

ORDINANCE NUMBER O- 19237 (New Series)

ADOPTED ON NOV 17 2003

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A FIRST AMENDMENT TO THE THIRD AMENDED PUBLIC USE LEASE AGREEMENT WITH PDP IMPERIAL PARTNERS, LLC, FOR A PARK 'N' RIDE FACILITY THAT WILL BE DEVELOPED AS A PART OF THE IMPERIAL MARKETPLACE DEVELOPMENT LOCATED IN THE CENTRAL IMPERIAL REDEVELOPMENT PROJECT AREA.

WHEREAS, the Redevelopment Agency of the City of San Diego [Agency] is engaged in activities necessary to carry out and implement the Redevelopment Plan for the Central Imperial Redevelopment Project Area [Project]; and

WHEREAS, pursuant to that certain Disposition and Development Agreement by and between the Redevelopment Agency of the City of San Diego and Pacific Development Partners [Developer] dated September 9, 1999, as amended by a First Implementation Agreement to Disposition and Development Agreement dated April 16, 2000, a Second Implementation Agreement to Disposition and Development Agreement dated October 12, 2000, a Third Implementation Agreement to Disposition and Development Agreement dated January 10, 2001, and a Fourth Implementation Agreement to Disposition and Development Agreement dated OCT 21 2003, 2003 [DDA], the City of San Diego and Developer entered into that certain Third Amendment and Restated Public Use Lease dated January 10, 2001 [Original Lease] for the lease of the certain Park and Ride Parcel; and

WHEREAS, the redevelopment of the site involves construction of certain improvements set forth specifically in the DDA, which may be constructed in multiple phases; and

WHEREAS, under the DDA, Developer is required to construct improvements on a portion of the Site referred to as "Park and Ride Parcel" which is also shown on the map attached hereto as Attachment 2, and is more particularly described in Attachment 3; and

WHEREAS, in connection with its transportation planning and to further mitigate environmental impacts generated by proposed development within the City, City desires to increase the opportunity for persons to participate in mass transit by making available convenient Park and Ride facilities to the general public; and

WHEREAS, the Developer proposes to undertake certain improvements to the Park and Ride Parcel and the Site pursuant to the Agreement, which is expected to affect the City's transportation planning; and

WHEREAS, the City and Developer hereby agree that the Third Amended and Restated Public Use Lease by and between the City of San Diego, as lessee, and Developer, as lessor, dated January 10, 2001, shall be amended by a First Amendment to Third Amended and Restated Public Use Lease in the form attached hereto as Attachment No. 1 which shall reduce both the amount of the Base Rent and the available Reserves Fund established in the Third Amended and Restate Public Use Lease from \$3,360,000 to \$2,729,516.53, and \$821,907; and

WHEREAS, the creation of the reserve fund will allow transfer of monies to the new reserves fund to be drawn upon by the City for the annual payments on the First Amendment to Third Amended and Restated Public Use Lease in the event that sales tax is insufficient to make the annual payment; and

WHEREAS, the revised annual lease payment ainounts are in accordance with Rent Schedule A, which is attached as Exhibit B to the First Amendment to Third Amended and Restated Public Use Lease; NOW, THEREFORE,

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

Section 1: That the Third Amended Public Use Lease Agreement with PDP Imperial partners LLC, for a Park 'N' Ride Facility is approved.

Section 2: That the Auditor and Comptroller is directed to establish a reserve fund as set forth in the First Amendment to the Third Amended and Restated Public Use Lease.

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: That this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By



Douglas K. Humphreys
Deputy City Attorney

DKH:dm:ai
10/17/03
Or.Dept: SEDC
Aud.Cert:2400428
O-2004-49
Redv:RA-2004-45

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ATTACHMENT NO. 1

Recording Requested by:

CITY OF SAN DIEGO
City Administration Building
202 "C" Street, M.S. 9B
San Diego, California 92101-4155

When Recorded Return to and
Mail Tax Statements to:

c/o Pacific Development Partners, LLC
177 South Beverly Drive
Beverly Hills, California 90212
Attn: Mark Burger

SPACE ABOVE THIS LINE FOR RECORDING USE

FIRST AMENDMENT TO THIRD AMENDED AND RESTATED PUBLIC USE LEASE

THIS FIRST AMENDMENT TO THIRD AMENDED AND RESTATED PUBLIC USE LEASE (the "Lease Amendment") is entered into by and between PDP IMPERIAL PARTNERS LLC, a California Limited Liability Company ("Lessor"), and the CITY OF SAN DIEGO ("City"), a charter city.

RECITALS

A. Pursuant to that certain Disposition and Development Agreement by and between the Redevelopment Agency of the City of San Diego and Lessor dated September 9, 1999, as amended by a First Implementation Agreement to Disposition and Development Agreement dated April 16, 2000, a Second Implementation Agreement to Disposition and Development Agreement dated October 12, 2000, a Third Implementation Agreement to Disposition and Development Agreement dated January 10, 2001 and a Fourth Implementation Agreement to Disposition and Development Agreement dated _____, 2003 (collectively the "DDA"), the City of San Diego and the Lessor entered into that certain Third Amended and Restated Public Use Lease dated January 10, 2001 (the "Original Lease") for the lease of the certain "Park and Ride Parcel" as more particularly described in Exhibit A attached hereto.

B. All terms used herein shall have the same meanings set forth in the Original Lease unless otherwise defined.

C. As a result of certain revisions to the DDA as described and set forth in the Fourth Implementation Agreement to Disposition and Development Agreement, the parties hereby agree to enter into this Lease Amendment to effectuate certain amendments and modifications to the Original Lease as hereinafter provided in this Lease Amendment.

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

1. Base Rent. Section 1.02A(b) is hereby deleted and replaced in its entirety with the following:

(b) "Base Rent" shall mean an amount of Two Million Seven Hundred Twenty-Nine Thousand Five Hundred Sixteen Dollars and Fifty-Three Cents (\$2,729,516.53) which amount shall constitute the entire amount of Base Rent outstanding attributable to the entire Term of the Lease. Except as otherwise provided herein, the Base Rent shall be paid exclusively from Available Sales Tax.

2. Annual Rent Amount. Section 1.02A(f) is hereby deleted and replaced in its entirety as follows:

(f) "Annual Rent Amount" shall mean the semi-annual or annual scheduled payments of Base Rent owed by City and payable to Lessor the First Partial Lease Year, each Lease Year and Final Partial Lease Year, or portion thereof, as shown on Rent Schedule A, which is attached hereto as Exhibit B.

3. Available Reserves Fund. Section 1.017 is hereby deleted and replaced in its entirety with the following:

As security for and to facilitate City's obligation to make the Annual Payments to Lessor, City agrees to establish in its accounts a reserve fund (the "Available Reserves Fund" or "Fund"), which shall only be drawn upon by City, pursuant to the terms of this Lease, to pay toward any Annual Payment in any Lease Year or the Final Partial Lease Year, as applicable, in which Available Sales Tax is insufficient to pay the Annual Rent Amount in full, or to pay toward any Annual Payment obligation which accrued in any previous lease period, subject to the terms and limitations of this Lease, when the Available Sales Tax for any Lease Year or the Final Partial Lease Year and funds in the Available Reserves Fund as of the end of the immediately

preceding First Partial Lease Year and Lease Year are insufficient to pay the Annual Rent Amount. Commencing with the First Partial Lease Year after the Term Commencement Date and concluding at the point in time when an aggregate amount of Eight Hundred Twenty-One Thousand Nine Hundred and Seven Dollars (\$821,907)(i.e. \$273,969 x 3 Lease Years) has been placed into the Available Reserve Fund, City, following allocation and actual receipt of any amount of Sales Tax, shall deposit into the Available Reserves Fund any and all amounts by which Available Sales Tax exceeds the Annual Rent Amount required for the First Partial Lease Year, each successive Lease Year and Final Partial Lease Year as set forth in the Rent Schedule A (Exhibit D). However, notwithstanding anything contained in the preceding sentence to the contrary, following the deposit of Two Hundred Seventy-Three Thousand Nine Hundred Sixty-Nine Dollars (\$273,969) of excess Available Sales Tax into the Available Reserves Fund by City, the deposit requirement shall be reduced to fifty (50%) of any and all amounts by which Available Sales Tax exceeds the Annual Rent Amount required for the First Partial Lease Year, each successive Lease Year and Final Partial Lease Year as set forth in the Rent Schedule A (Exhibit B). Any interest or other investment return earned on monies in the Available Reserves Fund (determined by City in its absolute discretion), shall be added to the Available Reserves 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.

Notwithstanding anything contained herein to the contrary, in no event shall City be required to deposit into the Available Reserves Fund (including any interest added thereto) any amount in excess of an aggregate amount of Eight Hundred Twenty-One Thousand Nine Hundred and Seven Dollars (\$821,907). Moreover, following the complete funding of the Available Reserves Fund, City shall have no further obligation to make available or place any additional Available Sales Tax or any other funds into the Available Reserves Fund. In addition, Lessor shall not be entitled to any additional payment of Available Sales Tax or other funds from the City in the event that Available Sales Tax is less than an Annual Payment Amount for any particular Lease Year or Final Partial Lease Year following the complete funding of the Available Reserves Fund by the City and the payment of all proceeds previously deposited into the Available Reserves Fund to the Lessor pursuant to Section 1.017 of this Lease.

However, notwithstanding the funding requirements and limitations of the City with respect to the Available Reserves Fund set forth in this Lease, all proceeds may be immediately withdrawn from the Available Reserves Fund by the City at any such point in time following the first Lease Year in which

the amount of Available Sales Tax is equal to or greater than three (3) times the Annual Rent Amount of a Lease Year. Said withdrawal may take place without regard to the amount of proceeds in the Available Reserves Fund and/or whether the City has completely funded the Available Reserves Fund at the time of such withdrawal by the City.

4. Term Commencement Date. The "Term Commencement Date" occurred on January 7, 2002. Within ninety (90) days after the full execution of this Lease Amendment, City shall pay Lessor all sums previously owed and presently due and payable through the date of such payment, none of which have been paid to date.

5. Original Lease. Except as modified by this Lease Amendment, all terms and conditions set forth, including but not limited to all of the obligations of the parties thereto, shall remain in full force and effect.

Dated this _____ day of _____, 2003

CITY OF SAN DIEGO,
a Charter City
(City)

Date: _____

By: _____
City Manager

PDP IMPERIAL PARTNERS, LLC, a
California Limited Liability Company
(Lessor)

Date: _____

By: _____
Ronald A. Recht
Its: Manager

Date: _____

By: _____
Mark T. Burger
Its: Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM AND LEGALITY:

CASEY GWINN
City Attorney

By: _____
Deputy

APPROVED:

KANE, BALLMER & BERKMAN
City Special Counsel

By: _____
Royce K. Jones

EXHIBIT B

Rent Schedule A

Amortization Schedule

<u>Payment</u>	<u>Annual Rent Amount</u>	<u>Scheduled Principal Payment Amount</u>	<u>Scheduled Interest Payment Amount</u>	<u>Balance of Base Rent Amount</u>
				\$2,729,517
1 ¹	(\$136,985)	(\$28,271)	(\$108,713)	\$2,701,245
2	(\$273,969)	(\$60,039)	(\$213,930)	\$2,641,206
3	(\$273,969)	(\$65,023)	(\$208,947)	\$2,576,183
4	(\$273,969)	(\$70,409)	(\$203,550)	\$2,505,764
5	(\$273,969)	(\$76,274)	(\$197,705)	\$2,429,499
6	(\$273,969)	(\$82,594)	(\$191,375)	\$2,346,905
7	(\$273,969)	(\$89,449)	(\$184,520)	\$2,257,456
8	(\$273,969)	(\$96,874)	(\$177,096)	\$2,160,582
9	(\$273,969)	(\$104,914)	(\$169,055)	\$2,055,668
10	(\$273,969)	(\$113,622)	(\$160,347)	\$1,942,046
11	(\$273,969)	(\$123,053)	(\$150,917)	\$1,818,993
12	(\$273,969)	(\$133,266)	(\$140,703)	\$1,685,727
13	(\$273,969)	(\$144,327)	(\$129,642)	\$1,541,401
14	(\$273,969)	(\$156,306)	(\$117,663)	\$1,385,095
15	(\$273,969)	(\$169,279)	(\$104,690)	\$1,215,815
16	(\$273,969)	(\$183,329)	(\$90,640)	\$1,032,486
17	(\$273,969)	(\$198,546)	(\$75,424)	\$833,941
18	(\$273,969)	(\$215,025)	(\$58,945)	\$618,916
19	(\$273,969)	(\$232,872)	(\$41,098)	\$386,044
20	(\$273,969)	(\$252,200)	(\$21,769)	\$133,844
21 ²	(\$136,985)	(\$133,844)	(3,140)	(\$0)

¹/First Partial Year

²/Final Partial Year

1st Amd-Public Use Lease
4/21/03
Final Version

0 - 19237

ATTACHMENT 2
PARCEL MAP

ATTACHMENT 3
LEGAL DESCRIPTION

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