ensure that the business of LESSEE and its subtenants shall not be interfered with unreasonably.

b. CITY shall indemnify, defend and hold LESSEE harmless for any and all claims, liability and damages arising out of any activity by CITY on the Premises pursuant to this Section, except to the extent caused by the negligence or willful misconduct of LESSEE. Except to the extent such claim is based on the negligence or willful misconduct of CITY in conducting its activities pursuant to this Section, LESSEE hereby waives any claim for damages for any injury or inconvenience to or interference with LESSEE's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss which may occur, but only to the extent and as the result of

CITY's entry onto the Premises and performance of CITY's activities pursuant to this Section.

c. CITY shall have the right to use any and all means which CITY may deem proper to open doors in an emergency in order to obtain entry to the Premises, without liability to LESSEE except for any failure to exercise due care for LESSEE's property. Any entry to the Premises obtained by CITY by any means for the purposes specified above shall not under any circumstances be construed or deemed to be forcible or unlawful entry into, or a detainer of, the Premises or an eviction of LESSEE from the Premises or any portion thereof.

8.2 Maintenance and Repair.

a. Subject to subsection d. below, LESSEE shall maintain the Premises in the same aesthetic and sound condition (or better) as the condition of the Premises at the date of commencement of the term, reasonable wear and tear excepted. Pursuant to the DDA, the parties acknowledge that various improvements on the Premises are likely to become obsolete and will need to be demolished, removed, disposed of and/or replaced, and agree that the standard of "reasonable" wear and tear as set forth in the first sentence of this subsection a. includes and incorporates this understanding. Subject to the foregoing, this standard for the quality of maintenance of the Premises shall be met whether or not a specific item of maintenance is listed below. However, representative items of maintenance shall include frequent and regular inspection for graffiti or damage or deterioration or failure, and immediate repainting or repair or replacement of all surfaces, fencing, walls, equipment, etc., as necessary; emptying of trash receptacles and removal of litter; sweeping of public sidewalks adjacent to the improvements, on-site walks and paved areas and washing-down as necessary to maintain clean surfaces; maintenance of all landscaping in a healthy and attractive condition, including trimming, fertilizing and replacing vegetation as necessary; cleaning windows on a regular basis; painting the buildings on a regular program and prior to the deterioration of the painted surfaces; conducting a roof inspection on a regular basis and maintaining the roof in a leak-free and weather-tight condition; maintaining security devices in good working order. In the event LESSEE fails to maintain the Premises in accordance with the standard for the quality of maintenance, CITY or its designee shall have the right but not the obligation to enter the Premises upon reasonable notice to LESSEE, correct any violation, and hold LESSEE responsible for the cost thereof ("Maintenance Cost"). LESSEE shall, upon demand, pay all Maintenance Cost, with interest.

b. Subject to subsection d. below, LESSEE shall, at LESSEE's sole cost and expense, (1) keep and maintain any buildings on the Premises in good condition and repair, ordinary wear and tear excepted; and (2) undertake such maintenance of the Premises from time to time as may be reasonable and customary under the circumstances or as required by subsection a.

c. CITY shall not under any circumstances be obligated to undertake any maintenance, repair, or replacement of any portions of the Premises. LESSEE understands that CITY is not obligated to maintain the structural portions of any building or structure, including the

roof, exterior walls, and foundations of said building or structure; CITY shall not be liable for any failure to make any such repairs or to perform any maintenance, whether by reason of any injury to or interference with LESSEE's business or otherwise. LESSEE waives any obligations which CITY may have with respect to the tenantability of the Premises and the right to make repairs at CITY's expense under any law, statute, or ordinance now or hereafter in effect, including without limitation the provisions of California Civil Code sections 1941 and 1942.

d. The parties acknowledge and agree that none of LESSEE's obligations to maintain, repair, restore, rebuild or comply with applicable law set forth herein shall require LESSEE to make any "capital improvement" (as that term is defined by the Internal Revenue Code, implementing regulations thereto, and/or applicable case law) to the Leased Premises or Improvements unless mutually agreed to by the parties following a meeting wherein both parties agree to reasonably consult with each other regarding the necessity of any capital improvement.

8.3 Security. LESSEE shall be responsible for and shall pay for, at its sole cost and expense, security for the Premises throughout the term so that the Premises are maintained and preserved in a decent, safe, healthy, and sanitary condition satisfactory to CITY.

8.4 Improvements; Alterations. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by LESSEE without prior written approval by the City Manager or designee, in the City Manager's or designee's sole and absolute discretion. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Premises without prior written approval by the City Manager or designee, in the City Manager's or designee's sole and absolute discretion. This Section shall not relieve LESSEE of any obligation under this Lease to maintain and repair the Premises. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.

8.5 Waste. LESSEE shall not commit or suffer to be committed any waste or injury or any public or private nuisance on the Premises. LESSEE shall keep the Premises clean and clear of refuse and obstructions, and shall dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY.

8.6 Damage; Reconstruction.

a. Covered by Insurance. In the event the Premises or any portion thereof are damaged by fire or other perils covered by extended coverage insurance, LESSEE shall have the right to use all available insurance proceeds to repair or rebuild improvements on the Premises. Except as set forth in subsection c. below, if the estimated cost of repairs is not in excess of available insurance proceeds (including rent loss insurance proceeds, if any), then LESSEE shall forthwith repair the same (using the insurance proceeds to pay the cost of such repair). In any event, this Lease shall remain in full force and effect as to the entire Leased Premises.

b. Not Covered by Insurance. Except as set forth in subsection c. below, in the event the Premises or any portion thereof are damaged as a result of any cause other than the perils covered by fire and extended coverage insurance, or the estimated cost of repairs (including lost rent) is in excess of available insurance proceeds (including rent loss insurance proceeds), then the parties shall hold a meet and confer meeting within a reasonable period of time to decide whether to repair, restore, rebuild, demolish, keep in a safe condition, or otherwise the damaged Premises. In any event, this Lease shall remain in full force and effect as to the entire Leased Premises.

c. Pursuant to the DDA, the parties acknowledge that various improvements on the Premises are likely to become obsolete and will need to be demolished, removed, disposed of and/or replaced. Consequently, if the Premises or any portion thereof are damaged and LESSEE's cost to repair the damaged Premises or portion thereof is more than LESSEE believes, in its reasonable discretion, LESSEE should be obligated to pay due to the future intended redevelopment of the Premises, LESSEE may, after first reasonably consulting with the City Manager or designee, decide not to make such repairs and rather keep the damaged Premises or portion thereof in a safe condition until the redevelopment occurs, or, subject to the prior written consent of CITY, demolish the damaged Premises.

d. Excess Insurance Proceeds. If completion of required repair, reconstruction or restoration of the Premises does not utilize all insurance proceeds, then CITY may retain such unused proceeds. If, for any reason, LESSEE does not repair, reconstruct or restore the Premises, the insurance proceeds shall belong to CITY as its property.

e. LESSEE shall not be entitled to any compensation or damages from CITY for loss of the use of the whole or any part of the Premises, LESSEE's personal property, or any inconvenience or annoyance occasioned by such damage, repair, reconstruction, or restoration. LESSEE waives the provisions of California Civil Code sections 1932(2) and 1933(4) with respect to any destruction of the Premises.

8.7 Construction Bond. Whenever there is any construction to be performed on the Premises or portion thereof, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of 100 percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.

8.8 Liens. LESSEE shall keep the Premises free and clear of any and all liens and encumbrances which may arise at any time in connection with any improvement, maintenance or repair work by LESSEE or its agents and contractors. Any mechanic's liens that have been recorded

or stop notices that have been delivered shall be paid, settled or otherwise extinguished, discharged, released, waived or bonded around within ten (10) days after notice thereof to LESSEE. In addition, LESSEE shall indemnify, defend, and hold CITY, its agents, officers and employees and the Premises harmless from and against any and all costs, expenses, claims, demands, damages, actions, causes of action, or liabilities of any kind which may arise at any time in connection with any improvement, maintenance or repair work by LESSEE or its agents and contractors, except to the extent such costs, expenses, claims, demands, damages, actions, causes of action, or liabilities relate to the negligence or willful misconduct of CITY, its agents, officers, and employees. Nothing herein contained shall be deemed to prohibit Lessee from contesting the validity or amount of any encumbrance or lien, nor to limit the remedies available to LESSEE in respect thereto.

8.9 Ownership of Property During Term and Upon Termination of Lease.

a. During the term of this Lease, all buildings, structures, fixtures, additions and improvements located on the Leased Premises shall be owned in fee by CITY.

b. As to any Parcel, immediately upon the termination of this Lease due to the Agency's conveyance to the Master Developer or other parties, either by deed or by lease, of such Parcel, all buildings, structures, fixtures, additions, equipment, improvements, and any subtenant security deposits for said Parcel shall be owned as set forth in the Grant Deed or Ground Lease (as both terms are defined in the DDA).

c. As to any Parcel, immediately upon the termination of this Lease for any reason other than the Agency's conveyance to the Master Developer or other parties, either by deed or by lease, of such Parcel pursuant to the DDA, all buildings, structures, fixtures, additions, equipment, improvements, and any subtenant security deposits shall continue to be owned by the CITY.

d. Notwithstanding any provision of this Lease to the contrary, upon termination of the Lease, LESSEE shall have (1) no obligation to remove any Improvements from any Parcel, and (2) no right to remove any Improvements from any Parcel without CITY's consent.

SECTION 9: EMINENT DOMAIN

9.1 If the Premises or any portion thereof is taken under the power of eminent domain, or sold by CITY under the threat of the exercise of such power, this Lease shall terminate as to the part so taken as of the date that the condemning authority takes possession of the Premises. If a portion of the Premises is taken or sold under such threat such that the commercial use of the Premises is no longer reasonably viable, either CITY or LESSEE may terminate this Lease as of the date that the condemning authority takes possession by delivery of written notice of such election within twenty (20) days after such party has been notified of the taking or, in the absence thereof, within twenty (20) days after the condemning authority shall have taken possession.

9.2. If this Lease is not terminated by CITY or LESSEE, it shall remain in full force and effect as to the portion of the Premises remaining. In such event, LESSEE shall, at LESSEE's own expense, restore the Premises to a complete unit of like quality and character, except as to size, as existed prior to the date on which the condemning authority took possession.

9.3 All monies awarded in any taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.

9.4 Notwithstanding any provision of this Section, in the event CITY exercises its power of eminent domain with respect to the Premises or any portion thereof or interest therein, LESSEE shall be entitled to such awards as may be authorized by applicable law, without regard to this Section.

9.5 No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 10: DEFAULT

10.1 Subject to the notice and cure provisions of Sections 10.4 and 10.5, the occurrence of any one or more of the following events shall constitute a default and breach of this Lease by LESSEE:

- a. The failure by LESSEE to observe or perform any covenants, conditions, or provisions of this Lease to be observed or performed by LESSEE; or
- b. An uncured default by Master Developer under the DDA, subject to the notice and cure provisions therein; or
- c. The abandonment of the Premises by LESSEE; or
- d. LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- e. LESSEE shall be adjudicated a bankrupt; or
- f. LESSEE shall make a general assignment for the benefit of creditors.

10.2 Subject to Force Majeure delay, LESSEE must immediately commence to cure,

correct or remedy any default or breach and shall complete such cure, correction or remedy with reasonable diligence, and during any period of curing shall not be in default, so long as it endeavors to complete such cure, correction or remedy with reasonable diligence, and provided such cure, correction or remedy is completed within the applicable time period set forth herein after receipt of written notice (or such additional time as may be deemed by CITY to be reasonably necessary to correct the default).

10.3 CITY shall give written notice of default to LESSEE, specifying the default complained of by CITY. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Lease, any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

10.4 If a monetary event of default occurs, prior to exercising any remedies hereunder, CITY shall give LESSEE written notice of such default. LESSEE shall have a period of seven (7) calendar days after such notice is received or deemed received within which to cure the default prior to exercise of remedies by CITY. Notwithstanding the foregoing, if any payment is not received by CITY within seven (7) calendar days following the due date thereof, then in addition to the remedies conferred upon CITY pursuant to this Lease, a late charge of ten percent (10%) of the amount due and unpaid will be added to the delinquent amount to compensate CITY for the expense of handling the delinquency, computed from the date on which the amount was due and payable until paid.

10.5 If a non-monetary event of default occurs, prior to exercising any remedies hereunder, CITY shall give LESSEE notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, LESSEE shall have such period to effect a cure prior to exercise of remedies by CITY. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and LESSEE (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then LESSEE shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by CITY. In no event shall CITY be precluded from exercising remedies if the security of its fee interest in the Premises becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within one hundred eighty (180) days after the first notice of default is given.

10.6 If any default or breach is not cured by LESSEE within the respective period of time provided in Sections 10.4 and 10.6, then CITY shall be entitled to exercise any and all rights or remedies which may be available at law or in equity, including terminating this Lease. Any and all rights or remedies available to CITY shall be cumulative, and not alternative.

10.7 Abandonment by LESSEE. Even though LESSEE has breached the Lease and abandoned the Premises, this Lease shall continue in effect for so long as CITY does not terminate this Lease, and CITY may enforce all its rights and remedies hereunder.

SECTION 11: GENERAL PROVISIONS

11.1 Notices. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at the Leased Premises or at such other address designated in writing by LESSEE; and to CITY as follows:

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

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.

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

11.3 Waivers. The waiver by either party of any term, covenant, or condition herein contained shall not be a waiver of such term, covenant, or condition on any subsequent breach.

11.4 Time is of the Essence. Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

11.5 Binding on Successors and Assigns. This Lease, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

11.6 Force Majeure.

a. Performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation brought by a third party (but only to the extent performance is enjoined by a court of competent jurisdiction as the result of such litigation), unusually severe weather, reasonably unforeseeable Site Conditions (as defined in the DDA) including the presence of Hazardous Materials, inability to secure necessary labor, material or tools, delays of any contractor, sub-contractor or supplier, acts of the other party, acts or failure to act of any public or governmental agency or entity (except that acts or failure to act of CITY shall not excuse performance of CITY), or any causes beyond the control or without the fault of the party claiming an extension of time to perform.

b. An extension of time for any such cause (a "Force Majeure Delay") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom. Any party claiming a Force Majeure Delay shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event. Times of performance under this Lease may also be extended in writing by CITY and LESSEE.

c. Notwithstanding any provision of this Lease, CITY agrees that in the event LESSEE fails to perform any obligation to be performed by LESSEE hereunder as the result of adverse changes in market conditions affecting the development, sale or lease of any part of the Leased Premises, the City Manager shall not terminate this Lease without first providing LESSEE a reasonable opportunity to address the City Council at a public meeting.

11.7 Costs of Proceedings and Attorneys' Fees. If any action or proceeding is brought by either party against the other under this Lease, whether for interpretation, enforcement, recovery of possession, or otherwise, the prevailing party shall be entitled to recover all costs and expenses, including the fees of its attorney in such action or proceeding. This provision shall also apply to any postjudgment action by either party, including without limitation efforts to enforce a judgment.

11.8 Severability. Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

11.9 No Exclusive Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

11.10 Laws of California. This Lease shall be governed by the laws of the State of California. Proper venue for any action shall be in San Diego, California.

11.11 No Partnership. Nothing contained in this Lease shall be deemed or construed as creating a partnership, joint venture, or any other relationship between the parties hereto other than landlord and tenant according to the provisions contained herein, or cause CITY to be responsible in any way for the debts or obligations of LESSEE, or any other party.

11.12 Final Agreement. This Lease, including any document or instrument incorporated therein or herein by reference, contains a complete and final expression of the agreement between CITY and LESSEE as to the subject matters contained herein, and there are no promises, representations, agreements, warranties, or inducements either express or implied other than as are set forth in this Lease. Any and all previous discussions or agreements between CITY and LESSEE with respect to the subject matter contained herein, whether oral or written, are superseded by this Lease.

11.13 Language of Lease. When the context so requires when used in this Lease, the masculine gender shall be deemed to include the feminine and neuter gender and the neuter gender shall be deemed to include the masculine and feminine gender. When the context to requires when used in this Lease, the singular shall be deemed to include the plural. The term "including" shall mean "including but not limited to."

11.14 Redemption. LESSEE hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of LESSEE being lawfully evicted or dispossessed for any cause, or in the event of CITY obtaining possession of the Premises by reason of the violation by LESSEE of any of the covenants and conditions of this Lease or otherwise.

11.15 Requirement of a Writing. No amendment, change, or addition to, or waiver of termination of, this Lease or any part hereof shall be valid unless in writing and signed by both CITY and LESSEE.

11.16 No Third Party Beneficiaries. The parties acknowledge and agree that the provisions of this Lease are for the sole benefit of CITY and LESSEE, and not for the benefit, directly or indirectly, of any other person or entity, except as otherwise expressly provided herein.

11.17 Authority of LESSEE. The party executing this Lease on behalf of LESSEE has full authority to do so and to bind LESSEE to perform pursuant to the terms and conditions of this Lease.

11.18 Incorporation by Reference. Each of the exhibits attached hereto is incorporated herein by this reference.

11.19 Interpretation.

a. The language in all parts of this Lease shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Lease has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Lease with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Lease, this Lease shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

b. If any term or provision of this Lease, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each other term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties hereto that in lieu of each clause or provision of this Lease that is illegal, invalid, or unenforceable, there be added as a part of this Lease an enforceable clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible.

c. The captions of the sections and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

d. References in this instrument to this "Lease" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation, and/or undertaking "herein," "hereunder," or "pursuant hereto" (or language of like import) shall mean, refer to, and include the covenants, obligations, and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, and attachments or other documents affixed to or expressly incorporated by reference in this instrument.

11.20 Counterparts. This Lease may be executed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

11.21 CITY Approval. The approval or consent of CITY, wherever required in this Lease, shall mean the written approval or consent of the City Manager or designee unless otherwise

specified, without need for further resolution by the City Council.

11.22 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE'S use of the Premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

11.23 Compliance with CITY'S Equal Opportunity Contracting Program.

a. (1) Equal Opportunity Contracting. LESSEE acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. LESSEE and all of its subcontractors are individually responsible to abide by its contents.

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

(3) LESSEE will comply with Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that LESSEE will take to achieve the CITY'S commitment to equal employment opportunities.

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

b. (1) Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. LESSEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Lease from local residents and firms as opportunities occur. LESSEE agrees to hire qualified local residents and firms whenever feasible.

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

less than one (1) year.

11.24 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or tenants shall include a condition that the contract, agreement, or lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor, vendor or tenant employs an individual who, within the twelve (12) months immediately preceding such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor, vendor or tenant. It is not the intent of this policy that these provisions apply to members of the City Council. This condition is hereby added to this Lease.

11.25 Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.

b. Establishing a drug-free awareness program to inform employees about all of the following:

- (1) The dangers of drug abuse in the workplace.
- (2) The LESSEE'S policy of maintaining a drug-free workplace.
- (3) Any available drug counseling, rehabilitation, and employees assistance programs.
- (4) The penalties that may be imposed upon employees' for drug abuse violations.

c. LESSEE shall include in each sublease language which indicates the subtenant's agreement to abide by the provisions of a drug-free workplace. LESSEE and subtenants shall be individually responsible for their own drug-free workplace programs.

11.26 Disabled Access Compliance. Subject to Section 8.2.d., LESSEE agrees to comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of

people with disabilities. LESSEE'S compliance shall include but not necessarily be limited to the following:

a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.

b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.

c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.

d. Subject to Section 8.2 of this Interim Lease, where required by law, LESSEE shall comply with CITY'S disabled access requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of LESSEE.

e. LESSEE shall include language in each sublease which indicates the subtenant's agreement to abide by the foregoing provisions. LESSEE and subtenants shall be individually responsible for their own ADA employment programs.

f. LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this Lease.

11.27 Estoppel Offset Statement.

a. LESSEE shall, at any time and from time to time upon not less than twenty (20) days' prior written notice from CITY, execute, acknowledge, and deliver to CITY a statement in writing certifying that this Lease is unmodified and in full force and effect (or, if modified, is in full force and effect, and stating the modifications) and acknowledging that there are not, to LESSEE'S knowledge, any uncured defaults on the part of CITY hereunder (or specifying such defaults if any are claimed) and such other matters as may be reasonable and customary or as needed to clarify any provision of this Lease. LESSEE'S failure to deliver such statement to CITY within twenty (20) days after receipt of CITY'S notice shall be conclusively deemed to be LESSEE'S acknowledgment that this Lease is unmodified except as reflected in recorded instruments and that, to LESSEE'S knowledge, there are no uncured defaults on the part of CITY hereunder.

b. CITY shall, at any time and from time to time upon not less than twenty (20) days' prior written notice from LESSEE, execute, acknowledge, and deliver to LESSEE a statement in writing certifying that this Lease is unmodified and in full force and effect (or, if modified, is in full force and effect, and stating the modifications) and acknowledging that there are not, to CITY's knowledge, any uncured defaults on the part of LESSEE hereunder (or specifying such defaults if any are claimed), acknowledging that the recipient will rely on the certificate, and such other matters as may be reasonable and customary or as needed to clarify any provision of this Lease. CITY's failure to deliver such statement to LESSEE within twenty (20) days after receipt of LESSEE's notice shall be conclusively deemed to be CITY's acknowledgment that this Lease is unmodified except as reflected in recorded instruments and that, to CITY's knowledge, there are no uncured defaults on the part of LESSEE hereunder.

11.28 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the management of the Leased Premises in a creditable manner.

11.29 Relocation Payments. LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this Lease.

THE CITY OF SAN DIEGO

Date: _____

By: _____

APPROVED AS TO FORM AND LEGALITY

Casey Gwinn
City Attorney

By: _____

Richard A. Duvernay, Deputy

KANE, BALLMER & BERKMAN
Special Counsel

By: _____

Glenn F. Wasserman

NTC PROPERTY MANAGEMENT, LLC.

By: McMILLIN-NTC, LLC, a Delaware limited liability company, its sole member

By: McMillin Companies, LLC, a Delaware limited liability company, its managing member

By: _____

By: _____

APPROVED AS TO FORM AND LEGALITY:

SELTZER CAPLAN WILKINS VITEK
Counsel to LESSEE

By: _____
Brian T. Seltzer

EXHIBIT A

LEGAL DESCRIPTION

[to be added]

EXHIBIT B

SITE MAP

[to be added]

ATTACHMENT NO. 15

MAP OF SITE IDENTIFYING TIDELANDS TRUST BOUNDARY

[BEHIND THIS PAGE]

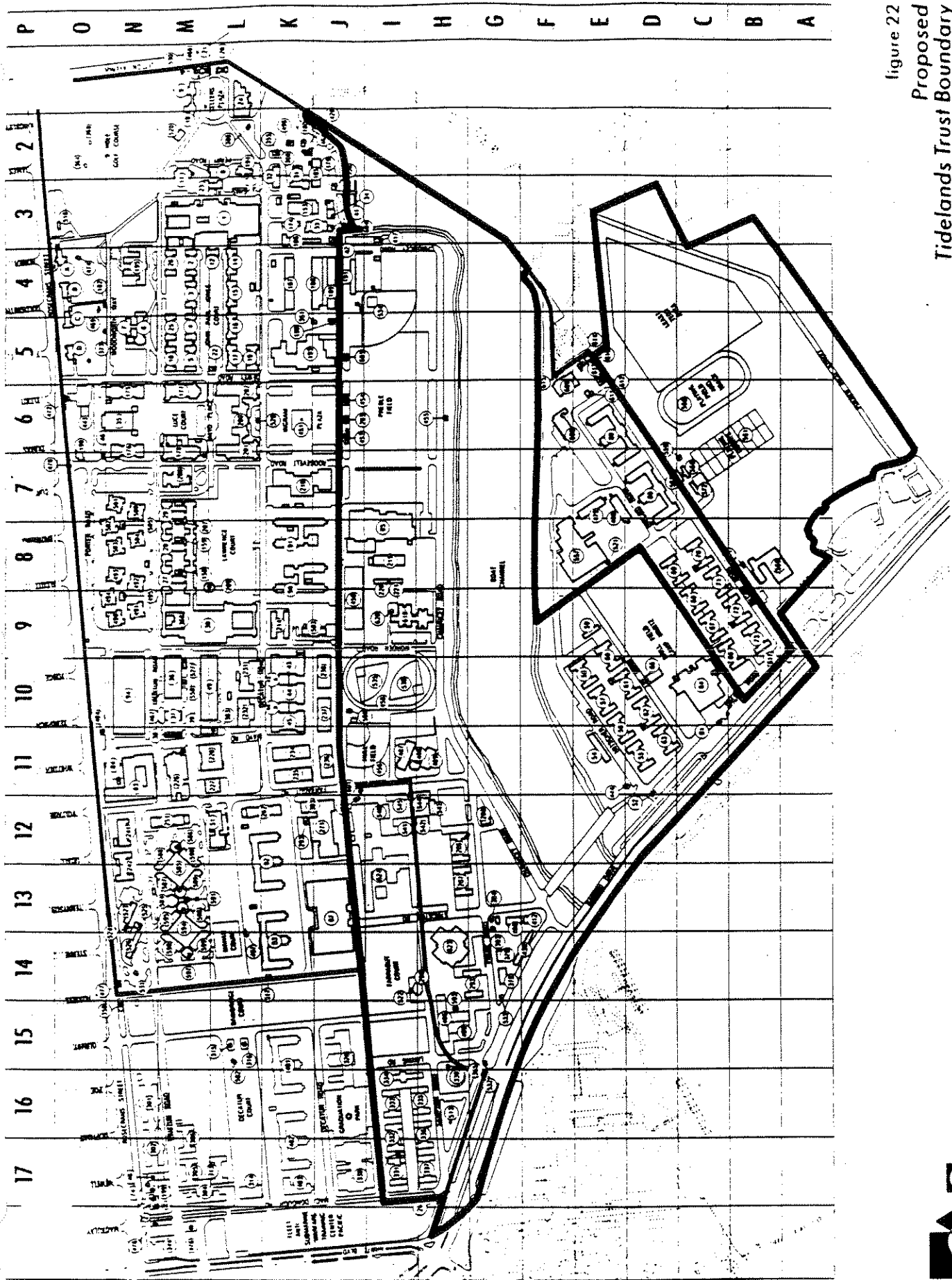
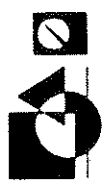


figure 22
 Proposed
 Tidlands Trust Boundary
 NTC Reuse Plan



Scale in Feet (approx.)
 0 100 200 300 400 500

7-10-97

ATTACHMENT NO. 16-A
FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT
[BEHIND THIS PAGE]

NAVAL TRAINING CENTER DDA
ASSIGNMENT AND ASSUMPTION AGREEMENT
[ALL PARCELS EXCEPT FOUNDATION PARCELS]

This Assignment and Assumption Agreement is entered into as of [INSERT DATE] by and among the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO ("Agency"), McMILLIN-NTC, LLC, a Delaware limited liability company ("Master Developer") and [INSERT NAME OF ASSIGNEE], a [INSERT FORM OF ENTITY] ("Assignee") with reference to the following facts:

A. Agency and Master Developer have heretofore entered into that certain Disposition and Development Agreement, dated as of [INSERT DATE OF DDA] (the "DDA"). The DDA is incorporated herein by this reference.

B. Pursuant to the DDA, Agency has [sold/leased] to Master Developer certain real property described in the Legal Description attached hereto as Exhibit "A" (the "Parcel"), which is part of the San Diego Naval Training Center Site, and Master Developer has agreed to cause the development of the Parcel to occur by [constructing and installing certain infrastructure improvements and] causing Assignee to [construct/rehabilitate] and operate certain buildings and structures on the Parcel, as provided in the DDA (the "Improvements").

C. Master Developer has selected and designated the Assignee to [take title to/be the sublessee of] the Parcel, and to [construct/rehabilitate] and operate the Improvements, as required by the DDA.

D. As contemplated by the DDA, Master Developer intends to assign Master Developer's rights and obligations under the DDA that relate to the Parcel (the "Assigned Rights and Obligations") to Assignee, and Assignee intends to assume all of the Assigned Rights and Obligations.

NOW, THEREFORE, the Agency, Master Developer and Assignee hereby agree as follows:

1. Master Developer hereby assigns to Assignee all of its right, title and interest in and to the DDA, but only to the extent such right, title and interest relates to the Parcel, and Assignee hereby accepts such assignment and assumes all of the obligations of the Developer that relate to the Parcel pursuant to the DDA, and agrees to be bound thereby in accordance with the terms thereof.

2. Master Developer shall convey to Assignee and Assignee shall accept [leasehold] title to the Property. In connection with such conveyance, Assignee shall execute any instrument or document relating to the Parcel which is to be executed by the Master Developer pursuant to the DDA, and be bound thereby in accordance with the terms thereof. The DDA and any other instrument or document to be executed by the Developer pursuant to the DDA shall be referred to collectively as the "Assigned Agreements."

3. Assignee shall [construct/rehabilitate] and operate the Improvements on the Parcel in conformance with the DDA and the other Assigned Agreements.

4. Assignee shall assume and perform all executory obligations of Master Developer relating to the Parcel pursuant to the DDA, without exception.

5. Nothing in this Assignment and Assumption Agreement shall relieve Master Developer of any of its obligations to Agency under the DDA that relate to the Parcel until the issuance by the Agency of the Agency Certificate of Completion for the Parcel pursuant to Section 6.15 of the DDA, except that Master Developer's liability to Agency shall be limited to the Deposit pursuant to Section 9.12 of the DDA, those obligations set forth in that certain [NTC Park Improvement Agreement - see Attachment No. 12-B] and the obligations secured by [list the applicable Performance Bonds and Labor and Material Payment Bonds - see Attachment No. 12-A] - issued by NAME OF SURETY for the benefit of the Agency and the City of San Diego.

6. Agency hereby consents to and approves the assumption of the Assigned Rights and Obligations by Assignee pursuant to the terms and conditions of this Assignment and Assumption Agreement.

7. The principal address of Assignee for purposes of the DDA is as follows:

[Name of Assignee]

8. This Assignment and Assumption Agreement is made for the sole benefit and protection of the parties hereto, and their successors and assigns, and no other person or persons shall have any right of action or right to rely hereon. As this Assignment and Assumption Agreement contains all the terms and conditions agreed upon between the parties, no other agreement regarding the subject matter thereof, shall be deemed to exist or bind any party unless in writing and signed by the party to be charged. Wherever

required, any consent or approval of either party shall not be unreasonably withheld or delayed.

9. This Assignment and Assumption Agreement may be executed in several duplicate originals, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and shall become effective upon execution by the parties, as indicated by the signatures below. The signature pages of one or more counterpart copies may be removed from such counterpart copies and all attached to the same copy of this Assignment and Assumption Agreement, which, with all attached signature pages, shall be deemed to be an original instrument.

IN WITNESS WHEREOF, Agency, Master Developer and Assignee have executed this Assignment and Assumption Agreement.

"Agency"

REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

By: _____
Hank Cunningham
Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY
Casey Gwinn
Agency General Counsel

By: _____
Richard A. Duvernay

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Glenn F. Wasserman

"Master Developer"

McMILLIN-NTC, LLC

By: McMillin Companies, LLC, a
Delaware limited liability
company, its managing member

By: _____
Eliot Alport
Executive Vice President

By: _____
Walter Heiberg
Vice President

"Assignee"

[INSERT NAME OF ASSIGNEE]

By: _____

By: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF PARCEL TO BE ASSIGNED

[TO BE ADDED]

ATTACHMENT NO. 16-B

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT
(FOUNDATION)

[BEHIND THIS PAGE]

NAVAL TRAINING CENTER DDA
ASSIGNMENT AND ASSUMPTION AGREEMENT
[FOUNDATION PARCELS]

This Assignment and Assumption Agreement is entered into as of [INSERT DATE] by and among the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO ("Agency"), McMILLIN-NTC, LLC, a Delaware limited liability company ("Master Developer") and [INSERT NAME OF FOUNDATION], a [INSERT FORM OF ENTITY] ("Foundation") with reference to the following facts:

A. Agency and Master Developer have heretofore entered into that certain Disposition and Development Agreement, dated as of [INSERT DATE OF DDA] (the "DDA"). The DDA is incorporated herein by this reference.

B. Pursuant to the DDA, Agency has agreed to lease directly to the Foundation certain real property described in the Legal Description attached hereto as Exhibit "A" (the "Foundation Parcels"), which is sometimes referred to as the Civic, Arts and Cultural Center of the San Diego Naval Training Center, and Master Developer has agreed to cause the development of the Foundation Parcels to occur by entering into an agreement with the Foundation which will require Master Developer to (1) construct and install certain infrastructure improvements and (2) rehabilitate certain buildings and structures on the Foundation Parcels, to be managed by the Foundation (the "Improvements").

C. As contemplated by the DDA, Master Developer intends to assign Master Developer's rights and obligations under the DDA that relate to the Foundation Parcels (the "Assigned Rights and Obligations") to Foundation, and Foundation intends to assume all of the Assigned Rights and Obligations.

NOW, THEREFORE, the Agency, Master Developer and Foundation hereby agree as follows:

1. Master Developer hereby assigns to Foundation all of its right, title and interest in and to the DDA, but only to the extent such right, title and interest relates to the Foundation Parcels, and Foundation hereby accepts such assignment and assumes all of the obligations of the Master Developer that relate to the Foundation Parcels pursuant to the DDA, and agrees to be bound thereby in accordance with the terms thereof.

2. Upon satisfaction of all Phase Three Conditions Precedent applicable to the Foundation Parcels, Agency shall convey to Foundation and Foundation shall accept leasehold title to the Foundation Parcels. In connection with such conveyance, Foundation shall execute any instrument or document relating to the Foundation Parcels which is to be executed by the Master Developer pursuant to the DDA, and be bound thereby in accordance with the terms thereof.

The DDA and any other instrument or document to be executed by the Master Developer pursuant to the DDA shall be referred to collectively as the "Assigned Agreements."

3. Foundation shall cause the rehabilitation of and manage and operate the Improvements on the Foundation Parcels in conformance with the DDA and the other Assigned Agreements.

4. Foundation shall assume and perform all executory obligations of Master Developer relating to the Foundation Parcels pursuant to the DDA, without exception.

5. Nothing in this Assignment and Assumption Agreement shall relieve Master Developer of any of its obligations to Agency under the DDA that relate to the Foundation Parcels until the issuance by the Agency of the Agency Certificate of Completion for the Foundation Parcels pursuant to Section 6.15 of the DDA, except that Master Developer's liability to Agency shall be limited to the Deposit pursuant to Section 9.12 of the DDA, those obligations set forth in that certain [NTC Park Improvement Agreement - see Attachment No. 12-B] and the obligations secured by [list the applicable Performance Bonds and Labor and Material Payment Bonds - see Attachment No. 12-A] -issued by NAME OF SURETY for the benefit of the Agency and the City of San Diego.

6. Agency hereby consents to and approves the assumption of the Assigned Rights and Obligations by Foundation pursuant to the terms and conditions of this Assignment and Assumption Agreement.

7. The principal address of Foundation for purposes of the DDA is as follows:

[Name of Foundation]

8. This Assignment and Assumption Agreement is made for the sole benefit and protection of the parties hereto, and their successors and assigns, and no other person or persons shall have any right of action or right to rely hereon. As this Assignment and Assumption Agreement contains all the terms and conditions agreed upon between the parties, no other agreement regarding the subject matter thereof, shall be deemed to exist or bind any party unless in writing and signed by the party to be charged. Wherever required, any consent or approval of either party shall not be unreasonably withheld or delayed.

9. This Assignment and Assumption Agreement may be executed in several duplicate originals, each of which shall be deemed an original, but all of which together shall constitute one and the

same instrument, and shall become effective upon execution by the parties, as indicated by the signatures below. The signature pages of one or more counterpart copies may be removed from such counterpart copies and all attached to the same copy of this Assignment and Assumption Agreement, which, with all attached signature pages, shall be deemed to be an original instrument.

IN WITNESS WHEREOF, Agency, Master Developer and Foundation have executed this Assignment and Assumption Agreement.

"Agency"

REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

By: _____
Hank Cunningham
Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY
Casey Gwinn
Agency General Counsel

By: _____
Richard A. Duvernay

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Glenn F. Wasserman

"Master Developer"

McMILLIN-NTC, LLC

By: McMillin Companies, LLC, a
Delaware limited liability
company, its managing member

By: _____
Eliot Alport
Executive Vice President

By: _____
Walter Heiberg
Vice President

"Foundation"

[INSERT NAME OF FOUNDATION]

By: _____

By: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF FOUNDATION PARCELS TO BE ASSIGNED

[TO BE ADDED]

ATTACHMENT NO. 17
PRELIMINARY REPORT
[BEHIND THIS PAGE]

000468



FIRST AMERICAN TITLE INSURANCE COMPANY
411 IVY STREET, SAN DIEGO, CALIFORNIA 92101
P.O. BOX 808, SAN DIEGO, CALIFORNIA 92112 (619) 238-1776

MARCH 14, 2000

MCMILLIN COMPANIES
2727 HOOVER AVENUE
NATIONAL CITY, CALIFORNIA
ATTN: WALTER HEIBERG

YOUR REF. NTC (PORTION)
OUR ORDER NO. 1215794-6

IN RESPONSE TO THE HEREIN REFERENCED APPLICATION FOR A POLICY OF TITLE INSURANCE, THIS COMPANY HEREBY REPORTS THAT IT IS PREPARED TO ISSUE, OR CAUSE TO BE ISSUED, AS OF THE DATE HEREOF, A POLICY OR POLICIES OF TITLE INSURANCE DESCRIBING THE LAND AND THE ESTATE OR INTEREST THEREIN HEREINAFTER SET FORTH, INSURING AGAINST LOSS WHICH MAY BE SUSTAINED BY REASON OF ANY DEFECT, LIEN OR ENCUMBRANCE NOT SHOWN OR REFERRED TO AS AN EXCEPTION HEREIN OR NOT EXCLUDED FROM COVERAGE PURSUANT TO THE PRINTED SCHEDULES, CONDITIONS AND STIPULATIONS OF SAID POLICY FORMS.

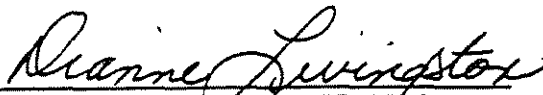
THE PRINTED EXCEPTIONS AND EXCLUSIONS FROM THE COVERAGE OF SAID POLICY OR POLICIES ARE SET FORTH HEREIN. COPIES OF THE POLICY FORMS SHOULD BE READ. THEY ARE AVAILABLE FROM THE OFFICE WHICH ISSUED THIS REPORT.

PLEASE READ THE EXCEPTIONS SHOWN OR REFERRED TO BELOW AND THE EXCEPTIONS AND EXCLUSIONS SET FORTH IN EXHIBIT A OF THIS REPORT CAREFULLY. THE EXCEPTIONS AND EXCLUSIONS ARE MEANT TO PROVIDE YOU WITH NOTICE OF MATTERS WHICH ARE NOT COVERED UNDER THE TERMS OF THE TITLE INSURANCE POLICY AND SHOULD BE CAREFULLY CONSIDERED.

IT IS IMPORTANT TO NOTE THAT THIS PRELIMINARY REPORT IS NOT A WRITTEN REPRESENTATION AS TO THE CONDITION OF TITLE AND MAY NOT LIST ALL LIENS, DEFECTS, AND ENCUMBRANCES AFFECTING TITLE TO THE LAND.

THIS REPORT (AND ANY SUPPLEMENTS OR AMENDMENTS HERETO) IS ISSUED SOLELY FOR THE PURPOSE OF FACILITATING THE ISSUANCE OF A POLICY OF TITLE INSURANCE AND NO LIABILITY IS ASSUMED HEREBY. IF IT IS DESIRED THAT LIABILITY BE ASSUMED PRIOR TO THE ISSUANCE OF A POLICY OF TITLE INSURANCE, A BINDER OR COMMITMENT SHOULD BE REQUESTED.

DATED AS OF MARCH 7, 2000 AT 7:30 A.M.


DIANNE LIVINGSTON - TITLE OFFICER
DIRECT DIAL PHONE 231-4654
FAX NO. 231-4647



THE FORM OF POLICY TITLE INSURANCE CONTEMPLATED BY THIS REPORT IS:
TO BE DETERMINED

TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:
UNITED STATES OF AMERICA

THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED
TO COVERED BY THIS REPORT IS:

FEE

THE LAND REFERRED TO HEREIN IS DESCRIBED AS FOLLOWS:

(SEE ATTACHED LEGAL DESCRIPTION)

AT THE DATE HEREOF EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED
EXCEPTIONS AND EXCLUSIONS CONTAINED IN SAID POLICY FORM WOULD BE AS
FOLLOWS:

1. THIS ITEM HAS BEEN DELETED.
2. THIS ITEM HAS BEEN DELETED.
3. THE PUBLIC TRUST EASEMENT FOR COMMERCE, NAVIGATION OR FISHERY.

NOTE: THIS ITEM AFFECTS A PORTION OF THE HEREIN DESCRIBED
PROPERTY. AS OF THE DATE OF THIS REPORT NEGOTIATIONS ARE IN
PROGRESS TO DETERMINE THE EXACT LOCATION OF THE AFFECTED
AREAS.

4. THIS ITEM HAS BEEN DELETED. (COVERED IN ITEM NO. 3)
5. THIS ITEM HAS BEEN DELETED.
6. THIS ITEM HAS BEEN DELETED.
7. THIS ITEM HAS BEEN DELETED. (COVERED IN ITEM NO. 3)
8. THIS ITEM HAS BEEN DELETED.



9. THE FOLLOWING RECITAL IN DEED FROM THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION, TO UNITED STATES OF AMERICA, RECORDED SEPTEMBER 5, 1917 IN BOOK 739, PAGE 307 OF DEEDS, FILE NO. 15414:

"TO HAVE AND TO HOLD THE ABOVE GRANTED AND DESCRIBED PREMISES UNTO THE SAID GRANTEE FOREVER FOR PUBLIC PURPOSES OF THE UNITED STATES."

10. THE FOLLOWING RECITAL IN DEED FROM FRANK J. BELCHER, JR., ET AL. TO THE UNITED STATES OF AMERICA, RECORDED JUNE 6, 1921 IN BOOK 853, PAGE 122 OF DEEDS:

TO HAVE AND TO HOLD THE ABOVE GRANTED AND DESCRIBED PREMISES UNTO THE SAID UNITED STATES OF AMERICA, ITS SUCCESSORS AND ASSIGNS, FOREVER, FOR THE EXCLUSIVE USE OF THE UNITED STATES NAVY DEPARTMENT AS A SITE FOR A NAVAL TRAINING STATION.

11. THE FOLLOWING RECITAL IN DEED FROM THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION, TO THE UNITED STATES OF AMERICA, RECORDED JUNE 6, 1921 IN BOOK 853, PAGE 126 OF DEEDS:

TO HAVE AND TO HOLD THE ABOVE GRANTED AND DESCRIBED PREMISES UNTO THE SAID GRANTEE FOREVER, FOR THE EXCLUSIVE USE OF THE UNITED STATES NAVY DEPARTMENT AS A SITE FOR A NAVAL TRAINING STATION.

12. THE FOLLOWING RECITAL IN DEED FROM FRANK J. BELCHER, JR., ET AL., TO THE UNITED STATES OF AMERICA, RECORDED JUNE 6, 1921 IN BOOK 853, PAGE 127 OF DEEDS:

TO HAVE AND TO HOLD THE ABOVE GRANTED AND DESCRIBED PREMISES UNTO THE SAID UNITED STATES OF AMERICA, ITS SUCCESSORS AND ASSIGNS, FOREVER, FOR THE EXCLUSIVE USE OF THE UNITED STATES NAVY DEPARTMENT AS A SITE FOR A NAVAL TRAINING STATION.

13. THIS ITEM HAS BEEN DELETED.

14. THE FOLLOWING RECITAL IN JUDGEMENT IN CASE NO. 817 CIVIL, IN FAVOR OF UNITED STATES OF AMERICA A CERTIFIED COPY OF WHICH WAS RECORDED OCTOBER 10, 1928 IN BOOK 1528, PAGE 328 OF DEEDS:

THE COURT HAVING FOUND AND DETERMINED THAT THE USE TO WHICH THE PARCELS OF LAND HEREINAFTER DESCRIBED ARE TO BE APPLIED IS A PUBLIC USE, AUTHORIZED BY LAW, AND THAT THE TAKING OF SAID LANDS IS NECESSARY TO SUCH USE.



15. THE FOLLOWING RECITAL IN DEED FROM THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION, TO THE UNITED STATES OF AMERICA, RECORDED OCTOBER 25, 1933 IN BOOK 239, PAGE 408 OF OFFICIAL RECORDS:

TO HAVE AND TO HOLD UNTO THE UNITED STATES OF AMERICA FOREVER FOR NATIONAL DEFENSE AND FOR THE USES AND PURPOSES OF THE UNITED STATES.

16. THIS ITEM HAS BEEN DELETED.
17. THIS ITEM HAS BEEN DELETED. (COVERED IN ITEM NO. 23)
18. THIS ITEM HAS BEEN DELETED. (COVERED IN ITEM NO. 23)
19. THE RIGHTS OF APPLIED ENERGY, INCORPORATED AND MERIDIAN TRUST COMPANY, TRUSTEE TO USE THE TRANSMISSION LINES LOCATED ON THE HEREIN DESCRIBED PROPERTY REFERRED TO AS "NEW 69KV INTERCONNECT CABLE ROUTING", AS DISCLOSED BY A WARRANTY BILL OF SALE BETWEEN APPLIED ENERGY, INCORPORATED, SELLER AND MERIDIAN TRUST COMPANY, AS OWNER TRUSTEE, BUYERS, DATED AS OF AUGUST 25, 1989 WHICH WAS RECORDED AUGUST 25, 1989 AS FILE NO. 89-457138 OF OFFICIAL RECORDS.
20. AN INSTRUMENT ENTITLED "ACCEPTANCE OF RETROCESSION OF LEGISLATIVE JURISDICTION, CALIFORNIA GOVERNMENT CODE SECTION 113", EXECUTED BY ROBERT C. HIGHT, EXECUTIVE OFFICER, CALIFORNIA STATE LANDS COMMISSION, ACCEPTING RETROCESSION OF EXCLUSIVE LEGISLATIVE JURISDICTION AND ESTABLISHED CONCURRENT LEGISLATIVE JURISDICTION OVER THE LAND DESCRIBED HEREIN, RECORDED MAY 20, 1996 AS FILE NO. 1996-0254673 OF OFFICIAL RECORDS.

REFERENCE IS MADE TO SAID INSTRUMENT FOR FURTHER PARTICULARS.

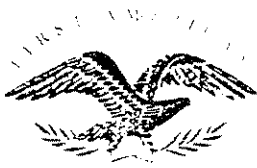
21. THE FACT THAT SAID LAND LIES WITHIN THE NAVAL TRAINING CENTER REDEVELOPMENT PROJECT AREA AND STATEMENT THAT DEVELOPMENT PROCEEDINGS HAVE BEEN INSTITUTED, AS DISCLOSED BY INSTRUMENT RECORDED MAY 20, 1997 AS FILE NO. 1997-0233640 OF OFFICIAL RECORDS.

REFERENCE IS MADE TO SAID INSTRUMENT FOR FURTHER PARTICULARS.

22. THIS ITEM HAS BEEN DELETED. (COVERED BY ITEM NO. 23)
23. THE EFFECT OF RECORD OF SURVEY MAP NOS. 9050, 15213, 15789 AND 15840, WHICH SETS FORTH, OR PURPORTS TO SET FORTH VARIOUS EASEMENTS, BUILDING ENCROACHMENTS, EXISTING BRIDGE, PEDESTRIAN CROSSING, FENCES AND CERTAIN DIMENSIONS AND BEARINGS OF THE HEREIN DESCRIBED PROPERTY.



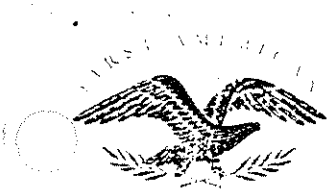
24. THIS ITEM HAS BEEN DELETED. (COVERED BY ITEM NO. 25)
25. THE INTEREST, IF ANY, OF PARTIES IN POSSESSION OF THE HEREIN DESCRIBED PROPERTY. FIRST AMERICAN REQUESTS THAT A RENT ROLL/TENANT STATEMENT BE SUBMITTED, SO THAT WE MAY CORRECTLY DISCLOSE THOSE INTERESTS, IF ANY, CURRENTLY IN POSSESSION OF THE HEREIN DESCRIBED PROPERTY.
26. THIS ITEM HAS BEEN DELETED.
27. A PENDING ACTION FILED IN THE UNITED STATES DISTRICT COURT, DISTRICT OF COLUMBIA.
CASE NO.: 1;99CV03375
PLAINTIFFS: CAMPO BAND OF MISSION INDIANS, ON ITS OWN BEHALF AND ON BEHALF OF THE TWELVE FEDERALLY RECOGNIZED TRIBES COMPRISED OF DESCENDANTS OF THE KUMEYAAY NATION; KUMEYAAY TRIBAL COALITION, ON ITS OWN BEHALF AND ON BEHALF OF THE TWELVE FEDERALLY RECOGNIZED TRIBES COMPRISED OF THE DESCENDANTS OF THE KUMEYAAY NATION.
DEFENDANTS: UNITED STATES OF AMERICA; HON. WILLIAM S. COHEN, IN HIS OFFICIAL CAPACITY AS SECRETARY OF DEFENSE; U.S. DEPARTMENT OF DEFENSE; HON. BRUCE BABBITT, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE INTERIOR; U.S. DEPARTMENT OF THE INTERIOR; CITY OF SAN DIEGO, IN ITS OWN CAPACITY AS A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA, AND IN ITS CAPACITY AS THE LOCAL REDEVELOPMENT AUTHORITY FOR DEPARTMENT OF DEFENSE.
28. ANY RIGHTS, INTERESTS OR CLAIMS WHICH MAY EXIST OR ARISE BY REASON OF THE FOLLOWING FACTS AS DISCLOSED BY ALTA SURVEY PREPARED BY RICK ENGINEERING, UNDER JOB NO. 13578-A, DATED MARCH 2, 2000:
1. AN EXISTING RUNWAY PROTECTION ZONE (UNDISCLOSED LOCATION).
 2. AN AVIGATION EASEMENT IN FAVOR OF THE CITY OF SAN DIEGO TO BE PLACED OVER THE HEREIN DESCRIBED PROPERTY.
 3. AN EXISTING EASEMENT GRANTED BY THE UNITED STATES OF AMERICA TO SAN DIEGO GAS & ELECTRIC (UNDISCLOSED LOCATION).
 4. A 15' FUTURE MAINTENANCE EASEMENT LOCATED WITHIN PORTIONS OF PARCELS A, B AND C..
 5. A STEAM LINE EASEMENT LYING WITHIN PORTIONS OF PARCELS B AND C.



ORDER NO. 1215794-6

6. A 24' WIDE 12KV ELECTRICAL EASEMENT LOCATED WITHIN PORTIONS OF PARCELS A, B AND C.
7. A PEDESTRIAN BRIDGE AFFECTING THE SOUTHWEST PORTION OF PARCEL C.
8. A 12' WIDE TELEPHONE EASEMENT LOCATED WITHIN PORTIONS OF PARCELS B AND C.
9. A 24' WIDE 69KV ELECTRICAL EASEMENT LOCATED WITHIN PORTIONS OF PARCEL A.
10. A JET FUEL LINE LOCATED WITHIN PORTIONS OF PARCEL A.
11. A BURIAL SITE LOCATED WITHIN THE EXISTING GOLF COURSE (PARCEL A).
12. VARIOUS INTERNAL STREETS WHICH SERVICE THE ENTIRE NAVAL TRAINING CENTER..

000474



LEGAL DESCRIPTION

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

Parcel "A"

Those portions of the United States Naval Training Center, in the City of San Diego, County of San Diego, State of California as shown on Record of Survey Map No. 15213 filed in the Office of the County Recorder of San Diego County on June 14, 1996 as File No. 1996-0298882 of Official Records, being more particularly described as follows:

Beginning at the Northwesternly terminus of that certain line designated as "North 54°15'14" West 1087.60 feet" of said Record of Survey; thence along said line South 54°15'14" East 1087.60 feet; thence continuing along the Northeastery line of said Record of Survey the following courses: North 35°45'46" East 0.37 feet; thence South 15°38'02" East 501.45 feet to the Westerly Top of Bank of the boat Channel as shown on Record of Survey No. 15840 filed in the Office of said County Recorder; thence leaving said Northeastery line along said Westerly Top of Bank line the following courses: South 40°42'25" West 88.21 feet; thence South 18°34'27" East 7.79 feet; thence South 01°29'46" East 17.22 feet; thence South 09°53'16" West 41.03 feet; thence South 18°36'23" East 26.69 feet; thence South 11°31'11" East 43.54 feet; thence South 88°41'28" West 6.81 feet; thence South 09°37'33" East 37.10 feet; thence South 09°04'34" East 39.01 feet; thence South 12°40'44" West 57.17 feet; thence South 12°40'21" West 41.43 feet; thence South 27°59'53" West 69.28 feet; thence South 32°18'07" West 59.18 feet; thence South 42°55'57" West 45.85 feet; thence South 66°35'38" West 10.51 feet; thence South 87°48'19" West 4.69 feet; thence South 35°55'16" West 6.43 feet; thence North 49°24'33" West 5.88 feet; thence South 38°27'13" West 35.82 feet; thence South 06°20'34" West 22.92 feet; thence South 26°09'17" West 68.03 feet; thence South 25°51'52" West 56.78 feet; thence South 07°00'49" West 32.16 feet; thence South 29°54'19" West 13.38 feet; thence South 58°05'23" West 16.58 feet; thence South 10°18'17" West 18.01 feet; thence leaving said Westerly Top of Bank line South 59°49'48" West 117.08 feet to Point "A"; thence South 41°48'36" West 731.18 feet; thence South 48°10'45" East 40.05 feet to the beginning of a tangent 20.43 foot radius curve concave Westerly; thence Southerly along the arc of said curve through a central angle of 90°00'00" a distance of 32.09 feet; thence South 41°49'16" West 419.25 feet to the beginning of a tangent 20.43 foot radius curve concave Northerly; thence Westerly along the arc of said curve through a central angle of 90°00'00" a distance of 32.09 feet; thence North 48°10'45" West 40.46 feet; thence South 41°50'55" West 1528.66 feet to the beginning of a tangent 2399.99 foot radius curve concave Southeasterly; thence Southwesterly along the arc of said curve through a central angle of 05°32'44" a distance of 232.29 feet; thence South 36°18'11" West 121.60 feet; thence South 53°43'30" East 16.18 feet to



Point "B"; thence South 36°18'40" West 1080.03 feet; thence North 53°43'54" West 1427.91 feet to the Northwesternly line of said Record of Survey No. 15213; thence along said Northwesternly line North 36°16'06" East 3087.79 feet; thence leaving said Northwesternly line South 48°10'22" East 523.19 feet; thence North 41°50'33" East 500.13 feet; thence North 48°09'51" West 572.01 feet to said Northwesternly line; thence along said Northwesternly line North 36°16'06" East 1697.53 feet to the beginning of a tangent 37.00 foot radius curve concave Southerly; thence Easterly along the arc of said curve through a central angle of 89°28'40" a distance of 57.78 feet to the Point of Beginning.

EXCEPTING THEREFROM the following: Beginning at the above-mentioned Point "A"; thence South 41°48'36" West 468.86 feet; thence North 48°11'24" West 37.88 feet to the TRUE POINT OF BEGINNING; thence North 48°04'05" West 253.65 feet; thence North 10°22'33" West 36.09 feet; thence North 41°38'01" East 114.39 feet; thence South 47°56'11" East 284.35 feet; thence South 42°34'59" West 135.81 feet to the TRUE POINT OF BEGINNING.

Parcel "B"

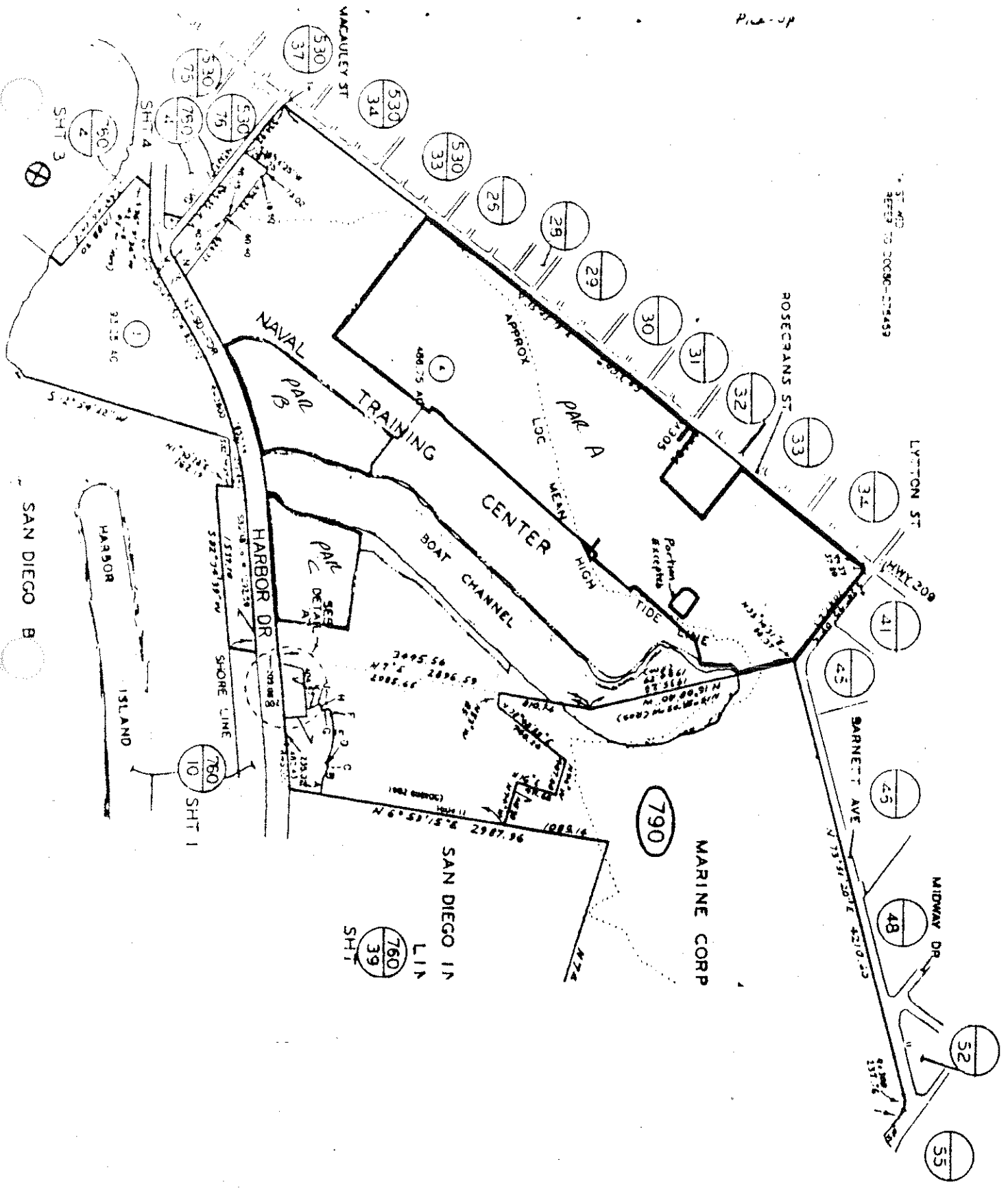
Beginning at the above-mentioned Point "B"; thence South 53°43'30" East 375.81 feet; thence South 36°16'00" West 29.98 feet to the TRUE POINT OF BEGINNING; thence South 53°44'05" East 335.08 feet; thence South 78°01'08" East 81.56 feet to Point "C" being a point on the Westerly Top of Bank of the Boat Channel as shown on said Record of Survey No. 15840; thence along said Westerly Top of Bank the following courses: South 23°59'50" West 19.19 feet; thence South 07°52'37" West 41.67 feet; thence South 11°58'23" West 41.96 feet; thence South 14°05'04" West 70.52 feet; thence South 10°46'32" West 75.21 feet; thence South 11°51'10" West 65.38 feet; thence South 07°11'37" West 73.82 feet; thence South 13°11'54" West 66.08 feet; thence South 16°49'21" West 96.63 feet; thence South 29°20'17" West 42.73 feet; thence South 13°53'42" West 107.62 feet; thence South 14°39'08" West 90.69 feet; thence South 13°40'46" West 32.67 feet; thence South 18°12'20" East 47.19 feet; thence South 25°35'02" East 23.50 feet; thence South 19°58'03" East 45.00 feet; thence South 00°16'48" East 12.96 feet to the Northerly Right-of-way of North Harbor Drive per document recorded April 18, 1962 as File No. 66681 of Official Records; as said point being the beginning of a non-tangent 4100.00 foot radius curve concave Southeasterly, to which a radial line bears North 14°48'14" West; thence leaving said Westerly top of Bank Southwesterly along said Northerly Right-of-way through a central angle of 14°55'28" a distance of 1067.85 feet; thence leaving said Northerly Right-of-way North 30°28'07" West 98.45 feet to the beginning of a tangent 266.00 foot radius curve concave Easterly; thence Northerly along the arc of said curve through a central angle of 66°44'13" a distance of 309.83 feet; thence North 36°16'06" East 43.44 feet to the beginning of a tangent 334.00 foot radius curve concave Northwesternly; thence Northeasterly along the arc of said curve through a central angle of 18°30'28" a distance of 107.89 feet; thence North 36°16'00" East 1277.98 feet to the TRUE POINT OF BEGINNING.

Parcel "C"

Beginning at the above-mentioned Point "C"; thence South 89°29'35" East 567.89 feet to the TRUE POINT OF BEGINNING; thence South 82°29'41" East 907.51 feet; thence South 07°31'19" West 587.34 feet to the Northerly Right-of-way of North Harbor Drive per document recorded April 18, 1962 as File No. 66681 of Official Records; thence along said Northerly Right-of-way South 83°48'36" West 947.73 feet to the beginning of a tangent 4100.00 foot radius curve concave Southerly; thence continuing along said Northerly Right-of-way Westerly along the arc of said curve through a central angle of 02°26'08" a distance of 174.28 feet to the Easterly Top of Bank of Boat Channel per said Record of Survey No. 15840; thence leaving said Northerly Right-of-way along said Easterly Top of Bank North 27°30'14" East 8.44 feet; thence North 85°23'53" East 25.32 feet; thence North 06°04'38" East 10.02 feet; thence North 24°43'12" East 8.14 feet; thence North 62°50'55" East 8.72 feet; thence North 81°30'52" East 24.20 feet; thence North 44°19'56" East 16.88 feet; thence North 11°54'56" West 12.47 feet; thence North 01°25'44" East 17.94 feet; thence North 31°14'27" West 15.80 feet; thence North 30°17'28" East 12.89 feet; thence North 43°59'07" East 10.78 feet; thence North 36°43'23" East 19.30 feet; thence North 25°14'51" East 12.30 feet; thence North 24°58'11" East 18.05 feet; thence North 27°58'31" East 14.68 feet; thence North 14°26'50" East 86.45 feet; thence North 16°12'24" East 204.87 feet; thence North 09°38'37" East 77.34 feet; thence North 15°34'49" East 86.37 feet; thence North 21°39'11" East 62.28 feet; thence North 10°29'44" East 59.12 feet; thence North 17°18'59" East 81.81 feet; thence North 15°00'45" East 27.45 feet to the TRUE POINT OF BEGINNING.

P. 2-1-57

ST AND REFER TO 20090-275459



ATTACHMENT NO. 18-A

STAGE ONE SHELL REHABILITATION
(HISTORIC BUILDINGS) SCOPE OF WORK

[BEHIND THIS PAGE]

ATTACHMENT 18-A

STAGE 1 SHELL REHABILITATION HISTORIC BUILDINGS SCOPE OF WORK NAVAL TRAINING CENTER REDEVELOPMENT

Master Developer has committed pursuant to the Disposition and Development Agreement to provide for the rehabilitation of historic buildings at the Naval Training Center. The buildings shall be rehabilitated pursuant to the following scope of work. It is understood that the mutual goal of all parties involved in the rehabilitation is to complete the work at a reasonable cost.

All work will be performed in accordance with the 1998 *State Historical Building Code* (SHBC) and the *Secretary of the Interior's Standards for the Treatment of Historic Properties* (Standards). The historic buildings in their current condition are classified as "existing non-conforming" and the scope of work defined below shall apply to uses consistent with the current use classification or previous "non-conforming" uses that can be verified. The existing conditions will be acceptable under one of the three following scenarios: (1) Drawings signed by a licensed engineer, registered architect or other professional engineers (i.e. mechanical, plumbing, electrical, civil etc.) will be assumed to be in compliance with the code at that time. Existing conditions (as-built) will be verified with the drawings; (2) If drawings cannot be found, the existing conditions will be compared to the prevailing code at the time the work was performed and if found to be in compliance, will be accepted as "existing non-conforming;" and (3) Existing condition that cannot be verified through scenarios (1) and (2) shall comply with the State Historic Building Code (SHBC), and the 1997 Uniform Code for Building Conservation (UCBC).

SHELL REHABILITATION: Repair or replace interior and exterior building elements, materials, equipment, and finishes as defined below. This will include:

Interiors:

1. **Wall surfaces:** Clean and/or patch and paint to provide a smooth, clean and consistent finish.
2. **Floor Finishes:** Repair or replace to create a consistent finish and color.
3. **Ceiling Finishes:** Clean or patch and paint plaster and drywall to provide a consistent surface. Suspended acoustic ceilings may be removed or repaired.
4. **Windows and Doors:** Repair or replace to make operable including replacement of broken glass. Surfaces shall be cleaned and/or painted and all historic hardware shall be made operable or replaced.
5. **Final Cleaning:** All interior spaces shall be professionally cleaned.

Exteriors:

1. **Roofs:** Inspect and repair roof materials to maintain watertight protection.
2. **Wall Surfaces:** Patch or paint in order to provide a consistent and moisture-resistant exterior surface.
3. **Windows and Doors:** Repair or replace to make operable and weather resistant including replacement of broken glass and deteriorated weather stripping. Surfaces shall be cleaned and/or painted and all historic hardware shall be made operable or replaced.
4. **Pest Control:** A termite survey and report will be performed for each building. Treatment and eradication of active termite infestations will be performed in accordance with the recommendations of the termite report. Any structural repairs identified in the report needed due to termite damage, fungus or dryrot are specifically excluded.

Treatment of Hazardous Materials:

Any loose or flaky lead-based paint will be scraped, bagged and disposed of by a licensed hazardous materials contractor. All surfaces finished with lead-based paint will be encapsulated. Reference shall be made to the *National Park Service Preservation Brief 37: Appropriate Methods of Reducing Lead-Paint Hazards in Historic Housing*. All accessible loose or exposed friable asbestos will be abated or encapsulated by a licensed hazardous materials contractor. All existing asbestos-containing floor covering will either be encapsulated or removed. All lead paint and hazardous materials will be remediated in accordance with means and methods pursuant to all state and federal regulatory requirements.

MECHANICAL, PLUMBING AND ELECTRICAL REQUIREMENTS

The intent of the stage one shell rehabilitation of the mechanical, plumbing and electrical systems is to preserve the integrity of the historic buildings while providing an adequate level of protection from fire, health and life-safety hazards.

Heating (Radiant Hot Water): Includes the addition of new heating system and units, or utilization of existing heating system. Heat will be provided to all buildings when required by code. Existing heating systems, which do not constitute a safety hazard, may remain in use.

Electrical: The existing electrical system will be inspected and repaired to an operating condition. Existing light fixtures, switches, outlets and devices will be repaired or replaced. Existing systems, wiring methods and electrical equipment, which do not constitute a safety hazard, may remain in use. Archaic methods that do not appear in present codes may remain and may be extended if they constitute a safe installation.

Plumbing: The existing plumbing system will be repaired to an operating condition. All existing sanitary sewer systems will be flushed and tested to confirm proper working order. Repair or replace piping as necessary to make systems operable. Operable and adequate restroom facilities will be provided for every building per the *1997 Uniform Plumbing Code, Appendix C: Minimum Plumbing Facilities*. These restroom facilities may utilize the existing plumbing fixtures, faucets and piping. Plumbing fixtures, faucets and piping will be repaired or replaced to provide adequate restroom facilities.

ALL WORK ITEMS LISTED BELOW ARE SPECIFICALLY EXCLUDED FROM THE STAGE 1 REHABILITATION SCOPE OF WORK:

1. Termite repair and obtaining the necessary building clearances.
2. Structural or seismic upgrades to existing structures.
3. Noise attenuation.
4. Code compliance unless specifically addressed.
5. The abatement of PCBs, contaminated soil, chemical waste or any other hazardous materials not specifically included in this scope of work.
6. Tenant improvements beyond those items specifically listed herein as shell rehabilitation.
7. Title 24 Energy Compliance and/or Calculations.
8. Utility (water, electric and gas) metering, and cable and telephone service connections for individual tenant spaces and/or buildings will be the responsibility of others and is not included in this scope of work.

ADDITIONAL CODE ISSUES

The buildings at the Naval Training Center fall into two groups of building: historic buildings as defined by the Historic District and non-historic buildings. The rehabilitation of historic buildings shall follow the requirements of the State Historical Building Code (SHBC).¹ Non-historic buildings will be governed by the current edition of the Uniform Code for Building Conservation and applicable portions of the Uniform Building Code. Additionally, any "non-conforming" occupancy that can be proven to have existed in the historic or non-historic buildings shall be deemed as a previous "non-conforming" occupancy and allowed to continue in use regardless of any period of time in which it may have remained unoccupied or in other uses.

The following analysis is a general understanding of the requirements for the historic buildings at the Naval Training Center.

A. Historic Buildings with No Increase in the Occupancy Hazard as defined in the UCBC tables 5A, 5B, 5C, 5D, and 5E.

- Existing stairways to remain. (Rise, run, width and handrail height to remain as "existing non-conforming").
- Existing exits to remain in current configuration. Number of exits, distance between exits, width of exits and direction of door swing shall all remain. Any missing exit signs will be added and any dead end corridors (longer than 20 feet) will be corrected.
- Existing structural loading of the building to remain. Vertical loads and seismic loads will not be verified or calculated. As stated in the SHBC, Section 8-705, "Where no distress is evident, and a complete load path is present, the structure may be assumed adequate by having withstood the test of time..."
- No Title 24 energy compliance will be required. Buildings will not require insulation, dual glazing, or Title 24 calculations as stated in the SHBC, Section 8-901.5, "Historical buildings covered by this part are exempted from compliance with energy conservation standards."

- No fire sprinkler system or fire alarm system will be required. Any existing fire sprinkler system or fire alarm system will be tested as "existing non-conforming."
- Existing construction and fire resistive ratings shall remain as "existing non-conforming."
- Backflow preventers will be provided.
- Existing plumbing and plumbing fixtures may remain. New plumbing and plumbing fixtures shall comply with the regular code.

B. Historic Buildings with a Change in Occupancy that Increases the Existing Occupancy Hazard as defined in the UCBC tables 5A, 5B, 5C, 5D, and 5E.

Change of occupancy which results in a more hazardous occupancy as defined in the UCBC shall be made to conform with the regular building code requirements except as specified in the SHBC or the UCBC.

C. Accessibility for Historic Buildings

Access Compliance: The regular code for access for persons with disabilities shall be applied to qualified historical buildings or properties unless strict compliance with the regular code will threaten or destroy the historical significance or character-defining features of the building or property. The preparation of the shell rehabilitation of the existing buildings shall comply with the applicable *1998 State Historical Building Code* and the *1998 California State Building Standards Code* (Title 24). Accessibility compliance for the historic buildings will be allowed to use the provisions of the *Americans with Disability Act Accessibility Guidelines (ADAAG) 4.1.7., Historic Preservation* and the *Americans with Disabilities Act (ADA) Title III - 6.4000, Alterations: Historic Preservation* and Chapter 8-6, *Alternative Accessibility Provisions of the State Historical Building Code*. If alterations are proposed on upper floors, complying path of travel and restrooms must be provided on that level unless exempt as an unreasonable hardship based on the prevailing code or the State Historic Building Code. However, elevator access will not be required unless major remodels are proposed triggering an elevator per Section 1134B of the California Building Code (CBC).

Stage One scope of work shall include:

- A single primary accessible entrance shall be provided.
- Accessible path of travel shall be provided.
- Accessible parking shall be made available.
- Thresholds shall be modified as required to meet the applicable code requirements.
- Second floor accessibility shall not be provided in buildings without an existing elevator.
- A single unisex accessible restroom shall be provided on the first floor of each building per the State Historical Building Code, Section 8-603.4.
- Existing restrooms may be left as "existing non-conforming."
- New restrooms shall comply with regular code requirements.

TABLE 5-A—HAZARD CATEGORIES AND CLASSIFICATIONS HEIGHTS AND AREAS

RELATIVE HAZARD	OCCUPANCY CLASSIFICATION
1.	A-1, H, I-3 (highest hazard group)
2.	A-2, A-2.1, I-1.1, I-1.2, I-2
3.	A-3, A-4, B, E, F, M, R-1, S
4.	R-3, U (lowest hazard group)

TABLE 5-B—HAZARD CATEGORIES AND CLASSIFICATIONS LIFE SAFETY AND EXITS

RELATIVE HAZARD	OCCUPANCY CLASSIFICATION
1.	A-1, A-2, A-2.1, E, I, H-1, H-2 (highest hazard group)
2.	A-3, A-4
3.	R-1, R-3, B dining and drinking establishments
4.	B all others, F, H other than H-1 and H-2, M, S-1, S-2
5.	S-3, S-4, S-5
6.	U (lowest hazard group)

TABLE 5-C—HAZARD CATEGORIES AND CLASSIFICATIONS OCCUPANCY SEPARATIONS

RELATIVE HAZARD	OCCUPANCY CLASSIFICATION
1.	H, I, S-3, S-4 (highest hazard group)
2.	A, B, F, M, S-1, S-2, S-5
3.	E
4.	R-1, U
5.	R-3 (lowest hazard group)

TABLE 5-D—HAZARD CATEGORIES AND CLASSIFICATIONS EXPOSURE OF EXTERIOR WALLS AND STAIRWAY ENCLOSURES

RELATIVE HAZARD	OCCUPANCY CLASSIFICATION
1.	H (highest hazard group)
2.	M, S-1, S-2
3.	A, E, I
4.	B, F-1, R, S-3, S-4, S-5
5.	F-2, U (lowest hazard group)

TABLE 5-E—HAZARD CATEGORIES AND CLASSIFICATIONS EARTHQUAKE SAFETY

RELATIVE HAZARD	OCCUPANCY CLASSIFICATION
1.	A, E, I (highest hazard group)
2.	R-1
3.	F-2, H, S-5
4.	B, F-1, M, S-1, S-2, S-3, S-4
5.	R-3, U (lowest hazard group)

¹ The State Historical Building Code uses the Uniform Code for Building Conservation (UCBC) as reference compliance standards.

ATTACHMENT NO. 18-B

PRIORITY ONE SHELL RENOVATION
(NON-HISTORIC BUILDINGS) SCOPE OF WORK

[BEHIND THIS PAGE]

ATTACHEMENT 18-B

PRIORITY 1 SHELL RENOVATION NON-HISTORIC BUILDINGS SCOPE OF WORK NAVAL TRAINING CENTER REDEVELOPMENT

Master Developer has committed pursuant to the Disposition and Development Agreement to provide for the renovation of certain non-historic buildings at the Naval Training Center. The buildings shall be renovated pursuant to the following scope of work. It is understood that the mutual goal of all parties involved in the renovation is to complete the work at a reasonable cost.

All work will be performed in accordance with the *1997 Uniform Building Code, Title 24 of The California Health and Safety Code, The 1997 Uniform Code for Building Conservation (UCBC) and the City of San Diego Information Bulletin 147, Commercial Tenant Improvements, dated November 1999*. The non-historic buildings in their current condition are classified as "existing non-conforming" and the scope of work defined below shall apply to uses consistent with the current use classification or previous "non-conforming" uses that can be verified. The existing conditions will be acceptable under one of the three following scenarios: (1) Drawings signed by a licensed engineer, registered architect or other professional engineers (i.e. mechanical, plumbing, electrical, civil etc.) will be assumed to be in compliance with the code at that time. Existing conditions (as-built) will be verified with the drawings; (2) If drawings cannot be found, the existing conditions will be compared to the prevailing code at the time the work was performed and if found to be in compliance, will be accepted as "existing non-conforming;" and (3) Existing condition that cannot be verified through scenarios (1) and (2) shall comply with the 1997 Uniform Code for Building Conservation (UCBC).

SHELL RENOVATION: Repair or replace interior and exterior building elements, materials, equipment, and finishes as defined below. This will include:

Interiors:

1. **Wall surfaces:** Clean or patch and paint to provide a smooth, clean and consistent finish.
2. **Floor Finishes:** Repair or replace to create a consistent finish and color.
3. **Ceiling Finishes:** Clean or patch and paint plaster and drywall to provide a consistent surface. Repair and/or replace suspended ceiling with similar material as necessary.
4. **Windows and Doors:** Repair or replace to make operable including replacement of broken glass. Surfaces shall be cleaned and/or painted and all hardware shall be made operable.
5. **Final Cleaning:** All interior spaces shall be professionally cleaned.

Exteriors:

1. **Roofs:** Inspect and repair roof materials to maintain watertight protection.
2. **Wall Surfaces:** Patch or paint to provide a consistent and moisture-resistant exterior surface.
3. **Windows and Doors:** Repair or replace to make operable and weather resistant including replacement of broken glass and deteriorated weather stripping. Surfaces shall be cleaned and/or painted and all hardware shall be made operable.
4. **Pest Control:** A termite survey and report will be performed for each building. Treatment and eradication of active termite infestations will be performed in accordance with the recommendations of the termite report. Any structural repairs identified in the report needed due to termite damage, fungus or dryrot are specifically excluded.

Treatment of Hazardous Materials:

Any loose or flaky lead-based paint will be scraped, bagged and disposed of by a licensed hazardous materials contractor. All surfaces finished with lead-based paint will be encapsulated. All accessible loose or exposed friable asbestos will be abated or encapsulated by a licensed hazardous materials contractor. All existing asbestos-containing floor covering will either be encapsulated or removed. All lead paint and hazardous materials will be remediated in accordance with means and methods pursuant to all state and federal regulatory requirements.

MECHANICAL, PLUMBING AND ELECTRICAL REQUIREMENTS

The intent of the priority one shell renovation is to meet regular code requirements for renovation or new construction work and the *City of San Diego Information Bulletin 147*.

Heating (Radiant Hot Water): Includes the addition of new heating system and units, or utilization of existing heating system. Heat will be provided to all buildings when required by code. Compliance with Title 24 energy requirements will be submitted when required by code.

Electrical: The existing electrical system will be inspected and repaired to an operating condition. Existing light fixtures, switches, outlets and devices will be repaired or replaced as per *City of San Diego Information Bulletin 147*.

Plumbing: The existing plumbing system will be repaired to an operating condition. All existing sanitary sewer systems will be flushed and tested to confirm proper working order. Repair or replace piping as necessary to make systems operable. Operable and adequate restroom facilities will be provided for every building per the 1997 *Uniform Plumbing Code, Appendix C: Minimum Plumbing Facilities*. These restroom facilities may utilize the existing plumbing fixtures, faucets and piping. Plumbing fixtures, faucets and piping will be repaired or replaced to provide adequate restroom facilities.

ALL WORK ITEMS LISTED BELOW ARE SPECIFICALLY EXCLUDED FROM THE PRIORITY 1 RENOVATION SCOPE OF WORK:

1. Termite repair and obtaining the necessary building clearances.

2. Structural or seismic upgrade to existing structures.
3. Noise attenuation.
4. Code compliance unless specifically addressed.
5. The abatement of PCBs, contaminated soil, chemical waste or any other hazardous materials not specifically included in this scope of work.
6. Tenant improvements beyond those items specifically listed herein as shell renovation.
7. Utility (water, electric and gas) metering, and cable and telephone service connections for individual tenant spaces and/or buildings will be the responsibility of others and is not included in this scope of work.

ADDITIONAL CODE ISSUES

The buildings at the Naval Training Center fall into two groups of building: historic buildings as defined by the Historic District and non-historic buildings. The rehabilitation of historic buildings shall follow the requirements of the State Historical Building Code (SHBC).² Non-historic buildings will be governed by the current edition of the Uniform Code for Building Conservation and applicable portions of the Uniform Building Code. Additionally, any "non-conforming" occupancy that can be proven to have existed in the historic or non-historic buildings shall be deemed as a "non-conforming" occupancy and allowed to continue in use regardless of any period of time in which it may have remained unoccupied or in other uses. Earlier modifications to the buildings will be allowed to remain if they were designed in accordance to the UBC at the time they were installed. Any items that pose an imminent threat will be corrected.

The following analysis is a general understanding of the requirements for the non-historic buildings at the Naval Training Center.

A. Non-historic Buildings with No Increase in the Occupancy Hazard as defined in the UCBC tables 5A, 5B, 5C, 5D, and 5E (Existing Non-conforming Occupancy)

- Existing stairways to remain. (Rise, run, width and handrail height to remain as "existing non-conforming").
- Existing exits to remain in current configuration. Number of exits, distance between exits, width of exits and direction of door swing shall all remain. Any missing exit signs will be added and any dead end corridors (longer than 20 feet) will be corrected.
- Existing structural loading of the building to remain. Vertical loads and seismic loads will not be verified or calculated unless required by tenant improvements.
- No Title 24 energy compliance will be required. Buildings will not require insulation, dual glazing, or Title 24 calculations unless required by future tenant improvements.
- No fire sprinkler system or fire alarm system will be required. Any existing fire sprinkler system or fire alarm system will be tested and accepted as "existing non-conforming."
- Existing construction and fire resistive ratings shall remain as "existing non-conforming."
- Backflow preventers will be provided.

- Existing plumbing and plumbing fixtures may remain. New plumbing and plumbing fixtures shall comply with regular code.

B. Non-historic Buildings with a Change in Occupancy that Increases the Occupancy Hazard as defined in the UCBC tables 5A, 5B, 5C, 5D, and 5E (Existing Non-Conforming Occupancy)

Change of occupancy which results in a more hazardous occupancy shall be made to conform with the regular building code requirements except as specified in the UCBC.

C. Accessibility for Non-Historic Buildings

If alterations to buildings are required, accessibility will need to conform with regular building code requirements. If alterations are proposed on upper floors, complying path of travel and restrooms must be provided on that level unless exempt as an unreasonable hardship based on the prevailing code. However, elevator access will not be required unless major remodels are proposed triggering an elevator per Section 1134B of the California Building Code (CBC).

Access Compliance: The preparation of the shell renovation of the existing buildings will be made to comply with the *California State Buildings Standards Code* (Title 24), and the *City of San Diego Information Bulletin 147* requirements.

Priority One Scope of work shall include at a minimum;

- Accessible parking shall be made available.
- Accessible path of travel shall be provided.
- A single primary accessible entrance shall be provided.
- Thresholds shall be modified to meet applicable code compliance.
- Single accessible restrooms (one for men and one for women) shall be provided on the first floor of each building.

TABLE 5-A—HAZARD CATEGORIES AND CLASSIFICATIONS HEIGHTS AND AREAS

RELATIVE HAZARD	OCCUPANCY CLASSIFICATION
1.	A-1, H, I-3 (highest hazard group)
2.	A-2, A-2.1, I-1.1, I-1.2, I-2
3.	A-3, A-4, B, E, F, M, R-1, S
4.	R-3, U (lowest hazard group)

TABLE 5-B—HAZARD CATEGORIES AND CLASSIFICATIONS LIFE SAFETY AND EXITS

RELATIVE HAZARD	OCCUPANCY CLASSIFICATION
1.	A-1, A-2, A-2.1, E, I, H-1, H-2 (highest hazard group)
2.	A-3, A-4
3.	R-1, R-3, B dining and drinking establishments
4.	B all others, F, H other than H-1 and H-2, M, S-1, S-2
5.	S-3, S-4, S-5
6.	U (lowest hazard group)

TABLE 5-C—HAZARD CATEGORIES AND CLASSIFICATIONS OCCUPANCY SEPARATIONS

RELATIVE HAZARD	OCCUPANCY CLASSIFICATION
1.	H, I, S-3, S-4 (highest hazard group)
2.	A, B, F, M, S-1, S-2, S-5
3.	E
4.	R-1, U
5.	R-3 (lowest hazard group)

TABLE 5-D—HAZARD CATEGORIES AND CLASSIFICATIONS EXPOSURE OF EXTERIOR WALLS AND STAIRWAY ENCLOSURES

RELATIVE HAZARD	OCCUPANCY CLASSIFICATION
1.	H (highest hazard group)
2.	M, S-1, S-2
3.	A, E, I
4.	B, F-1, R, S-3, S-4, S-5
5.	F-2, U (lowest hazard group)

TABLE 5-E—HAZARD CATEGORIES AND CLASSIFICATIONS EARTHQUAKE SAFETY

RELATIVE HAZARD	OCCUPANCY CLASSIFICATION
1.	A, E, I (highest hazard group)
2.	R-1
3.	F-2, H, S-5
4.	B, F-1, M, S-1, S-2, S-3, S-4
5.	R-3, U (lowest hazard group)

¹ "Non-Historic" for purposes of this scope of work shall mean buildings that are not nominated or listed on any national, state or local registers of historic places.

² The State Historical Building Code uses the *Uniform Code for Building Conservation* (UCBC) as reference compliance standards.

ATTACHMENT NO. 19

CIVIC, ARTS AND CULTURAL FOUNDATION
GENERAL STATEMENT OF PURPOSE

[BEHIND THIS PAGE]



**NAVAL TRAINING CENTER
HISTORIC PRESERVATION
CIVIC, ARTS AND CULTURAL FOUNDATION**

GENERAL STATEMENT OF PURPOSE

Purpose and Vision

The Reuse Plan for the Naval Training Center, approved in 1998, designates a significant portion of the historic core for civic, arts and cultural uses. Through historic preservation and rehabilitation, approximately 300,000 square feet of space in 21 buildings will become home to a dynamic and creative mix of organizations and diversity of activities, which will reflect the interest, talents and history of the San Diego community. This historic, community-based center will be open to the public and become an attraction for San Diego residents and visitors alike. It is envisioned that this center will be the nucleus of the Naval Training Center redevelopment project and will become an integral part of the lifestyle within the project and community, interacting and blending with the surrounding educational, residential, office and recreational uses.

Creation of a Non-Profit Foundation

To develop and carryout the vision of the historic civic, arts and cultural center, on behalf of the citizens of San Diego, a community-based organization will be created, independent of governmental and private interests. A non-profit public benefit corporation ("Foundation") will be formed and organized so as to be recognized as a tax-exempt public charity under Section 501(c)(3) of the Internal Revenue Code.

A Board of Directors, which will consist of local civic leaders, will direct the Foundation. The goal will be that the Board members will be San Diegans, and representative of the San Diego region in terms of cultural diversity, age and gender balance, and interests. The individuals recruited for the Board of Directors will collectively possess the skills necessary to oversee the activities of the corporation which are the historic preservation, development, management and operation of the Civic, Arts and Cultural Center. These skills may include planning, design, development, financial management and planning, accounting, legal, marketing, public relations, community development and organization, and

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fund raising, as well as interests and skills in the fields of the arts, humanities, education and recreation.

The Board will ultimately consist of approximately 25 directors, and will initially consist of a smaller number. The initial Board will select the balance of the Board over time as it determines what talents are necessary to carry out the Board's vision for the center. The terms for Board members will be staggered to provide for continuity and the Board will be self-perpetuating.

To ensure that they receive input from a representative and diverse cross-section of interests, the Board of Directors may establish a Community Advisory Committee consisting of non-board members who advise and make recommendations to the Board and contribute their ideas, resources, skills and counsel. The Community Advisory Committee members shall draw upon the diverse talents and interests of the San Diego community in the fields of the arts, humanities, education and recreation.

Responsibilities of the Board of Directors

The Board shall be responsible for the activities described below, as set forth in the Development and Disposition Agreement (DDA):

1. The Board will hire an executive director to manage the day-to-day operations of the center and carry out the directives of the Board. The executive director in turn will hire and oversee the necessary staff based on the Board's direction.
2. The Board will develop an implementation plan consisting of a marketing campaign, financing plan and rehabilitation budgets consistent with the Board's and the community's collective vision for the center.
3. Based on the plan adopted by the Board reflecting the specific purpose of the Foundation, they will select the appropriate mix of organizations reflective of the history, interests and talents of the San Diego region. These organizations will produce events and activities open to the general public.
4. The Board will rehabilitate and maintain the foundation property, which will be leased directly to the Foundation from the Redevelopment Agency of the City of San Diego via a long-term ground lease. Rehabilitation will be consistent with approved NTC planning documents and permits and the NTC Guidelines for Treatment of Historic Properties.
5. The Board will raise funds for the necessary capital and on-going operations and maintenance for the Foundation properties.

Responsibilities of the Master Developer

The Master Developer shall be responsible for the following obligations as set forth in the Development and Disposition Agreement (DDA):

1. Contribute \$2 million toward the initial establishment and operation of the Foundation, which includes the use of independent services of an expert advisor.
2. Assist the Foundation with funding for the rehabilitation of the historic buildings in the event that outside funding is not available or is delayed, and guarantee the completion of improvements within the historic core through performance bonds.
3. Provide construction management services to complete the improvements in the historic core required by the Disposition and Development Agreement.

Expected Results

The successful work of this Foundation is expected to result in a sustainable, self-sufficient operation and a resource of regional significance to the San Diego community. The vision and concepts for the Civic, Arts and Cultural Center will be shaped by San Diegans, and will ultimately become a true destination for residents and visitors alike.

ATTACHMENT NO. 20

FORM OF CIVIC, ARTS AND CULTURAL CENTER LEASE

[BEHIND THIS PAGE]

[FORM APPLIES ONLY TO FOUNDATION PARCELS]

NAVAL TRAINING CENTER

GROUND LEASE

by and between

REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO,

and

[NAME OF FOUNDATION]

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- EXHIBIT B - SITE MAP
- EXHIBIT C - MEMORANDUM OF LEASE
- EXHIBIT D - FORM OF TENANT'S NONDISTURBANCE AND ATTORNMENT AGREEMENT
- EXHIBIT E - FORM OF LENDER'S NONDISTURBANCE AND LEASE RECOGNITION AGREEMENT

GROUND LEASE

This GROUND LEASE (the "Lease") is dated as of _____, between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO ("Landlord") and [NAME OF FOUNDATION], a California nonprofit public benefit corporation ("Tenant"), who agree as follows:

ARTICLE 1 FUNDAMENTAL INFORMATION

1.1 Landlord: THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body, corporate and politic.

1.2 Tenant: [NAME OF FOUNDATION], a California nonprofit public benefit corporation .

1.3 Commencement Date: The Commencement Date shall be the date set forth in the introductory paragraph, above.

1.4 The Premises: The property leased hereunder (the "Property") is that real property described as the "Lease Parcel" in the Legal Description attached hereto as Exhibit "A" and incorporated herein by this reference. The "Property" consists of the Lease Parcel and the Improvements now or hereinafter located on the Lease Parcel from time to time.

1.5 Term: The Lease term (the "Term") shall commence on the Commencement Date, and shall continue for fifty-five (55) Lease Years thereafter (as defined below), or on the date resulting from an earlier termination as hereinafter set forth. For purposes of this Lease, a "Lease Year" shall mean the partial calendar year commencing the first day of the month following the Commencement Date, and each full calendar year thereafter, including the full calendar year in which the 55th anniversary of the Commencement Date occurs.

1.6 Landlord's address for notices: City Administration Building, 202 C Street, San Diego, California 92101, Attention: NTC Project Manager.

1.7 Tenant's address for notices: [TO BE ADDED].

1.8 Tenant's rent: As described in Sections 2.5 and 2.6., below.

1.9 The specified use of the Property: For the Term of this Lease, the Property shall be used for the following purposes and other additional uses as may be reasonably related thereto, and for no other purposes: a mix of uses that may include, but not be limited to, art and cultural uses, museums, civic activities, retail uses associated with primary uses, restaurants, crafts, uses that combine crafts and manufacturing with retail sales, offices,

[live/work spaces] and other uses as provided in the Civic, Arts and Cultural Center Implementation Plan approved by Landlord pursuant to the DDA (the "Implementation Plan").

1.10 Relation to the DDA. Reference is hereby made to that certain Disposition and Development Agreement dated _____ (the "DDA") by and between Landlord ("Agency" therein) and McMillin-NTC, LLC ("Master Developer" therein), and that certain Assignment and Assumption Agreement ("Assignment Agreement") by and among Landlord, Master Developer and Tenant, pursuant to which Master Developer has assigned to Tenant its rights and obligations under the DDA as they relate to the Property and the other parcels described therein as the "Foundation Parcels." Until Tenant is entitled to the execution and recordation of the Agency Certificate of Completion for the Property as provided in Section 6.15 of the DDA, a default under the DDA by Master Developer shall constitute a breach of the terms of this Lease, as specifically provided in Section 2.24 below. It is the intention of the parties that (a) prior to the recordation of the Agency Certificate of Completion for the Property, a breach or default under the DDA shall constitute a default under this Lease, and any notice provided pursuant to the DDA shall satisfy any notice requirement under this Lease (provided, however, that following the satisfaction of all Phase Three (Foundation) Conditions Precedent applicable to the Property, Landlord may not terminate this Lease as the result of a Default under the DDA unless such Default relates specifically to the Property), and (b) after the Agency Certificate of Completion for the Property is recorded, Landlord's rights and obligations with respect to the Property shall be as set forth in this Lease and any other recorded document, and the DDA shall no longer be applicable to the Property.

1.11 Definitions. For purposes of this Lease, the following capitalized terms shall have the respective definitions set forth in the corresponding section of this Lease:

"Additional Rent" shall have the meaning set forth in Section 2.6.

"Affiliate" shall have the meaning set forth in Section 2.14.c.

"Agency Certificate of Completion" shall have the meaning set forth in Section 1.10.

"City" shall have the meaning set forth in Section 2.3.a.

"Consumer Price Index" shall have the meaning set forth in Section 2.11.d.

"DDA" shall have the meaning set forth in Section 1.10.

"Force Majeure Delay" shall have the meaning set forth in Section 2.31.e.(ii).

"Hazardous Materials" shall have the meaning set forth in Section 2.27.

"Improvements" shall mean and include the Horizontal Improvements and Vertical Improvements, as defined in the DDA.

"Lease Parcel" shall have the meaning set forth in Section 1.4.

"Lease Year" shall have the meaning set forth in Section 1.5.

"Leasehold Mortgage" and "Leasehold Mortgagee" shall have the meanings set forth in Section 2.30.a.(ii).

"Maintenance Costs" shall have the meaning set forth in Section 2.12.a.

"Permitted Alterations" shall have the meaning set forth in Section 2.11.a.

"Permitted Leasehold Mortgage" and "Permitted Leasehold Mortgagee" shall have the meanings set forth in Section 2.30.a.(iii).

"Permitted Transfer" shall have the meaning set forth in Section 2.14.c.(iii).

"Property" shall have the meaning set forth in Section 1.4.

"Qualified Lender" shall have the meaning set forth in Section 2.30.b.

"Term" shall have the meaning set forth in Section 1.5.

"Transfer" shall have the meaning set forth in Section 2.14.c.

ARTICLE 2 LEASE TERMS AND PROVISIONS

2.1 PURPOSE OF LEASE

Landlord has agreed to lease the Property to Tenant in accordance with this Lease, and Tenant will cause the rehabilitation of, manage and operate the Improvements for the uses permitted by this Lease.

2.2

AGREEMENT TO LEASE

a. Landlord hereby leases the Property to Tenant, and Tenant hereby leases the Property from Landlord, subject to the provisions and conditions herein set forth, for an amount of rental as described in Sections 2.5 and 2.6 hereof; together with all right, title and interest, if any, of Landlord, to the land lying in the streets and roads adjoining the Property, to the center line thereof, and in and to any and all easements and rights of way appurtenant to the Property, subject nevertheless to all public easements and rights of use of such streets, rights of way and easements; together with all awards, rents, issues and profits of whatsoever nature of or with respect to any of the Property and the Improvements, except as expressly reserved to Landlord herein.

b. Except as expressly provided to the contrary in this Lease, reference to the Property is to the land described as the "Lease Parcel" in the attached Exhibit "A" and any and all buildings, structures or other improvements either now or hereafter located on such land. The parties agree that during the Term of this Lease, all buildings, structures and other improvements located on the Property shall be owned in fee by Tenant (and to the extent necessary, Landlord hereby grants such fee to Tenant), but shall automatically vest in Landlord upon the expiration or earlier termination of this Lease.

2.3

ACCEPTANCE OF PROPERTY

a. Landlord makes no representations, express or implied, with respect to the legality, fitness, or desirability of the Property for Tenant's intended use or for any other uses. Tenant shall conduct its own investigation to its satisfaction with respect to zoning, local codes and regulations, and other matters affecting Tenant's ability to use and improve the Property for Tenant's intended use. It shall be Tenant's responsibility, at no cost to Landlord, to ensure that zoning of the Property, and all applicable City land use requirements are, as of the date of execution hereof, such as to permit development of the Property and rehabilitation of improvements thereon in accordance with the provisions of this Lease and the use, operation and maintenance of such improvements as provided in this Lease. Nothing contained herein shall be deemed to entitle Tenant to any City of San Diego (the "City") permit or other City approval necessary for the development of the Property, or waive any applicable City requirements relating thereto. This Lease does not (1) grant any land use entitlement to Tenant, (2) supersede, nullify or amend any condition which may be imposed by the City in connection with any approval of the development, (3) guarantee to Tenant or any other party any profits from the development of the Property, or (4) amend any City laws, codes or rules. This is not a Development Agreement as provided in Government Code Section 65864.

b. The Property shall be leased in an "as is" condition, with no warranty or liability, express or implied, on the part of Landlord as to the condition of any buildings on the Property, the soil (or water), its geology, the existence of known or unknown faults or any other conditions relating to the Property. It shall be the sole responsibility of Tenant, at Tenant's expense, to investigate and determine the condition of any building, soil (and water) relating to the Property and the suitability of the Property for the uses contemplated by this Lease. If the condition of the Property, or any part thereof, is not in all respects entirely suitable for the use of the Property contemplated by this Lease, then it is the sole responsibility and obligation of Tenant to take such action as may be necessary to place the Property and the soil (and water) condition thereof in all respects in a condition that is suitable for such use.

2.4 TERM

a. Term. The Term of this Lease shall commence on the Commencement Date and shall continue for fifty-five (55) Lease Years, as set forth in Section 1.5, above unless terminated sooner pursuant to the provisions and conditions hereof. Upon the termination or expiration of this Lease, Tenant shall immediately surrender possession of the Property to Landlord and shall not allow delay in said transfer of possession for any reason.

b. Termination. Subject to the notice and cure provisions of Section 2.24, below, this Lease shall terminate after the Commencement Date, but prior to the end of the Term, in the event of any of the following:

(i) Intentionally Omitted.

(ii) Prior to the issuance of the Agency Certificate of Completion for the Property pursuant to the DDA, Landlord may terminate this Lease by giving written notice of termination to Tenant, in the event of any Default under this Lease (as provided in Section 2.24 hereof) or the DDA that is not cured within the applicable cure period. Provided, however, that Landlord may not terminate this Lease as the result of a Default under the DDA unless such Default relates specifically to the Property.

(iii) Following the issuance of the Agency Certificate of Completion for the Property pursuant to the DDA, Landlord may terminate this Lease by giving written notice of termination to Tenant, in the event of any Default under this Lease (as provided in Section 2.24 hereof) that is not cured within the applicable cure period.

c. Surrender. Subject to the damage and reconstruction provisions of Section 2.23, Tenant shall upon the expiration or sooner termination of this Lease surrender the Property to Landlord in good and clean condition, ordinary wear and tear excepted, including any buildings, structures, improvements or additions then located on the Property which are, during the Term of this Lease, owned in fee by Tenant.

2.5 BASIC RENT.

The Basic Rent shall be the sum of One Dollar (\$1.00) per year, payable annually in advance.

2.6 ADDITIONAL RENT

In addition to any Basic Rent that is due pursuant to this Lease, Tenant shall pay to Landlord, as additional consideration for the lease of the Property, any sums described in this Lease as "Additional Rent."

2.7 RENT GENERALLY

a. All Rent (both Basic and Additional) shall be paid absolutely net to Landlord, so that this Lease shall yield to Landlord the full amount of the Rent throughout the Term of this Lease. This Lease is and shall be a "Pure Net" or "Triple Net" lease, as such terms are commonly used in the real estate industry, it being intended that Tenant shall pay all costs, expenses and charges arising out of the use, occupancy and operation of the Property.

b. All payments of Rent and of other sums to be paid by Tenant to Landlord pursuant to this Lease shall be paid in lawful money of the United States of America, at Landlord's address set forth above, or at such other place within the United States or to such other person, firms or corporations as Landlord from time to time may designate in writing. Except as otherwise expressly provided by the terms of this Lease, Landlord and Tenant agree that all sums payable hereunder to or on behalf of Landlord shall be paid without notice or demand.

c. Should Tenant fail, for whatever reason, to make any rental payment required hereunder, then Tenant shall pay an Additional Rent equal to 4% per annum on the amount due, until paid; provided, however, that nothing in this subdivision c. shall be deemed to limit any of Landlord's other rights or remedies under this Lease or otherwise available at law or in equity.

2.8 TENANT WORK

Tenant shall, at its own cost and expense, cause the completion of the initial rehabilitation of the Improvements on the Property, as provided in the DDA. In the conduct of such work, Tenant shall comply with any and all rules, regulations, or requirements contained in the DDA. The parties to this Lease contemplate that Tenant shall contract with Master Developer to undertake and complete all Horizontal and Vertical Improvements relating to the Property subject to the provisions of the DDA. This Section 2.8 shall terminate upon execution and recordation of a Agency Certificate of Completion for the Property by Landlord pursuant to the DDA.

2.9 USE

a. Tenant shall use the Property only for the specified uses set forth in Section 1.9., above, and other additional uses as may be reasonably related thereto, and shall not use or permit the Property to be used for any other purposes. Tenant shall not cause, maintain, or permit any nuisance or waste in, on, or about the Property, normal wear and tear excepted.

b. Tenant covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall Tenant itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property.

c. Tenant shall refrain from restricting the rental, sale or lease of the Property on the basis of race, color, creed, religion, sex, sexual orientation, marital status, ancestry or national origin of any person. All deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee itself or any

person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

2. In leases: "The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

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

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

d. On fifteen (15) business days' prior notice, but no more than once in any 12 month period, Tenant shall make available in the County of San Diego full and accurate books and accounts, records, cash receipts and other pertinent data reasonably satisfactory to Landlord relating to its operation of the Property. Such books of account, records, cash receipts and other pertinent data shall be kept by Tenant for a five- (5) year period after the applicable Lease Year. Landlord shall be entitled during such period to inspect, examine and to copy at Landlord's expense, Tenant's books of account, records, cash receipts and other pertinent data relating to the Property as necessary or appropriate for the purpose of this Lease. Tenant shall cooperate fully with Landlord during any such inspection.

2.10 COMPLIANCE WITH LAW

a. Tenant shall not use the Property or permit anything to be done in or about the Property which will in any way conflict with any applicable law, statute, ordinance, or governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated. Tenant shall, at its sole cost and expense, promptly comply with all applicable laws, statutes, ordinances, and governmental rules, regulations or requirements now in force or which may hereafter be enacted or promulgated, and any applicable requirements of any board of fire insurance underwriters or other similar bodies now or hereafter constituted, relating to the condition, use, or occupancy of the Property. Tenant shall have the right, by appropriate proceedings, to protest or contest in good faith the application to Tenant and/or the Property of any law, statute, ordinance, or governmental rule, regulation or requirement or the validity of any such law, statute, ordinance, or governmental rule, regulation or requirement; provided, Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all costs, expenses, claims, demands, damages, actions, causes of action, or liabilities of any kind which may arise at any time in connection with any such proceedings, protest or contest.

b. The judgment of any court of competent jurisdiction after all applicable appeals have been exhausted or appeal periods have expired or the admission of Tenant in any action against Tenant, whether Landlord be a party thereof or not, that Tenant has violated any law, statute, ordinance, or governmental rule, regulation, or requirement, shall be conclusive of that fact as between Landlord and Tenant.

2.11 ALTERATIONS AND ADDITIONS

a. Except for Permitted Alterations (as hereinafter defined), Tenant shall not make or suffer to be made any alterations, additions, or improvements to or on the Property or any building or structure thereon or any part thereof without the prior written consent of Landlord, which consent will not be unreasonably withheld, conditioned or delayed. Any request for consent shall be accompanied by plans and specifications for the proposed work in reasonable detail (including component materials and finish items) to enable Landlord to consider whether or not to grant approval. Landlord may condition its approval in any way reasonably deemed necessary by Landlord to protect its interest in the Property. The term "Permitted Alterations" shall mean, and Tenant shall not be required to obtain the consent of Landlord for, either of the following, to the extent they comply with all applicable City procedures and requirements: (i) any routine alterations, additions, improvements, exterior painting or landscaping (provided such alterations, additions, improvements, exterior painting or landscaping do not require a Coastal

Development Permit and cost less than 15% of the after-rehabilitation value of the Property; or (ii) any tenant improvements within tenant or subtenant spaces or signs for any tenants or subtenants.

b. All alterations, additions, or improvements by Tenant shall be made without cost or expense to Landlord, by responsible and licensed contractors. All improvements and equipment shall be designed, built, and installed in accordance with all applicable building codes and regulations, and Tenant shall obtain all necessary building permits.

c. Tenant shall give notice to Landlord within a reasonable time prior to commencement of any work, to enable Landlord, if required, to review the plans and specifications and to enable Landlord to post notices of non-responsibility or take other actions deemed necessary by Landlord.

d. For all alterations costing in excess of \$200,000, as increased annually to reflect increases, if any, in the Consumer Price Index measured from the second anniversary of the Commencement Date, Tenant shall obtain and keep in effect "Builder's All Risk Insurance" during the period of construction and installation of any improvements being made by Tenant, including completed operations coverage, with coverage in the amount of at least \$2,000,000, increased every fifth anniversary of the Commencement Date by the percentage increase, if any, in the Consumer Price Index from the Commencement Date of this Lease to the anniversary thereof most recently preceding the start of such construction, naming Landlord as an additional insured. Tenant shall deliver to Landlord a Certificate of Insurance evidencing such insurance coverage prior to commencement of the alterations. As used in this Lease, the "Consumer Price Index" shall mean the Consumer Price Index - all Urban Consumers, San Diego, published by the Bureau of Labor Statistics, or such comparable index as may be acceptable to Landlord.

e. Tenant shall keep the Property free and clear of any and all liens and encumbrances which may arise at any time in connection with any improvement work by Tenant or its agents and contractors. Any mechanic's liens that have been recorded or stop notices that have been delivered shall be paid, settled or otherwise extinguished, discharged, released, waived or bonded around within ten (10) days after notice thereof to Tenant. In addition, Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all costs, expenses, claims, demands, damages, actions, causes of action, or liabilities of any kind which may arise at any time in connection with any improvement work by Tenant or its agents and contractors, including without limitation the design and installation of equipment and the renovation of the Property, except to the extent such costs, expenses, claims, demands, damages, actions, causes of action, or

liabilities relate to the design of offsite improvements provided by Landlord or the negligence or willful misconduct of Landlord, its agents, representatives, employees or contractors.

f. Nothing contained herein shall prohibit Tenant from disputing the correctness or validity of any mechanics lien upon the Property or any Improvement thereon, provided Tenant records in the office of the county recorder either before or after the commencement of an action to enforce such claim or lien, a lien release bond pursuant to Civil Code Section 3143.

g. Notwithstanding any provision of this Section 2.11, construction or rehabilitation of the initial Improvements shall be governed by the applicable provisions of the DDA.

2.12 MAINTENANCE AND REPAIRS

a. Tenant shall maintain the Property in the same aesthetic and sound condition (or better) as the condition of the Property at the time Agency issues an Agency Certificate of Completion for the Property pursuant to the DDA, reasonable wear and tear excepted. The parties acknowledge that over the course of the Term of this Lease, various Improvements on the Property are likely to become obsolete and will need to be demolished, removed, disposed of and/or replaced, and agree that the standard of "reasonable" wear and tear as set forth in the first sentence of this paragraph a. includes and incorporates this understanding. Subject to the foregoing, this standard for the quality of maintenance of the Property shall be met whether or not a specific item of maintenance is listed below. However, representative items of maintenance shall include frequent and regular inspection for graffiti or damage or deterioration or failure, and immediate repainting or repair or replacement of all surfaces, fencing, walls, equipment, etc., as necessary; emptying of trash receptacles and removal of litter; sweeping of public sidewalks adjacent to the Improvements, on-site walks and paved areas and washing-down as necessary to maintain clean surfaces; maintenance of all landscaping in a healthy and attractive condition, including trimming, fertilizing and replacing vegetation as necessary; cleaning windows on a regular basis; painting the buildings on a regular program and prior to the deterioration of the painted surfaces; conducting a roof inspection on a regular basis and maintaining the roof in a leak-free and weather-tight condition; maintaining security devices in good working order. In the event Tenant fails to maintain the Property in accordance with the standard for the quality of maintenance, Landlord or its designee shall have the right but not the obligation to enter the Property upon reasonable notice to Tenant, correct any violation, and hold Tenant responsible for the cost thereof ("Maintenance Cost"). Tenant shall, upon demand, pay all Maintenance Cost, with interest, as Additional Rent.

b. Tenant shall, at Tenant's sole cost and expense, (i) keep and maintain any buildings on the Property in good condition and repair, ordinary wear and tear excepted; and (ii) undertake such maintenance of the Property from time to time as may be reasonable and customary under the circumstances or as required by paragraph a. of this Section 2.12.

c. Landlord shall not under any circumstances be obligated to undertake any maintenance, repair, or replacement of any portions of the Property. Tenant understands that Landlord is not obligated to maintain the structural portions of any building or structure, including the roof, exterior walls, and foundations of said building or structure; Landlord shall not be liable for any failure to make any such repairs or to perform any maintenance, whether by reason of any injury to or interference with Tenant's business or otherwise. Tenant waives any obligations which Landlord may have with respect to the tenantability of the Site and the right to make repairs at Landlord's expense under any law, statute, or ordinance now or hereafter in effect, including without limitation the provisions of California Civil Code sections 1941 and 1942.

2.13 TAXES

a. Payment by Tenant. Tenant shall promptly pay, at least five (5) days prior to delinquency, all real estate and real property taxes, or possessory interest tax, assessed against the Property, including such added assessment or omitted assessment which may be levied against the Property from time to time by the applicable governmental taxing authority for periods commencing upon the Commencement Date, and any increase in the assessment from time to time based on improvements to the Property. Notwithstanding the foregoing, any assessment or impositions for capital or public improvements which may be payable by law at the option of the taxpayer in installments may be so paid by Tenant in installments, together with any required interest. Tenant shall furnish in writing to Landlord before the applicable delinquency date for the tax evidence of payment of all taxes and assessments required to be paid by Tenant during the Term hereof. If Landlord does not receive reasonable evidence of payment prior to the tax delinquency date, Landlord may, at its option, pay the tax for Tenant. In such case, Tenant shall reimburse Landlord immediately upon demand, plus interest at the rate of ten percent (10%) per annum, as Additional Rent. If Tenant shall be obligated to pay any taxes, assessments, and charges hereunder during a partial year, the amount of any such taxes, assessments, and charges shall be prorated according to the length of time Tenant's obligation shall be in effect during the relevant tax period.

b. Contest. Tenant shall have the right, by appropriate proceedings, to protest or contest in good faith any assessment or re-assessment of taxes, any special assessment, or the validity of any taxes or of any change in assessment or tax rate; provided, however, prior to any such challenge Tenant must either (i) pay the taxes alleged to be due in their entirety and seek a refund from the appropriate authority, or (ii) post a bond in an amount sufficient to insure full payment of the taxes; or (iii) provide such other security or take such other actions as may reasonably be required by Landlord's Executive Director or designee to insure full payment of the taxes. In any event, upon a final determination with respect to such contest or protest, Tenant shall promptly pay all sums found to be due with respect thereto. In any such protest or contest, Tenant may act in its own name; and at the request of Tenant, Landlord shall cooperate with Tenant in any way Tenant may reasonably require in connection with such contest or protest, including signing such documents as Tenant shall reasonably request, provided that such contest or protest shall be at Tenant's sole expense, and in the event any penalties, interest, or late charges become payable with respect to the taxes as a result of such contest or protest, Tenant shall pay the same. In the event Tenant obtains a refund as the result of Tenant's protest or contest and subject to Tenant's obligation to pay Landlord's costs (if any) associated therewith, Tenant shall be entitled to such refund to the extent it relates to the Property during the Term of this Lease.

c. Personal Property Taxes. Tenant shall pay any and all personal property taxes assessed against equipment, trade fixtures, inventory, or other personal property located in, on, or about the Property. Tenant shall indemnify, defend, and hold Landlord and the Property harmless from and against any such personal property taxes.

d. Future Taxes. If at any time during the Lease Term under the laws of the United States, or any state, county, or city, or any political subdivision thereof in which the Property is situated, a tax or excise on rent or any other tax however described is levied or assessed by any such political body against Landlord on account of fee ownership of the Property, such tax or excise shall be considered "taxes" for the purposes of this Section 2.13 and shall be paid by Tenant in the manner provided above, excluding, however, from such tax or excise to be paid by Tenant any amount assessed against Landlord as state or federal income tax, gift tax, excise tax or inheritance tax.

2.13.1 NOTICE OF POSSESSORY INTEREST; PAYMENT OF TAXES AND ASSESSMENTS ON VALUE OF ENTIRE PROPERTY

a. In accordance with California Revenue and Taxation Code Section 107.6(a), Landlord states that by entering into this Lease, a possessory interest subject to property taxes may be created. Tenant or other party in whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest.

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

2.14 ASSIGNMENT AND SUBLETTING

a. Landlord Consent Required. Except for Permitted Transfers, Tenant shall not, under any circumstances, without the express prior written approval of Landlord, which Landlord may grant or withhold in its sole discretion, Transfer the Property or any portion thereof, or attempt to Transfer all or any portion of its interest in this Lease. Tenant shall submit to Landlord a reasonably current financial statement of the proposed transferee, a description of such proposed assignee's experience in operating similar properties and shall disclose to Landlord the proposed terms of such Transfer or Assignment. Landlord shall have the right, in its discretion, to approve or disapprove any Transfer. Any attempted Transfer of the Property, this Lease, or any portion or interest therein which is not authorized by this Lease or expressly approved in writing by Landlord shall be void and of no force or effect and, at the option of Landlord, shall terminate this Lease.

b. Operation of Law. Neither this Lease nor any interest therein shall be assignable by operation of law (including, without limitation, the transfer of this Lease by testacy or intestacy). Any involuntary assignment shall constitute a default by Tenant, and Landlord shall have the right to elect to terminate this Lease immediately and take immediate possession of the Property. In such event, this Lease shall not be treated as an asset of Tenant. The following is a non-exclusive list of acts which shall be considered an involuntary assignment:

(i) If Tenant is or becomes bankrupt or insolvent or if any involuntary proceeding is brought against Tenant (unless, in the case of a petition filed against Tenant, the same is dismissed within ninety (90) days), or Tenant makes an assignment for the benefit of creditors, or institutes a proceeding under or otherwise seeks the protection of Federal or State bankruptcy or insolvency laws, including but not limited to the filing of a petition for voluntary bankruptcy or instituting a proceeding for reorganization or arrangement;

(ii) If a writ of attachment or execution is levied on this Lease, where such writ is not discharged within ninety (90) days; or

(iii) If, in any proceeding or action in which Tenant is a party, a receiver is appointed with authority to take possession of the Property, where possession is not restored to Tenant within ninety (90) days.

c. Definition of Transfer. (i) As used herein, the term "Transfer" means the sale, transfer or conveyance of Tenant's leasehold interests in the Property, the Improvements thereon, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, or any agreement to do so; the execution of any installment land sale contract or similar instrument affecting all or a portion of the Property or Improvements; or the sublease of any of the Property or Improvements (other than for occupancy in accordance with the Implementation Plan).

(ii) "Transfer" shall also include the transfer, assignment, hypothecation or conveyance of legal or beneficial ownership of any interest in Tenant, or any conversion of Tenant to an entity form other than that of Tenant at the time of execution of this Lease.

(iii) "Permitted Transfer" means any of the following: (a) any Permitted Leasehold Mortgage as provided in Section 2.30 hereof; and (b) the subleasing for occupancy of all or any part of the Property in accordance with the Implementation Plan. Any transfer described in clause (a) of this subdivision (iii) shall be subject to the reasonable approval of Landlord's Executive Director or designee. Any transfer described in clause (b) of this subdivision (iii) shall not require Landlord approval so long as it is consistent with the most recently approved Implementation Plan. For purposes of this subdivision (iii), consistency with the Implementation Plan shall include, at a minimum, the following: (x) a use that is permitted by the Precise Plan, the DDA and this Lease; and (y) a sublease rent which will maintain the revenue and expense ratio set forth in the Implementation Plan such that, Tenant will have sufficient

resources to pay all of its operating costs and other financial obligations. Without the written consent of the Landlord, approval by Tenant of any sublease that is not consistent with the Implementation Plan shall constitute a default under this Lease.

d. No Unreasonable Withholding of Consent. Provided Landlord has issued the Agency Certificate of Completion for the Property pursuant to the DDA, Landlord shall not unreasonably withhold, condition or delay its approval of any matter for which its approval is required hereunder. Any disapproval shall be in writing and contain Landlord's reasons for disapproval.

e. Nondisturbance and Lease Recognition Agreements. Within fifteen (15) business days after request, Landlord shall execute a Tenant's Nondisturbance and Lease Recognition Agreement, substantially in the form of the instrument attached to this Lease as Exhibit "D", for the benefit of any subtenant, and a Lender's Nondisturbance and Attornment, Agreement substantially in the form of the instrument attached to this Lease as Exhibit "E", for the benefit of any Permitted Leasehold Mortgagee.

2.15 HOLD HARMLESS

a. Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all costs, claims, demands, actions, causes of action, liability, loss, or damage, including attorneys' fees and costs (collectively referred to as "Claims" and, Claims that are made by third parties, collectively referred to as "Third Party Claims") whether for injury to or death or persons or damage to real or personal property or otherwise, arising out of or in connection with Tenant's use or occupancy of the Property, any activity, work, or other thing done, permitted, or suffered by Tenant in or about the Property, or arising from any reason or cause whatsoever in connection with the use or occupancy of the Property by any party during the Term of this Lease. The provisions of the preceding sentence shall not apply with respect to any negligent or intentional acts or omissions of Landlord, the City and their respective agents, servants, contractors and employees (collectively, "Landlord Parties"). Tenant shall further indemnify, defend, and hold Landlord harmless from and against any and all Third Party Claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease or arising from any act or negligence of Tenant or any officer, agent, employee, guest, or invitee of Tenant. In any case, action, or proceeding brought against Landlord or involving Landlord by reason of any such Claim, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon, or about the Property from any cause other than the negligent or intentional acts or omissions of Landlord Parties, and Tenant hereby waives all

claims in respect thereof against Landlord. Tenant's obligation to indemnify under this paragraph shall include attorneys' fees, investigation costs, and other reasonable costs, expenses, and liabilities incurred by Landlord. If the ability of Tenant to use the Property is interrupted for any reason, Landlord shall not be liable to Tenant for any loss or damages occasioned by such loss of use unless caused by the negligent or intentional acts or omissions of Landlord Parties.

b. Landlord or its agents shall not be liable for loss or damage to any property by theft or otherwise, nor for any injury to or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, or rain which may leak from any part of the Property or from the pipes, appliances, or plumbing works therein or from the roof, street, or subsurface or from any other place resulting from dampness or any other cause whatsoever, unless caused by or due to the negligent or intentional acts or omissions of Landlord Parties. Tenant shall give prompt notice to Landlord in case of fire or accidents in the Property or of defects therein or in the fixtures or equipment.

c. Landlord shall indemnify, protect, defend and hold harmless Tenant and its assignees, and their respective officers, employees, contractors and agents, with counsel reasonably acceptable to the indemnified party, from and against any and all loss, liability, damage, claim, cost and expense (including reasonable attorneys' fees, court and litigation costs and fees of expert witnesses) resulting or arising from or in any way connected with any negligence or intentional misconduct of Landlord, the City or their respective officers, employees, contractors or agents which relate to the maintenance, management or operation of the Property during the period commencing upon the effective date of the master lease between the United States Government and the City of San Diego for the Property, and ending upon the commencement of the Term of this Lease or upon assignment of the management of the Property to Tenant prior to conveyance, whichever occurs first, provided Landlord shall not be responsible for (and such indemnity shall not apply to) the negligence or willful misconduct of Tenant, any assignee or their respective officers, employees, contractors or agents.

2 16 OWNERSHIP OF PROPERTY DURING TERM AND UPON EXPIRATION OR TERMINATION OF LEASE

a. During the Term of this Lease, all buildings, structures, fixtures, additions and improvements located on the Property shall be owned in fee by Tenant, and Landlord hereby quitclaims its right, title and interest in and to such items to Tenant.

b. Upon the expiration or termination of this Lease, all buildings, structures, fixtures, additions, equipment, improvements, any subtenant security deposits then held by Tenant (upon delivery of which, Landlord shall assume all obligations to subtenants with respect thereto), and any other real property whatsoever located on the Property shall become part of the realty, become the property of Landlord, and shall be surrendered with the Property, but not including personal property or property that is donated to Tenant, which is removed from the Property by Tenant.

c. Upon termination of this Lease, whether by expiration of the Term or otherwise, the Improvements on the Property, and any personal property not removed by Tenant after fifteen (15) days' notice by Landlord, shall, without compensation to Tenant, then become Landlord's property, free and clear of all claims to or against them by Tenant or any third person, firm or entity.

d. Notwithstanding any provision of this Lease to the contrary, upon termination of the Lease, Tenant shall have (i) no obligation to remove any Improvements from the Property, and (ii) no right to remove any Improvements from the Property without Landlord's consent.

2.17 LIENS

Except for Permitted Leasehold Mortgages, Tenant shall not create or permit any lien or encumbrance, including but not limited to a mechanics' lien, to be attached to or affect the Property by reason of any act or omission of Tenant. Tenant shall indemnify and hold harmless Landlord and the Property against any such lien, encumbrance, or claim of lien or encumbrance, and against any costs in connection therewith, including attorneys' fees. In the event any such lien or encumbrance is attached to, or any claim of lien or encumbrance is made against, the Property by reason of any act or omission of Tenant, Tenant shall, within twenty (20) days after notice thereof to Tenant, cause the lien to be released or post with Landlord a cash bond in an amount reasonably satisfactory to Landlord, including costs and interest, or provide such other security or take such other actions as may reasonably be required by Landlord's Executive Director or designee to insure the timely release of such lien; provided, however, that if Tenant fails to do so, then Landlord may, in its sole discretion, either (i) pay and discharge the lien or encumbrance, whereupon Tenant shall immediately reimburse Landlord, as Additional Rent, for all costs and expenses which Landlord may incur in discharging such lien, encumbrance, or claim of lien or encumbrance, plus reasonable attorneys' fees, payable to Landlord upon demand, or (ii) Landlord may exercise such other remedies as may be available to it by reason of Tenant's failure to comply with its obligations under this Lease.

Neither Landlord nor Tenant shall be liable to the other or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure, or other tangible property, or any resulting loss of income, or losses under worker's compensation laws and benefits (even though such loss or damage might have been occasioned by the negligence of such party, its agents, or employees), to the extent any such loss or damage is covered by insurance proceeds received by the Party suffering the loss or damage. The foregoing waiver of the right to subrogation shall not apply to the extent insurance coverage for such loss or damage is not commercially available to Landlord or Tenant under such Party's insurance policies. Landlord and Tenant hereby mutually release each other from liability and waive all right to recover against each other or against officers, employees, agents or representatives of each other for any loss or damage to any person or property caused by or resulting from risks to the extent of proceeds paid against under any insurance policies carried by the parties; provided, however, this paragraph shall be inapplicable if it would have the effect, but only to the extent that it would have the effect, of invalidating any insurance coverage of Landlord or Tenant. The parties shall, to the extent available, cause each insurance policy obtained here under to provide a waiver of subrogation.

a. Throughout the Term of this Lease, Tenant shall maintain, at its own cost and expense, and furnish or cause to be furnished to Landlord evidence of the following policies of insurance, naming Tenant as insured and, except for automobile insurance and Workers' Compensation insurance, the Landlord and the City as additional insureds.

(1) Fire Policies: Tenant shall maintain or cause to be maintained a policy or policies of insurance against loss or damage to the Property and the Improvements thereon and all property of an insurable nature located upon the Property, resulting from fire, lightning, vandalism, malicious mischief, riot and civil commotion, and such other perils ordinarily included in special causes of loss property coverage form policies. Such insurance shall be maintained in an amount not less than one hundred percent (100%) of the full insurable value of the Improvements on a Parcel, as defined in this Section 2.19 below, in paragraph c. The proceeds of any such policy or policies of insurance shall be held and utilized in accordance with the provisions of Section 2.23 of this Lease.

(2) Liability Insurance: Tenant shall maintain or cause to be maintained public liability insurance, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever on or about the Property and the business of the Tenant on the Property, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Tenant or its sublessees, or any person acting for Tenant, or under its respective control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person occurring on or about the Property, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of Tenant or its tenants, or any person acting for Tenant, or under its control or direction. Such property damage and personal injury insurance shall also provide for and protect Landlord against incurring any legal cost in defending claims for alleged loss. Such personal injury and property damage insurance shall be maintained in full force and effect during the Term in the following amounts: commercial general liability in a general aggregate amount of not less than \$2,000,000 General Aggregate, \$2,000,000 Products and Completed Operations Aggregate, and \$2,000,000 Each Occurrence, which minimum amounts shall be increased every five years after the execution of the DDA by an additional One Million Dollars (\$1,000,000), so that the minimum amounts of commercial general liability insurance and other insurance at the end of the fifth year after execution of the DDA shall be not less than Three Million Dollars (\$3,000,000), and, at the end of the tenth year, Four Million Dollars (\$4,000,000). Tenant shall deliver to Landlord a Certificate of Insurance evidencing such insurance coverage prior to commencement of the alterations. Tenant agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Tenant may be held responsible for the indemnification of Landlord or the payment of damages to persons or property resulting from Tenant's activities, activities of its tenants or the activities of any other person or persons for which Tenant is otherwise responsible.

(3) Automobile Insurance: Tenant shall maintain or cause to be maintained automobile insurance, maintained in full force and effect during the Term of this Lease in an amount of not less than One Million Dollars (\$1,000,000) per accident (subject to adjustment as provided in paragraph (2), above).

(4) Workers' Compensation Insurance: Tenant shall maintain or cause to be maintained workers' compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation

insurance shall cover all persons employed by Tenant in connection with the Property and shall cover liability within statutory limits for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Property or the operation thereof by Tenant. Notwithstanding the foregoing, Tenant may, in compliance with the laws of the State of California and in lieu of maintaining such insurance, self-insure for workers' compensation in which event Lessee shall deliver to Landlord evidence that such self-insurance has been approved by the appropriate State authorities.

b. All policies or certificates of insurance shall provide that such policies shall not be canceled, reduced in coverage or limited in any manner without at least thirty (30) days prior written notice to Landlord. All fire and liability insurance policies (not automobile and Workers' Compensation) policies may name the Landlord, City and Tenant as insureds, additional insureds, and/or loss payable parties as their interests may appear.

c. The term "full insurable value" as used in this Section 2.19 shall mean the cost (excluding the cost of excavation, foundation and footings below the lowest floor and without deduction for depreciation) of providing similar Improvements of equal size and providing the same habitability as the Improvements immediately before such casualty or other loss, but using readily-available contemporary components, including the cost of construction, architectural and engineering fees, and inspection and supervision. To ascertain the amount of coverage required, Tenant shall cause the full insurable value to be determined from time to time by appraisal by the insurer, by agreement between Tenant and Landlord or by an appraiser mutually acceptable to Landlord and Tenant, not less often than once every three years.

d. All insurance provided under this Section 2.19 shall be for the benefit of Tenant, Landlord and City. Tenant agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. Tenant agrees to submit binders or certificates evidencing such insurance to Landlord prior to the execution of this Lease. Within thirty (30) days, if practicable, but in any event prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof, shall be submitted to Landlord. All insurance herein provided for under this Section 2.19 shall be provided by insurers licensed to do business in the State of California and rated A-VII or better.

e. If Tenant fails or refuses to procure or maintain insurance as required by this Lease, Landlord shall have the right, at Landlord's election, and upon ten (10) days prior notice to

Tenant, to procure and maintain such insurance. The premiums paid by Landlord shall be treated as a loan, due from Tenant, to be paid on the first day of the month following the date on which the premiums were paid. Landlord shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

2.20 UTILITIES

Tenant shall make all arrangements for and pay for all services and utilities to the Property; Landlord shall not be responsible or liable to Tenant for interruption or stoppages of utilities or other services to the Property, except to the extent caused by the negligence or willful misconduct of Landlord.

2.21 HOLDING OVER

In the event Tenant fails to vacate the Property and fulfill all of its obligations hereunder at the end of the Term, Tenant shall be liable for all damages incurred by Landlord by reason of the inability to deliver possession of the Property or any portion thereof to any other person.

2.22 ENTRY BY LANDLORD

Landlord reserves and shall at any and all times have the right, but not the obligation, to enter the Property, for the following purposes: (a) to respond to any emergency situation; (b) to inspect the Property, provided such inspections shall take place during normal business hours and upon not less than 5 calendar days' notice, except for inspections deemed necessary by Landlord to respond to any emergency situation, which inspections may occur at any time, and for which no advance notice shall be required; (c) to show said Property to prospective purchasers and tenants, provided such showings shall occur only during the last six months of the Term hereof; (d) to post notices of non-responsibility; and (e) to make repairs to the Property, without any obligation to do so, subject to notice to Tenant, and a reasonable opportunity to cure, as provided in Section 2.24.e. hereof, except for repairs deemed necessary by Landlord to respond to any emergency situation, for which no notice or opportunity to cure shall be required. Provided, however, that Landlord shall take all reasonable steps to ensure that the business of Tenant and its subtenants shall not be interfered with unreasonably. Landlord agrees to indemnify, defend and hold Tenant harmless for any and all claims, liability and damages arising out of any activity by Landlord on the Property pursuant to this Section 2.22, except to the extent caused by the negligence or willful misconduct of Tenant. Except to the extent such claim is based on the negligence or willful misconduct of Landlord in conducting its activities pursuant to this Section 2.22, Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss

of occupancy or quiet enjoyment of the Property, and any other loss which may occur, but only to the extent and as the result of Landlord's entry onto the Property and performance of Landlord's activities pursuant to this Section 2.22. Landlord shall have the right to use any and all means which Landlord may deem proper to open doors in an emergency in order to obtain entry to the Property, without liability to Tenant except for any failure to exercise due care for Tenant's property. Any entry to the Property obtained by Landlord by any means for the purposes specified above shall not under any circumstances be construed or deemed to be forcible or unlawful entry into, or a detainer of, the Property or an eviction of Tenant from the Property or any portion thereof.

2.23 DAMAGE, RECONSTRUCTION

a. Covered by Insurance. In the event the Property is damaged by fire or other perils covered by extended coverage insurance, Tenant shall have the right to use all available insurance proceeds to repair or rebuild the Improvements. If the estimated cost of repairs is not in excess of available insurance proceeds (including rent loss insurance proceeds, if any), then Tenant shall forthwith repair the same (using the insurance proceeds to pay the cost of such repair) and this Lease shall remain in full force and effect.

b. Not Covered by Insurance. (i) In the event the Property is damaged as a result of any cause other than the perils covered by fire and extended coverage insurance, or the estimated cost of repairs (including lost rent) is in excess of available insurance proceeds (including rent loss insurance proceeds), then Tenant shall notify Landlord in writing of the amount by which the estimated cost of repairs exceeds such proceeds (the "Shortfall"), and Tenant shall have the right, within ninety (90) days after receipt of such notice, to elect to provide the Shortfall and proceed with such repairs (using the insurance proceeds and such other funds as Tenant may provide to pay the Shortfall), in which case this Lease shall continue in full force and effect.

(ii) If Tenant fails to notify Landlord within such ninety (90) day period that it will provide the Shortfall and conduct the repairs, then Landlord shall have the option, within thirty days from the end of the ninety (90) day period described in clause (i), either to (A) provide the Shortfall at Landlord's sole expense and direct Tenant to repair or restore such damage (using the insurance proceeds and such additional funds as Landlord may provide to pay the Shortfall), with this Lease continuing in full force and effect, or (B) give notice to Tenant terminating this Lease as of the date specified in such notice, which date shall be no less than thirty (30) and no more than sixty (60) days after the giving of such notice of termination. In the event of giving such notice of termination, this Lease shall expire and all interest of

Tenant in the Property shall terminate on the date so specified in such notice.

c. Special Termination Rights. Notwithstanding anything to the contrary contained in this Section, Tenant shall have no obligation whatsoever to repair, reconstruct, or restore the Property, and Landlord shall have no right to instruct Tenant to do so, in either of the following circumstances: (i) the damage occurs during the last three (3) years of the Term of this Lease, or (ii) the damage cannot reasonably be expected to be repaired within one (1) year. In that event, Tenant may at its option terminate this Lease upon (30) days written notice to Landlord that Tenant elects not to repair, reconstruct, or restore the Property.

d. Excess Insurance Proceeds. If completion of required repair, reconstruction or restoration of the Property does not utilize all insurance proceeds, then Tenant may retain such unused proceeds. If, for any reason, Tenant does not repair, reconstruct or restore the Property, the insurance proceeds shall belong to Landlord as its property.

e. Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Property, Tenant's personal property, or any inconvenience or annoyance occasioned by such damage, repair, reconstruction, or restoration. Tenant waives the provisions of California Civil Code sections 1932(2) and 1933(4) with respect to any destruction of the Property.

2.24 DEFAULT

a. Subject to the notice and cure provisions of Section 2.24.d. and 2.24.e., the occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

(i) The failure by Tenant to pay Rent or observe or perform any other covenants, conditions, or provisions of this Lease or the Agreement Affecting Real Property to be observed or performed by Tenant; or

(ii) Until Tenant is entitled to recordation of the Agency Certificate of Completion applicable to the Property (after which this subparagraph (ii) shall no longer be applicable), any default or breach of a material obligation required to be performed by Tenant pursuant to the DDA, but only to the extent it relates to the development of the Property pursuant to the DDA, which is not cured within the applicable cure period; or

(iii) Any default or breach by Tenant pursuant to any Permitted Leasehold Mortgage or related document which is not cured within the applicable cure period, provided if there is a good faith dispute as to whether or not such a default exists, there shall be no default hereunder until such dispute is resolved and the expiration of the applicable cure period, provided further that in such event the notice and cure provisions of Section 2.24.d. and 2.24.e. shall not apply; or

(iv) Any Transfer that is not approved by Landlord when and as required by this Lease; or

(v) The abandonment of the Property by Tenant; or

(vi) The making by Tenant of any general assignment for the benefit of creditors; or the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt, or a petition or reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within one hundred fifty (150) days); or the appointment of a trustee or a receiver to take possession of substantially all of Tenant's assets located at the Property or of Tenant's interest in this Lease, where possession is not restored to Tenant within one hundred fifty (150) days; or the attachment, execution, or other judicial seizure of substantially all of Tenant's assets located at the Property or of Tenant's interest in this Lease, where such seizure is not discharged within one hundred fifty (150) days; or

(vii) the failure by Tenant to comply with any material terms of the Implementation Plan prepared by Tenant and approved by Landlord pursuant to the DDA.

b. Subject to Force Majeure delay, failure or delay by Tenant to perform any term or provision of this Lease constitutes a default under this Lease. Tenant must immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence, and during any period of curing shall not be in default, so long as it endeavors to complete such cure, correction or remedy with reasonable diligence, and provided such cure, correction or remedy is completed within the applicable time period set forth herein after receipt of written notice (or such additional time as may be deemed by Landlord to be reasonably necessary to correct the default).

c. Landlord shall give written notice of default to Tenant, specifying the default complained of by Landlord. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Lease, any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

d. If a monetary event of default occurs, prior to exercising any remedies hereunder, Landlord shall give Tenant written notice of such default. Tenant shall have a period of seven (7) calendar days after such notice is received or deemed received within which to cure the default prior to exercise of remedies by Landlord. Notwithstanding the foregoing, if any payment is not received by Landlord within seven (7) calendar days following the due date thereof, then in addition to the remedies conferred upon Landlord pursuant to this Lease, a late charge of ten percent (10%) of the amount due and unpaid will be added to the delinquent amount to compensate Landlord for the expense of handling the delinquency, computed from the date on which the amount was due and payable until paid. Without prejudice to the rights of Landlord hereunder, Tenant shall indemnify Landlord against, and shall pay Landlord on demand, any expense or loss which it may sustain or incur as a direct result of the failure by Tenant to pay when due any installment of Rent or other amounts payable to Landlord under this Lease, to the extent that any such expense or loss is not recovered pursuant to such foregoing provisions. A certificate of Landlord setting forth the basis for the determination of the amounts necessary to indemnify Landlord in respect of such expenses or direct loss, submitted to Tenant by Landlord shall be conclusive and binding for all purposes.

e. If a non-monetary event of default occurs, prior to exercising any remedies hereunder, Landlord shall give Tenant notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, Tenant shall have such period to effect a cure prior to exercise of remedies by Landlord. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Tenant (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then Tenant shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Landlord. In no event shall Landlord be precluded from exercising remedies if the security of its fee interest in the Lease Parcel becomes or is about to become materially jeopardized by any failure to cure a

default or the default is not cured within one hundred eighty (180) days after the first notice of default is given.

f. Any notice of default that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission, provided if such facsimile is received on a nonbusiness day or after 5:00 p.m. on a business day, receipt shall be deemed to have occurred on the next business day; any notice of default that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt by Tenant; and any notice of default that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

g. If any default or breach is not cured by Tenant within the respective period of time provided in paragraphs d. and e. of this Section 2.24, and if such default or breach is not cured by a Leasehold Mortgagee within the time provided in Section 2.30 hereof, then Landlord shall be entitled to exercise any and all rights or remedies which may be available at law or in equity, including terminating this Lease. Any and all rights or remedies available to Landlord shall be cumulative, and not alternative. Provided, however, Landlord shall not be required to deliver written notice to Tenant as a condition to Tenant's obligations to pay any rent hereunder, or as a condition to Tenant's obligations under any Leasehold Mortgage or related documents, so long as Landlord provides written notice to Tenant before exercising its remedies or terminating this Lease, as described in this subdivision g., above.

h. In any case where, after notice of default is given to Tenant pursuant to this Section 2.24 and any Permitted Leasehold Mortgagee pursuant to Section 2.30, and prior to Tenant's leasehold interest having become vested in the Permitted Leasehold Mortgagee, neither Tenant nor the Permitted Leasehold Mortgagee has cured such default within the respective times provided for such cure in this Lease, then Landlord shall have the following rights and remedies:

(i) Landlord shall have the right to seek money damages against Tenant;

(ii) Landlord shall have the right to seek injunctive relief and/or specific performance of any obligation of Tenant hereunder;

(iii) Landlord shall have the right to cure the default, in which case, Tenant shall reimburse all costs and expenses incurred by Landlord in connection therewith, immediately upon demand, plus interest at the rate of ten percent (10%) per annum.

(iv) Landlord shall have the right to terminate this Lease.

2.24A RIGHT OF REVERTER

a. Subject to the notice and cure provisions of Section 2.24.d. and 2.24.e., until Tenant is entitled to recordation of the Agency Certificate of Completion for the Property (after which this Section 2.24A shall no longer be applicable), Landlord shall have the additional right, at its option, to terminate the DDA and this Lease, and to reenter and take possession of the Property (or any portion thereof) with all improvements thereon, and to terminate and re-vest in Landlord the leasehold estate theretofore conveyed to Tenant, as provided in California Health and Safety Code Section 33437, in the event of an uncured default described in this Section 2.24A, below:

(i) Tenant fails to commence construction or rehabilitation of any Improvements as required by the DDA for a period of ninety (90) days after written notice from Landlord, which shall be subject to Force Majeure Delay; or

(ii) Tenant abandons or substantially suspends construction or rehabilitation of any Improvements for a period of ninety (90) days after written notice from Landlord, which shall be subject to Force Majeure Delay; or

(iii) Tenant assigns or attempts to assign the DDA, or any rights therein, or transfer, or suffer any involuntary transfer of the Property or such party's interest in the Property, or any part thereof, in violation of the DDA or this Deed, and such breach is not cured within thirty (30) days after the date of written notice thereof; or

(iv) Master Developer or Tenant otherwise materially breaches the DDA, and such breach is not cured within the time provided in Section 9.1 of the DDA.

b. Priority. Such right to reenter, repossess, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit, and Landlord's rights shall be subject and subordinate to any rights or interests provided in the DDA for the protection of any Mortgagee of a Permitted Leasehold Mortgage Loan. To carry out this paragraph b, subject to the conditions set forth in paragraph c. of this Section 2.24A, the Landlord shall execute such reasonable subordination agreements as may be requested by Tenant or the maker of any Permitted Leasehold Mortgage Loan.

c. Conditions of Subordination to Senior Obligations. Subject to this paragraph c., the Landlord shall subordinate its right of reverter to the lien of any Community Facilities District or other financing bonds issued with respect to the Property and the lien of any Permitted Leasehold Mortgagee (collectively, a "Senior Obligation"). The Landlord's agreement to subordinate its right of reverter to Senior Obligations is subject to the written agreement of the holder of any Senior Obligation to which the Landlord's right of reverter is to be subordinated, shall agree to provide to the Landlord the following rights:

(i) Upon the occurrence of an event of default under any of the Senior Obligation documents, the holder of the Senior Obligation shall promptly notify Landlord of the occurrence of such event of default, which notification shall be provided to Landlord contemporaneously with the delivery to Tenant of any notice of default under any of the Senior Obligation documents;

(ii) The Landlord shall have the right, during the cure periods which apply to the Tenant pursuant to the Senior Obligation documents and any cure period which may apply to the Landlord under applicable law, to cure Tenant's default relative to the Senior Obligation; and

(iii) After a default on any of the Senior Obligation documents but prior to a foreclosure sale or deed in lieu assignment of the leasehold interest in the Property, the Landlord shall have the right to take title to the Property and cure the default relative to the Senior Obligation documents, without the holder of the Senior Obligation exercising any right it might otherwise have to accelerate the Senior Obligation by reason of such title transfer, so long as Landlord promptly cures any such default upon taking title to the Property.

d. Disposition of Property Following Reversion. If such reversion occurs following the satisfaction of all Phase Three (Foundation) Conditions Precedent for the Property and subordination of the Landlord's Right of Reverter to the lien of a Permitted Leasehold Mortgage Loan, upon the reversioning in Landlord of the leasehold estate theretofore conveyed to Tenant as provided in this Section 2.24A, Landlord shall, pursuant to its responsibilities under state law, use its best efforts to lease the Property, or any part thereof, as soon and in such manner as Landlord shall find feasible and consistent with the objectives of the Community Redevelopment Law, the Reuse Plan and the Redevelopment Plan to a qualified and responsible party or parties (as determined by Landlord), who will assume the obligation of making or completing the improvements, or such other improvements in their stead, as shall be satisfactory to Landlord and in accordance with the uses specified for the Property, or any part thereof, in the Redevelopment Plan. Upon such conveyance of the Property, or any part thereof, the proceeds thereof, if any, shall be applied:

(i) First (but only if such reversion occurs following the satisfaction of all Phase Three (Foundation) Conditions Precedent and subordination of the Landlord's Right of Reverter to the lien of any Permitted Leasehold Mortgage Loan), repayment in full of the outstanding balance of any Permitted Leasehold Mortgage Loan;

(ii) next, to reimburse Landlord on its own behalf or on behalf of the City of San Diego of all costs and expenses incurred by Landlord, including salaries of personnel engaged in such action, in connection with the recapture, management and leasing of the Property, or any part thereof (but less any income derived by Landlord from the leasing of the Property, or any part thereof, in connection with such management); all taxes, assessments and water and sewer charges with respect to the Property or any part thereof (or, in the event the Property, or any part thereof, is exempt from taxation or assessment or such charges during the period of ownership, then such taxes, assessments or charges, as would have been payable if the Property, or part thereof, were not so exempt); any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Tenant, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the agreed improvements or any part thereof on the Property, or any part thereof; and

any amounts otherwise owing to the Landlord by Tenant and its successor or transferee; and

(iii) Third, to reimburse Tenant, its successor or transferee, up to the amount equal to: the sum of the consideration paid to the Landlord for the lease of the Property (or allocable to the part thereof) and the costs incurred for the development of the Property, or any part thereof, or for the construction of the agreed improvements thereon, less (subject to the satisfaction of all Phase Three (Foundation) Conditions Precedent) the Permitted Mortgage Loan.

(iv) Any balance remaining after such reimbursements shall be retained by Landlord as its property.

e. Rules of Interpretation. To the extent that the right established in this Section 2.24A involves a forfeiture, it must be strictly interpreted against Landlord, the party for whose benefit it is created. The rights established in this Section 2.24A are to be interpreted in light of the fact that Landlord will convey the leasehold interest in the Property to Tenant for development and not for speculation.

f. Statutory Basis for Right of Reverter. The parties acknowledge that Landlord's right of reverter pursuant to this Section 2.24A is authorized by and is in furtherance of California Health and Safety Code Section 33437.

g. Expiration of Right of Reverter. The rights established in this Section 2.24A shall not apply to the Property after the recordation of the Agency Certificate of Completion with respect to the Property.

2.25 EMINENT DOMAIN

a. If the Property or any portion thereof is taken under the power of eminent domain, or sold by Landlord under the threat of the exercise of such power, this Lease shall terminate as to the part so taken as of the date that the condemning authority takes possession of the Property. If a portion of the Property is taken or sold under such threat such that the commercial use of the Property is no longer reasonably viable, either Landlord or Tenant may terminate this Lease as of the date that the condemning authority takes possession by delivery of written notice of such election within twenty (20) days after such party has been notified of the taking or, in the absence thereof, within twenty (20) days after the condemning authority shall have taken possession.

b. If this Lease is not terminated by Landlord or Tenant, it shall remain in full force and effect as to the portion of the Property remaining. In such event, Tenant shall, at Tenant's own expense, restore the Property to a complete unit of like quality and character, except as to size, as existed prior to the date on which the condemning authority took possession.

c. Except as provided in paragraph d., below, all awards for the taking of any part of the Property or proceeds from the sale made under the threat of the exercise of the power of eminent domain shall be paid directly to Tenant; provided, however, that Landlord shall be entitled to any award which is specifically made for the value of the fee as encumbered by this Lease (including any residual value after the Term).

d. During the last twenty (20) years of the Term, all awards for the taking of any part of the Property or proceeds from the sale made under the threat of the exercise of the power of eminent domain shall be paid directly to Landlord (except as provided in paragraph e., below), whether made as compensation for diminution of value of the leasehold estate, for the taking of the fee, or as severance damages; provided, however, that Tenant shall be entitled to any award which is specifically made for the value of the leasehold estate created by this Lease, Tenant's interest in the Improvements and any loss of or damage to Tenant's trade fixtures and removable personal property.

e. Notwithstanding any provision of this Section 2.25, in the event Landlord exercises its power of eminent domain with respect to the Property or any portion thereof or interest therein, Tenant shall be entitled to such awards as may be authorized by applicable law, including bonus value, if any, without regard to this Section 2.25.

2.26 ESTOPPEL OFFSET STATEMENT

a. Tenant shall, at any time and from time to time upon not less than twenty (20) days' prior written notice from Landlord, execute, acknowledge, and deliver to Landlord a statement in writing certifying that this Lease is unmodified and in full force and effect (or, if modified, is in full force and effect, and stating the modifications) and acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder (or specifying such defaults if any are claimed) and such other matters as may be reasonable and customary or as needed to clarify any provision of this Lease. Tenant's failure to deliver such statement to Landlord within twenty (20) days after receipt of Landlord's notice shall be conclusively deemed to be Tenant's acknowledgment that this Lease is unmodified except as reflected in recorded instruments and that, to Tenant's knowledge, there are no uncured defaults on the part of Landlord hereunder.

b. Landlord shall, at any time and from time to time upon not less than twenty (20) days' prior written notice from Tenant, execute, acknowledge, and deliver to Tenant a statement in writing certifying that this Lease is unmodified and in full force and effect (or, if modified, is in full force and effect, and stating the modifications) and acknowledging that there are not, to Landlord's knowledge, any uncured defaults on the part of Tenant hereunder (or specifying such defaults if any are claimed), the last date Landlord received rent under this Lease, the date such rent was due and the amount thereof, acknowledging that the recipient will rely on the certificate, and such other matters as may be reasonable and customary or as needed to clarify any provision of this Lease. Landlord's failure to deliver such statement to Tenant within twenty (20) days after receipt of Tenant's notice shall be conclusively deemed to be Landlord's acknowledgment that this Lease is unmodified except as reflected in recorded instruments and that, to Landlord's knowledge, there are no uncured defaults on the part of Tenant hereunder.

2.27 HAZARDOUS MATERIALS

a. For purposes of this Lease, the term "Hazardous Materials" shall mean and include the following:

- (1) a "Hazardous Substance", "Hazardous Material", "Hazardous Waste", or "Toxic Substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101, et seq., or the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.;
- (2) an "Extremely Hazardous Waste", a "Hazardous Waste", or a "Restricted Hazardous Waste", under §§ 25115, 25117 or 25122.7 of the California Health and Safety Code, or is listed or identified pursuant to §§ 25140 or 44321 of the California Health and Safety Code;
- (3) a "Hazardous Material", "Hazardous Substance", "Hazardous Waste", "Toxic Air Contaminant", or "Medical Waste" under §§ 25281, 25316, 25501, 25501.1, 117690 or 39655 of the California Health and Safety Code;

- (4) "Oil" or a "Hazardous Substance" listed or identified pursuant to § 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321, as well as any other hydrocarbonic substance or by-product;
- (5) listed or defined as a "Hazardous Waste", "Extremely Hazardous Waste", or an "Acutely Hazardous Waste" pursuant to Chapter 11 of Title 22 of the California Code of Regulations;
- (6) listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to § 25249.9(a) of the California Health and Safety Code;
- (7) a material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, damages or threatens to damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or public agency requires in order for the property to be put to any lawful purpose;
- (8) any material whose presence would require remediation pursuant to the guidelines set forth in the State of California Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank;
- (9) pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.;
- (10) asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.;
- (11) any radioactive material including, without limitation, any "source material", "special nuclear material", "by-product material", "low-level wastes", "high-level radioactive waste", "spent nuclear fuel" or "transuranic waste", and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. §§ 2011 et seq., the Nuclear Waste Policy Act, 42 U.S.C. §§ 10101 et seq., or

pursuant to the California Radiation Control Law, California Health and Safety Code §§ 114960 et seq.;

- (12) regulated under the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq., or the California Occupational Safety and Health Act, California Labor Code §§ 6300 et seq.; and/or
- (13) regulated under the Clean Air Act, 42 U.S.C. §§ 7401 et seq. or pursuant to Division 26 of the California Health and Safety Code.

b. The term "Pre-existing Site Conditions" shall mean the existence, release, presence or disposal on, in, under, about or adjacent to the Property, of any Hazardous Materials which occurred before the delivery of possession of the Property to Tenant.

c. Tenant shall not, except in compliance with law:

- (1) Make, or permit to be made, any use of the Property, or any portion thereof, which emits, or permits the emission of dust, sweepings, dirt, cinders, fumes, or odors into the atmosphere, the ground, or any body of water, whether natural or artificial, in violation of applicable law; or
- (2) Discharge, leak, or emit, or permit to be discharged, leaked, or emitted, any liquid, solid, or gaseous matter, or any combination thereof, into the atmosphere, the ground, or any body of water, in violation of applicable law.
- (3) Use, store or dispose of any Hazardous Materials on the Property.

d. Tenant shall not keep any trash, garbage, waste, or other refuse on the Property except in sanitary containers and shall regularly and frequently remove the same from the Property. Tenant shall keep all incinerators, containers, and other equipment used for the storage or disposal of such matter in a clean and sanitary condition. Tenant shall surrender the Property at the expiration or termination of this Lease free of any Hazardous Materials or contamination caused by Tenant's activities, and free and clear of all judgements, liens, or encumbrances caused by Tenant's activities and shall, at its own cost and expense, repair all damage and clean up or perform any remedial action necessary relating to any Hazardous Materials or contamination caused by Tenant's activities. Tenant shall, at its sole cost and expense

remediate in accordance with law and/or remove any alterations or improvements that may be contaminated or may contain Hazardous Materials caused by Tenant's activities.

e. Tenant shall indemnify, defend, and hold harmless Landlord, the City of San Diego and their respective officers, employees, contractors and agents (collectively referred to as the "Indemnified Parties"), with counsel reasonably acceptable to Agency, from and against any and all loss, liability, damage, claim, cost and expense (including reasonable attorneys' fees, court and litigation costs and fees of expert witnesses) resulting or arising from or in any way connected with the following: the existence, release, presence or disposal on, in, under, about or adjacent to the Property, at any time after the delivery of possession and conveyance of the Property to Tenant, of any Hazardous Materials, except to the extent of (and in no event shall Tenant be responsible for) any loss, liability, damage, claim, cost or expense caused by: (1) Pre-existing Conditions; and (2) the negligence or willful misconduct of any Indemnified Party or any tenant or subtenant of the City of San Diego prior to the effective date of this Lease or the assignment of the management of the Property to Master Developer prior to the effective date of this Lease, whichever occurs first.

f. Notwithstanding the expiration or termination of this Lease, Tenant's obligations and liabilities under this Section shall continue so long as Landlord continues to own the Property or any portion thereof or otherwise remains responsible for any Hazardous Materials on the Property; provided, however, that nothing contained in this provision is intended to or shall have the effect of relieving any party of liability under any applicable statutory or common law.

2.28 TENANT'S SIGNAGE

Tenant shall have the right to place signs on the Property in accordance with applicable City requirements.

2.29 MEMORANDUM OF LEASE

Concurrently with the execution of this Ground Lease, Landlord and Tenant shall execute in recordable form a Memorandum of Lease, substantially in the form attached hereto as Exhibit "C" which is incorporated herein by this reference, which either party is authorized to record.

a. DEFINITIONS.

(i) For purposes of this Lease, the term "mortgage" shall include whatever security instruments are used in the locale of the Property, such as, without limitation, deeds of trust security deeds, and conditional deeds. The term "mortgage" shall also include any instruments required in connection with a sale-leaseback transaction. The term "mortgagee" shall include the holder of the secured position under each of the foregoing types of instruments, including but not limited to the beneficiary under a deed of trust, the secured party under a security agreement and the lessor in a sale-leaseback transaction.

(ii) For purposes of this Lease, the term "Leasehold Mortgage" means a conveyance of a security interest in this Lease and all of Tenant's interests in the Property (collectively referred to as "Tenant's Leasehold Interests") to a lender (a "Leasehold Mortgagee") to secure any loan (which shall include, among other things, bond financing) to finance any construction, improvement or alteration of the Property, or, to secure any refinancing of any such loan (or bond financing).

(iii) For purposes of this Lease, the terms "Permitted Leasehold Mortgage" and "Permitted Leasehold Mortgagee" shall mean, respectively, a Leasehold Mortgage and a Leasehold Mortgagee satisfying all of the conditions set forth in paragraph b. of this Section 2.30.

b. RIGHT TO ENCUMBER. At any time and from time to time during the Term, Tenant shall have the right to enter into a Leasehold Mortgage upon and subject to each and all of the following terms and conditions, subject to the reasonable consent of Landlord, which Landlord shall grant provided the proposed Leasehold Mortgage satisfies all of the following conditions:

(i) The Leasehold Mortgage shall contain an aggregate principal amount which, when combined with the principal balance of all other Permitted Leasehold Mortgages then outstanding, shall not exceed eighty percent (80%) of the fair market value of Tenant's interests in this Lease. The fair market value of Tenant's interests in this Lease shall be determined by an appraisal conducted on behalf of the Leasehold Mortgagee by a disinterested real estate appraiser having the qualifications for appraisers required by the Leasehold Mortgagee's underwriting criteria.

(ii) The Leasehold Mortgage shall cover all of Tenant's interest in the Lease, the Property, the Improvements and, without the prior express consent of Landlord, which Landlord shall not unreasonably withhold, condition or delay, shall cover no interest in any other real property.

(iii) The Leasehold Mortgage shall be without subordination of the fee simple title of the Property. The term of any Leasehold Mortgage shall expire prior to the expiration of the term of this Lease.

(iv) No such Leasehold Mortgage shall be binding upon Landlord in the enforcement of its rights and remedies herein, unless and until Tenant delivers or causes to be delivered to Landlord a certified copy of the fully executed original Leasehold Mortgage bearing the date and recording information and a certified copy of the original note secured by the Leasehold Mortgage, together with written notice of the address of the Leasehold Mortgagee to which notices may be sent; and in the event of an assignment of such Leasehold Mortgage, such assignment shall not be binding upon Landlord unless and until a certified copy thereof, bearing the date and recording information together with written notice of the address of the assignee thereof to which notices may be sent, have been delivered to Landlord.

(v) No Leasehold Mortgage permitted by this Lease shall cover more than one indebtedness; that is, there shall be no cross-collateralization permitted.

(vi) A Leasehold Mortgage is to be originated only by a Qualified Lender. For the purposes hereof, the term "Qualified Lender" shall consist of:

(aa) the mortgagee of any purchase money financing of a Transfer approved by Landlord; or

(bb) any one or a combination of the following lending institutions authorized under applicable California law to make mortgage loans and not under any order or judgment of any court or administrative agency restricting or impairing its operation as a lender, and having a net worth in the amount of not less than Twenty-Five Million Dollars (\$25,000,000), increased by the percentage increase, if any, in the Consumer Price Index from the Commencement Date of this Lease to the date of anniversary thereof most recently preceding the date of calculation, and is regularly engaged in business in the State of California: a commercial or savings bank; a trust company; an insurance company; a savings and loan association; a building and loan association;

(cc) any company engaged in the ordinary course of business as a lender with a net worth of not less than Twenty-Five Million Dollars (\$25,000,000), increased by the percentage increase, if any, in the Consumer Price Index from the Commencement Date of this Lease to the date of anniversary thereof most recently preceding the date of calculation, which is duly licensed or registered (if legally required) with any regulatory agency having jurisdiction over its operation, and is not under any order or judgment of any court or administrative agency restricting or impairing its operation as a lender, including, without limitation, the following: a real estate investment trust; a pension, retirement or welfare fund; an endowment fund or foundation authorized to make loans in the State of California;

(dd) any other person or company approved by the Landlord's Executive Director or designee, which approval may be granted or withheld in his or her sole discretion; or

(ee) subject to paragraph c., below, McMillin-NTC ("Master Developer"), or an Affiliate (as defined in the DDA).

Landlord acknowledges that the identity and nature of lending institutions changes over time, and agrees that Landlord's approval of any proposed mortgage lender that is not a "Qualified Lender" as defined in this paragraph (6) shall not be unreasonably withheld, conditioned or delayed.

(vii) All rights acquired by the Leasehold Mortgagee under the Leasehold Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Landlord hereunder. Landlord shall not be deemed to waive any covenants, conditions and restrictions contained in this Lease by reason of Tenant's grant of a Leasehold Mortgage.

(viii) No extension, modification, change or amendment to a Leasehold Mortgage shall be effective, or binding upon Landlord, unless and until approved by Landlord, which approval shall be granted so long as such extension, modification, change or amendment satisfies the applicable requirements of paragraphs (i) through (vii), above.

c. MASTER DEVELOPER AS LEASEHOLD MORTGAGEE. Landlord and Tenant anticipate that Tenant will finance the Stage One Rehabilitation of the Property by obtaining grants, donations, loans or other funds from individuals, private organizations and public agencies other than the City of San Diego or the Landlord. The Parties hereto acknowledge and agree that neither the Landlord nor the City shall have any obligation to provide any funding to Tenant or any of its sublessees. To the extent Tenant is unable to obtain grants, donations, loans or other funds to pay for the Stage One Rehabilitation of the Property, the Master Developer has agreed

in the DDA to advance the shortfall to Tenant, or assist Tenant to obtain conventional financing. To the extent Master Developer advances such funds, Landlord understands that Master Developer intends to obligate Tenant to repay such funds, as a loan, secured by a deed of trust in Tenant's leasehold interest in the Property or portion thereof. Landlord agrees that, subject to satisfaction of the terms and conditions set forth in this Section 2.30, Master Developer shall be a Permitted Mortgagee for all purposes pursuant to this Lease, and shall have all of the rights of a Permitted Leasehold Mortgagee set forth in this Section 2.30; provided, however, that Master Developer shall not have the right to assign any portion of its rights as Leasehold Mortgagee under such Leasehold Mortgage to a third party. Master Developer shall have the right to include in its Leasehold Mortgage Loan documents a requirement that Tenant's revenues must in the aggregate be sufficient to pay all of Tenant's operating expenses and debt service on loans, including loans made by the Master Developer. To this end, Master Developer may reserve the right, in its Leasehold Mortgage Loan documents, to approve all subleases proposed to be entered into by Tenant, to assure that sublease rents, in the aggregate, will be sufficient to pay all of Tenant's operating expenses and debt service on loans, including loans made by the Master Developer.

d. LANDLORD'S RIGHT TO CURE DEFAULTS. In the event of a default or breach by Tenant of any Permitted Leasehold Mortgage, Landlord shall have the right to cure the default provided such cure is completed at least five (5) business days before the date of foreclosure. In such event, Landlord shall be entitled to reimbursement by Tenant of all costs and expenses incurred by Landlord in curing the default, with interest at the highest rate permitted by law, as Additional Rent (collectively, "Landlord's Cure Payments"), provided in the event of a subsequent foreclosure of a Permitted Leasehold Mortgage, the party acquiring Tenant's Leasehold interests shall not be obligated to pay Landlord any of Landlord's Cure Payments. As a condition of Landlord approval of any Leasehold Mortgage, the proposed Leasehold Mortgagee shall agree, in writing, to provide to the Landlord the following rights:

(i) Upon the occurrence of an event of default under any of the Leasehold Mortgage documents, the Leasehold Mortgagee shall promptly notify Landlord of the occurrence of such event of default, which notification shall be provided to Landlord contemporaneously with the delivery to Tenant of any notice of default under any of the Leasehold Mortgage documents;

(ii) The Landlord shall have the right, during the cure periods which apply to the Tenant pursuant to the Leasehold Mortgage documents and any cure period which may apply to the Landlord under applicable law, to cure Tenant's default relative to the Leasehold Mortgage; and

(iii) After a default on the Leasehold Mortgage documents but prior to a foreclosure sale or deed in lieu assignment of the leasehold interest in the Property, the Landlord shall have the right to take title to the Property and cure the default relative to the Leasehold Mortgage documents, without the Leasehold Mortgagee exercising any right it might otherwise have to accelerate the Leasehold Mortgage by reason of such title transfer, so long as Landlord promptly cures any such default upon taking title to the Property.

e. RIGHTS OF PERMITTED LEASEHOLD MORTGAGEE: If Tenant and/or Tenant's successors and assigns (including, but not limited to, any sublessee of Tenant) shall mortgage its interest in this Lease and its leasehold estate in the Property, or any part or parts thereof as permitted by this Section 2.30, above, the following provisions shall apply:

(i) No Amendment. There shall be no amendment, cancellation, termination, surrender or modification of this Lease by joint action of Landlord and Tenant without the prior consent in writing of any Permitted Leasehold Mortgagee.

(ii) Right to Notice of Default. Landlord shall, upon serving Tenant with any notice of default, simultaneously serve a copy of the notice of default upon any Permitted Leasehold Mortgagee.

(iii) Right to Cure. Any Permitted Leasehold Mortgagee, shall have the right, but not the obligation, at any time prior to termination of this Lease, to pay all of the rents due hereunder, to effect any insurance, to pay any taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Tenant hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Lease. Any Permitted Leasehold Mortgagee and its agents and contractors shall have full access to the Property for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Permitted Leasehold Mortgagee shall be as effective to prevent a termination of this Lease as the same would have been if done by Tenant.

(iv) Additional Cure Period. Anything contained in this Lease notwithstanding, if any default shall occur which, pursuant to any provision of this Lease, purportedly entitles Landlord to terminate this Lease, Landlord shall not be entitled to terminate this Lease as to any Permitted Leasehold Mortgagee, nor to disturb the right of possession of any subtenant of Tenant, and the notice shall be rendered void as to such parties, if the Permitted Leasehold Mortgagee, within sixty (60) days after expiration of the period within which Tenant was permitted to cure the default (but in no event later than ninety (90) days after receipt by the Leasehold Mortgagee of the notice of default referred to in paragraph d. (ii) of this Section 2.30, above), shall both:

(aa) either (1) cure the default if the same can be cured by the expenditure of money, or (2) if the default or breach is not so curable, commence, or cause any trustee under the mortgage to commence, and thereafter to diligently pursue to completion steps and proceedings to foreclose on the interests covered by the mortgage; and

(bb) perform or cause the performance of all of the covenants and conditions of this Lease requiring the expenditure of money by Tenant until such time as the leasehold shall be sold upon foreclosure pursuant to the mortgage, or shall be released or reconveyed thereunder, or shall be transferred upon judicial foreclosure or by deed or assignment in lieu of foreclosure.

(v) Condition of Termination. All right of Landlord to terminate this Lease as the result of the occurrence of any default shall be subject to, and conditioned upon, Landlord having first given to each Permitted Leasehold Mortgagee written notice of the default as required under Section 2.30.d. (ii), above, and each Permitted Leasehold Mortgagee having failed to remedy such default or acquire Tenant's leasehold estate hereunder or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in Section 2.30.d. (iv), above.

(vi) Suspension of Cure Period. If any Permitted Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court, or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant, the times specified in paragraph (iv) above, for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition, so long as the Permitted Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant under this Lease and shall continue to pay currently those monetary obligations as and when the same fall due, subject to any applicable notice and grace periods.

(vii) Loss Payable Endorsement. Landlord and Tenant agree that the name of the Permitted Leasehold Mortgage shall, at its request, be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Tenant under this Lease on condition that the insurance proceeds are to be applied in the manner specified in this Lease.

(viii) No Consent to Foreclosure. Foreclosure of any leasehold mortgage, 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 Tenant to any Leasehold Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance, Landlord shall recognize in writing the purchaser or other transferee referred to in the preceding sentence in connection therewith as the Tenant hereunder. Further, following such foreclosure or conveyance, any assignment or subleasing by the purchaser or other transferee shall not require the consent of Landlord, despite any other provisions of this Lease to the contrary.

(ix) Proceeds of Insurance and Condemnation. The proceeds from any insurance policies or arising from a condemnation award to Tenant shall be paid to and held by the Permitted Leasehold Mortgagee of highest priority and distributed pursuant to the provisions of this Lease, except that the Permitted Leasehold Mortgagee may reserve the right to apply to the mortgagee debt (in the order of priority) all, or any part, of the proceeds not used to repair or restore the Property and the Improvements.

(x) Notice of Proceedings. The parties hereto shall give to any Permitted Leasehold Mortgagee notice of any arbitration proceedings or condemnation proceedings involving Tenant's interest in the Property, or of any pending adjustment of insurance claims, and any Permitted Leasehold Mortgagee shall have the right to intervene therein and shall be made a party to such proceedings. The parties hereto do hereby consent to such intervention. In the event that any Permitted Leasehold Mortgagee shall not elect to intervene or become a party to the proceedings, that Permitted Leasehold Mortgagee shall receive notice and a copy of any award or decision made in connection therewith.

(xi) Further Protections. Landlord and Tenant shall cooperate in including in this Lease, by suitable amendment from time to time, any provision which may be reasonably requested by any proposed Permitted Leasehold Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Section 2.30 and allowing that Permitted Leasehold Mortgagee reasonable means to protect or preserve the lien of its leasehold mortgage upon the occurrence of a default under the terms of this

Lease. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that no such amendment shall in any way affect the term or rent under this Lease, nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.

(xii) Additional Agreement. Landlord shall, upon request, execute, acknowledge and deliver to each Leasehold Mortgagee, an agreement prepared by a Permitted Leasehold Mortgagee and reviewed by Landlord at the sole cost and expense of Tenant, in form satisfactory to Permitted Leasehold Mortgagee, between Landlord, Tenant and the Permitted Leasehold Mortgagee, agreeing to all of the provisions of this Lease.

f. NOTICE: If Tenant and/or Tenant's successors and assigns shall mortgage its interest in this Lease or its leasehold estate in the Property, or any part or parts thereof, Tenant shall send to Landlord a true copy thereof, together with written notice specifying the name and address of the leasehold mortgagee(s) and the pertinent recording data with respect to such mortgage(s).

g. NEW LEASE:

(i) Landlord agrees that in the event of termination of this Lease by reason of any default by Tenant, or by reason of the disaffirmance hereof by a receiver, liquidator or trustee for Tenant or its property, Landlord, if requested by Master Developer or any other Permitted Leasehold Mortgagee, will enter into a new lease of the Property, with Master Developer or such other Permitted Leasehold Mortgagee requesting a new lease, or its designee, for the remainder of the Term, effective as of the date of such termination, at the rent and additional rent and upon the terms, provisions, covenants and agreements as herein contained and subject to the rights, if any, of any parties then in possession of any part of the Property, provided:

(aa) Master Developer or such other Permitted Leasehold Mortgagee shall make written request upon Landlord for the new lease within one hundred twenty (120) days after the date of termination:

(bb) Within thirty (30) days after receipt of the new lease from Landlord complying with the terms of this paragraph (g), Master Developer or such other Permitted Leasehold Mortgagee shall execute and deliver the new lease to Landlord and shall pay any and all sums which would, at the time of the execution and delivery thereof, be due and unpaid pursuant to this Lease but for its termination.

(cc) Master Developer or such other Permitted Leasehold Mortgagee shall perform and observe all covenants herein contained on Tenant's part to be performed, and shall further remedy any other conditions which Tenant under the terminated Lease was obligated to perform under its terms, in each instance as and to the extent the same are curable or may be performed by Master Developer or such other Permitted Leasehold Mortgagee:

(dd) The tenant under the new lease shall have the same right, title and interest in and to the buildings and improvements on the Property as Tenant had under the terminated Lease immediately prior to its termination; and

(ee) Notwithstanding anything to the contrary expressed or implied elsewhere in this Lease, any new lease made pursuant to this Section 2.30.g.(i) shall enjoy the same priority in time as the Lease over any mortgage, deed of trust, or other lien, charge, or encumbrance on the Property.

(ii) Any new lease made pursuant to Section 2.30.g.(i) shall be accompanied by a conveyance from Landlord to the new tenant of title to the Improvements (free of any mortgage, deed of trust, lien, charge, or encumbrance created by Landlord) for a term of years equal to the term of the new lease, subject to the reversion in favor of Landlord upon expiration or sooner termination of the new lease.

(iii) Nothing herein contained shall require any Master Developer or such other Permitted Leasehold Mortgagee to enter into a new lease pursuant to Section 2.30.g.(i), above, nor to cure any default of Tenant referred to above.

(iv) If Master Developer or such other Permitted Leasehold Mortgagee shall elect to demand a new lease, Landlord agrees, at the request of, on behalf of and at the expense of Master Developer or such other Permitted Leasehold Mortgagee, to institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or remove the original Tenant from the Property, but not any subtenants of Tenant actually occupying the Property, or any part thereof.

(v) Unless and until Landlord has received notice from Master Developer or other Permitted Leasehold Mortgagee that Master Developer or such other Permitted Leasehold Mortgagee elects not to demand a new lease as provided in Section 2.30.g.(i), or until the period therefor has expired, Landlord shall not cancel or agree to the termination or surrender of any existing subleases nor enter into any new subleases hereunder without the prior written consent of Master Developer or such other the Permitted Leasehold Mortgagee.

h. **LENDER'S LIABILITY:** In the event Master Developer or any other Permitted Leasehold Mortgagee or any designee of it becomes the Tenant under this Lease or under any new lease obtained pursuant to Section 2.30.g.(i), above, Master Developer or such other Permitted Leasehold Mortgagee or its designee shall be personally liable for the obligations of Tenant under this Lease or a new sublease only for the period of time that Master Developer or other Permitted Leasehold Mortgagee or its designee remains the actual beneficial holder of the leasehold estate hereunder.

i. **QUIET ENJOYMENT:** Absent an uncured default by Tenant, Landlord agrees not to disturb the possession, interest or quiet enjoyment of Tenant in the Property for any reason, or in a manner which would materially adversely affect any Permitted Leasehold Mortgage.

j. **APPROVAL OF MODIFICATIONS:** Landlord (through its Executive Director or designee) shall approve reasonable modifications to the terms of this Lease which are reasonably requested by a proposed Leasehold Mortgagee (except Master Developer) as a condition of financing contemplated by this Lease, and which are limited to procedures, notice provisions or similar mechanical matters relating to lenders' remedies which the Executive Director or designee determines, in his sole discretion, will not adversely affect Landlord's rights.

k. **THE PROVISIONS OF THIS LEASE DO NOT GIVE TO TENANT OR ANY PERSON WHATSOEVER OTHER THAN LANDLORD THE RIGHT TO MORTGAGE, HYPOTHECATE OR OTHERWISE TO ENCUMBER OR TO CAUSE ANY LIENS TO BE PLACED AGAINST THE FREEHOLD ESTATE OF LANDLORD, NOR SHALL SAID PROVISIONS BE CONSTRUED AS RESULTING IN A SUBORDINATION IN WHOLE OR IN PART OF THE FREEHOLD ESTATE OF LANDLORD OR LANDLORD'S RIGHT TO RECEIVE RENT TO ANY INDEBTEDNESS OF TENANT.**

2.31 GENERAL PROVISIONS

a. **Waivers.** The waiver by either party of any term, covenant, or condition herein contained shall not be a waiver of such term, covenant, or condition on any subsequent breach.

b. **Notices.** Formal notices, demands and communications between Landlord and Tenant shall be deemed sufficiently given if dispatched by first class mail, registered or certified mail, postage prepaid, return receipt requested, or by electronic facsimile transmission followed by delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), to the addresses of Landlord and Tenant as set forth in Sections 1.6 and 1.7 hereof. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail. Any notice that is transmitted by

electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission, provided that if such transmission is delivered after 5:00 p.m., notice shall be deemed given on the next business day; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

c. Time is of the Essence. Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

d. Binding on Successors and Assigns. This Lease, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and assigns.

e. Force Majeure.

(i) Performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation brought by a third party (but only to the extent performance is enjoined by a court of competent jurisdiction as the result of such litigation) unusually severe weather, reasonably unforeseeable site conditions including the presence of Hazardous Materials, inability to secure necessary labor, material or tools, delays of any contractor, sub-contractor or supplier, acts of the other party, acts or failure to act of the City of San Diego or any other public or governmental agency or entity (except that acts or failure to act of Landlord shall not excuse performance of Landlord), or any causes beyond the control or without the fault of the party claiming an extension of time to perform.

(ii) An extension of time for any such cause (a "Force Majeure Delay") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom. Any party

claiming a Force Majeure Delay shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event. Times of performance under this Agreement may also be extended in writing by Landlord and Tenant.

(iii) Notwithstanding any provision of this Agreement, Landlord agrees that in the event Tenant fails to perform any obligation to be performed by Tenant hereunder as the result of adverse changes in market conditions affecting the development, sale or lease of any part of the Property, the Landlord Executive Director shall not terminate this Agreement or exercise the Landlord's right of reverter without first providing Tenant a reasonable opportunity to address the governing body of the Landlord at a public meeting.

f. Costs of Proceedings and Attorneys' Fees. If any action or proceeding is brought by either party against the other under this Lease or by a Leasehold Mortgagee against any such party, whether for interpretation, enforcement, recovery of possession, or otherwise, the prevailing party shall be entitled to recover all costs and expenses, including the fees of its attorney in such action or proceeding. This provision shall also apply to any postjudgment action by either party, including without limitation efforts to enforce a judgment.

g. Severability. Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

h. No Exclusive Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

i. Laws of California. This Lease shall be governed by the laws of the State of California. Proper venue for any action shall be in San Diego, California.

j. No Partnership. Nothing contained in this Lease shall be deemed or construed as creating a partnership, joint venture, or any other relationship between the parties hereto other than Landlord and Tenant according to the provisions contained herein, or cause Landlord to be responsible in any way for the debts or obligations of Tenant, or any other party.

k. Final Agreement. This Lease, including any document or instrument incorporated therein or herein by reference, contains a complete and final expression of the agreement between Landlord and Tenant, and there are no promises, representations, agreements, warranties, or inducements either express or implied other than as are set forth in this Lease. Any and all previous discussions or agreements between Landlord and Tenant with respect to the

premises, whether oral or written, are superseded by the DDA and this Lease.

l. Language of Lease. When the context so requires when used in this Lease, the masculine gender shall be deemed to include the feminine and neuter gender and the neuter gender shall be deemed to include the masculine and feminine gender. When the context to requires when used in this Lease, the singular shall be deemed to include the plural. The term "including" shall mean "including but not limited to."

m. Waiver. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being lawfully evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the Property by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise.

n. Requirement of a Writing. No amendment, change, or addition to, or waiver of termination of, this Lease or any part hereof shall be valid unless in writing and signed by both Landlord and Tenant.

o. No Third Party Beneficiaries. The parties acknowledge and agree that the provisions of this Lease are for the sole benefit of Landlord and Tenant, and not for the benefit, directly or indirectly, of any other person or entity, except as otherwise expressly provided herein.

p. Authority of Tenant. The party executing this Lease on behalf of Tenant has full authority to do so and to bind Tenant to perform pursuant to the terms and conditions of this Lease.

q. Incorporation by Reference. Each of the attachments and exhibits attached hereto is incorporated herein by this reference.

r. Interpretation.

(i) The language in all parts of this Lease shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Lease has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Lease with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Lease, this Lease shall not be interpreted or construed against the party preparing it, and

instead other rules of interpretation and construction shall be utilized.

(ii) If any term or provision of this Lease, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each other term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties hereto that in lieu of each clause or provision of this Lease that is illegal, invalid, or unenforceable, there be added as a part of this Lease an enforceable clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible.

(iii) The captions of the articles, sections, and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

(iv) References in this instrument to this "Lease" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation, and/or undertaking "herein," "hereunder," or "pursuant hereto" (or language of like import) shall mean, refer to, and include the covenants, obligations, and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, and attachments or other documents affixed to or expressly incorporated by reference in this instrument.

s. Merger. So long as any Leasehold Mortgagee holds a Leasehold Mortgage, the fee title to the Property and the leasehold estate created by this Lease shall not merge unless all Leasehold Mortgagees expressly consent to the merger in writing. This provision shall apply even if Tenant or Landlord or any third party acquires both the fee title and this Lease.

t. Priority. This Lease, and any extensions, renewals or replacements thereof, and any sublease entered into by Tenant as sublessor, and any Leasehold Mortgage or other encumbrance recorded by Leasehold Mortgagee shall be superior to any mortgages, deeds of trust or similar encumbrances placed by Landlord on the Property (except for the Agreement Affecting Real Property being recorded concurrently with the Memorandum of Lease) and to any lien right, if any, of Landlord on the buildings, and any furniture, fixtures, equipment or other personal property of Tenant upon the Property.

u. Counterparts. This Lease may be executed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

By: _____
Hank Cunningham
Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY
Casey Gwinn
Agency General Counsel

By: _____
Richard A. Duvernay

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Glenn F. Wasserman

[FOUNDATION]

By: _____

Exhibit "A"
LEGAL DESCRIPTION
[TO BE ADDED]

Exhibit "B"

SITE MAP

[TO BE ADDED]

Exhibit "C"
MEMORANDUM OF LEASE
[BEHIND THIS PAGE]

OFFICIAL BUSINESS
Document entitled to free
recording per Government
Code Section 6103

Recording Requested by

REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

When Recorded Return to:
Redevelopment Agency of the
City of San Diego
202 C Street
San Diego, California 92101
Attn: NTC Project Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NAVAL TRAINING CENTER REDEVELOPMENT PROJECT

MEMORANDUM OF LEASE

This Memorandum of Lease (the "Memorandum") is made as of _____, by and between THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, CALIFORNIA ("Landlord") and [INSERT NAME OF FOUNDATION] ("Tenant"), who agree as follows:

1. Concurrently herewith, Landlord and Tenant have entered into that certain Ground Lease (the "Lease") with respect to the real property (the "Property") described as set forth in Exhibit "A" attached hereto and incorporated herein by this reference. Pursuant to the Lease, Landlord hereby leases the Property to Tenant and Tenant hereby accepts tenancy of the Property from Landlord.
2. The provisions of the Lease to be performed by Tenant, whether affirmative or negative in nature, are intended to and shall bind Tenant and its successors and assigns at any time, and shall inure to the benefit of Landlord and its successors and assigns.
3. The provisions of the Lease to be performed by Landlord, whether affirmative or negative in nature, are intended to and shall bind Landlord and its successors and assigns at any time, and shall inure to the benefit of Tenant and its successors and assigns.

4. This Memorandum is prepared for the purpose of recordation only and it in no way modifies the provisions of the Lease.

5. Reference is hereby made to the entire Lease for any and all purposes. A true copy of the Lease is on file in the offices of the Redevelopment Agency of the City of San Diego, California, at its offices located in the City Administration Building, Community Concourse, San Diego, California 92101.

REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

By: _____
Hank Cunningham
Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY
Casey Gwinn
Agency General Counsel

By: _____
Richard Duvernay

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Glenn F. Wasserman

[FOUNDATION]

By: _____

Exhibit "D"

FORM OF LENDER'S NONDISTURBANCE AND ATTORNMENMENT AGREEMENT

[BEHIND THIS PAGE]

[Attachment No. 10-B to DDA]

Exhibit "E"

FORM OF TENANT'S NONDISTURBANCE AND LEASE RECOGNITION AGREEMENT

[BEHIND THIS PAGE]

**TENANT'S NONDISTURBANCE
AND LEASE RECOGNITION AGREEMENT**

THIS TENANT'S NONDISTURBANCE AND LEASE RECOGNITION AGREEMENT (this "Agreement") is made as of _____, by and among THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO (hereinafter referred to as "Agency"), [NAME OF FOUNDATION], a California nonprofit corporation (hereinafter referred to as "Tenant") and _____, a _____ (hereinafter referred to as "Subtenant").

1. Recitals.

1.1 Agency and Tenant have entered into a ground lease dated _____ for premises legally described on Exhibit A attached hereto and made a part hereof (the "Ground Lease").

1.2 Tenant is executing an agreement of sublease with Subtenant for a portion of the premises leased under the Ground Lease (the "Sublease").

1.3 The parties desire to set forth their respective rights and obligations in the event of the termination of the Ground Lease.

2. Nondisturbance.

2.1 In the event that the Ground Lease is terminated before its expiration, Agency hereby agrees to recognize the Sublease as a direct lease between Agency and Subtenant, and Subtenant agrees to attorn to Agency, subject to the following:

(a) Agency shall retain all rights under the Sublease in the event of any default by Subtenant.

(b) Agency shall not be liable to Subtenant for any default under the Sublease by Tenant as sublandlord.

(c) Agency shall not be required to return to Subtenant any security deposit not received by Agency.

(d) Agency shall not be obligated to credit Subtenant with any rent paid under the Sublease more than one month in advance.

3. Miscellaneous Provisions.

3.1 Applicable Law and Venue. This Agreement is made in, and shall be governed, enforced and construed under the laws of, the State of California. Venue for any action brought regarding this Agreement or the transaction contemplated herein shall be in San Diego County, California.

3.2 Binding Upon Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, estates, personal representatives, successors, and assigns. No assignment shall relieve the assignor of any liability accruing under this Agreement either before or after the assignment.

3.3 Entire Agreement; Integration. This Agreement constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof, and shall supersede and replace all prior understandings and agreements, whether verbal or in writing. The parties confirm and acknowledge that there are no other promises, covenants, understandings, agreements, representations, or warranties with respect to the subject matter of this Agreement except as expressly set forth herein, or in any instrument executed by the parties of even date herewith.

3.4 Amendments Only in Writing. This Agreement may not be modified, terminated, or amended in any respect, except pursuant to an instrument in writing duly executed by all of the parties hereto.

3.5 Attorneys' Fees. In the event that any party hereto shall bring any legal action or other proceeding with respect to the breach, interpretation, or enforcement of this Agreement, or with respect to any dispute relating to any transaction covered by this Agreement, or in connection with any bankruptcy proceeding relating to a party, the losing party or parties (or the debtor party involved in the bankruptcy) in such action or proceeding shall reimburse the prevailing party or parties therein for all reasonable costs of litigation, including the reasonable non-contingent fees of attorneys, paralegals and other professionals, in such amount as may be determined by the court or other tribunal having jurisdiction, including matters on appeal

3.6 Interpretation. The language of this agreement shall not be construed against any party, since all parties have participated in the negotiation and drafting of this Agreement. The term "including" shall mean "including but not limited to" All captions and headings herein are for convenience and ease of reference only, and shall not be used or referred to in any way in

connection with the interpretation or enforcement of this Agreement. As used herein, the masculine, feminine or neuter gender, and the singular and plural numbers, shall each be deemed to include the others, whenever and wherever the context so indicates.

3.7 Counterparts. This Agreement may be executed in one or more counterpart copies, and each of which so executed, irrespective of the date of execution and delivery, shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove set forth.

Tenant:

[NAME OF FOUNDATION TO BE INSERTED],
a California nonprofit corporation

By: _____

Subtenant:

[NAME OF SUBTENANT TO BE INSERTED]

By: _____

Agency:

REDEVELOPMENT AGENCY OF THE CITY OF
SAN DIEGO

By: _____

Hank Cunningham
Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY:
CASEY GWINN
Agency General Counsel

By: _____
Richard A. Duvernay

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Glenn F. Wasserman

Tenant's Nondisturbance and
Lease Recognition Agreement
Page 4 of 4

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6-3-00

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ATTACHMENT NO. 21

FORM OF COOPERATION AGREEMENT

[BEHIND THIS PAGE]

COOPERATION AGREEMENT
(NAVAL TRAINING CENTER REDEVELOPMENT PROJECT)

THIS AGREEMENT is entered into as of the _____ day of _____, 2000, by and between the CITY OF SAN DIEGO, a charter city (the "City") and the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body, corporate and politic (the "Agency").

RECITALS

A. The City Council of the City of San Diego ("City Council"), acting pursuant to the provisions of the California Community Redevelopment Law (California Health and Safety Code § 33000 et seq.), has activated the Agency, declared itself to constitute the Agency and has approved the Redevelopment Plan for the Naval Training Center Redevelopment Project (the "NTC Redevelopment Project" and "NTC Redevelopment Plan").

B. The City Council has adopted that certain Naval Training Center San Diego Reuse Plan ("Reuse Plan") providing for the redevelopment and reuse of the NTC Redevelopment Project area.

C. The City and the United States of America (the "Government") have entered into that certain "Memorandum of Agreement for an Economic Development Conveyance of Property at the Former Naval Training Center, San Diego" (the "MOA") pursuant to which the Government has conveyed to the City approximately 429 acres of real property in the NTC Redevelopment Project (the "Site"), for redevelopment and reuse as provided in the Reuse Plan.

D. Concurrently with this Cooperation Agreement, the Agency has entered into a Disposition and Development Agreement (the "DDA") with McMillin NTC, LLC ("Master Developer"), providing for the conveyance and redevelopment of the Site. City and Agency acknowledge that the Master Developer is entering into the DDA in reliance on Agency and City entering into this Cooperation Agreement and the Master Developer is the intended beneficiary of certain rights of Agency contained in this Cooperation Agreement as delineated in Section 5.4 hereof.

E. Pursuant to and in accordance with the powers and authorization provided to public bodies in California Health and Safety Code § 33220 to aid and cooperate in the planning, undertaking, construction and operation of redevelopment projects, the City and the Agency desire to enter into this Agreement in order to carry out the NTC Redevelopment Plan and the Reuse Plan and to assist the Agency in performing its obligations under the DDA.

F. Pursuant to the Community Redevelopment Law, the Agency is performing a public function of the City and may have access to services and facilities of the City, and may accept financial and other assistance from the City.

G. The Agency and the City mutually desire to enter into this Agreement for the following purposes:

(1) To provide for activities, services and facilities which the City will provide and make available to or for the Agency in furtherance of the activities and functions of the Agency in connection with the Redevelopment Project under the Community Redevelopment Law;

(2) To provide that the Agency will reimburse the City for actions undertaken and costs and expenses incurred by the City for and on behalf of the Agency, and will repay funds advanced by the City to or for the Agency pursuant hereto;

(3) To provide the terms and conditions pursuant to which the City will sell the Site to the Agency; and

(4) To provide that the City will otherwise cooperate with the Agency in the effectuation and implementation of the NTC Redevelopment Plan, the Reuse Plan and the DDA.

AGREEMENTS

PART 1 CITY ASSISTANCE

1.1 Purpose of City Assistance. Upon the written request of the Agency's Executive Director or designee, the City agrees to assist the Agency by paying or defraying costs incurred by the Agency or the City on behalf of the Agency, in connection with the Redevelopment Project, which costs shall include, but are not limited to the following: (a) preparation and implementation of the NTC Redevelopment Plan pursuant to the Community Redevelopment Law; (b) preparation and implementation of the Reuse Plan; (c) preparation and implementation of applications to the Government relating to the acquisition of the Site; (d) preparation and implementation of the DDA and other agreements with the Master Developer and its assignees for the implementation of the NTC Redevelopment Plan and the Reuse Plan; (e) costs of surveys, plans, studies and environmental assessments relating to the NTC Redevelopment Project area; (f) costs, if any, of acquisition of property within the NTC Redevelopment Project area; (g) costs of property management, maintenance, repair, demolition and clearance of properties acquired, site preparation, public improvements and relocation assistance to displaced residential and nonresidential occupants; and (h) expenditures of approximately \$7.5 million pursuant to agreement between the City and homeless social service providers for off-site services and facilities.

1.2 Form of City Assistance. The City's assistance may take the form of any of the following: (a) provision of services (through City employees and/or officers and/or City consultants), supplies, or facilities to the Agency; (b) advances of City funds to the Agency, or expenditure of City funds by the City on behalf of the Agency, to pay for services (including services provided by Agency consultants and attorneys), supplies or facilities; or (c) any combination of (a) and (b), as determined by the City. The aggregate amount of such City assistance, including the provision of services, the cost of which shall be determined by the City, shall not exceed the amount budgeted for such purposes by the City Council.

1.3 Repayment of Debt. The Agency agrees to repay the City for all City funds advanced and all assistance and services rendered hereunder. On the basis of procedures established by the City Manager, the City shall compute the costs of the services and facilities provided hereunder and the amount of funds expended on the Agency's behalf and/or advanced to the Agency. The City shall submit to the Agency, on an annual basis, a statement of such costs, expenditures and advances, to evidence the Agency's repayment obligation (the "Statement of Costs"). Such statements shall include a proration of the City's administrative and salary expense attributable to the rendition of services by City officials, employees and departments on behalf of the Agency; provided, however, that no City officer or employee shall be paid extra compensation for any work performed for the Agency unless such compensation is expressly authorized and provided by the City Council. The City shall maintain adequate accounting records to substantiate the costs billed to the Agency under this Agreement.

1.4 Terms of Repayment. The Agency agrees to repay the City, upon demand, the total costs enumerated in all annual Statements of Costs, with interest at the rate of eight percent (8%) per annum, compounded, computed from the date upon which the cost was incurred or the funds were advanced by the City, but only to the extent that the Agency has tax increment revenues available pursuant to California Health and Safety Code Section 33670 or from other sources, which are not otherwise needed to carry out the NTC Redevelopment Plan, the Reuse Plan and the Agency obligations under the DDA. The parties agree, however, that the indebtedness of the Agency to the City created by this Section is and shall be subordinate to any pledge of tax increments made by the Agency in connection with any bonds or other obligations issued by the Agency or another public entity under contract with the Agency to finance any part of the redevelopment of the NTC Redevelopment Project area. The Agency shall repay the entire indebtedness created hereunder not later than the applicable time limit the Agency has to repay indebtedness with the proceeds of taxes received pursuant to California Health and Safety Code Section 33670 in the Redevelopment Project area.

PART 2 ACQUISITION AND SALE OF SITE

2.1 Acquisition of Site from the Government. The City and Agency shall use their best efforts in the negotiation and implementation of the MOA to ensure that title to the Site acquired by the City from the Government will permit the implementation of the NTC Redevelopment Plan, Reuse Plan and the DDA.

2.2 Agreement to Sell to Agency. The City hereby agrees to sell the Site to Agency and the Agency hereby agrees to buy the Site from the City in accordance with the terms and conditions of this Cooperation Agreement.

2.3 Purchase Price. The purchase price for the Site shall be calculated as \$ 8,300,000 (the "Purchase Price"), which shall be deferred and payable solely as provided in Section 2.4, below.

2.4 Terms of Payment. The Agency agrees to pay the Purchase Price to the City, upon demand, with interest at the rate of eight percent (8%) per annum, compounded, computed from the date of conveyance to the Agency, but only to the extent that the Agency has tax increment revenues available pursuant to California Health and Safety Code Section 33670 or from other sources, which are not otherwise needed to carry out the NTC Redevelopment Plan, the Reuse Plan and the Agency's obligations under the DDA. The parties agree, however, that the indebtedness of the Agency to the City created by this Section is and shall be subordinate to any pledge of tax increments made by the Agency in connection with any bonds or other obligations issued by the Agency or another public entity under contract with the Agency to finance any part of the redevelopment of the NTC Redevelopment Project area. The Agency shall repay the entire indebtedness created hereunder not later than the applicable time limit the Agency has to repay indebtedness with the proceeds of taxes received pursuant to California Health and Safety Code Section 33670 in the Redevelopment Project area. Any portion of the Purchase Price received by the City during the first seven years after the recordation of the first deed from the Government to the City for any part of the Site shall be subject to and used by the City in accordance with the MOA.

2.5 Escrow.

Not later than the time provided in the DDA for the conveyance of fee or leasehold title to the Master Developer or its assignees, the City shall execute one or more grant deeds, conveying to the Agency fee title to the Site or portion thereof. Agency shall be responsible for paying all escrow and title charges and fees in connection with such conveyance. City and Agency shall cooperate and execute such instruments and documents as may be necessary to close escrow.

2.6 Maintenance. If applicable, upon taking title to the Site, or any portion thereof, Agency shall maintain such property or cause the Master Developer to maintain such property, either at no cost to City, or subject to reimbursement to the City for costs incurred by City and described in Section 1.1(g), above, until the conveyance of title to the Master Developer or its assignees pursuant to the DDA. To implement this Section 2.6, the DDA provides that not later than 90 days after the mutual execution of the DDA, NTC Property Management, LLC, an affiliate of the Master Developer, shall assume the obligation to maintain, manage and operate the Site, in accordance with the Interim Lease Agreement attached to the DDA as Attachment No. 14. City agrees to execute the Interim Lease Agreement substantially in the form attached to the DDA, and to assign to Master Developer all leases affecting the Site, concurrently with the effective date of the Interim Lease. In addition, the Master Developer (or its affiliate) shall assume the obligation to manage, on an interim basis, that property designated in the DDA as the "Park", the Remediation Parcels and the Boat Channel, pursuant to a management agreement to be negotiated and entered into between the City and the Master Developer. The terms and conditions of the management agreement shall be subject to the mutual approval of the City and that is mutually acceptable to the City and Master Developer.

PART 3 INDEBTEDNESS CREATED.

The obligations of the Agency under this Agreement, whether to repay funds or reimburse the City for services rendered or expenditures made on the Agency's behalf, or to pay the deferred Purchase Price, shall constitute an indebtedness of the Agency

within the meaning of California Health and Safety Code § 33670, et seq., for the NTC Redevelopment Project area.

PART 4 COOPERATION.

4.1 General. The Agency and City acknowledge that the DDA is intended to carry out the City Council-approved NTC Redevelopment Plan and Reuse Plan, and that the implementation of the DDA may require a number of actions to be undertaken over an extended period of time by the City and/or Agency and their respective staff members, including but not limited to those set forth in this Part 4, below. In taking such and similar actions, the City and Agency agree to cooperate in good faith, within applicable legal constraints and consistent with applicable City and Agency policies, and to take such actions as may be necessary or appropriate to effectuate and carry out the terms and conditions of the DDA in a timely and commercially reasonable manner. The City further agrees that it shall take no action which shall unreasonably interfere with the ability of the Agency to perform its obligations under the DDA in a timely and commercially reasonable manner.

4.2 Review of Plans and Entitlement Applications. The City acknowledges that the Site has previously been developed by the Navy for the singular purpose of being used as a naval base and training center, and that the re-use of the Site for the purposes set forth in the City Council-approved Reuse Plan is subject to physical constraints that do not exist generally in other parts of the City of San Diego. Therefore, the City agrees to be reasonable in interpreting and applying to the Site applicable design standards so that the purposes of the City Council-approved Reuse Plan may best be carried out. Subject to Section 4.1, the City and Agency shall cooperate in good faith to expedite the review, processing and approval of all plans and entitlement and permit applications, environmental clearances and other similar City approvals relating to the improvements to be constructed or rehabilitated on the Site by Master Developer or its assignees. In so doing, it is the intent of the City and Agency to give the Project the highest priority and emphasis and, to the extent permitted by applicable law and City policies, and to the extent that health and safety matters are addressed in a safe and prudent

manner, that applicable codes and rules shall be interpreted and applied in a manner that is consistent with standards, if any, that are set forth in the Reuse Plan and the DDA. The City further agrees to reasonably accept (and provide for the proportionate release of bonds) in phases the public facilities required as a condition of City approval of any development on the Site.

4.2.1 Acknowledgment of Private Nature of Project.

City and Agency acknowledge that upon conveyance of title by Agency to Master Developer or its assignees pursuant to the DDA: (a) the buildings and other improvements to be constructed and rehabilitated pursuant to the DDA shall be privately owned, including those buildings and improvements that are situated on property owned in fee by the Agency and ground leased to Master Developer or assignee; (b) except for obligations of the Agency, if any, specifically described in the DDA, the Agency and City will have no interest or responsibilities for or duty to third parties concerning any of the construction or improvement work to be performed pursuant to the DDA; (c) subject to any applicable ground lease in which Agency is the landlord, Master Developer or its assignees, as applicable, shall have full power over and exclusive control of the Site; and (d) the contractual relationship between the Agency and Master Developer in the DDA is such that Master Developer is not an agent of the Agency or City. Therefore, the City and Agency agree that to the extent a particular application of any rule or regulation depends on whether a building or improvement is publicly owned or privately owned, it is the express intention of the City and Agency in entering into this Cooperation Agreement that the buildings and improvements to be constructed and rehabilitated by Master Developer or its assignees on the Site pursuant to the DDA shall be deemed to be privately owned for all purposes.

4.2.2 Disclaimer. Except as provided in this

Cooperation Agreement, the City neither undertakes nor assumes nor will have any responsibility or duty to Master Developer or to any other person or entity, as the result of this Agreement, to review, inspect, supervise, pass judgment upon or inform any party of any matter in connection with the development, rehabilitation or construction of the improvements on the Site, whether regarding the quality, adequacy or suitability of the plans, any labor, service,

equipment or material, any person furnishing the same, or otherwise. Master Developer and all other persons and entities shall rely upon its or their own judgment regarding such matters. The City shall not be responsible for any of the work of construction, rehabilitation, improvement or development on the Site. Nothing contained in this Agreement shall be deemed to waive or modify any otherwise applicable obligations the City, acting in its governmental capacity and not as a party to this Cooperation Agreement, may have to Master Developer or any other party, under and in accordance with all applicable laws.

4.3 Other Governmental Agency Permits. Subject to Section 4.1, City and Agency shall cooperate and actively support all applications required to be made by Master Developer and its assignees for permits, approvals and entitlements necessary for the implementation of the DDA, from other governmental agencies, including but not limited to, the California Coastal Commission, the Regional Water Quality Control Board, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the California Department of Fish and Game, the Port of San Diego and the State Lands Commission.

4.4 Public Financing. Subject to Section 4.1, City and Agency shall consider in good faith implementing such public financing mechanisms as may be appropriate to carry out the method of financing described in the DDA. It is intended that any public financing proposed shall conform with City public financing policies as approved by the City Council.

4.5 Capacity and Impact Fees. The City acknowledges that, pursuant to previous City studies, credits are available on an equivalent dwelling unit basis for water and sewer capacity fees sufficient to allow the entire redevelopment of the Site consistent with the Reuse Plan and the DDA. The City acknowledges that the Master Developer shall be constructing or causing the construction of major transportation and park facilities. To the greatest extent allowed under existing law, the Master Developer or assignee shall be entitled to a credit against any impact fees otherwise applicable to the redevelopment of the Site.

4.6 Remediation and Recycling. The City will cooperate and allow the recycling of materials on site to the fullest extent allowable under applicable law for uses such as trenching, road construction, foundations and parking lots.

4.7 Applicable Standards. The City acknowledges that certain standards were used as assumptions for the cost estimates contained in Appendix "I" of the Reuse Plan. The assumptions included the retention of existing roads and utilities in their current configuration.

4.8 Dry Utility Franchises. The Master Developer has requested that the City and Agency explore the possibility of incorporating into the reuse of the Site state-of-the-art communications technology, including voice, data, wired and airborne transmission. Agency and City agree that the reuse of the Site provides a unique opportunity to accomplish this objective in the context of the development of a mixed-use community, support the concept and agree to cooperate reasonably with the Master Developer, by, among other things, making available their rights of way and other properties under their control on the Site for airborne stations or wiring, on reasonable terms and conditions, consistent with all applicable federal, state and local laws and regulations and City policies and practices.

4.9 Environmental Insurance. Reference is hereby made to subparagraph a. (5) of Section 6.8 of the DDA, pursuant to which the Master Developer has agreed to obtain environmental insurance covering the Site and the Park, commencing with the execution of the DDA, naming the Master Developer, the Agency and the City as insureds. Agency and City hereby agree that to the extent a deductible is required to be paid by the Agency or City for claims arising prior to the conveyance of fee or leasehold title to the Master Developer (or Foundation) pursuant to subparagraph a. (5) (d) of said Section 6.8, as between the Agency and City, it shall be the party holding fee title to the parcel that shall be responsible for paying such deductible.

PART 5 GENERAL PROVISIONS

5.1 Remedies. If either party defaults with regard to any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured within ninety (90) days after service of the notice of default, or if the default is not commenced to be cured within thirty (30) days after service of the notice of default and is not cured promptly within a reasonable time after commencement, the non-defaulting party shall have the right to enforce this Cooperation Agreement; provided, however, that such enforcement shall be limited to specific performance or injunctive relief, and shall not, under any circumstances, include monetary damages or monetary relief of any sort.

5.2 Liability and Indemnification. In contemplation of the provisions of Section 895.2 of the California Government Code imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement as defined by Section 895 of said Code, the parties hereto, as between themselves, pursuant to the authorization contained in Section 895.4 and 895.6 of said Code, will each assume the full liability imposed upon it, or any of its officers, agents or employees by law for injury caused by negligent or wrongful act or omission occurring in the performance of this Agreement to the same extent that such liability would be imposed in the absence of Section 895.2 of said Code. To achieve the above stated purpose each party indemnifies and holds harmless the other party for any loss, costs or expense that may be imposed upon such other party solely by virtue of said Section 895.2. The provisions of Section 2778 of the California Civil Code are made a part hereof as if fully set forth herein.

5.3 Entire Agreement. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or part of the subject matter hereof.

5.4 Third Party Beneficiary. Except as stated in this Section 5.4, the terms of this Agreement are only for the benefit

of the City and the Agency, and there are no other intended or incidental third party beneficiaries hereto. Notwithstanding the foregoing sentence, the City and the Agency hereby acknowledge that, so long as the Master Developer is not in default of its obligations under the DDA, the Master Developer is an intended third party beneficiary of certain rights of the Agency under the following provisions of this Cooperation Agreement, provided, however, that Master Developer's sole recourse in the event of default by the City shall be to enforce this Cooperation Agreement as provided in Section 5.1 hereof, and shall not, under any circumstances, include monetary damages or monetary relief of any sort. Master Developer's rights shall be limited to the enforcement of the following provisions:

Section 2.1. Acquisition of Site from Government.

Section 2.2. Agreement to Sell to Agency.

Section 2.5 Escrow.

Section 4.1. General.

Section 4.2. Review of Plans and Entitlement Applications.

Section 4.2.1. Acknowledgment of Private Nature of Project.

Section 4.3. Other Governmental Agency Permits.

Section 4.4. Public Financing.

Section 4.5. Capacity Fees.

Section 4.6. Remediation and Recycling.

5.5 Amendments and Waivers. This Agreement may be amended any number of times upon the mutual approval of the Agency and the City. Any amendment to the provisions listed in Section 5.4 which has a material adverse impact on Master Developer shall require the express written consent of the Master Developer. All waivers of any of the provisions of this Agreement must be mutually agreed upon in writing.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

"CITY"
THE CITY OF SAN DIEGO

By: _____

"AGENCY"
REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

By: _____
Hank Cunningham
Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY
ON THIS _____ DAY OF _____, 2000

CASEY GWINN
City Attorney

By: _____
Richard A. Duvernay, Deputy

APPROVED:
KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Glenn F. Wasserman

ATTACHMENT NO. 22

FORM OF MEMORANDUM OF AGREEMENT AND QUITCLAIM DEED
AND ENVIRONMENTAL RESTRICTION
PURSUANT TO CIVIL CODE SECTION 1471

[BEHIND THIS PAGE]

000578

MEMORANDUM OF AGREEMENT

BY AND BETWEEN

THE UNITED STATES OF AMERICA AND THE CITY OF SAN DIEGO
FOR ECONOMIC DEVELOPMENT CONVEYANCE AND PUBLIC BENEFIT
CONVEYANCES AT THE FORMER NAVAL TRAINING CENTER, SAN DIEGO

MEMORANDUM OF AGREEMENT
BY AND BETWEEN
THE UNITED STATES OF AMERICA AND THE CITY OF SAN DIEGO
FOR ECONOMIC DEVELOPMENT CONVEYANCE AND PUBLIC BENEFIT
CONVEYANCES AT THE FORMER NAVAL TRAINING CENTER SAN DIEGO

THIS AGREEMENT is made between the United States of America, acting by and through the Department of the Navy, hereinafter referred to as the "Navy," and the City of San Diego, a municipal corporation and charter city organized and existing under the laws of the State of California, hereinafter referred to as the "City." The Navy and the City may sometimes be referred to jointly as the "Parties."

RECITALS

- A. The Navy is the owner of certain real property, improvements and associated personal property, located in San Diego, California and commonly referred to as the former Naval Training Center ("NTC"), which was used as a military installation, and closed pursuant to the Defense Base Closure and Realignment Act of 1990, as amended (hereinafter referred to as "DBCRA").
- B. That part of NTC which was subject to reuse planning by the City and is subject to disposal by the Navy consists of approximately 429 acres of land, together with buildings, structures, facilities and personal property thereon, as shown on the site map attached hereto as Exhibit "A."
- C. By application dated September 23, 1999, City has applied for an economic development conveyance pursuant to DBCRA § 2905(b)(4), as amended by the National Defense Authorization Act for Fiscal Year 2000. The application encompasses approximately 279 acres. For purposes of this Agreement, this acreage has been divided into four parcels: (1) Parcel II/IIIA, a parcel of approximately 258 acres which is available for immediate transfer; (2) Parcel VIII, a parcel of approximately 6 acres adjacent to Rosecrans Avenue; (3) Parcel X, a parcel of approximately 1 acre adjacent to Cushing Road; and (4) Parcel IIIB, a parcel of approximately 13 acres within the southern part of the boat channel. The legal descriptions of these four parcels are a part of the quitclaim deed referred to in paragraph 3. The parcels are also identified on Exhibit "A." For purposes of this Agreement, Parcels II/IIIA, IIIB, VIII and X are referred to collectively as the "Property."
- D. It is anticipated that the remainder of NTC subject to reuse planning by the City will be conveyed through several public benefit conveyances to the City and other public entities. The parcels proposed for public benefit conveyances are appropriately marked as such on Exhibit "A."

AGREEMENTS

NOW, THEREFORE, the Parties hereby covenant and agree as follows:

1. Conveyance and Acceptance of the Property. Subject to the terms and conditions hereinafter set forth, the Navy agrees to convey to the City, and the City agrees to accept from the Navy, in consideration of the covenants, conditions and restrictions contained in the Deed and other valuable consideration, all of the Navy's right, title and interest in the Property, except for such rights as are reserved therein.

2. Sequence of Conveyances. The Parties anticipate that the conveyance of the Property will be accomplished in four separate transactions, as follows:

(a) The anticipated date of conveyance for Parcel II/IIIA is June, 2000; and

(b) The anticipated date of conveyance for Parcel VIII is May, 2001. Parcel VIII is known to be impacted with elevated levels of tetrachloroethene (PCE) in soil and groundwater. Navy shall take all remedial action necessary to protect human health and the environment and will obtain site closure from appropriate regulatory authorities based on the projected use of Parcel VIII, as described in the NTC San Diego Reuse Plan dated August 1998; and

(c) The anticipated date of conveyance for Parcel IIIB is March, 2002. Parcel IIIB is believed to contain sediments impacted with various contaminants. Navy shall take all remedial action necessary to protect human health and the environment and will obtain site closure from appropriate regulatory authorities based on the projected use of Parcel IIIB, as described in the NTC San Diego Reuse Plan dated August 1998. The City agrees that until such time as site closure is obtained by the Navy, the City shall take all steps necessary to ensure that no activity is conducted within 15 feet of the top of the bank of the Boat Channel which may result in the sloughing of soil or other materials from the bank or the Esplanade into the Boat Channel shown on Exhibit "D." It shall be assumed for purposes of this Agreement that any development, as that term is defined in California Public Resources Code Section 30106, is such an activity; and

(d) The anticipated date of conveyance for Parcel X is March 2001. Parcel X may contain petroleum-based residues. Navy shall take all remedial action necessary, if any, to protect human health and the environment and will obtain site closure from appropriate regulatory authorities based on the projected use of Parcel X, as described in the NTC San Diego Reuse Plan dated August 1998.

The Parties recognize that although the Navy will utilize its best efforts to achieve conveyance by the dates set forth above, the dates for (b), (c) and (d) are based on the present best estimate of work required to complete Navy's remedial actions, the full

extent and nature of which are not presently known. The Parties also recognize that the anticipated dates for conveyance may be impacted by regulator and public review.

3. Form of Conveyance. All conveyances shall be by quitclaim deed ("Deed") in substantially the form attached hereto as Exhibit "B" provided, however, that changes may be required in connection with execution of the Findings of Suitability to Transfer discussed in paragraph 5.

4. Application for Public Benefit Conveyances. City agrees to apply for and take all necessary steps to expeditiously perfect its applications for the following public benefit conveyances:

(a) Parcel VI (approximately 40 acres). Sponsoring agency is the Department of the Interior. Authority for the disposal is 40 U.S.C. § 484(k)(2) for public park or recreation purposes. The projected date for assignment to the sponsoring agency is November, 2000

(b) Parcel VII (approximately 51 acres). Sponsoring agency is the Department of the Interior. Authority for the disposal is 40 U.S.C. § 484(k)(2) for public park or recreation purposes. The projected date for assignment to the sponsoring agency is March 2002. Parcel VII is believed to contain sediments impacted by various contaminants. Navy shall take all remedial action necessary to protect human health and the environment and will obtain site closure from appropriate regulatory authorities based on the projected use of Parcel VII, as described in the NTC San Diego Reuse Plan dated August 1988. The City agrees that until such time as site closure is obtained by the Navy, the City shall take all steps necessary to ensure that no activity is conducted within 15 feet of the top of the bank of the Boat Channel which may result in the sloughing of soil or other materials from the bank or the Esplanade into the Boat Channel shown on Exhibit "D." It shall be assumed for purposes of this Agreement that any development, as that term is defined in California Public Resources Code Section 30106, is such an activity.

(c) Parcel IX (approximately 9 acres). Sponsoring agency is the Department of Health and Human Services. Authority for the disposal is 40 U.S.C. § 484(k), 1) for the protection of public health, including research. This parcel is to be used by the Metropolitan Wastewater Department for the construction and operation of a laboratory. The projected date for assignment is six months from the date the sponsoring agency accepts the City's application for public benefit conveyance.

Provided that the City has obtained the necessary approvals for its applications, and upon request of the sponsoring agencies, Navy will assign the parcels described above to the sponsoring agencies for conveyance, subject to the sponsoring agencies' normal terms and conditions and subject to such additional terms and conditions as the Navy may determine are required for the protection of human health and the environment, and subject further to such easements and reservations as may be required for ongoing

federal activities in and about NTC. City shall take all necessary actions to accept the deeds as they are proffered by the sponsoring agencies.

5. Findings of Suitability to Transfer. The Parties recognize that it will be necessary for Navy to prepare Findings of Suitability to Transfer ("FOST") prior to conveyance of any of the parcels of the Property and prior to the assignment of the properties described above as public benefit conveyances, and that said FOSTs will have to be reviewed, approved and disseminated in a manner consistent with applicable Department of Defense guidance on the subject. The Parties anticipate that it will be necessary to prepare five separate FOSTs for the following parcels:

- (a) Parcels II/IIIA and IX; and
- (b) Parcel VI; and
- (c) Parcel VIII; and
- (d) Parcels IIIB and VII; and
- (e) Parcel X.

While the completion of these documents has been considered in connection with the dates of disposal described in paragraph 2 above, the Parties understand that regulator and public comment may delay the completion of the documents and, therefore, the dates of disposal or assignment.

6. Personal Property. In addition to conveyance of the Property, Navy agrees to transfer to City and City agrees to accept from Navy all that personal property described in the bill of sale attached hereto as Exhibit "C." Said transfer shall be in accordance with the terms and conditions contained in Exhibit "C" and shall occur concurrently with the conveyance of the Property.

7. Description of Property. The descriptions of the Property are based on the best information presently available to the Navy and the City and are believed to be correct. In the event of an error, however, the Parties, their successors and assigns, will cooperate, at no expense to the Navy, in executing and delivering instruments required to correct the error.

8. Title Insurance and Escrow. Any title insurance which may be desired by the City shall be procured at its sole cost and expense. The Navy will, however, cooperate with the City or its authorized agent, and will permit reasonable examination and inspection of any documents relating to the title of the Property as it may have available. It is understood that the Navy will not be obligated to pay for any expense incurred in connection with title matters, survey of the Property or escrow.

9. Performance. Failure of the City to accept delivery of a Deed, or failure of either party to perform or observe any other term or condition of this Agreement prior to conveyance of the Property, after written notice and thirty days to cure, shall be deemed to be a breach of this Agreement, and the other party may exercise any of the remedies for breach or default set forth in this Agreement or otherwise available, including the right to terminate this Agreement.

10. Condition of Property. The City acknowledges that it has inspected the Property as well as those parcels which are contemplated to be transferred pursuant to public benefit conveyances, and that, except as otherwise specifically provided in this Agreement, and in the exhibits hereto, the Property and said parcels will be conveyed "as is" and "where is" without any representation, promise, agreement or warranty on the part of Navy regarding such condition and state of repair, or regarding the making of any alterations, improvements, repairs or additions, except to the extent required by applicable law.

11. Additional Action Required.

(a) Prior to conveyance of the parcel(s) on which the following building(s) are located, the Navy will abate hazards associated with friable, accessible and damaged asbestos and asbestos-containing materials in Buildings 5, 9, 15, 16, 17, 18, 19, 25, 35, 202, 430, 479, 480 and 557 through removal or encapsulation.

(b) Prior to conveyance of the parcel(s) on which such wells exist, the Navy will close all monitoring and extraction wells on the Property, with the exception of monitoring wells ES-14S and ES-14D. The permits for these two wells will be assigned to the San Diego Unified Port District ("District"). City shall grant the District a license to sample and maintain these wells for purposes related to the District's remediation of Parcels IV and V. The license will be conditioned upon timely closure of the wells by the District at no cost to City.

(c) The Navy is in the process of establishing a new telecommunications hub to serve continuing operations of the Navy and the Department of Justice adjacent to the Property. In the course of installing that hub, it will be necessary to modify connections at existing Navy hubs and the Pacific Bell point of connection on the Property. City agrees to allow Navy access and exclusive control within those areas of buildings 38 and 9 where the hub connections are situated as necessary to accomplish this work. In accomplishing this work, the Navy will minimize service interruptions to facilities and buildings presently served through these hubs and the point of connection, regardless of whether said buildings and facilities are presently being used by the City or its tenants. This obligation shall not extend to the following building numbers 55, 56, 57, 58, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 90, 91, 92, 93, 209, 214, 226, 227, 228, 241, 242, 251, 262, 286, 287, 293, 355, 356, 368, 378, 379, 383, 408, 412, 443, 496, and 583.

(d) City acknowledges that there are fire protection indicator panels in building 303 which the Navy intends to retain. City agrees to grant Navy right of entry and access until September 30, 2000 in order to remove these fire protection indicator panels.

12. Lease Termination. It is acknowledged that the City currently leases a substantial portion of the Property pursuant to Navy Contract N68711-96-RP0607, originally executed on March 12, 1996, as amended. Upon conveyance of the Property hereunder, the City's leasehold interest shall be extinguished in accordance with the terms of lease, but only insofar as said lease covers portions of the Property conveyed. The lease shall continue in full force and effect with respect to portions of the premises described therein which are not a part of the Property conveyed.

13. Use of Proceeds From Sale or Lease.

(a) Any proceeds from a sale, lease, or equivalent use of the Property (i.e., any mechanism that serves to accomplish the same purposes of a sale or lease such as licenses, permits, concession agreements, etc.) received by the City for the Property or the personal property transferred by the bill of sale ("Proceeds"), during the first seven years after the recordation of each Deed for a part of the Property, shall be used to support long-term job creation and the economic redevelopment of, or related to, NTC. Proceeds shall be expended for such purposes as quickly as practicable, but in no event later than 180 days following the end of said seven year period. For purposes of this paragraph, the definition of "Property" shall include the personal property transferred pursuant to the bill of sale.

(b) Allowable uses of Proceeds pursuant to subparagraph (a) include payment for, or offsetting the costs of public investment, for the following purposes:

- Road construction
- Transportation management facilities
- Storm and sanitary sewer construction
- Police and fire protection facilities and other public facilities
- Utility construction
- Building rehabilitation
- Historic property preservation
- Pollution prevention equipment or facilities
- Demolition
- Disposal of hazardous materials generated by demolition
- Landscaping, grading, and other site or public improvements
- Planning for or the marketing of the redevelopment and reuse of NTC

Other activities on NTC related to those listed above (for example, new construction related to job creation and economic redevelopment, capital improvements, and

operation and maintenance of NTC required to market its redevelopment and reuse) will also be considered an allowable use of Proceeds.

(c) Proceeds may also be expended for the allowable uses enumerated in subparagraph (b) off of NTC; provided, however, in order for expenditures made off of NTC to be considered allowable uses of Proceeds, the City shall first submit appropriate documentation to the Navy for its approval which demonstrates that such investments are related to those listed in subparagraph (b) and directly benefit the City's economic redevelopment and long term job generation efforts on NTC.

(d) Consistent with generally accepted accounting practices, City shall maintain adequate records and books of account for income and expenses related to the redevelopment of NTC detailing transactions described in subparagraphs (a), (b) and (c). City shall provide Navy with access to such records and books of account and proper facilities for inspection thereof at all reasonable times.

(e) City shall submit to the Navy an annual financial statement certified by an independent certified public accountant. The statement shall cover the City's use of Proceeds it receives from the sale, lease, or equivalent use of the Property. The first such statement shall cover the 12-month period beginning on the date of recordation of the first Deed and shall be delivered to Navy within 60 days of the end of that period and annually thereafter. Once statements have been submitted for the first seven annual periods after the recordation of each deed, this requirement shall be fully satisfied.

(f) In the event that the DBCRA is amended to permit it, the provisions of subparagraphs (a) and (e) regarding the several periods of seven years beginning upon the recordation of each deed for a part of the Property shall be changed to reflect a single period of seven years beginning upon recordation of the first deed for a part of the Property. Said change shall be effective without further action of either party upon the effective date of the amendment.

14. Recoupment of Proceeds. Navy may recoup all Proceeds described in paragraph 13(a) which have not been reinvested in allowable uses described in paragraphs 13(b) and 13(c). If recoupment is desired, Navy shall notify City in writing that it intends to recoup Proceeds in a specific amount, describing why it believes that those Proceeds have not been reinvested as required by paragraph 13. Within 30 days of receipt of such notification, City shall submit its response to Navy. Within 30 days of receipt of City's response or within 30 days of the date City's response was due under this paragraph, Navy shall issue its decision on the matter which shall be final and binding on the City. The amount of the recoupment described in the decision shall be paid by the City.

15. Submission of Notices. Notice and correspondence under or related to this Agreement shall be in writing and shall be addressed to the addressees set out below or to such addressees as may from time to time be identified by the Parties.

Such notice and correspondence may be delivered by hand, express delivery, overnight courier, or by prepaid registered or certified mail, return receipt requested.

If to Navy:

BRAC Operations Office
Attention: BCM Hunters Point/San Diego
Southwest Division, Naval Facilities Engineering Command
1220 Pacific Highway
San Diego, CA 92132-5190

If to City:

NTC Reuse Project Manager
City of San Diego
City Administration Building
202 C Street
San Diego, CA 92101-3863

And to:

Office of City Attorney
Attention: Richard A. Duverney
City Administration Building
202 C Street
San Diego, CA 92101-3863

16. Agreement: This Agreement shall not be modified unless in writing and signed by both Parties. No oral statements or representations made by, or on behalf of either Party shall be a part of this Agreement. This Agreement, together with all exhibits hereto, constitute the entire agreement between the Parties. All prior discussions and understandings on this matter are superceded by said documents.

17. Dispute Regarding Tidelands. Navy has been advised by City that a dispute exists between the City and the California State Lands Commission ("CSLC") with respect to whether portions of the Property and public benefit conveyance parcels are subject to the jurisdiction of the CSLC as tidelands trust property. Without cost to the Navy, and to the extent that it has the legal authority to do so, Navy will cooperate with City to obtain from the CSLC such approvals as may be necessary for the City to adjust tidelands trust encumbrances claimed to exist in a manner consistent with the City's NTC Reuse Plan, provided, however, that such cooperation is not inconsistent with the position of the United States of America regarding tidelands trust issues in general.

18. Determination of No Hazard to Air Navigation. Based on coordination between the General Services Administration and the Federal Aviation Administration,

as recommended in House Report 95-1053, entitled "FAA Determination of 'No Hazard' for Structures Near Airports," it has been determined that the only public airport within six nautical air miles of the Property is the San Diego International Airport at Lindbergh Field. FAA has been apprised of the proposed disposal of the Property, and the Navy's conveyance document will contain a provision that the grantee, its successors and assigns, must prohibit any construction or alteration on the Property unless a determination of no hazard to air navigation is issued by FAA under 14 CFR part 77, "Objects Affecting Navigable Airspace," or under the authority of the Federal Aviation Act of 1958, as amended.

19. Lease and Rental to Department of Justice and Navy. Immediately following conveyance of any part of the Property containing all or part of the leasehold described therein, the City shall enter into the lease agreements attached hereto as Exhibit "E." As soon as practicable, and within 60 days of conveyance, the City and the Department of Justice shall enter into a mutually acceptable, no-cost lease, for a term acceptable to the United States of America for Parcel 9 depicted on Record of Survey Map No. 16556 filed on April 25, 2000 in the Book of Record of Survey Maps in the office of the County Recorder for the County of San Diego. Said lease to be for parking purposes of the Department of Justice, Immigration and Naturalization Service, in connection with the operation and maintenance of the adjacent small arms range.

20. Failure To Insist On Compliance. The failure of either Party to insist, in any one or more instances, upon strict performance of any of the terms of this Agreement shall not be construed as a waiver or relinquishment of such Party's right to future performance of this Agreement, but the obligations of the other Party with respect to such future performance shall continue in full force and effect. Whenever the terms of this Agreement call for one Party to approve an action or make a determination before the other Party may undertake or perform such action, said approval or determination shall not be unreasonably denied or delayed.

21. Risk of Loss. From the effective date of this Agreement, City shall bear all risks of loss and damage due to casualty that may be suffered by the Property or associated personal property. Notwithstanding any such loss or damage, each and all of the provisions of this Agreement shall remain unimpaired and in full force and effect.

22. Counterparts. This Agreement is executed in three counterparts, each of which is deemed to be an original.

23. Availability of Funds. Navy's obligations under this Agreement are subject to the availability of funds appropriated for such purpose.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the respective dates set forth beneath each of their signatures and hereby deem this Agreement to be effective as of the latest such date, which date shall be considered the date of this Agreement for all purposes.

THE UNITED STATES OF AMERICA

By: Karen P. Ringel
Title: Real Estate Contracting Officer, Southwest Division,
Naval Facilities Engineering Command

Printed Name: Karen P. Ringel

Date: 5/24/00

CITY OF SAN DIEGO

By: S. Gail Goldberg
Title: City Manager, City of San Diego

Printed Name: S. Gail Goldberg

Date: 5/30/00

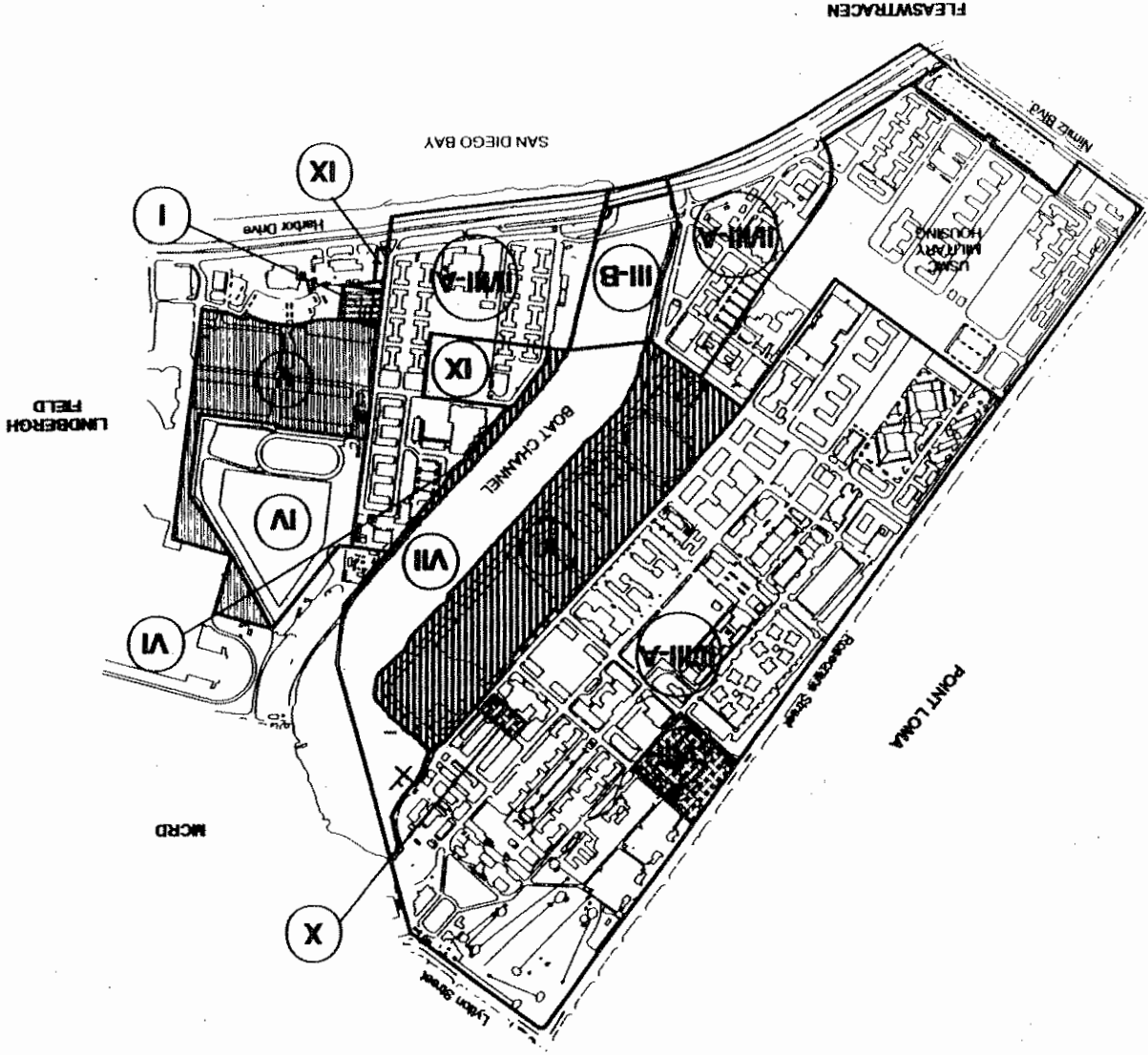
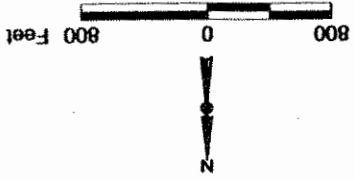
ATTEST: Charles G. Abdour
Charles G. Abdour, City Clerk

DATE: June 1, 2000

LIST OF EXHIBITS

- | | |
|-----------|--------------------------------------|
| Exhibit A | Parcel Map |
| Exhibit B | Form of Quitclaim Deed |
| Exhibit C | Form of Bill of Sale |
| Exhibit D | <i>Cross section of Boat Channel</i> |
| Exhibit E | Form of Lease to COMNAVREGSW |

File No.	168L5238
Date	4/6/00
Exhibit A	
Map of Disposal Parcels	
Former Naval Training Center, San Diego, CA	
Southwest Division Naval Facilities Engineering Command	



- NOTE:
- — — — — BULK LIMITS
 - — — — — PARCEL BOUNDARY
 - — — — — NTC BOUNDARY
 - ▨ ECONOMIC DEVELOPMENT CONVEYANCE
 - ▧ FEDERAL TRANSFER
 - ▩ PUBLIC BENEFIT CONVEYANCE
 - ① PARCEL DESIGNATION

PARCEL I TRANSFERRED IN 1998

EXHIBIT A

Acres	Parcel Number as shown on Record of Survey Map No. 16556 filed on April 25, 2000 in the Book of Record of Survey Maps in the office of the County Recorder for the County of San Diego	Exhibit A Parcel ID
6.990	8	III/A
39.635	10	
180.050	14	
0.202	9	
21.230	12	
8.899	16	
10.847	11	III/B
2.031	15	
1.551	1	VI
1.203	2	
6.922	5	
39.380	6	
43.625	4	VII
6.288	13	VIII
7.545	3	IX
0.313	7	
0.878	18	X

RECORDING REQUESTED BY:
The City of San Diego

WHEN RECORDED MAIL TO:
NTC Project Manager
Redevelopment Agency of the City
of San Diego
City Administration Building
202 C Street
San Diego, CA 92101-3863

THE ORIGINAL OF THIS DOCUMENT
WAS RECORDED ON MAY 30, 2000
DOCUMENT NUMBER 2000-0281476
GREGORY J. SMITH, COUNTY RECORDER
SAN DIEGO COUNTY RECORDER'S OFFICE
TIME: 2:22 PM

Space Above This Line Reserved for Recorder's Use

N 687 1 10 0 R P 0 0 X 1 4

**QUITCLAIM DEED AND ENVIRONMENTAL
RESTRICTION PURSUANT TO CIVIL CODE SECTION 1471**

This Deed is made this 27 day of May 2000, by the UNITED STATES OF AMERICA, acting by and through the Department of the Navy, (herein called "Grantor") in favor of the CITY OF SAN DIEGO, a municipal corporation of the State of California ("Grantee"),

RECITALS

A. The Defense Base Closure and Realignment Commission's recommendations for 1993 included the closure of the former Naval Training Center San Diego (the "Installation") consisting of approximately 429 acres. The Installation is depicted on Exhibit "A," attached hereto and made a part hereof. The property was declared to be surplus to the needs of the federal government and available for disposal. In accordance with the Defense Base Closure and Realignment Act of 1990, and the Department of Defense regulations adopted pursuant thereto, the City of San Diego prepared a redevelopment plan for the Installation. A Final Environmental Impact Statement was prepared to analyze the impact of disposal of the Property and a Record of Decision has been signed by the Deputy Assistant Secretary of the Navy (Conversion & Redevelopment).

B. Pursuant to said redevelopment plan, and in accordance with the provisions of section 2905(b)(4) of the Defense Base Closure and Realignment Act of 1990, as amended by the Defense Authorization Act for Fiscal Year 2000, Grantee submitted an application for an economic development conveyance of approximately 279 acres of the Installation. Included within that acreage are three parcels of property, consisting of approximately 20 acres, which cannot be conveyed until Grantor completes certain remedial action thereon. The legal description for that portion of the acreage presently suitable for transfer (the "Property") is contained in Exhibit "B" which is attached hereto. The legal descriptions for those three parcels not suitable for transfer at this time are set forth in Exhibits "C," "D" and "E" respectively, all of which are attached hereto and made a part hereof as if set out at length.

C. Grantor and Grantee have entered into a Memorandum of Agreement pursuant to which this deed has been executed, delivered and accepted. Said Memorandum of Agreement contains certain restrictions on the use of the proceeds derived from the sale or lease of the Property, provisions for the recoupment of proceeds not used for those purposes set forth in the Memorandum of Agreement, together with other conditions and requirements contained in section 2905(b)(4) mentioned above. Said Memorandum of Agreement also commits the Grantor to convey to Grantee the three parcels described in Paragraph B above following the completion of the remedial action.

D. In accordance with the provisions of the Community Environmental Response Facilitation Act, the Navy prepared an Environmental Baseline Survey (EBS) for the Installation dated November 1994, and a Finding of Suitability to Transfer (FOST) regarding the Property dated April, 2000. The FOST sets forth the basis for Grantor's determination that the Property is suitable for transfer.

E. Pursuant to California Civil Code section 1471, Grantor has determined that it is reasonably necessary to impose certain restrictions on the use of the Property to protect present and future human health or safety or the environment as a result of the presence of hazardous materials on portions of the Property described hereinafter with particularity.

AGREEMENT

1. Grantor, in consideration of the foregoing, the performance by Grantee of its covenants, conditions and restrictions hereinafter contained and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby remise, release and forever quitclaim to Grantee any and all right, title and interest in and to the Property described in Exhibit " B", together with all improvements and appurtenances thereon, reserving only such rights as may arise from the operation of the easements, restrictions and covenants of this deed, which the UNITED STATES OF AMERICA has in and to the Property.

2. Grantee acknowledges that it has received copies of the EBS and FOST, together with all documents referenced therein.

3. (a) Grantee is hereby informed and does hereby acknowledge that hazardous materials in the form of asbestos or asbestos-containing materials ("ACM") have been found and are otherwise presumed to exist in buildings and structures on the Property. Grantee acknowledges receipt of the EBS and the FOST disclosing the presence of known asbestos or ACM hazards in the buildings and structures on the Property.

(b) Grantee covenants, on behalf of itself, its successors and assigns, as a covenant running with the land, that it will prohibit occupancy and use of buildings and structures, or portions thereof, containing known asbestos or ACM hazards prior to abatement of such hazards. In connection with its use and occupancy of the Property, including, but not limited to, demolition of buildings and structures containing asbestos

or ACM, it will comply with all applicable Federal, State and local laws relating to asbestos and ACM.

4. (a) In accordance with the provisions of 42 U.S.C. section 9620(h)(3)(A), Grantor hereby gives notice that hazardous substances were stored for one year or more, released or disposed of on the Property. **The information contained in this notice is required by regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA or "Superfund"), 42 U.S.C. section 9620(h).** Grantor has made a complete search of its files and records concerning the Property. Based on that search, the type and quantity of these substances, the time at which such storage, release or disposal took place, to the extent such information is available, and a description of the remedial action taken, if any, is contained in Exhibit "F" attached hereto and made a part hereof.

(b) Grantor warrants for the benefit of Grantee, its successors and assigns, that all remedial action necessary to protect human health and the environment with respect to any hazardous substances remaining on the Property has been taken before the date of this deed.

(c) Grantor covenants for the benefit of Grantee, its successors and assigns, as a covenant running with the land, that any additional remedial action found to be necessary after the date of this deed shall be conducted by the United States; provided, however, that the foregoing covenant shall not apply with respect to any release or threat of release caused by Grantee or its successors or assigns.

(d) In connection with Grantor's covenant made in subparagraph (c), Grantee agrees on behalf of itself, its successors and assigns, as a covenant running with the land, that the United States, and the State of California, their agencies, officers, agents, employees, contractors and subcontractors shall have the right, upon reasonable notice to Grantee, its successors and assigns, to enter upon the Property in any case in which remedial or corrective action is found to be necessary at such Property after the date of this deed, or such access is necessary to carry out remedial action or corrective action on adjoining property. In exercising these rights of access, except in case of imminent endangerment to human health or the environment, Grantor or the State of California shall give to Grantee, its successors and assigns, reasonable notice of actions to be taken related to such remedial action or corrective action necessary at the Property or on adjoining property and shall make every reasonable effort to minimize interference with the use of the Property by Grantee, its successors or assigns. Neither Grantee nor its successors and assigns shall have any claim solely on account of the exercise of any reserved right of entry against the United States or the State of California, or any of their agencies, officers, agents, employees, contractors or subcontractors.

(e) The right to enter described in subparagraph (d) shall include the right to conduct tests, investigations and surveys, including, where necessary, drilling, testpitting, boring and other similar activities. Such right shall also include the right to construct, operate, maintain or undertake any other necessary remedial or corrective action including, but not limited to, monitoring wells, extraction wells and treatment facilities.

(f) In connection with Grantor's remedial actions described in subparagraph (d), Grantee agrees on behalf of itself, its successors and assigns, as a covenant running with the land, to comply with the provisions of any health or safety plan approved by appropriate regulatory authorities and in effect during the course of any such action.

(g) In accordance with, and to the extent required by, applicable federal, state and local laws, and to the extent that Grantee or its successors and assigns have not caused or contributed to any release or threat of release, Grantor will timely:

(i) Assess, inspect, investigate, study and remove or remediate, as appropriate, the release or threat of release of a hazardous substance, pollutant or contaminant from or on the Property caused by Department of Defense activities at the Property; and

(ii) Settle or defend any claim, demand, or order made by federal, state or local regulators or third parties in connection with any release or threat of release of a hazardous substance, pollutant or contaminant from or on the Property caused by Department of Defense activities at the Property.

(h) Grantee agrees, on behalf of itself and its successors and assigns, as a covenant running with the land, that it shall:

(i) Notify Grantor in writing within ninety (90) days after learning of any previously unidentified condition of the Property that suggests a response action is necessary, or, within ninety (90) days after receiving notice of a claim by federal, state or local regulators, or other third parties, of the existence of any condition on the Property that suggests a response action is necessary. If Grantee, or its successors and assigns is served with a complaint or written notice of a claim by federal, state or local regulators, the served party shall provide Grantor with a copy of such document not later than fifteen (15) days following service of such document; and

(ii) Furnish Grantor copies of pertinent papers Grantee, or any successor or assigns, receives; and

(iii) Provide, upon written request of Grantor, reasonable access to the records and personnel of Grantee, or any successor or assigns, for the purposes of defending or resolving the need for additional response action.

5. (a) In accordance with and to the extent required by applicable federal, state and local laws, Grantor will timely:

(i) assess, inspect, investigate, study, and remove or remediate, as appropriate, the release or threat of release of petroleum or a petroleum derivative from or on the Property caused by Department of Defense activities at the Property; and

(ii) settle or defend any claim, demand, or order made by federal, state or local regulators or third parties in connection with a release or threat of release

of petroleum or a petroleum derivative, from or on the Property caused by Department of Defense activities at the Property.

(b) Grantee agrees, on behalf of itself and its successors and assigns, as a covenant running with the land, that upon learning of any previously unidentified release or threat of release of petroleum or a petroleum derivative from or on the Property, that may have been caused by Department of Defense activities at the Property, will notify Grantor by following the notification procedures set forth in subparagraph 4(h) above.

6. (a) Pursuant to Section 330 of P.L. 102-484, as amended, and subject to the provisions of this Paragraph 6, Grantor shall hold harmless, defend and indemnify in full Grantee, any other person or entity that acquires ownership or control of the Property and any successor, assignee, transferee, lender or lessee of Grantee or of any other person or entity that acquires ownership or control of the Property (collectively and individually "Indemnitee(s)") from and against any suit, claim, demand or action, liability, judgment, cost or other fee arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property or economic loss) that results from, or is in any manner predicated upon, the release or threat of release of any hazardous substance, pollutant, contaminant, petroleum or petroleum derivative from or on the Property as a result of Department of Defense activities at the Property.

(b) Grantor will not indemnify an Indemnitee to the extent said Indemnitee caused or contributed to any release or threat of release of any hazardous substance, pollutant, contaminant, petroleum or petroleum derivative at the Property. Grantor shall be entitled to contribution from Indemnitees to the extent Grantor shows that such Indemnitees caused or contributed to any release. However, the availability of contribution shall not affect the requirement of Grantor to defend Indemnitees, unless such Indemnitees are solely responsible for the release or threat of release giving rise to the claim for indemnity, in which case Grantor shall have no duty to defend as to said claim.

(c) In any case in which Grantor determines that Grantor may be required to indemnify an Indemnitee for any suit, claim, demand or action, liability, judgment, cost or other fee arising out of any claim for personal injury or property damage, Grantor may settle or defend, on behalf of Indemnitee, the claim for personal injury or property damage. Prior to taking any action or reaching any final settlement under this paragraph that could adversely impact any Indemnitee, Grantor shall consult with such Indemnitee to minimize any such impact.

(d) If any Indemnitee refuses to allow Grantor to settle or defend any claim, then Indemnitee shall not be afforded indemnification with respect to such claim.

(e) Indemnification shall not be afforded by Grantor to an Indemnitee unless:

(i) Such Indemnitee notifies Grantor in writing within 90 days after such an indemnification claim accrues. If an Indemnitee is served with a complaint or written notice of a claim by a private party or by Federal, State or local regulators,

Indemnitee will provide Grantor with a copy of such document not later than fifteen (15) days following service of such complaint or written notice. A claim for indemnification accrues when the Indemnitee receives written notice of any suit, claim, demand or action, liability, judgment, cost or other fee, which relates to personal injury or property damage, that the Indemnitee knows, or reasonably should have known, may have been caused or contributed to by Department of Defense activities. The right of an Indemnitee to indemnification shall not expire due to late notice on the part of Indemnitee unless Grantor's ability to defend or to settle is materially and adversely affected;

(ii) Such Indemnitee provides to Grantor copies of pertinent papers Indemnitee receives;

(iii) Such Indemnitee provides to Grantor, to the extent such is in the possession or control of such Indemnitee, evidence or proof of any claim, loss or damage covered by this indemnity obligation; and

(iv) Such Indemnitee provides, upon the request of Grantor, reasonable access to the records and personnel of such Indemnitee for purposes of defending or settling the claim or action.

(f) Any Indemnitee may implement or enforce the terms of this Paragraph in its own right at its own discretion without obtaining permission from, or joining, any of the other Indemnitees.

(g) Nothing in this Paragraph creates rights of any kind in any person or entity other than Grantor and Indemnitees.

7. For purposes of Paragraphs 4, 5 and 6, the following terms have the meanings indicated below:

(a) "Release," "threat of release," "remedial action," "remove," "response," "hazardous substance," "pollutant" and "contaminant" have the meanings given such terms under CERCLA and U.S. Environmental Protection Agency Regulations implementing CERCLA.

(b) "Department of Defense activities" means the construction, installation, placement, operation, maintenance, misuse, abandonment, or failure to maintain the buildings, equipment and land at the Property or the failure to satisfy any otherwise legally applicable obligation to investigate or remediate any Environmental Conditions existing at the Property. "Department of Defense activities" does not mean the release or threat of release of a hazardous substance, pollutant, contaminant, petroleum or petroleum derivative, to the extent Grantor shows that the release or threat of release is caused or contributed to by the Indemnitee(s).

(c) "Demand or action . . . arising out of any claim for . . . property damage" includes, but is not limited to, any judicial, administrative or private cost recovery proceedings brought against an Indemnitee (i) for response costs arising under CERCLA, (ii) for costs incurred to enjoin or abate the presence or migration of contamination from or on the Property under RCRA, or (iii) for costs incurred to comply

with the requirements of other federal or state laws or regulations (or the laws of any political subdivision of the state) which arise from the environmental conditions at the Property.

(d) "Environmental Conditions" means any hazardous substance, pollutant or contaminant, including hazardous waste or hazardous constituent, petroleum or petroleum derivative, disposed of, released or existing in environmental media such as surface soil, subsurface soil, air, groundwater, surface water or subsurface geological formations at levels above background.

8. Grantor agrees that for purposes of 42 U.S.C. section 9620(h)(3), the acquisition of ownership or control of the Property by the Grantee or its successors or assigns will not make such person a potentially responsible party or relieve Grantor of its obligations herein unless their activities cause a release or a threat of release resulting in response costs to the Grantor.

9. Nothing in this Deed shall diminish or waive any rights which parties might otherwise have under common law or any Federal or State law or regulation, except that the provisions of this Deed shall be deemed to fully set forth the parties' statutory rights under section 330 of P.L. 102-484 and under 42 U.S.C. section 9620(h)(3).

10. (a) This Deed is subject to all outstanding easements and rights of way of record.

(b) Grantor has constructed and installed structures, facilities, pipelines and conduits on the Property, including those used for water, gas, electricity, steam, communications, heating and cooling, to serve and support Grantor's continuing activities off of the Property. Grantor hereby reserves the easements described in Exhibits "G" through "P" for the purposes enumerated therein. Said easements shall be non-exclusive and Grantee may make use of the underlying property burdened by such easements, provided it does so in a manner not inconsistent with Grantor's rights under the easements.

(c) With the exception of the easement for ingress and egress to and from the United States Border Patrol small arms range and the Department of the Navy medical/dental clinic, all said easements shall include the right, upon reasonable advance notice except in the case of an emergency, to enter upon, above, below or through the surface to construct, operate, maintain, repair, replace or modify Grantor's improvements, provided that the surface shall be restored to the condition previously existing and provided that interference with Grantee's use of the Property is minimized to the extent practicable.

(d) Grantee, agrees, on behalf of itself and its successors and assigns, as a covenant running with the land, that it shall protect or relocate Grantor's improvements in a manner satisfactory to Grantor should such protection or relocation be required as a result of Grantee's, its successors' and assigns' use of the Property.

(e) In the event that the proposed use of the Property by Grantee, its successors and assigns, will require the protection or relocation of Grantor's improvements, or restrict or interfere in any way with Grantor's use of the easements

reserved herein, such proposed use shall not begin or proceed until and unless the written consent of the Grantor is obtained and all reasonable requirements and conditions imposed as a condition of the grant of consent are complied with. Grantor's consent shall not be unreasonably withheld or delayed.

11. Grantee covenants for itself, its successors and assigns, that in connection with any construction or alteration on the Property, it will obtain a determination of no hazard to air navigation from the Federal Aviation Administration in accordance with Title 14 Code of Federal Regulations, part 77, entitled "Objects Affecting Navigable Airspace," or under the authority of the Federal Aviation Act of 1958, as amended.

12. Grantee covenants for itself, its successors and assigns, that it will not discriminate upon the basis of race, color, religion, sex, marital status, national origin, ancestry, age, sexual orientation, disability or handicap in the use, occupancy, sale or lease of the Property.

13. The conditions, restrictions, reservations and covenants set forth herein are a binding servitude on the Property, shall inure to the benefit of Grantor and Grantee and their respective successors and assigns, and will be deemed to run with the land in perpetuity, pursuant to California Civil Code sections 1462 and 1471 and other applicable authority.

14. No waiver by Grantor or Grantee of any of the terms or conditions of this Deed or any of their respective rights under this Deed shall be effective unless such waiver is in writing and signed by the party charged with the waiver.

15. Time is of the essence of this Deed.

16. Notice under or related to this Deed shall be in writing and shall be addressed to the addressees set out below or to such addresses as may from time to time be identified by the parties. Such notice may be delivered by hand, express delivery, overnight courier or pre-paid registered or certified mail, return receipt requested.

If to Grantor:

BRAC Operations Office
Attn: BCM Hunters Point/NTC
Southwest Division
Naval Facilities Engineering Command
1220 Pacific Highway
San Diego, CA 92132-5190

If to Grantee:

NTC Project Manager
Redevelopment Agency of the City of San Diego
City Administration Building
202 "C" Street
San Diego, CA 92101-3863

And to:

Office of City Attorney
Attn: Richard A. Duvernay
City Administration Building
202 "C" Street
San Diego, CA 92101-3863

GRANTOR'S SIGNATURE

UNITED STATES OF AMERICA

By: Karen P. Ringel

Print Name: Karen P. Ringel

Date: 24 May 00

Title: Real Estate Contracting Officer, Southwest
Division Naval Facilities Engineering Command

GRANTEE'S COVENANTS AND SIGNATURE

TO INDICATE ACCEPTANCE of its covenants and agreements contained in this deed, and receipt of the documents described in Paragraphs 2 and 3 above, Grantee has executed this document on the date written below.

CITY OF SAN DIEGO

By: S. Gail Goldberg








Print Name: S. Gail Goldberg

Date: 5/30/00

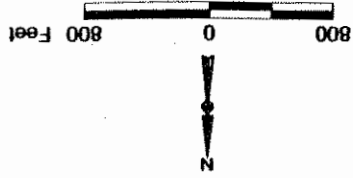
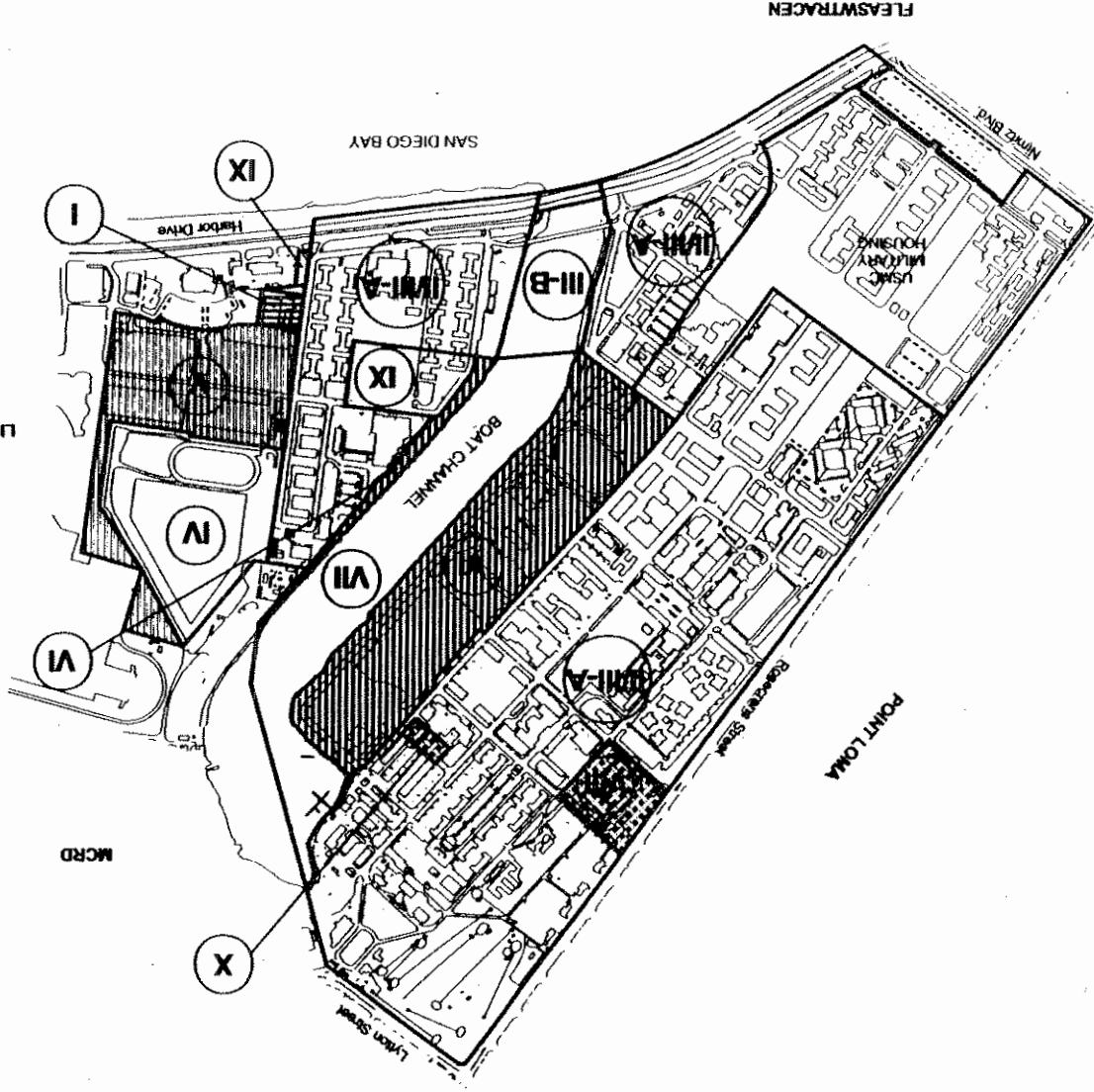
Title: City Manager, City of San Diego

LIST OF EXHIBITS

Deed Exhibit	Description
A	Parcel Map
B	EDC Parcel II/IIIA Legal Description
C	EDC Parcel IIIB Legal Description
D	EDC Parcel VIII Legal Description
E	EDC Parcel X Legal Description
F	Hazardous Substances Notification
G	Finding of Suitability to Transfer Parcels II/IIIA and IX of the Former Naval Training Center San Diego, California, May 2000
H	Easement for Telecommunications Distribution System
I	Easement for 69kV Electric Distribution Line
J	Easement for Steam Distribution Line
K	Easement for 12 kV Electric Distribution System
L	Easement for Fuel Line
M	Easement for Electric Service to CATS Microwave Tower
N	Storm Drain Easement
O	Easement for Cable Television Distribution System
P	Easement for Pedestrian Bridge
Q	Easement for Access to Retained Facilities

-  BUILDINGS
-  PARCEL BOUNDARY
-  NTC BOUNDARY
-  ECONOMIC DEVELOPMENT CONVEYANCE
-  FEDERAL TRANSFER
-  PUBLIC BENEFIT CONVEYANCE
-  PARCEL DESIGNATION

NOTE:
PARCEL I TRANSFERRED IN 1998



Southwest Division Naval Facilities Engineering Command	
Former Naval Training Center, San Diego, CA	
Map of Disposal Parcels	
File No.	168LS238
Date	4/8/00
Exhibit A	

ATTACHMENT NO. 23
FORM OF SUBORDINATION AGREEMENT
[BEHIND THIS PAGE]

OFFICIAL BUSINESS
Document entitled to free
recording per Government
Code Section 6103

Recording Requested by
and When Recorded Return to:
REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO
202 C Street
San Diego, California 92101
Attn: NTC Project Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION AGREEMENT ("Agreement") is made this _____ day of _____, by and among REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body, corporate and politic ("Agency"), [NAME OF ASSIGNEE], a _____ ("Borrower"), and _____, a _____ ("Lender"). Agency, Borrower and Lender are sometimes referred to collectively as the "Parties."

RECITALS

A. Agency and McMillin-NTC, LLC ("Master Developer") have entered into that certain Disposition and Development Agreement dated _____ (the "DDA") pursuant to which Agency has conveyed to Master Developer [leasehold] title to that certain real property which is legally described as set forth in Exhibit "A" attached hereto (the "Property") pursuant to that certain [Grant Deed/Ground Lease] dated _____ (the "[Grant Deed/Ground Lease]").

B. Agency, Master Developer and Borrower have entered or are entering into that certain Assignment and Assumption Agreement dated on or about the date hereof, pursuant to which Master Developer will convey its interest in the Property to Borrower and Borrower will develop the Property as provided in the DDA.

C. Section ___ of the [Grant Deed/Ground Lease] (the "Agency Right of Reverter") provides that, until Master Developer or Borrower is entitled to recordation of the Agency Certificate of Completion pursuant to the DDA, Agency has the right to terminate the DDA as to the Property [and the Lease], and to reenter and take possession of the Property with all improvements thereon, and to terminate and revest in Agency the [leasehold] estate theretofore

Subordination Agreement

Page 1 of 4

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1-11-00

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conveyed to Master Developer, as provided in California Health and Safety Code Section 33437, in the event of an uncured default as described in the [Grant Deed/Ground Lease].

D. Lender and Borrower have entered into or are entering into a loan agreement pursuant to which Lender will make a loan (the "Lender Loan") to Borrower to finance the acquisition and development of the Property.

E. The Lender Loan is evidenced by a promissory note in the amount of \$ _____ (the "Note") and is secured by, among other things, a Deed of Trust (the "Deed of Trust") executed by Borrower in favor of Lender and recorded concurrently with this Agreement.

F. The Lender requires as a condition of making the Lender Loan that the Deed of Trust shall be senior in priority to the Agency Right of Reverter and Agency is willing to specifically and unconditionally subordinate the Agency Right of Reverter to achieve and maintain the senior priority of the Deed of Trust.

THEREFORE, in consideration of the mutual benefits accruing to the Parties hereto and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lenders hereby agree as follows:

1. The Lender Loan and the Deed of Trust, together with any advances by Lender pursuant to the Lender Loan, shall at all times be prior and superior to the Agency Right of Reverter.

2. The Agency Right of Reverter shall at all times be junior and is hereby subordinated to the Lender Loan and the Deed of Trust.

3. The Lender would not make the Lender Loan described in this Agreement without this Subordination Agreement.

4. This Agreement shall be the whole and only agreement with regard to the priority and subordination of the Lender Loan, the Deed of Trust and the Agency Right of Reverter and shall supersede and cancel, but only insofar as would affect the priority among the loans and documents referred to hereinabove, any prior agreements as to such subordination.

5. Agency consents to and approves (i) all provisions of the Deed of Trust; (ii) all provisions of the Note Secured by Deed of Trust from Borrower to Lender; and (iii) all provisions of the Loan Agreement between Lender and Borrower, dated _____, and all agreements between Borrower and Lender for the disbursement of the proceeds of the Lender Loan.

6. Agency intentionally and unconditionally waives, relinquishes and subordinates the lien of the Agency Right of Reverter in favor of the prior lien or charges upon the Property and Improvements as referred to in this Agreement in favor of Lender and understands that in reliance upon, and in consideration of, waiver, relinquishment and subordination, specific loans and advances are being and will be made, and specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.

7. Notwithstanding anything to the contrary contained in this Subordination Agreement, the parties hereto hereby acknowledge that Agency would not subordinate the Agency Right of Reverter except if the Agency obtains written commitments from Lender, designed to protect the Agency's interest in the Property in the event of a default under the Lender, as hereinafter set forth. Therefore, Lender hereby agrees, for the benefit of the Agency, as follows:

- (a) Upon the occurrence of an event of default under any of the Lender Loan documents, Lender shall promptly notify Agency of the occurrence of such event of default, which notification shall be provided to Agency contemporaneously with the delivery to Borrower of any notice of default under any of the Lender Loan documents;
- (b) The Agency shall have the right, during the cure periods which apply to the Borrower pursuant to the Lender Loan documents and any cure period which may apply to the Agency under applicable law, to cure Borrower's default relative to the Lender Loan; and
- (c) After a default on the Lender Loan documents but prior to a foreclosure sale or deed in lieu assignment of the leasehold interest in the Property, the Agency shall have the right to take title to the Property and cure the default relative to the Lender Loan documents, without the Lender exercising any right it might otherwise have to accelerate the Lender Loan by reason of such title transfer, so long as Agency promptly cures any such default upon taking title to the Property.

8. This Agreement may be executed in counterparts, each of which, when taken together, shall constitute one original Agreement.

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS PROVISIONS WHICH ALLOW THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN LOANS WHICH MAY BE OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT AND WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

Dated: _____

By: _____
Hank Cunningham
Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY
CASEY GWINN
Agency General Counsel

By: _____
Richard A. Duvernay

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Glenn F. Wasserman

[LENDER]

Date: _____

By: _____

[BORROWER]

Date: _____

By: _____

ATTACHMENT NO. 24

SUBCONTRACTING OUTREACH PROGRAM

[BEHIND THIS PAGE]

ATTACHMENT 24

NAVAL TRAINING CENTER SUBCONTRACTING OUTREACH PROGRAM

The Naval Training Center redevelopment project represents a unique opportunity to provide contracting and employment opportunities to a broad base of San Diego companies and individuals. The McMillin Companies as the managing partner of McMillin-NTC, LLC, ("McMillin") the master developer for the NTC project, is committed to assuring such opportunities by voluntarily implementing and enforcing the policies stated herein.

WORKING ENVIRONMENT FREE OF DISCRIMINATION

McMillin continues to maintain a working environment free of discrimination, harassment, intimidation and coercion at all sites and in all facilities where employees are assigned to do work and will enforce this same policy at the NTC project. McMillin maintains this environment independent of federal law or the City of San Diego requirements because it reflects its corporate values.

McMillin has covenanted through the Disposition and Development Agreement and agrees for itself, its successors, and assigns and every successor in interest to the NTC Site or any part thereof, there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Master Developer itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, subleasees or vendees of the Site.

RESPONSIBLE OFFICIAL

Kent Ireland, Vice President, McMillin Companies has been designated as the responsible official to monitor all contracting activity for NTC to ensure that this Equal Opportunity Contracting Plan is being carried out and that the appropriate reports are filed.

DISSEMINATION OF PLAN TO SUBCONTRACTORS

This NTC Equal Opportunity Contracting Plan will be distributed and reviewed with all subcontractors performing work at NTC. Periodic meetings will be held with subcontractors to insure compliance and proper implementation of this Equal Opportunity Plan. Additionally each deed, lease and contract shall contain substantially the non-discrimination and nonsegregation language as stated above.

EQUAL OPPORTUNITY AND SUBCONTRACTING GOALS

For all contracted work for which the master developer, McMillin-NTC, LLC is responsible to complete, McMillin voluntarily commits to make a good faith effort to achieve the following goals through its subcontractors for the NTC project:

Goal #1: Combined 15% participation of Disadvantaged Business Enterprises (DBE), and Disabled Veteran Business Enterprises (DVBE).

(Definition of DBE also includes Minority Business Enterprises (MBE) and Women Business Enterprise (WBE).

Goal #2: Minimum 20% total subcontractor participation in order to enhance competition and maximize subcontracting opportunities.

McMillin will encourage its assignees to voluntarily comply with the above goals as well.

OUTREACH

McMillin will solicit subcontractors and encourage participation of DBE/DVBE through various outreach efforts.

CONTRACTING ACTIVITY REPORTS

McMillin will provide quarterly reports to the City documenting progress made toward the above goals. The report will describe contracting activity, contract amounts and percentages achieved for subcontracting and DBE/DVBE goals.

For projects which may be publicly bid such as those financed by a Community Facilities District, or projects which utilize City funds, McMillin will comply with the applicable City equal opportunity guidelines in effect at the time such projects are undertaken. For projects funded by a Community Facilities District the Acquisition and Funding Agreement will set forth equal opportunity requirements.

Nothing in this policy shall be interpreted to hold McMillin or a prime contractor liable for any discriminatory practice of its subcontractors.

ATTACHMENT NO. 25
EIR MITIGATION MEASURES
[BEHIND THIS PAGE]

**FINAL
MITIGATION MONITORING AND REPORTING PROGRAM**

Naval Training Center Redevelopment Project

Future development within the NTC San Diego or 430-acre portion of the Project Area shall incorporate or comply with the measures provided below to the satisfaction of the City Environmental Review Manager prior to issuance of land development permits. The City Environmental Review Manager, unless otherwise indicated, shall verify that future development plans have incorporated or complied with the following measures:

Mitigation Measure	Responsibility of:	Implementation of Mitigation Measure
<p><i>Incompatible Land Uses</i> Design facilities to control public access to the public safety institute. (LU-1)</p>	Developer(s) *	The Master Development Permit will require that the facility is designed to control public access. The Precise Plan requires controlled access as a policy.
<p><i>Plan Consistency</i> Prior to final Project design and construction, a view corridor analysis and mapping effort shall be submitted to the City Environmental Review Manager. (LU-2)</p>	Developer(s) *	View Corridor Analysis will be submitted to the City's Environmental Review Manager as part of the ongoing environmental review process.
<p>Regarding the public safety institute's inconsistency with the tidelands trust, the City shall enter into an agreement with the State Lands Commission, which imposes restrictions where none exist in exchange for removal of restrictions where they do exist. (LU-3)</p>	City	The City is currently negotiating an agreement with the State Lands Commission which will ensure the project's consistency with the Tidelands Trust.
<p>No later than 90 days after transfer of the NTC San Diego property from the Navy to the City of San Diego, and prior to transfer of the title from the City to another party, the City shall execute a limited aviation easement in favor of the Lindbergh Field Airport Operator (currently the San Diego Unified Port District [SDUPD]) for noise impacts at noise contour levels provided in the Comprehensive Land Use Plan for Lindbergh Field adopted February 1992, as amended April 1994 and approved by the San Diego Association of Governments (SANDAG). (LU-4)</p>	City	The City is currently negotiating an agreement with the San Diego Unified Port District which will establish an appropriate limited aviation easement for noise impacts at noise contour levels provided in the Comprehensive Land Use Plan for Lindbergh Field.

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**FINAL
MITIGATION MONITORING AND REPORTING PROGRAM - NTC**

In accordance with the Airport Environs Overlay Zone (AEOZ) and California Noise Standards, the City of San Diego Environmental Review Manager shall review noise studies in the noise-impacted areas prior to issuance of building permits to confirm that appropriate noise attenuation measures are proposed. The City Environmental Review Manager will confirm that noise attenuation measures have been implemented in accordance with California Noise Standards, State Building Code Title 24, before issuance of a certificate of occupancy. (LU-5)

Developer(s)*

Master Development Permit will require that prior to the issuance of building permits, the developer will show that appropriate noise attenuation measures have been incorporated into the design.

Appropriate Commitment of Land Uses

Fencing and directional signage shall be used adjacent to the MWWD lab and public safety institute to keep pedestrians away from these uses; and the uses shall be designed to discourage trespassing. The City shall enter into an agreement with the State Lands Commission, which imposes restrictions where none exist in exchange for removal of restrictions where they do exist. (LU-6)

City

In accordance with the Precise Plan, fencing and directional signage shall be incorporated into the site design as necessary. Prior to the issuance of certificate of completion, the Environmental Review Manager shall ensure that these measures have been implemented to ensure the safety of pedestrians. The City is currently negotiating an agreement with the State Lands Commission.

Transportation and Circulation

Three intersections (Rosecrans Street/North Evergreen Street, Pacific Highway/Laurel Street, Laning Road/North Harbor Drive) that would be significantly impacted by the Project would still operate at an acceptable LOS (i.e., LOS D or better) under Buildout conditions and therefore would not require mitigation.

No mitigation required.

Four intersections that would be significantly impacted by the Project (Rosecrans St/Roosevelt Rd, Nimitz Blvd/Rosecrans St, Rosecrans St/Bainbridge Ct/Russell St, Rosecrans St/Lytton St) and would operate at a congested LOS (i.e., LOS E or F) would be restored to an acceptable LOS through the incorporation of mitigation measures (improvements) presented in Section 4.2 of the EIR. These improvements would be 100% funded by the Project.

Developer

McMillin's financial obligation regarding these improvements would be to pay its fair share (together with the other developers) of all development costs, including hard costs, soft costs and property acquisition, if any, necessary for the intersection improvements. However to the extent such hard costs, soft costs and property acquisition, if any, results in McMillin's total off-site Horizontal Improvements cost to exceed \$6,000,000, the overage would be considered an "Additional City-Imposed Cost" which would be reimbursed to McMillin by the Agency pursuant to Section 9.15 of the DDA.

One intersection (Rosecrans Street/Sports Arena Boulevard/Camino Del Rio South) could be restored to an acceptable LOS through the incorporation of improvements presented in Section 4.2 of the EIR; however, these improvements would not be funded by the Project. [TC-1]

Not Project funded.

Full funding of improvements at Rosecrans St. intersections with Nimitz and Lytton and widening of Rosecrans are provided in lieu of partial funding of Rosecrans St./Sports Arena Blvd./Camino del Rio So.

**FINAL
MITIGATION MONITORING AND REPORTING PROGRAM - NTC**

Cultural Resources

An archaeological monitor shall be onsite during construction activities involving grading or excavation in areas west of the 1850 mean high tide line; monitoring shall not be required in areas east (bayward) of the 1850 mean high tide line. The monitor shall be empowered to halt construction in and around areas where previously unevaluated cultural materials, either historic or prehistoric, are unearthed until such time that the resource is inspected by a member of the Society of Professional Archaeologists in consultation with a cultural resource representative of the lead agency responsible for administering the construction/earth moving permit. [CR-1]

All original maps, field notes, non-burial related artifacts, catalog information and final reports shall be curated at an institution within San Diego County. Qualified institutions are those with proper facilities and staffing for ensuring research access to the collections, consistent with federal standards. If there are no qualified institutions in San Diego County that can accept additional collections, the historical resource consultant shall be responsible for temporary curation until such time as a regional facility becomes available. Arrangements for long-term curation shall be established between future applicants/property owners and the consultant prior to the initiation of the field reconnaissance. [CR-2]

Biological Resources

Construction noise adjacent to breeding, roosting, and foraging areas of birds shall be kept to a minimum, particularly during the breeding season. Specific requirements for herons are provided below under measure BR-2. [BR-1]

Three ornamental trees along Worden [Womple] and Cushing Roads used by nesting herons shall be retained and no less than a 100-foot construction buffer shall be provided during the heron breeding season (January 15 through July 15) to ensure that construction or noise and activities do not result in herons avoiding nest trees or abandoning their nests or young. Appropriate buffers shall be determined by a biologist familiar with the life history and nesting requirements of herons on a case-by-case basis. [BR-2]

Developer *

The Master Development Permit will include a condition that prior to the issuance of the first grading permit, the applicant will be required to provide a letter of verification to the Environmental Review Manager of Land Development Review (LDR) stating that a qualified archaeologist and/or archaeological monitor, as defined in the City of San Diego Historical Resources Guidelines, have been retained to implement the monitoring program. All persons involved in the archaeological monitoring of this project shall be approved by LDR prior to the start of monitoring; the applicant shall notify LDR of the start and end of construction.

Developer(s)*

The Master Planned Development Permit will include a condition that prior to the start of construction, a biologist will determine the potential for sensitive bird species protected under the Migratory Bird Treaty Act to occur on-site. In any areas have potential to be breeding, roosting, or foraging area for these species, appropriate construction buffers no less than 100-feet shall be provided as determined by the biologist on a case-by-case basis.

Developer *

The Master Planned Development Permit will include a condition that the subject trees be retained and a biologist familiar with the life history and nesting requirements of herons will determine an appropriate construction buffer no less than 100-feet to be provided on a case-by-case basis during the heron breeding season.

FINAL
MITIGATION MONITORING AND REPORTING PROGRAM - NTC

Implement Best Management Practices (BMPs). Design runoff drainages to empty into areas of San Diego Bay where greater tidal flushing exists. Comply with Section 402 of the Clean Water Act, as amended. Prepare an Oil and Hazardous Spill Contingency Plan and Spill Prevention, Control, and Countermeasures (SPCC) Plan. [BR-3]

Developer(s)*

As a condition of the Master Development Permit, prior to the issuance of the first grading permit, the City Engineer shall verify that appropriate pre- and post-construction Best Management Practices (BMPs) will be incorporated into the project design, as depicted in the Master Planned Development Plans/VTM). The Developer shall provide evidence of an approved Oil and Hazardous Spill Contingency Plan and SPCC Plan to the City Manager for any facility requiring such Plan.

Geology and Soils

Design and construct proposed facilities in accordance with the Uniform Building Code (UBC) and state-of-the-art seismic design specifications of the Structural Engineering Association of California for buildings in Seismic Zone IV. [GS-1]

Developer(s)*

Prior to the issuance of any land development or building permits, the Developer will be required to provide structural plans and calculations to the City which demonstrate that the proposed improvements have been designed in accordance with requirements of the Uniform Building Code (UBC) and City Geologist.

Remove soils that are potentially liquefiable and replace with properly compacted fill soils. [GS-2]

Developer(s)*

As a condition of the Master Development Permit, prior to the issuance of a land development permit and/or building permit, a geotechnical investigation will be required in order to provide information on the liquefaction of soils and to identify appropriate mitigation requirements to be incorporated into the grading and/or building permit to the satisfaction of the City Engineer.

Prepare a soil erosion plan. Provide protective covering for exposed graded areas. Use diverting techniques. Maintain a buffer strip between the Project Area and boat channel and the adjoining portion of San Diego Bay. Revegetate open areas. [GS-3]

Developer(s)*

A permanent buffer strip in the form of a 50' to 100' wide landscaped esplanade will be required through the Master Development Permit and Vesting Tentative Map, and construction will be implemented through a land development permit. The Vesting Tentative Map will be conditioned to require a soil erosion plan prior to issuance of any grading permit. Protective covering for excavation/grading will be provided as part of the grading permit.

**FINAL
MITIGATION MONITORING AND REPORTING PROGRAM - NTC**

Perform corrosivity testing prior to construction and treat or remove corrosive soils as appropriate. [GS-4]

Developer(s)*

As a condition of the Master Development Permit, prior to the issuance of a land development permit a geotechnical investigation will be required in order to provide information on the corrosivity of soils and to identify appropriate mitigation requirements to be incorporated into the grading and/or building permit to treat or remove corrosive soils.

Hydrology and Water Quality

Implement soil erosion mitigation measures. Comply with National Pollutant Discharge Elimination System (NPDES) permits, AB 411, and the U.S. Environmental Protection Agency (USEPA) California Toxics Rule, prepare and implement a Stormwater Pollution Prevention Plan, and implement BMPs. [H-1]

Developer(s) *

As a condition of the Master Development Permit, prior to the issuance of any grading permits for the project area the Developer shall provide evidence of an approved SPCC Plan and NPDES permit to the satisfaction of the City Engineer. Such SPPP will implement Best Management Practices, such as low flow diverters and other such measures.

Public Health and Safety

Post appropriate signage and monitor the aboveground steam lines to restrict access to area residents. [PH-1]

Developer *
City

Master Development Permit will require undergrounding of above-ground steam lines under a phased plan. Prior to relocation and/or undergrounding, appropriate safety measures will be provided to restrict access to area residents. Safety measures will be implemented prior to issuance of first building permit for the site.

Safety measures such as fencing, markers, flagging, and access restrictions will be implemented. [PH-2]

Post a crossing guard at appropriate locations along Rosecrans Street to assist children walking to and from Loma Portal Elementary School. [PH-3]

School District

The School District shall post guards at appropriate locations along Rosecrans Street to assist children walking to and from Loma Portal Elementary School as necessary.

Visual Resources - Visual Character

Minimize the time between removal or alteration of a visual element and the introduction of a new visual element. Keep construction equipment and materials out of public view as much as possible. [VR-1.1]

Developer(s) *

A Schedule of Performance as outlined in Attachment No. 3 to the DDA will minimize the time between removal or alteration of visual element and introduction of a new visual element. Construction equipment and materials will be kept from public view as much as possible. This will be a requirement of Master Development Permit.

FINAL
MITIGATION MONITORING AND REPORTING PROGRAM - NTC

Prior to final design or construction, a visual resource site inventory shall be submitted. Important visual character elements and resources shall be mapped. These resources would either be incorporated into the development plans or be replaced with resources having a higher level of visual quality and quantity. Elements to be considered include architectural treatments, site planning that takes into account the axial spatial arrangements, mature street trees, and associated site elements. [VR-1.2]

Developer *

Prior to issuance of the Master Development Permit, Environmental Review Manager shall ensure that a visual resource site inventory has been submitted, and that important visual character elements and resources have been mapped and incorporated in the development plans or replaced with resources having a higher level of visual quality and quantity.

Include the overall pedestrian scale and historical context of the site in all plans for development. [VR-1.3]

Developer *

Environmental Review Manager shall ensure that all conditions are satisfied prior to issuance of Master Development Permit.

Incorporate the urban design guidelines found in the NTC San Diego Reuse Plan. Expand on these guidelines to include other architectural, landscape architectural, and site planning design guidelines prior to the final design or construction phases. These guidelines shall preserve existing architectural, landscape architectural, and site planning elements that give the Project Area its special character and context and guide new development to be consistent with the elements. Guidelines should incorporate the design principals associated with relevant plans including the Peninsula Community Plan and the Midway/Pacific Highway Corridor Community Plan. [VR-1.4]

Developer(s)*

Environmental Review Manager shall ensure that all conditions are satisfied prior to issuance of Master Development Permit.

View Quality

Prior to final design and construction, a view corridor analysis and mapping effort shall be submitted by the Project applicant for approval to the City Environmental Review Manager. This analysis will include the existing private and public viewing points that depend on visual corridors over the Project Area. Existing blockage will be noted and the spatial extent of these corridor requirements on the Project Area will be mapped. Height and percentage encroachment into these corridors will be determined and design guidelines developed in order to direct the future development plans of the Project.

Developer *

Environmental Review Manager shall ensure that all conditions are satisfied prior to issuance of Master Development Permit

**FINAL
MITIGATION MONITORING AND REPORTING PROGRAM - NTC**

Community Services and Facilities

Collection of school fees and the school district's statutory share of annual tax increment revenue generated in the NTC San Diego portion of the Project Area would offset the cost of additional students generated by the Project. The City's Development Services Permit Review Manager shall verify that future developments have complied with this measure. [CS-1]

Redevelopment
Agency/School
District

The Redevelopment Agency is required by Redevelopment Law to pay to all effected taxing entities annual payments of a proportionate share of tax increment revenue generated by the Project Area and received by the Agency.

* Developers - Any Applicant or End User of property within the 430 acres of the Project Area generating impacts which require mitigation. Improvements will be a condition of Master Development Permit subject to fair share reimbursement.

ATTACHMENT NO. 26
NEW HOME SALES PROCEDURES
[BEHIND THIS PAGE]

NEW HOME SALES PROCEDURES

By the time most new home neighborhoods become available for sale, we have developed an extensive list of buyer prospects. These prospects have been collected from a variety of sources.

- ◆ Press releases with preliminary data on each neighborhood that includes a phone number to call for more information.
- ◆ A "Community Newsletter" with information on the new neighborhoods with a phone number to call for more information.
- ◆ A McMillin Web Site that includes preliminary neighborhood data and a phone number to call for more information.
- ◆ Community or Corporate advertisements with "Coming Soon" areas outlining new neighborhoods with a phone number to call for more information.
- ◆ On site signs describing the neighborhood, type of homes, square footage, number of bedrooms and bathrooms and phone number to call for more information.
- ◆ Visitors to any of the McMillin Information Centers can obtain information on upcoming neighborhoods and a number to call to be placed on the interest list.

All of the names collected are cataloged and maintained by our mailing house until needed.

Approximately 45 days prior to the sales release:

- ◆ We notify the interest list by mail of the date that the neighborhood will go to sale. The letter will also include instructions on how to become a priority purchaser.
- ◆ Once a person on the general interest list has made the transition to the priority purchaser list, they will be required to fill out a loan pre-qualification form, meet with a McMillin Mortgage Loan Officer and be pre-qualified.
- ◆ Approximately ten days before the "Grand Opening" everyone on the priority list will receive a final letter outlining Sales Procedures and notifying them they must be present on opening morning to maintain their priority sales position. Those on the priority list that did not get to purchase in the first phase will continue to receive notice of each subsequent sale releases and the procedure to maintain their priority position until they have purchased a home.