

DUPLICATE ORIGINAL

SECOND IMPLEMENTATION AGREEMENT
Naval Training Center Redevelopment Project

This Second Implementation 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") as of May 21, 2002.

For and in consideration of the mutual covenants and conditions set forth herein, the Agency and Master Developer hereby agree as follows:

1. Recitals

a. The Agency and Master Developer have heretofore entered into that certain Disposition and Development Agreement dated as of June 26, 2000, as amended (the "DDA"), which is incorporated herein by this reference. Any capitalized term contained in this Agreement that is not otherwise defined shall have the meaning attributed to such term in the DDA.

b. The purposes of the DDA include effectuating the Redevelopment Plan for the Naval Training Center Redevelopment Project (the "Redevelopment Project"), adopted by the City Council of the City of San Diego on May 13, 1997 and the Naval Training Center San Diego Reuse Plan (the "Reuse Plan"), adopted by the City Council of the City of San Diego on October 20, 1998, by providing, among other things, for the disposition and development of certain real property defined in the DDA as the "Site" by the Agency to the Master Developer and by the Master Developer to one or more Assignees (subject to the provisions of the DDA), and the development of a mixed-use project on the Site involving the construction and installation of public infrastructure improvements, the rehabilitation and reuse of existing buildings and construction of new buildings and improvements, as well as the development of a public waterfront park and recreation area on property to be owned by the City of San Diego located adjacent to the Site, subject to the Precise Plan for the site adopted by the City Council for the NTC Project (the "Project").

c. The Agency and Master Developer deem it desirable, for the efficient preservation of the amenities in that portion of the Project consisting of Map Areas (also sometimes referred to as "Units") 3, 4, 5 and 6, and Lot 117 of Unit 2 (referred to herein as the "Subject Property") and the operation and maintenance of

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shared parking and other common areas therein, and necessary to implement the Precise Plan, to create a "common interest development" within the meaning of Section 1351(c) of the California Civil Code, pursuant to a Master Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Liberty Station (the "Master Declaration") and to have the Master Declaration administered by a Master Association created pursuant to the California Nonprofit Public Benefit Law.

d. The Agency and Master Developer have agreed upon a form of Master Declaration, a copy of which is attached hereto as Exhibit "A". As lots within the Subject Property are sold or subleased by Master Developer, the Master Declaration contemplates and authorizes the Master Developer (and future Declarants under the Master Declaration) to impose additional terms on the subject sale and sublease lot through a Supplemental Master Declaration made by Master Developer (or other future Declarant) (each a "Supplemental Master Declaration").

e. The Agency and Master Developer desire to cause their respective present and future real property interests in the Subject Property to be impressed with the Master Declaration and Supplemental Master Declarations in implementation of the Precise Plan and the DDA.

f. The purpose of this Agreement is therefore to amend the DDA to authorize the Agency Executive Director or designee ("Executive Director") to consent to the recordation by Master Developer of the Master Declaration against the Subject Property, and authorize the Executive Director to subject the Agency's interest in the Subject Property to the Master Declaration and, as they are created, Supplemental Master Declarations.

Now, therefore, the Agency and Master Developer hereby agree that the DDA is amended as follows:

2. Approval of Master Declaration

a. Notwithstanding any contrary provision of the DDA, (i) the parties hereby consent to the Master Declaration; and (ii) the Executive Director shall have the authority to consent to such other form of Master Declaration substantially equivalent to the attached form of Master Declaration.

b. Notwithstanding any contrary provision of the DDA, Master Developer shall have the authority at any time following mutual approval and execution of this Agreement to execute the Master Declaration (or such other form of Master Declaration as has been approved on behalf of the Agency by the Executive Director) as the "Declarant" and cause such Master Declaration to be recorded against all of the Subject Property, without regard to whether any of the Phase Three Conditions Precedent or Phase Four Conditions Precedent have been satisfied with respect to such Subject Property.

c. Notwithstanding any contrary provision of the DDA, the Agency Executive Director or designee shall have the authority to execute and acknowledge (i) the "Agency Consent, Joinder and Subordination of Fee Interest" in the form attached to the Master Declaration or such other form as is substantially equivalent to the form attached to the Master Declaration, and (ii) a substantially equivalent consent, joinder and subordination with respect to each Supplemental Master Declaration or, with respect to the Civic, Arts and Cultural Center portion of the Project (as defined in the DDA), the Supplemental Master Declaration itself.

3. Miscellaneous Amendments

a. To the extent that any of the forms of documents attached to the DDA refer to the DDA, such references shall mean the DDA as amended to date and as further amended by this Implementation Agreement.

b. The exhibits and attachments to the DDA are hereby amended to the extent necessary to conform to the provisions of this Implementation Agreement. The Agency Executive Director or designee is hereby authorized to make such changes to the forms of documents attached to this DDA as may be necessary to conform to the provisions of this Implementation Agreement.

4. Actions to Effectuate this Agreement

The parties agree to execute such other instruments, agreements and amendments to documents as may be necessary or appropriate to effectuate the DDA, as amended to date and as further amended by this Implementation Agreement.

5. DDA to Remain in Effect

Except as expressly provided otherwise in this Implementation Agreement, the DDA, as amended to date, remains in full force and effect, enforceable in accordance with its terms.

6. Counterparts; Date of Agreement

a. This Implementation Agreement is executed in five (5) duplicate originals, each of which is deemed to be an original, and may be signed in counterparts.

b. This Implementation Agreement shall not be effective until it has been mutually executed by Master Developer and Agency. Upon such mutual execution, the date of this Implementation Agreement for reference purposes shall be the date first set forth above.

7. Time for Acceptance of Agreement

This Implementation Agreement, when executed by Master Developer and delivered to the Agency, will be considered and may be approved by the governing body of the Agency at a public meeting. Unless this Agreement is approved by the governing body of the Agency and executed and delivered by the Agency Executive Director or designee within thirty (30) days after delivery to the Agency, this Agreement may be terminated by Master Developer upon written notice to the Agency.

IN WITNESS WHEREOF, the Agency and Master Developer have executed this Agreement.

REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

By: 
Hank Cunningham
Assistant Executive Director

APPROVED AS TO FORM AND LEGALITY
Casey Gwinn
Agency General Counsel

By: Chia A. Lusetti

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: Glenn Wasserman
Glenn F. Wasserman

McMILLIN-NTC, LLC

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

By: Walter H. J.

By: Kimberly K. Elliott

EXHIBIT "A" TO SECOND IMPLEMENTATION AGREEMENT
MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATION OF EASEMENTS FOR LIBERTY STATION

[Behind this Page]

see "Liberty Station CCRs" Binder