

ORDINANCE NUMBER O- 19070 (NEW SERIES)

ADOPTED ON JUN 11 2002

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE PUBLIC USE LEASE PARCEL A AGREEMENT (PUBLIC PARKING) WITH INTERNATIONAL GATEWAY ASSOCIATES.

WHEREAS, the City previously entered into a Public Use Lease for Parcel A (for parking) with International Gateway Associates [Lease], which was approved by Council on March 20, 2001, by Ordinance No. OO-18932; and

WHEREAS, the City and International Gateway Associates desire to amend the Lease to provide for an adjustment to the lease payment schedule to reflect the phasing of construction on Parcel A, and to provide for minor adjustments to the physical location of parking spaces;

NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Amendment to the Public Use Lease (Parcel A), attached as Exhibit A, is hereby approved.

Section 2. That the City Manager is authorized to execute, for and on behalf of the City of San Diego, the Amendment to the Public Use Lease Agreement (Parcel A), with International Gateway Associates, under the terms and conditions set forth in that Amendment on file in the office of the City Clerk as Document No. OO- 19070.

Section 3. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 4. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By Deborah Geysl-Brodie for Douglas Humphreys
Douglas K. Humphreys
Deputy City Attorney

DKH:pev
5/20/02
Or.Dept:Com.&Econ.Dev
O-2002-145
Form=leaseo.frm

Recording Requested by:
CITY OF SAN DIEGO

When Recorded Return to and
Mail Tax Statements to:
CITY OF SAN DIEGO
Economic Development & Community
Services Department
400 B Street, 4th Floor
San Diego, CA 92101
Attention: San Ysidro Project Manager

Free Recording Requested
per Government Code § 6103

AMENDMENT TO PUBLIC USE LEASE
(Parcel A)

This Amendment to Public Use Lease (the "Amendment") is entered into as of May 28, 2002, by and between INTERNATIONAL GATEWAY ASSOCIATES, LLC, a Delaware limited liability company, ("Lessor"), and the CITY OF SAN DIEGO, a charter city ("City").

RECITALS

A. The Redevelopment Agency of the City of San Diego ("Agency") and Lessor ("Developer" therein) are the parties to that certain Disposition and Development Agreement dated May 29, 1998, as amended by the First Implementation Agreement dated February 23, 2000, the Second Implementation Agreement dated November 27, 2000, the Third Implementation Agreement dated June 28, 2001 and the Fourth Implementation Agreement dated May 28, 2002 (collectively the "DDA") with respect to the redevelopment of certain real property (the "Site"), within the San Ysidro Redevelopment Project area in the City. The redevelopment of the Site involves construction of certain improvements specified in the DDA. Such improvements are to be constructed in phases.

B. In accordance with the DDA, Lessor and City entered into that certain Public Use Lease dated March 20, 2001, relating to a portion of the Site referred to as "Parcel A" (the "Lease"). Any capitalized terms not otherwise defined in this Amendment shall have the meaning ascribed to such terms in the Lease.

C. Pursuant to the Lease, Lessor has agreed to lease to City and City has agreed to lease from Lessor that portion of Parcel A described in the Lease as the "Parking Area".

D. Pursuant to the Fourth Implementation Agreement to the DDA, the Agency and Lessor have agreed that Parcel A is to be

subdivided into three parcels, described as "Parcel A-1" (also sometimes referred to as "Phase 1-B-1") , "Parcel A-2" (also sometimes referred to as "Phase 1-B-2") and "Parcel A-3" (also sometimes referred to as "Phase 1-B-3"). The Parking Area is to be contained within Parcel A-1.

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

1. Map of Parcel A. The Map of Parcel A attached to the Lease as Exhibit A is hereby replaced with the substitute Map of Parcel A attached to this Amendment as Exhibit A.

2. Legal Description of Parcel A. The Legal Description of Parcel A attached to the Lease as Exhibit B is hereby replaced with the substitute Legal Description of Parcel A attached to this Amendment as Exhibit B.

3. Parking Area Description. The Parking Area Description attached to the Lease as Exhibit C is hereby replaced with the substitute Parking Area Description attached to this Amendment as Exhibit C. [DO WE NEED TO CHANGE THIS EXHIBIT?]

4. Rent Schedules. Rent Schedule A, attached to the Lease as Exhibit D is hereby replaced with the following Rent Schedules: Rent Schedule A-1 (excluding Building X), which is attached hereto as Exhibit D; Rent Schedule A-2 (excluding Building X), which is attached hereto as Exhibit E; Rent Schedule A-3 (excluding Building X), which is attached hereto as Exhibit F; and Rent Schedule Building X, which is attached to this Amendment as Exhibit G.

5. Plans for Improvements. The Plan for Improvements on DDA Parcel A, attached to the Lease as Exhibit G is hereby replaced with the Plans for Improvements, attached to this Amendment as Exhibit H.

6. Rent. Article 1 of the Lease (RENT) is hereby amended in its entirety to read as follows:

ARTICLE 1. RENT

Amount and Terms of Payment

"Section 1.01. For the purposes of this Lease, the following terms shall have the following meanings:

(a) "Additional Rent A" shall mean the sum of Additional Rent A-1, Additional Rent A-2 and Additional Rent A-3, as follows:

(i) "Additional Rent A-1" shall mean amounts to be paid each Lease Year during the Term, calculated at the rate of ten percent (10%) per annum on the First Tier Base Rent A-1, and at the rate of six percent (6%) per annum on the Second Tier Base Rent A-1, which when paid with the Annual Base Rent A-1 applicable to each such Lease Year, will equal the Annual Rent Amount A-1. The Additional Rent A-1 for each Lease Year, and the composition thereof, is shown on Rent Schedule A-1 (excluding Building X), which is attached to this Amendment as Exhibit D and hereby incorporated by reference. Provided, however, that if Lessor exercises its right to expand the development on Parcel A-1 by including the approximately 23,980 square foot Building X, the Additional Rent A-1 shall be the sum of the amounts shown on Rent Schedule A-1 (excluding Building X), which is attached to this Amendment as Exhibit D, plus the amounts shown on Rent Schedule Building X, which is attached to this Amendment as Exhibit G, and hereby incorporated by reference.

(ii) "Additional Rent A-2" shall mean amounts to be paid each Lease Year during the Term, calculated at the rate of ten percent (10%) per annum on the First Tier Base Rent A-2, and at the rate of six percent (6%) per annum on the Second Tier Base Rent A-2, which when paid with the Annual Base Rent A-2 applicable to each such Lease Year, will equal the Annual Rent Amount A-2. The Additional Rent A-2 for each Lease Year, and the composition thereof, is shown on Rent Schedule A-2 (excluding Building X), which is attached to this Amendment as Exhibit E and hereby incorporated by reference.

(iii) "Additional Rent A-3" shall mean amounts to be paid each Lease Year during the Term, calculated at the rate of ten percent (10%) per annum on the First Tier Base Rent A-3, and at the rate of six percent (6%) per annum on the Second Tier Base Rent A-3, which when paid with the Annual Base Rent A-3 applicable to each such Lease Year, will equal the Annual Rent Amount A-3. The Additional Rent A-3 for each Lease Year, and the composition thereof, shall be the sum of the amounts shown on Rent Schedule A-3 (without Building X), which is attached to this Amendment as Exhibit F, and hereby incorporated by reference, and the Rent Schedule Building X, which is attached to this Amendment as Exhibit G. Provided, however, that if Lessor exercises its right to reduce the development on Parcel A-3 by excluding from Parcel A-3 the approximately 23,980 square foot Building X, the Additional Rent A-3 shall be only the amount shown

on Rent Schedule A-3 (excluding Building X), attached hereto as Exhibit F.

(b) "Available Sales Tax A" shall mean the sum of Available Sales Tax A-1, Available Sales Tax A-2 and Available Sales Tax A-3, as follows:

(i) "Available Sales Tax A-1" shall mean the amount of sales and use taxes (i.e., those taxes levied by City under the authority of the California Sales and Use Tax Law (Part 1 of Division 2 of the California Revenue and Taxation Code commencing at Section 6001) or any successor law thereto) which have been collected, allocated and paid to, and actually received by City from transactions originating in any applicable Lease Year from Parcel A-1, after reduction for any amounts received earlier by City and which are to be refunded because of an overpayment of such taxes. An example of the calculation of the Available Sales Tax A is attached to the Lease as Exhibit E.

(ii) "Available Sales Tax A-2" shall mean the amount of sales and use taxes (i.e., those taxes levied by City under the authority of the California Sales and Use Tax Law (Part 1 of Division 2 of the California Revenue and Taxation Code commencing at Section 6001) or any successor law thereto) which have been collected, allocated and paid to, and actually received by City from transactions originating in any applicable Lease Year from Parcel A-2, after reduction for any amounts received earlier by City and which are to be refunded because of an overpayment of such taxes. An example of the calculation of the Available Sales Tax A is attached to the Lease as Exhibit E.

(iii) "Available Sales Tax A-3" shall mean the amount of sales and use taxes (i.e., those taxes levied by City under the authority of the California Sales and Use Tax Law (Part 1 of Division 2 of the California Revenue and Taxation Code commencing at Section 6001) or any successor law thereto) which have been collected, allocated and paid to, and actually received by City from transactions originating in any applicable Lease Year from Parcel A-3, after reduction for any amounts received earlier by City and which are to be refunded because of an overpayment of such taxes. An example of the calculation of the Available Sales Tax A is attached to the Lease as Exhibit E.

(c) "Base Rent A" shall mean the sum of Base Rent A-1, Base Rent A-2 and Base Rent A-3, as follows:

(i) "Base Rent A-1" shall mean the amount of \$4,416,750, constituting the initial total amount of Base Rent A-1 outstanding attributable to the entire Term of the Lease. The Base Rent A-1 is comprised of the sum of: (1) the initial total amount of Base Rent A-1 outstanding related to the first tier of annual Additional Rent A-1 in the amount of \$801,958 (the "First Tier Base Rent A-1"); plus (2) the initial total amount of Base Rent A-1 outstanding related to the second tier of annual Additional Rent A-1 in the amount of \$3,614,764 (the "Second Tier Base Rent A-1"). Provided, however, that if Lessor exercises its right to expand the development on Parcel A-1 by including the approximately 23,980 square foot Building X, the Base Rent A-1 shall be the sum of the amounts shown above plus the amounts shown on Rent Schedule Building X (Exhibit G).

(ii) "Base Rent A-2" shall mean the amount of \$657,700, constituting the initial total amount of Base Rent A-2 outstanding attributable to the entire Term of the Lease. The Base Rent A-2 is comprised of the sum of: (1) the initial total amount of Base Rent A-2 outstanding related to the first tier of annual Additional Rent A-2 in the amount of \$119,424 (the "First Tier Base Rent A-2"); plus (2) the initial total amount of Base Rent A-2 outstanding related to the second tier of annual Additional Rent A-2 in the amount of \$538,292 (the "Second Tier Base Rent A-2").

(iii) "Base Rent A-3" shall mean the amount of \$[?], constituting the initial total amount of Base Rent A-3 (including Building X) outstanding attributable to the entire Term of the Lease. The Base Rent A-3 is comprised of the sum of: (1) the initial total amount of Base Rent A-3 outstanding related to the first tier of annual Additional Rent A-3 in the amount of \$[?] (the "First Tier Base Rent A-3"); plus (2) the initial total amount of Base Rent A-3 outstanding related to the second tier of annual Additional Rent A-3 in the amount of \$[?] (the "Second Tier Base Rent A-3"). Provided, however, that if Lessor exercises its right to reduce the development on Parcel A-3 by deleting the approximately 23,980 square foot Building X, the Base Rent A-3 shall be the amounts shown above minus the amounts shown on Rent Schedule Building X (Exhibit G).

(d) "Lease Year" shall mean the period from July 1 of one calendar year, through and including June 30 of the immediately following calendar year.

(e) "Sales Tax A" shall consist of the sum of Sales Tax A-1, Sales Tax A-2 and Sales Tax A-3, as follows:

(i) "Sales Tax A-1" shall include (but only include) sales and use taxes (i.e., those taxes levied by City under the authority of the California Sales and Use Tax Law (Part 1 of Division 2 of the California Revenue and Taxation Code commencing at Section 6001) or any successor law thereto) which have been collected, allocated and paid to, and actually received by City from transactions originating in any applicable Lease Year from Parcel A-1, without reduction for any amounts received earlier by City and which are to be refunded because of an overpayment of such taxes.

(ii) "Sales Tax A-2" shall include (but only include) sales and use taxes (i.e., those taxes levied by City under the authority of the California Sales and Use Tax Law (Part 1 of Division 2 of the California Revenue and Taxation Code commencing at Section 6001) or any successor law thereto) which have been collected, allocated and paid to, and actually received by City from transactions originating in any applicable Lease Year from Parcel A-2, without reduction for any amounts received earlier by City and which are to be refunded because of an overpayment of such taxes.

(iii) "Sales Tax A-3" shall include (but only include) sales and use taxes (i.e., those taxes levied by City under the authority of the California Sales and Use Tax Law (Part 1 of Division 2 of the California Revenue and Taxation Code commencing at Section 6001) or any successor law thereto) which have been collected, allocated and paid to, and actually received by City from transactions originating in any applicable Lease Year from Parcel A-3, without reduction for any amounts received earlier by City and which are to be refunded because of an overpayment of such taxes.

(f) "Annual Rent Amount A" shall consist of the sum of Annual Rent Amount A-1, Annual Rent Amount A-2 and Annual Rent Amount A-3, as follows:

(i) "Annual Rent Amount A-1" shall mean the equal annual scheduled payment for Base Rent A-1 and Additional Rent A-1 owed by City to Lessor each Lease Year as shown on Rent Schedule A-1 (Excluding Building X) (Exhibit D). Provided, however, that if Lessor exercises its right to expand the development on Parcel A-1 by including the approximately 23,980 square foot Building X, the Annual Rent A-1 shall be the sum of the amounts shown on Rent

Schedule A-1 (excluding Building X), (Exhibit D), plus the amounts shown on Rent Schedule Building X (Exhibit G).

(ii) "Annual Rent Amount A-2" shall mean the equal annual scheduled payment for Base Rent A-2 and Additional Rent A-2 owed by City to Lessor each Lease Year as shown on Rent Schedule A-2 (Excluding Building X) (Exhibit E).

(iii) "Annual Rent Amount A-3" shall mean the equal annual scheduled payment for Base Rent A-3 and Additional Rent A-3 owed by City to Lessor each Lease Year as shown on Rent Schedule A-3 (without Building X) (Exhibit F), and the Rent Schedule Building X (Exhibit G). Provided, however, that if Lessor exercises its right to reduce the development on Parcel A-3 by excluding from Parcel A-3 the approximately 23,980 square foot Building X, the Annual Rent A-3 shall be only the amount shown on Rent Schedule A-3 (excluding Building X) (Exhibit F).

(g) "Term Commencement Date" shall mean, as to each of Parcel A-1, Parcel A-2 and Parcel A-3, respectively, the July 1 next following the earlier to occur of: (i) the date when the amount of Improvements on such parcel required by Section 2.02 (b), and the Parking Area Improvements referred to in Section 2.04, have been completed; or (ii) the date established in the Schedule of Performance (Attachment No. 3) of the DDA for completion of construction of the development on such parcel, as such date may be extended by City for purposes of this provision only pursuant to Section 3.02, or as such date may be extended for purposes of this provision only pursuant to Section 6.19, to the extent, and only to the extent, that the causes under that Section delay completion of the amount of Improvements on such parcel required by Section 2.02 (b), or the completion of the Parking Area Improvements referred to in Section 2.04.

(h) "Termination Date" shall mean as follows, as the context may require:

(i) Termination Date as to Parcel A-1 shall mean June 30 of the thirtieth (30th) Lease Year of scheduled rental payments of the Base Rent A-1 and Additional Rent A-1 under this Lease.

(ii) Termination Date as to Parcel A-2 shall mean June 30 of the thirtieth (30th) Lease Year of scheduled rental payments of the Base Rent A-2 and Additional Rent A-2 under this Lease.

(iii) Termination Date as to Parcel A-3 shall mean June 30 of the thirtieth (30th) Lease Year of scheduled rental payments of the Base Rent A-3 and Additional Rent A-3 under this Lease.

Section 1.02.

a. Parcel A-1. City hereby agrees to pay to Lessor each Lease Year, the Annual Rent Amount A-1, until Termination Date A-1, at which time any as yet unpaid Base Rent A-1 and/or Additional Rent A-1 shall be deemed forgiven.

b. Parcel A-2. City hereby agrees to pay to Lessor each Lease Year, the Annual Rent Amount A-2, until Termination Date A-2, at which time any as yet unpaid Base Rent A-2 and/or Additional Rent A-2 shall be deemed forgiven.

c. Parcel A-3. City hereby agrees to pay to Lessor each Lease Year, the Annual Rent Amount A-3, until Termination Date A-3, at which time any as yet unpaid Base Rent A-3 and/or Additional Rent A-3 shall be deemed forgiven.

d. All Annual Rent Amount A shall be payable in cash or by check drawn to the order of Lessor."

Section 1.03.

a. Parcel A-1. Within forty-five (45) days after City receives its final installment of Sales Tax A-1 from the State of California (or such other governmental entity as may be the payor of Sales Tax A-1 in the future) for each Lease Year after the Term Commencement Date A-1, City shall pay to Lessor the lesser of: (a) the Annual Rent Amount A-1, or (b) the sum of (i) Available Sales Tax A-1 for the applicable Lease Year, and (ii) Available Reserves A-1 (as defined in Section 1.07 below) as of the end of the immediately preceding Lease Year. Such amount is referred to herein as the "Annual Payment" for the applicable Lease Year. An example of the calculation of the Annual Payment is attached to the Lease as Exhibit F. Any interest earned on Available Sales Tax A-1 due to investment of such funds by City prior to the making of such Annual Payment to Lessor shall be the property of City. Concurrently with the making of such Annual Payment, City shall provide Lessor with a financial report showing the amount of Sales Tax A-1 allocated and paid to City for the preceding Lease Year and how the amount paid to Lessor for that Lease Year was determined. Such report further shall detail the amount (if any) of Annual Rent Amount A-1 that continues to be unpaid for any past Lease Year as referred to in Section 1.04.

b. Parcel A-2. Within forty-five (45) days after City receives its final installment of Sales Tax A-2 from the State of California (or such other governmental entity as may be the payor of Sales Tax A-2 in the future) for each Lease Year after the Term Commencement Date A-2, City shall pay to Lessor the lesser of: (a) the Annual Rent Amount A-2, or (b) the sum of (i) Available Sales Tax A-2 for the applicable Lease Year, and (ii) Available Reserves A-2 (as defined in Section 1.07 below) as of the end of the immediately preceding Lease Year. Such amount is referred to herein as the "Annual Payment" for the applicable Lease Year. An example of the calculation of the Annual Payment is attached to the Lease as Exhibit F. Any interest earned on Available Sales Tax A-2 due to investment of such funds by City prior to the making of such Annual Payment to Lessor shall be the property of City. Concurrently with the making of such Annual Payment, City shall provide Lessor with a financial report showing the amount of Sales Tax A-2 allocated and paid to City for the preceding Lease Year and how the amount paid to Lessor for that Lease Year was determined. Such report further shall detail the amount (if any) of Annual Rent Amount A-2 that continues to be unpaid for any past Lease Year as referred to in Section 1.04.

c. Parcel A-3. Within forty-five (45) days after City receives its final installment of Sales Tax A-3 from the State of California (or such other governmental entity as may be the payor of Sales Tax A-3 in the future) for each Lease Year after the Term Commencement Date A-3, City shall pay to Lessor the lesser of: (a) the Annual Rent Amount A-3, or (b) the sum of (i) Available Sales Tax A-3 for the applicable Lease Year, and (ii) Available Reserves A-3 (as defined in Section 1.07 below) as of the end of the immediately preceding Lease Year. Such amount is referred to herein as the "Annual Payment" for the applicable Lease Year. An example of the calculation of the Annual Payment is attached to the Lease as Exhibit F. Any interest earned on Available Sales Tax A-3 due to investment of such funds by City prior to the making of such Annual Payment to Lessor shall be the property of City. Concurrently with the making of such Annual Payment, City shall provide Lessor with a financial report showing the amount of Sales Tax A-3 allocated and paid to City for the preceding Lease Year and how the amount paid to Lessor for that Lease Year was determined. Such report further shall detail the amount (if any) of Annual Rent Amount A-3 that continues to be unpaid for any past Lease Year as referred to in Section 1.04.

Section 1.04.

a. Parcel A-1. City shall only be required to calculate the Annual Payments on the basis of Sales Tax A-1, and to pay such amounts from (a) Sales Tax A-1, which are actually

collected, allocated to and received by City for the applicable Lease Year; and (b) Available Reserves A-1 as of the end of the Lease Year immediately preceding the Lease Year for which the applicable Annual Payment is due. Any portion of Annual Rent Amount A which is not paid in a Lease Year because there is insufficient Available Sales Tax A-1 for that Lease Year, or insufficient Available Reserves A-1, shall be deemed a deferred obligation payable (without interest) from Available Reserves A-1, if and as there are Available Reserves A-1 to pay to Lessor on account of such deferred obligation. Any deposit in the Fund for Available Reserves A-1 in a Lease Year as provided for in Section 1.05, shall be used in that Lease Year, immediately upon such deposit, to pay toward the outstanding balance of deferred obligations, if any. After such time as City has deposited into the Fund for Available Reserves A-1, the maximum cumulative limit of such deposits established pursuant to Section 1.07 hereinbelow, then any portion of Annual Rent Amount A-1 which is not paid in a Lease Year because there is insufficient Available Sales Tax A-1 for that Lease Year, or insufficient Available Reserves A-1 available from deposits made before the limit was reached, shall be deemed forgiven, and City shall have no further obligation or liability with respect thereto. For the purpose of calculating the outstanding balance of Base Rent A-1 under this Lease, the portion of Annual Rent Amount A-1 deemed forgiven shall be treated as if it actually had been paid.

b. Parcel A-2. City shall only be required to calculate the Annual Payments on the basis of Sales Tax A-2, and to pay such amounts from (a) Sales Tax A-2, which are actually collected, allocated to and received by City for the applicable Lease Year; and (b) Available Reserves A-2 as of the end of the Lease Year immediately preceding the Lease Year for which the applicable Annual Payment is due. Any portion of Annual Rent Amount A which is not paid in a Lease Year because there is insufficient Available Sales Tax A-2 for that Lease Year, or insufficient Available Reserves A-2, shall be deemed a deferred obligation payable (without interest) from Available Reserves A-2, if and as there are Available Reserves A-2 to pay to Lessor on account of such deferred obligation. Any deposit in the Fund for Available Reserves A-2 in a Lease Year as provided for in Section 1.05, shall be used in that Lease Year, immediately upon such deposit, to pay toward the outstanding balance of deferred obligations, if any. After such time as City has deposited into the Fund for Available Reserves A-2, the maximum cumulative limit of such deposits established pursuant to Section 1.07 hereinbelow, then any portion of Annual Rent Amount A-2 which is not paid in a Lease Year because there is insufficient Available Sales Tax A-2 for that Lease Year, or insufficient Available Reserves A-2 available from deposits made before the limit was reached,

shall be deemed forgiven, and City shall have no further obligation or liability with respect thereto. For the purpose of calculating the outstanding balance of Base Rent A-2 under this Lease, the portion of Annual Rent Amount A-2 deemed forgiven shall be treated as if it actually had been paid.

c. Parcel A-3. City shall only be required to calculate the Annual Payments on the basis of Sales Tax A-3, and to pay such amounts from (a) Sales Tax A-3, which are actually collected, allocated to and received by City for the applicable Lease Year; and (b) Available Reserves A-3 as of the end of the Lease Year immediately preceding the Lease Year for which the applicable Annual Payment is due. Any portion of Annual Rent Amount A which is not paid in a Lease Year because there is insufficient Available Sales Tax A-3 for that Lease Year, or insufficient Available Reserves A-3, shall be deemed a deferred obligation payable (without interest) from Available Reserves A-3, if and as there are Available Reserves A-3 to pay to Lessor on account of such deferred obligation. Any deposit in the Fund for Available Reserves A-3 in a Lease Year as provided for in Section 1.05, shall be used in that Lease Year, immediately upon such deposit, to pay toward the outstanding balance of deferred obligations, if any. After such time as City has deposited into the Fund for Available Reserves A-3, the maximum cumulative limit of such deposits established pursuant to Section 1.07 hereinbelow, then any portion of Annual Rent Amount A-3 which is not paid in a Lease Year because there is insufficient Available Sales Tax A-3 for that Lease Year, or insufficient Available Reserves A-3 available from deposits made before the limit was reached, shall be deemed forgiven, and City shall have no further obligation or liability with respect thereto. For the purpose of calculating the outstanding balance of Base Rent A-3 under this Lease, the portion of Annual Rent Amount A-3 deemed forgiven shall be treated as if it actually had been paid.

Section 1.05.

a. Parcel A-1. Lessor acknowledges and agrees that payment of the Base Rent A-1 and Additional Rent A-1 shall be calculated solely upon City's receipt of Sales Tax A-1 from transactions on or from Parcel A-1 based upon the percentage of sales taxes received by City for general fund purposes as of the date of this Lease. The parties acknowledge that the documentation as to sales tax generation received by City from the State of California (or other distributing entity) may not be available in a form to undertake such calculation, and agree to reasonably cooperate with each other to establish procedures and means to ascertain the Sales Tax A-1 as best as reasonably possible to permit application of Sections 1.02 through 1.04. If specific figures for Parcel A-1 are

available from the State or other governmental agency, City will cooperate with Lessor in attempting to have such figures provided to City. It is recognized, however, that figures regarding transactions on Parcel A-1 which generate Sales Tax A may be only obtainable directly from the occupants of Parcel A engaged in such transactions. In such circumstances, Lessor acknowledges and agrees that it is the party best positioned to obtain such figures from such occupants in a form reasonably acceptable to City.

City covenants to take all actions legally required to obtain and receive the maximum amount of Sales Tax A-1 revenue to which City is legally entitled so as not to jeopardize or impair Lessor's ability to receive payment pursuant to this Lease. Lessor acknowledges and agrees that to the extent that any future constitutional, legislative or judicial amendment, act, ruling or decision (hereafter referred to as a "Sales Tax Interference Act") interferes with the ability of City to receive Sales Tax A-1, any payments made by City to Lessor during the period following the start of the Lease Term that such Sales Tax Interference Act is not in effect will be deemed full and complete payment of the Base Rent A-1 and Additional Rent A-1, even if the amount of such payments total less than otherwise required by this Lease, unless an alternative payment formula and procedure is agreed to by the parties in accord with this Section. In the event of a Sales Tax Interference Act, the parties will reasonably cooperate to establish an alternative payment formula and procedure, provided, however, that such alternative shall be based solely upon transactions occurring on Parcel A-1, and shall most closely achieve the economic equivalent of the present situation for both City and Lessor.

b. Parcel A-2. Lessor acknowledges and agrees that payment of the Base Rent A-2 and Additional Rent A-2 shall be calculated solely upon City's receipt of Sales Tax A-2 from transactions on or from Parcel A-2 based upon the percentage of sales taxes received by City for general fund purposes as of the date of this Lease. The parties acknowledge that the documentation as to sales tax generation received by City from the State of California (or other distributing entity) may not be available in a form to undertake such calculation, and agree to reasonably cooperate with each other to establish procedures and means to ascertain the Sales Tax A-2 as best as reasonably possible to permit application of Sections 1.02 through 1.04. If specific figures for Parcel A-2 are available from the State or other governmental agency, City will cooperate with Lessor in attempting to have such figures provided to City. It is recognized, however, that figures regarding transactions on Parcel A-2 which generate Sales Tax A may be only obtainable directly from the occupants of Parcel

A engaged in such transactions. In such circumstances, Lessor acknowledges and agrees that it is the party best positioned to obtain such figures from such occupants in a form reasonably acceptable to City.

City covenants to take all actions legally required to obtain and receive the maximum amount of Sales Tax A-2 revenue to which City is legally entitled so as not to jeopardize or impair Lessor's ability to receive payment pursuant to this Lease. Lessor acknowledges and agrees that to the extent that any future constitutional, legislative or judicial amendment, act, ruling or decision (hereafter referred to as a "Sales Tax Interference Act") interferes with the ability of City to receive Sales Tax A-2, any payments made by City to Lessor during the period following the start of the Lease Term that such Sales Tax Interference Act is not in effect will be deemed full and complete payment of the Base Rent A-2 and Additional Rent A-2, even if the amount of such payments total less than otherwise required by this Lease, unless an alternative payment formula and procedure is agreed to by the parties in accord with this Section. In the event of a Sales Tax Interference Act, the parties will reasonably cooperate to establish an alternative payment formula and procedure, provided, however, that such alternative shall be based solely upon transactions occurring on Parcel A-2, and shall most closely achieve the economic equivalent of the present situation for both City and Lessor.

c. Parcel A-3. Lessor acknowledges and agrees that payment of the Base Rent A-3 and Additional Rent A-3 shall be calculated solely upon City's receipt of Sales Tax A-3 from transactions on or from Parcel A-3 based upon the percentage of sales taxes received by City for general fund purposes as of the date of this Lease. The parties acknowledge that the documentation as to sales tax generation received by City from the State of California (or other distributing entity) may not be available in a form to undertake such calculation, and agree to reasonably cooperate with each other to establish procedures and means to ascertain the Sales Tax A-3 as best as reasonably possible to permit application of Sections 1.02 through 1.04. If specific figures for Parcel A-3 are available from the State or other governmental agency, City will cooperate with Lessor in attempting to have such figures provided to City. It is recognized, however, that figures regarding transactions on Parcel A-3 which generate Sales Tax A may be only obtainable directly from the occupants of Parcel A engaged in such transactions. In such circumstances, Lessor acknowledges and agrees that it is the party best positioned to obtain such figures from such occupants in a form reasonably acceptable to City.

City covenants to take all actions legally required to obtain and receive the maximum amount of Sales Tax A-3 revenue to which City is legally entitled so as not to jeopardize or impair Lessor's ability to receive payment pursuant to this Lease. Lessor acknowledges and agrees that to the extent that any future constitutional, legislative or judicial amendment, act, ruling or decision (hereafter referred to as a "Sales Tax Interference Act") interferes with the ability of City to receive Sales Tax A-3, any payments made by City to Lessor during the period following the start of the Lease Term that such Sales Tax Interference Act is not in effect will be deemed full and complete payment of the Base Rent A-3 and Additional Rent A-3, even if the amount of such payments total less than otherwise required by this Lease, unless an alternative payment formula and procedure is agreed to by the parties in accord with this Section. In the event of a Sales Tax Interference Act, the parties will reasonably cooperate to establish an alternative payment formula and procedure, provided, however, that such alternative shall be based solely upon transactions occurring on Parcel A-3, and shall most closely achieve the economic equivalent of the present situation for both City and Lessor.

Section 1.06.

a. Parcel A-1. Notwithstanding any other provision of this Lease, City may prepay the outstanding balance (not paid, or deemed paid pursuant to Section 1.04 above) of the Base Rent A-1, or the outstanding balance (not paid, or deemed paid pursuant to Section 1.04 above) of the First Tier Base Rent A-1 or the Second Tier Base Rent A-1, together with all Additional Rent, or the first tier of annual Additional Rent or the second tier of annual Additional Rent, as applicable, accrued (and not paid, or deemed paid pursuant to paragraph a. of Section 1.04 above) as of the date of prepayment, at any time without prior notice to Lessor and without any penalty or charge. Lessor agrees to cooperate with City, including without limitation providing any appropriate estoppel certificate regarding the status of this Lease, and the prepayment of Base Rent A-1 and the payment of accrued Additional Rent A-1, or the first tier of annual Additional Rent or the second tier of annual Additional Rent accrued, as applicable, hereunder as may be reasonably requested by City or in connection with any bond issue or other financing of City's obligations hereunder.

b. Parcel A-2. Notwithstanding any other provision of this Lease, City may prepay the outstanding balance (not paid, or deemed paid pursuant to Section 1.04 above) of the Base Rent A-2, or the outstanding balance (not paid, or deemed paid pursuant to Section 1.04 above) of the First Tier Base Rent A-

2 or the Second Tier Base Rent A-2, together with all Additional Rent, or the first tier of annual Additional Rent or the second tier of annual Additional Rent, as applicable, accrued (and not paid, or deemed paid pursuant to paragraph b. of Section 1.04 above) as of the date of prepayment, at any time without prior notice to Lessor and without any penalty or charge. Lessor agrees to cooperate with City, including without limitation providing any appropriate estoppel certificate regarding the status of this Lease, and the prepayment of Base Rent A-2 and the payment of accrued Additional Rent A-2, or the first tier of annual Additional Rent or the second tier of annual Additional Rent accrued, as applicable, hereunder as may be reasonably requested by City or in connection with any bond issue or other financing of City's obligations hereunder.

c. Parcel A-3. Notwithstanding any other provision of this Lease, City may prepay the outstanding balance (not paid, or deemed paid pursuant to Section 1.04 above) of the Base Rent A-3, or the outstanding balance (not paid, or deemed paid pursuant to Section 1.04 above) of the First Tier Base Rent A-3 or the Second Tier Base Rent A-3, together with all Additional Rent, or the first tier of annual Additional Rent or the second tier of annual Additional Rent, as applicable, accrued (and not paid, or deemed paid pursuant to paragraph c. of Section 1.04 above) as of the date of prepayment, at any time without prior notice to Lessor and without any penalty or charge. Lessor agrees to cooperate with City, including without limitation providing any appropriate estoppel certificate regarding the status of this Lease, and the prepayment of Base Rent A-3 and the payment of accrued Additional Rent A-3, or the first tier of annual Additional Rent or the second tier of annual Additional Rent accrued, as applicable, hereunder as may be reasonably requested by City or in connection with any bond issue or other financing of City's obligations hereunder.

Section 1.07.

a. Parcel A-1. As security for City's obligation to make the Annual Payments to Lessor with respect to Parcel A-1, City agrees to establish in its accounts a reserve fund (the "Fund for Available Reserves A-1"), which shall be drawn upon by City to pay toward any Annual Payment in a Lease Year when the Available Sales Tax A-1 for the applicable Lease Year is insufficient to pay the Annual Rent Amount A-1 in full, or to pay toward any obligations accrued in a previous Lease Year when the Available Sales Tax A-1 for the applicable Lease Year and Available Reserves A-1 as of the end of the immediately preceding Lease Year were insufficient to pay the Annual Rent Amount A-1. Commencing with the first Lease Year after the

closing of the mortgage loan and/or other financing for the development of Parcel A-1 under the DDA, when City is allocated and actually receives any amount of Sales Tax A-1, City shall deposit in the Fund for Available Reserves A-1 any amount by which Available Sales Tax A-1 exceeds the Annual Rent Amount A required for the applicable Lease Year. Any interest or other investment return earned on monies in the Fund for Available Reserves A-1 (determined by City in its absolute discretion), shall be added to the Fund and used for the same purposes and under the same conditions and limitations, provided for herein with respect to amounts deposited by City from Available Sales Tax A-1. Notwithstanding the foregoing, in no event shall City be required to deposit into the Fund for Available Reserves A-1 (including any interest added thereto) in excess of [Five Hundred Eighty-Eight Thousand Ninety Six Dollars (\$588,096) - need to discuss allocating this amount among three A parcels] for the entire term of this Lease, independent of whether or how much of such deposits are withdrawn to cover current or past shortfalls in Annual Rent Amount A-1. Provided however, that on the earlier of (a) the end of the tenth Lease Year, or (b) the July 1 next following the first Lease Year in which Available Sales Tax A-1 is greater than 1.5 times the Annual Rent Amount A-1, the maximum cumulative limit on deposits into the Fund for Available Revenues A-1 shall be reduced to an amount equal to the greater of (i) the Annual Rent Amount A-1, or (ii) the amount theretofore withdrawn by City from the Fund for Available Reserves A-1 to cover current or past shortfalls in Annual Rent Amount A-1. Any balance in the Fund for Available Reserves A-1 in excess of such revised limit may be immediately withdrawn by City.

b. Parcel A-2. As security for City's obligation to make the Annual Payments to Lessor with respect to Parcel A-2, City agrees to establish in its accounts a reserve fund (the "Fund for Available Reserves A-2"), which shall be drawn upon by City to pay toward any Annual Payment in a Lease Year when the Available Sales Tax A-2 for the applicable Lease Year is insufficient to pay the Annual Rent Amount A-2 in full, or to pay toward any obligations accrued in a previous Lease Year when the Available Sales Tax A-2 for the applicable Lease Year and Available Reserves A-2 as of the end of the immediately preceding Lease Year were insufficient to pay the Annual Rent Amount A-2. Commencing with the first Lease Year after the closing of the mortgage loan and/or other financing for the development of Parcel A-2 under the DDA, when City is allocated and actually receives any amount of Sales Tax A-2, City shall deposit in the Fund for Available Reserves A-2 any amount by which Available Sales Tax A-2 exceeds the Annual Rent Amount A required for the applicable Lease Year. Any interest or other investment return earned on monies in the

Fund for Available Reserves A-2 (determined by City in its absolute discretion), shall be added to the Fund and used for the same purposes and under the same conditions and limitations, provided for herein with respect to amounts deposited by City from Available Sales Tax A-2. Notwithstanding the foregoing, in no event shall City be required to deposit into the Fund for Available Reserves A-2 (including any interest added thereto) in excess of [Five Hundred Eighty-Eight Thousand Ninety Six Dollars (\$588,096) - need to discuss allocating this amount among three A parcels] for the entire term of this Lease, independent of whether or how much of such deposits are withdrawn to cover current or past shortfalls in Annual Rent Amount A-2. Provided however, that on the earlier of (a) the end of the tenth Lease Year, or (b) the July 1 next following the first Lease Year in which Available Sales Tax A-2 is greater than 1.5 times the Annual Rent Amount A-2, the maximum cumulative limit on deposits into the Fund for Available Revenues A-2 shall be reduced to an amount equal to the greater of (i) the Annual Rent Amount A-2, or (ii) the amount theretofore withdrawn by City from the Fund for Available Reserves A-2 to cover current or past shortfalls in Annual Rent Amount A-2. Any balance in the Fund for Available Reserves A-2 in excess of such revised limit may be immediately withdrawn by City.

c. Parcel A-3. As security for City's obligation to make the Annual Payments to Lessor with respect to Parcel A-3, City agrees to establish in its accounts a reserve fund (the "Fund for Available Reserves A-3"), which shall be drawn upon by City to pay toward any Annual Payment in a Lease Year when the Available Sales Tax A-3 for the applicable Lease Year is insufficient to pay the Annual Rent Amount A-3 in full, or to pay toward any obligations accrued in a previous Lease Year when the Available Sales Tax A-3 for the applicable Lease Year and Available Reserves A-3 as of the end of the immediately preceding Lease Year were insufficient to pay the Annual Rent Amount A-3. Commencing with the first Lease Year after the closing of the mortgage loan and/or other financing for the development of Parcel A-3 under the DDA, when City is allocated and actually receives any amount of Sales Tax A-3, City shall deposit in the Fund for Available Reserves A-3 any amount by which Available Sales Tax A-3 exceeds the Annual Rent Amount A required for the applicable Lease Year. Any interest or other investment return earned on monies in the Fund for Available Reserves A-3 (determined by City in its absolute discretion), shall be added to the Fund and used for the same purposes and under the same conditions and limitations, provided for herein with respect to amounts deposited by City from Available Sales Tax A-3. Notwithstanding the foregoing, in no event shall City be required to deposit into the Fund for Available Reserves A-3

(including any interest added thereto) in excess of [Five Hundred Eighty-Eight Thousand Ninety Six Dollars (\$588,096) - need to discuss allocating this amount among three A parcels] for the entire term of this Lease, independent of whether or how much of such deposits are withdrawn to cover current or past shortfalls in Annual Rent Amount A-3. Provided however, that on the earlier of (a) the end of the tenth Lease Year, or (b) the July 1 next following the first Lease Year in which Available Sales Tax A-3 is greater than 1.5 times the Annual Rent Amount A-3, the maximum cumulative limit on deposits into the Fund for Available Revenues A-3 shall be reduced to an amount equal to the greater of (i) the Annual Rent Amount A-3, or (ii) the amount theretofore withdrawn by City from the Fund for Available Reserves A-3 to cover current or past shortfalls in Annual Rent Amount A-3. Any balance in the Fund for Available Reserves A-3 in excess of such revised limit may be immediately withdrawn by City.

Section 1.08.

a. Parcel A-1. Upon the prior written approval of City, Lessor may assign its rights to receive the Base Rent A-1 and Additional Rent A-1 due under this Lease to one or more construction or permanent lenders (each a "Lender") that makes a construction or permanent loan secured by all or any portion of Parcel A-1. Such assignment shall be made pursuant to a written agreement reasonably satisfactory to City in form and substance.

Notwithstanding the foregoing, City shall not be obligated to pay any portion of the Base Rent A-1, or any Annual Payment related thereto, to any person other than Lessor unless City is notified by Lessor in writing of the name of any Lender to which payment of the Base Rent A-1, and the Annual Payments related thereto, are to be paid directly, the amount to be paid to such Lender, and the address to which such payment is to be sent. City shall not be liable for any failure on the part of Lessor to give such notice to City or if City for any reason does not actually receive any such notice.

In the event that Lessor defaults on its obligations to any Lender, or defaults as the Developer on its obligations to the Agency under the DDA, and such Lender elects to assume the obligations of Lessor (as the Developer) pursuant to Section 320 of the DDA, Lessor may assign its rights under this Lease to such Lender with the prior written approval of City and City shall pay the Base Rent A-1, and the Annual Payments related thereto, directly to such Lender as provided for in this Lease. Such assignment shall be made pursuant to a

written agreement reasonably satisfactory to City in form and substance.

b. Parcel A-2. Upon the prior written approval of City, Lessor may assign its rights to receive the Base Rent A-2 and Additional Rent A-2 due under this Lease to one or more construction or permanent lenders (each a "Lender") that makes a construction or permanent loan secured by all or any portion of Parcel A-2. Such assignment shall be made pursuant to a written agreement reasonably satisfactory to City in form and substance.

Notwithstanding the foregoing, City shall not be obligated to pay any portion of the Base Rent A-2, or any Annual Payment related thereto, to any person other than Lessor unless City is notified by Lessor in writing of the name of any Lender to which payment of the Base Rent A-2, and the Annual Payments related thereto, are to be paid directly, the amount to be paid to such Lender, and the address to which such payment is to be sent. City shall not be liable for any failure on the part of Lessor to give such notice to City or if City for any reason does not actually receive any such notice.

In the event that Lessor defaults on its obligations to any Lender, or defaults as the Developer on its obligations to the Agency under the DDA, and such Lender elects to assume the obligations of Lessor (as the Developer) pursuant to Section 320 of the DDA, Lessor may assign its rights under this Lease to such Lender with the prior written approval of City and City shall pay the Base Rent A-2, and the Annual Payments related thereto, directly to such Lender as provided for in this Lease. Such assignment shall be made pursuant to a written agreement reasonably satisfactory to City in form and substance.

c. Parcel A-3. Upon the prior written approval of City, Lessor may assign its rights to receive the Base Rent A-3 and Additional Rent A-3 due under this Lease to one or more construction or permanent lenders (each a "Lender") that makes a construction or permanent loan secured by all or any portion of Parcel A-3. Such assignment shall be made pursuant to a written agreement reasonably satisfactory to City in form and substance.

Notwithstanding the foregoing, City shall not be obligated to pay any portion of the Base Rent A-3, or any Annual Payment related thereto, to any person other than Lessor unless City is notified by Lessor in writing of the name of any Lender to which payment of the Base Rent A-3, and the Annual Payments related thereto, are to be paid directly,

the amount to be paid to such Lender, and the address to which such payment is to be sent. City shall not be liable for any failure on the part of Lessor to give such notice to City or if City for any reason does not actually receive any such notice.

In the event that Lessor defaults on its obligations to any Lender, or defaults as the Developer on its obligations to the Agency under the DDA, and such Lender elects to assume the obligations of Lessor (as the Developer) pursuant to Section 320 of the DDA, Lessor may assign its rights under this Lease to such Lender with the prior written approval of City and City shall pay the Base Rent A-3, and the Annual Payments related thereto, directly to such Lender as provided for in this Lease. Such assignment shall be made pursuant to a written agreement reasonably satisfactory to City in form and substance.

Section 1.09.

a. Parcel A-1. Notwithstanding any other provision of this Lease, if City has made, or is treated as if having made pursuant to paragraph a. of Section 1.04 above, the Base Rent A-1 and Additional Rent A-1 payments in compliance with the provisions of Article 1 of this Lease for transactions occurring on Parcel A-1 for thirty (30) Lease Years beginning with the Term Commencement Date A-1, the Base Rent A-1, and any Additional Rent A-1, shall be deemed to have been completely paid, even if the sum of such installments totals less than otherwise required by this Lease.

b. Parcel A-2. Notwithstanding any other provision of this Lease, if City has made, or is treated as if having made pursuant to paragraph b. of Section 1.04 above, the Base Rent A-2 and Additional Rent A-2 payments in compliance with the provisions of Article 1 of this Lease for transactions occurring on Parcel A-2 for thirty (30) Lease Years beginning with the Term Commencement Date A-2, the Base Rent A-2, and any Additional Rent A-2, shall be deemed to have been completely paid, even if the sum of such installments totals less than otherwise required by this Lease.

c. Parcel A-3. Notwithstanding any other provision of this Lease, if City has made, or is treated as if having made pursuant to paragraph c. of Section 1.04 above, the Base Rent A-3 and Additional Rent A-3 payments in compliance with the provisions of Article 1 of this Lease for transactions occurring on Parcel A-3 for thirty (30) Lease Years beginning with the Term Commencement Date A-3, the Base Rent A-3, and any Additional Rent A-3, shall be deemed to have been

completely paid, even if the sum of such installments totals less than otherwise required by this Lease.

7. Parking Area: Miscellaneous Conditions. Section 2.02 is hereby amended in its entirety to read as follows:

Section 2.02. City's obligation to lease the Parking Area pursuant to this Lease is subject to the satisfaction of the following conditions, which are solely for City's benefit unless otherwise indicated:

Delivery of Possession

(a) The delivery of possession of the Parking Area to City at the start of the Lease Term, free and clear of all uses and occupancies except those approved in writing by City. City hereby consents to the use and occupancy of the Parking Area for parking purposes by all tenants of Parcel A, and by their employees, customers, invitees, and guests, provided such uses do not interfere with use of the Parking Area for a Park and Ride facility.

Completion of Construction on Parcel A-1

(b) The completion by Lessor of not less than 190,000 square feet of improvements on Parcel A-1 in the approximate locations set forth in the plan in Exhibit _____ which is attached to this Lease and hereby incorporated by reference ("the "Improvements") or any modification of the Improvements duly approved by City. Completion of the Improvements shall be evidenced by the issuance of a certificate by a licensed architect stating that all required construction necessary for occupancy of the Improvements, both exterior and interior, other than tenant signage and tenant improvements, has been completed.

8. Conditions to Payment of Rent. A new Section 2.02A is hereby added to the Lease to read as follows:

Section 2.02A. City's obligation to pay Rent pursuant to this Lease is subject to the satisfaction of the following conditions, which are solely for City's benefit unless otherwise indicated:

a. Parcel A-1. The completion by Lessor of not less than 189,115 square feet of improvements on Parcel A-1 (or, in the alternative, 213,095 square feet if Lessor exercises its right to include Building X as part of Parcel A-1 rather than as part of Parcel A-3) in the approximate locations set forth in the plan in Exhibit H

which is attached to this Lease and hereby incorporated by reference ("the "A-1 Improvements") or any modification of the A-1 Improvements duly approved by City. Completion of the A-1 Improvements shall be evidenced by the issuance of a certificate by a licensed architect stating that all required construction necessary for occupancy of the A-1 Improvements, both exterior and interior, other than tenant signage and tenant improvements, has been completed.

b. Parcel A-2. The completion by Lessor of not less than 57,035 square feet of improvements on Parcel A-2 in the approximate locations set forth in the plan in Exhibit H ("the "A-2 Improvements") or any modification of the A-2 Improvements duly approved by City. Completion of the A-2 Improvements shall be evidenced by the issuance of a certificate by a licensed architect stating that all required construction necessary for occupancy of the A-2 Improvements, both exterior and interior, other than tenant signage and tenant improvements, has been completed.

c. Parcel A-3. The completion by Lessor of not less than 52,730 square feet of improvements on Parcel A-3 (or, in the alternative, 28,750 square feet if Lessor exercises its right to include Building X as part of Parcel A-1 rather than as part of Parcel A-3) in the approximate locations set forth in the plan in Exhibit H ("the "A-3 Improvements") or any modification of the A-3 Improvements duly approved by City. Completion of the A-3 Improvements shall be evidenced by the issuance of a certificate by a licensed architect stating that all required construction necessary for occupancy of the A-3 Improvements, both exterior and interior, other than tenant signage and tenant improvements, has been completed.

9. Parking Area: Term of Lease. Section 2.03 is hereby amended in its entirety to read as follows:

Term of Lease

Section 2.03. The lease term shall commence on the first to occur of Term Commencement Date A-1, Term Commencement Date A-2 or Term Commencement Date A-3, and shall continue until the last to occur of Termination Date A-1, Termination Date A-2 or Termination Date A-3 (hereafter referred to as the "Lease Term"), unless terminated earlier in accordance with the terms of this Lease. Each consecutive twelve (12) month period is a "Lease Year." Upon the commencement of the Lease Term, the parties agree to execute an acknowledgment evidencing the date

of such commencement. Except as otherwise expressly set forth herein, City shall have no right to extend the Lease Term. Upon the termination or expiration of the Lease Term, City shall immediately surrender possession of the Parking Area to Lessor or its successors or assigns, and shall not allow delay in said transfer of possession for any reason.

Lessor shall have the right to terminate the Lease Term prior to the end of the Lease Term by giving written notice of termination to City, in the event City fails to pay any Base Rent A or Additional Rent A as required by this Lease, provided Lessor has first given City written notice of such failure, and thirty (30) days from the date of such notice have elapsed without cure of the default by City. Such remedy shall be in addition to any other remedies Lessor may have for such failure.

10. Miscellaneous Amendments. The exhibits and attachments to the Lease are hereby amended to the extent necessary to conform to the provisions of this Amendment. The Agency Executive Director or designee is hereby authorized to make such changes to the documents attached to the Lease as may be necessary to conform to the provisions of this Lease.

11. Actions to Effectuate this Amendment. The parties agree to execute such other instruments, memoranda, agreements and amendments to documents as may be necessary or appropriate to effectuate the Lease, as amended by this Amendment. The City Manager (or his designee) is hereby authorized to execute such memoranda of agreements with the Lessor as the City Manager and City Attorney (or his designee) may deem appropriate for the proper interpretation and implementation of the terms of this Amendment, including such corrections or modifications to the terms of this Amendment as the City Manager (or designee) and City Attorney (or designee) may deem appropriate and consistent with the purposes of this Amendment.

12. Lease to Remain in Effect. Except as expressly provided otherwise in this Amendment, the Lease remains in full force and effect, enforceable in accordance with its terms.

13. Counterparts; Date of Amendment. This Amendment is executed in five (5) duplicate originals, each of which is deemed to be an original, and may be signed in counterparts. This Amendment shall not be effective until it has been mutually executed by Lessor and City. Upon such mutual execution, the date of this Amendment for reference purposes shall be the date first set forth above.

IN WITNESS WHEREOF, the City and Lessor have executed this Agreement.

Executed this _____ day of _____, 2002.

INTERNATIONAL GATEWAY ASSOCIATES, LLC
a Delaware limited liability company
(Lessor)

By: Gateway Retail Group, LLC,
a California limited liability
company
(Managing Member)

By: _____

Name: _____

Title: _____

CITY OF SAN DIEGO
(City)

By: _____

APPROVED AS TO FORM AND LEGALITY:

CASEY GWINN
City Attorney

By: _____

EXHIBIT A
MAP OF PARCEL A

[BEHIND THIS PAGE]

EXHIBIT B
LEGAL DESCRIPTION OF PARCEL A

[BEHIND THIS PAGE]

EXHIBIT C

PARKING AREA DESCRIPTION

[BEHIND THIS PAGE]

EXHIBIT D

RENT SCHEDULE A-1 (EXCLUDING BUILDING X)

[BEHIND THIS PAGE]

EXHIBIT E

RENT SCHEDULE FOR A-2 (EXCLUDING BUILDING X)

[BEHIND THIS PAGE]

EXHIBIT F

RENT SCHEDULE FOR A-3 (EXCLUDING BUILDING X)

[BEHIND THIS PAGE]

EXHIBIT G
RENT SCHEDULE FOR BUILDING X
[BEHIND THIS PAGE]

EXHIBIT H
PLAN FOR IMPROVEMENTS
[BEHIND THIS PAGE]