

ORDINANCE NUMBER O- 19344 (NEW SERIES)

ADOPTED ON DEC 07 2004

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDED AND RESTATED SECOND AMENDMENT TO THE PUBLIC USE LEASE AGREEMENT (PARCEL A-1) WITH INTERNATIONAL GATEWAY ASSOCIATES, LLC.

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

WHEREAS, the City previously entered into an Amendment to Public Use Lease for Parcel A (public parking) with International Gateway Associates, LLC which was approved by Council on December 9, 2003, by Ordinance No. OO-19252; and

WHEREAS, the City previously entered into a Second Amendment to Public Use Lease for Parcel A (public parking) with International Gateway Associates, LLC which was approved administratively and dated August 17, 2004; and

WHEREAS, the City and International Gateway Associates, LLC desire to amend the Lease to provide for a minor modification to the Plan for Improvements for Parcel A-1 and physical location of parking spaces; and

WHEREAS, the City and International Gateway Associates, LLC desire to amend the Lease to provide for a relief of responsibility to construct improvements on former Parcel A-2 as they relate to the Term Commencement Date;” and

WHEREAS, the City Council has determined that the Public Use Lease advances important public policies, including the Park and Ride capabilities afforded by the Public Use

Lease, and it has been, and continues to be, the intent of the City Council that the various permits and approvals issued by the City of San Diego with respect to the Las Americas Project (including without limitation the Coastal Development Permit/Site Development Permit No. 40-338 approved on November 2, 2000, by City Council Resolution No. R-294284) should not be interpreted or construed as being inconsistent with, or otherwise prohibiting or interfering with, the uses contemplated by the Public Use Lease; NOW, THEREFORE,

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

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

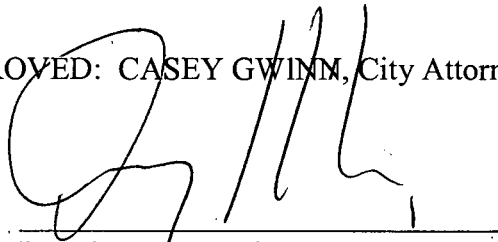
Section 2. That the City Manager is authorized to execute, for and on behalf of the City of San Diego, the Second and Restated Amendment to the Public Use Lease Agreement (Parcel A-1), with International Gateway Associates, LLC under the terms and conditions set forth in that Amended and Restated Second Amendment on file in the office of the City Clerk as Document No. OO- 19344.

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



Douglas K. Humphreys
Deputy City Attorney

DKH:ai
10/26/04
Or.Dept:REDV
O-2005-58

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

International Gateway Associates, LLC
Attn: JER International Gateway LLC
c/o JER Partners (JC Richards)
1650 Tysons Boulevard, Suite 1600
McLean, Virginia 22102

AMENDED AND RESTATED SECOND AMENDMENT TO PUBLIC USE LEASE

(Parcel A-1)

AMENDED AND RESTATED SECOND AMENDMENT TO PUBLIC USE LEASE

(Parcel A-1)

This Amended and Restated Second Amendment to Public Use Lease (this "Amendment") is entered into as of _____, 2004, 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. Existing Lease. Lessor and City have entered into that certain Public Use Lease dated March 20, 2001 (the "Lease"), relating to certain real property referred to therein as "Parcel A." The Lease has been amended by that certain Amendment to Public Use Lease dated November 18, 2003 (the "First Amendment") and by that certain Second Amendment to Public Use Lease dated August 17, 2004 and filed in the Office of the City Clerk for the City of San Diego on September 14, 2004 as Document No. 00-18932-1 (the "Former Second Amendment" and, collectively with the Lease and First Amendment, the "Existing Lease"). Any capitalized terms not otherwise defined in this Amendment shall have the meaning ascribed to such terms in the Existing Lease.

B. Purpose. Lessor and the City now wish to enter into this Amendment in order to replace and supercede the terms of the Former Second Amendment and to further amend the provisions of the Lease, all as set forth herein.

Agreement

NOW, THEREFORE, in consideration of the covenants and conditions hereafter contained and subject to the following terms and conditions, Lessor and City amend the Existing Lease in accordance with the terms of this Amendment. The Former Second Amendment is replaced in its entirety by the terms of this Amendment, and the Former Second Amendment shall have no further force or effect. All references herein or in the Existing Lease to the "Lease" henceforth shall be deemed to refer to the Existing Lease, as amended by this Amendment, and all references in the Lease to the "Second Amendment" shall mean this Amendment. The parties further agree as follows:

1. Property Subject to Lease; Parcel A-1; Map. The parties hereby agree that all references in the Lease to "Parcel A" henceforth shall be deemed to refer to Parcel A-1 as described on Exhibit A-1 attached hereto (which for all purposes henceforth shall be deemed to constitute "Parcel A-1" for purposes of the Lease), and except for Parcel A-1 as so described, no other portions of "Parcel A" (as defined in the Existing Lease) shall continue to be subject to the Lease. The Map of Parcel A referenced in the Existing Lease is hereby deleted. Lessor and City hereby acknowledge and agree that the rights and obligations of Lessor under the Existing Lease, as amended by this Amendment, shall be binding upon Lessor, as owner of Parcel A-1, and any successor owner(s) of Parcel A-1.

2. DDA. All references herein or in the Lease to the term "DDA" shall refer to that certain Disposition and Development Agreement entered into by LandGrant as of May 28, 1998 (as succeeded to by Lessor), and by the Agency as of May 29, 1998, as clarified and implemented by (1) that certain First Implementation Agreement dated February 23, 2000 (the "First Implementation Agreement"), (2) that certain Second Implementation Agreement dated November 27, 2000 (the "Second Implementation Agreement"), (3) that certain Third Implementation Agreement dated June 28, 2001 (the "Third Implementation Agreement"), (4) that certain Fourth Implementation Agreement dated May 28, 2002 (the "Fourth Implementation Agreement" and (5) that certain Fifth Implementation Agreement dated _____, 2004 (the "Fifth Implementation Agreement"), as the same may be further amended or implemented from time to time hereafter.

3. Parking Area Description. The Parking Area Description attached to the Existing Lease as Exhibit C is hereby replaced with the substitute Parking Area Description attached to this Amendment as Exhibit C. The parties agree that the Parking Area Description may be revised from time to time with the consent of the City Manager of the City of San Diego, provided that no such revision (a) shall diminish in any material respect the ability of the City to use the Parking Area for Park and Ride purposes or (b) shall relocate any portion of the Parking Area off Parcel A-1.

4. Plan for Improvements.

(a) The Plan for Improvements on DDA Parcel A, attached to the First Amendment as Exhibit F, is hereby replaced with the Plan for Improvements on DDA Parcel A-1 attached to this Amendment as Exhibit D.

(b) The second and third sentences of Section 5 of the First Amendment are hereby replaced by the following:

"The Plan for Improvements attached as Exhibit D to the Second Amendment to this Lease shows the general layout of approximately 188,272 square feet of retail, office, entertainment and/or food uses to be constructed on Parcel A-1 (the "Initial A Improvements"). The DDA further provides the Developer with an option to develop within Parcel A-I approximately 3,631 square feet of improvements for retail, office, entertainment and/or food uses within an expansion of Building D-2 identified on the Plan for Improvements as Building D-3 (it being understood that said optional improvements shall not constitute a portion of the Initial A Improvements for purposes of this Lease)."

(c) The reference in Section 2.02(b) of the Lease (as amended by Section 7 of the First Amendment) to Exhibit F to the Lease henceforth shall be deemed to refer to Exhibit D to this Amendment.

5. Amendments to Article 1 of the Lease (Regarding Rent). The parties intend (1) that the Lessor is to be relieved from any obligation to commence or complete any "Supplemental A Improvements", (2) that the former concept of additional rent being payable under the Lease from and after completion of "Supplemental A Improvements" is to be deleted

from the Lease, and (3) that the entire "Annual Rent Amount A-1" and the "Annual Rent Amount A-2" (including both the "Base Rent" and the "Additional Rent" components thereof) shall be payable from and after the Term Commencement Date A-1, notwithstanding the fact that no "Supplemental A Improvements" shall have been completed (and thus the Term Commencement Date A-2 shall be the same day as the Term Commencement Date A-1). In furtherance of these general intentions, the parties agree that Article 1 of the Lease (RENT), as amended by the First Amendment, is hereby further amended with Sections 5(a), (b) and (c) below:

(a) Section 1.01(g) of Article 1 is hereby amended and restated in its entirety to read as follows:

"(g) "Term Commencement Date" shall mean, as to both the Annual Rent Amount A-1 and the Annual Rent Amount A-2, the July 1 next following the date upon which the Initial A Improvements have been completed and the Parking Area Improvements referred to in Section 2.04, have been completed."

(b) Section 1.02 of Article 1 is hereby amended and restated in its entirety to read as follows:

"Section 1.02

a. Annual Rent Amount A. City hereby agrees to pay to Lessor for each Lease Year beginning with the Term Commencement Date A-1 and continuing until the Lease Year ending on the Termination Date A-1, the Annual Rent Amount A (including both the Annual Rent Amount A-1 and the Annual Rent Amount A-2), at which time any as yet unpaid Base Rent A-1, Base Rent A-2, Additional Rent A-1 or Additional Rent A-2 shall be deemed forgiven.

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

(c) Section 1.09 of Article 1 is hereby amended and restated in its entirety to read as follows:

"Section 1.09. Notwithstanding any other provisions of this Lease to the contrary, if City has made, or is treated as if having made pursuant to Section 1.04 above, the Base Rent A-1, Additional Rent A-1, Base Rent A-2 and Additional Rent A-2 payments in compliance with the provisions of this Article 1 for transactions occurring on Parcel A-1 for thirty (30) Lease Years beginning with the Term Commencement Date A-1, then the Base Rent A-1, the Additional Rent A-1, the Base Rent A-2 and the 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."

6. 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 intent of this Amendment and the Lease.

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

8. Counterparts; Date of Amendment. This Amendment may be executed in counterparts, each of which is deemed to be an original. 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 parties have executed this Amendment as of the date and year first above written.

INTERNATIONAL GATEWAY
ASSOCIATES, LLC, a Delaware limited
liability company

THE CITY OF SAN DIEGO, a California
municipal corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____ City Manager

APPROVED AS TO FORM AND
LEGALITY ON THIS ____ day
of _____, 2004.

City Attorney of the City of San Diego

By: _____
Name: _____

APPROVAL OF THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO

The Redevelopment Agency of the City of San Diego (the "Agency") acknowledges that it has reviewed the foregoing Amended and Restated Second Amendment to Public Use Lease (the "Amendment") and approves of the execution, delivery and performance of the Amendment. Further, the Agency agrees that it will take all actions reasonably necessary or appropriate in order to implement the transactions contemplated by the Amendment. The Agency acknowledges and agrees that the Lessor and its present and future lenders may rely upon the provisions of this paragraph in proceeding with the financing and redevelopment contemplated by, or otherwise reasonably necessary or appropriate to achieve the redevelopment contemplated by, the DDA.

THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO

By: _____
Name: _____
Title: _____ Executive Director

APPROVED AS TO FORM AND
LEGALITY ON THIS _____ day
of _____, 2004.

Agency General Counsel

By: _____
Name: _____

APPROVED:
KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Glenn F. Wasserman, Esq.

STATE OF CALIFORNIA,
COUNTY OF SAN DIEGO} S.S.

On _____, 2004, before me, _____ (here insert name and title of the officer), 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,
COUNTY OF SAN DIEGO} S.S.

On _____, 2004, before me, _____ (here insert name and title of the officer), 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.

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Signature _____

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Signature _____

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Signature _____

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COUNTY OF SAN DIEGO } S.S.

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WITNESS my hand and official seal.

Signature _____

STATE OF CALIFORNIA,
COUNTY OF SAN DIEGO } S.S.

On _____, 2004, before me, _____ (here insert name and title of the officer), 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-1

Legal Description of Parcel A-1

Parcel 2 as shown on the 2004 West Side Map (as defined in the attached "Map Attachment").

THERE IS NO EXHIBIT B TO THIS AMENDMENT

EXHIBIT C

Parking Area Description

(Parcel A-1 Parking Area)

That portion of Lots 4, 8, 9 and 10 of International Gateway of the Americas Phase 1B, according to the map thereof No. 14406, filed in the Office of the County Recorder of San Diego County, June 13, 2002, described as follows:

COMMENCING at the northeast corner of Lot 9 of said Map 14406; thence South 20°05'29" West 13.69 feet to the **POINT OF BEGINNING**;

1. Thence South 0°00'00" East 130.00 feet;
2. Thence North 90°00'00" West, 67.17 feet;
3. Thence South 00°00'00" East, 129.08 feet;
4. Thence North 90°00'00" East, 67.17 feet;
5. Thence South 0°00'00" East 29.42 feet;
6. Thence South 74°57'58" West, 86.15 feet;
7. Thence South 62°18'09" West, 151.79 feet;
8. Thence North 90°00'00" West, 110.70 feet;
9. Thence South 0°00'00" West, 240.97 feet;
10. Thence North 90°00'00" West, 103.52 feet;
11. Thence North 0°00'00" East, 445.04 feet;
12. Thence South 90°00'00" East, 121.46 feet;
13. Thence North 0°00'00" East, 135.39 feet;
14. Thence North 70°20'28" East, 12.06 feet to a tangent curve concave to the south with a radius of 650.00 feet;
15. Thence easterly along the said curve through a central angle of 19°39'32", 223.02 feet;
16. Thence South 90°00'00" East 80.34 feet to the **POINT OF BEGINNING**;

Said land contains 144,716 square feet or 3.322 acres, more or less.

This legal description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Signature: _____

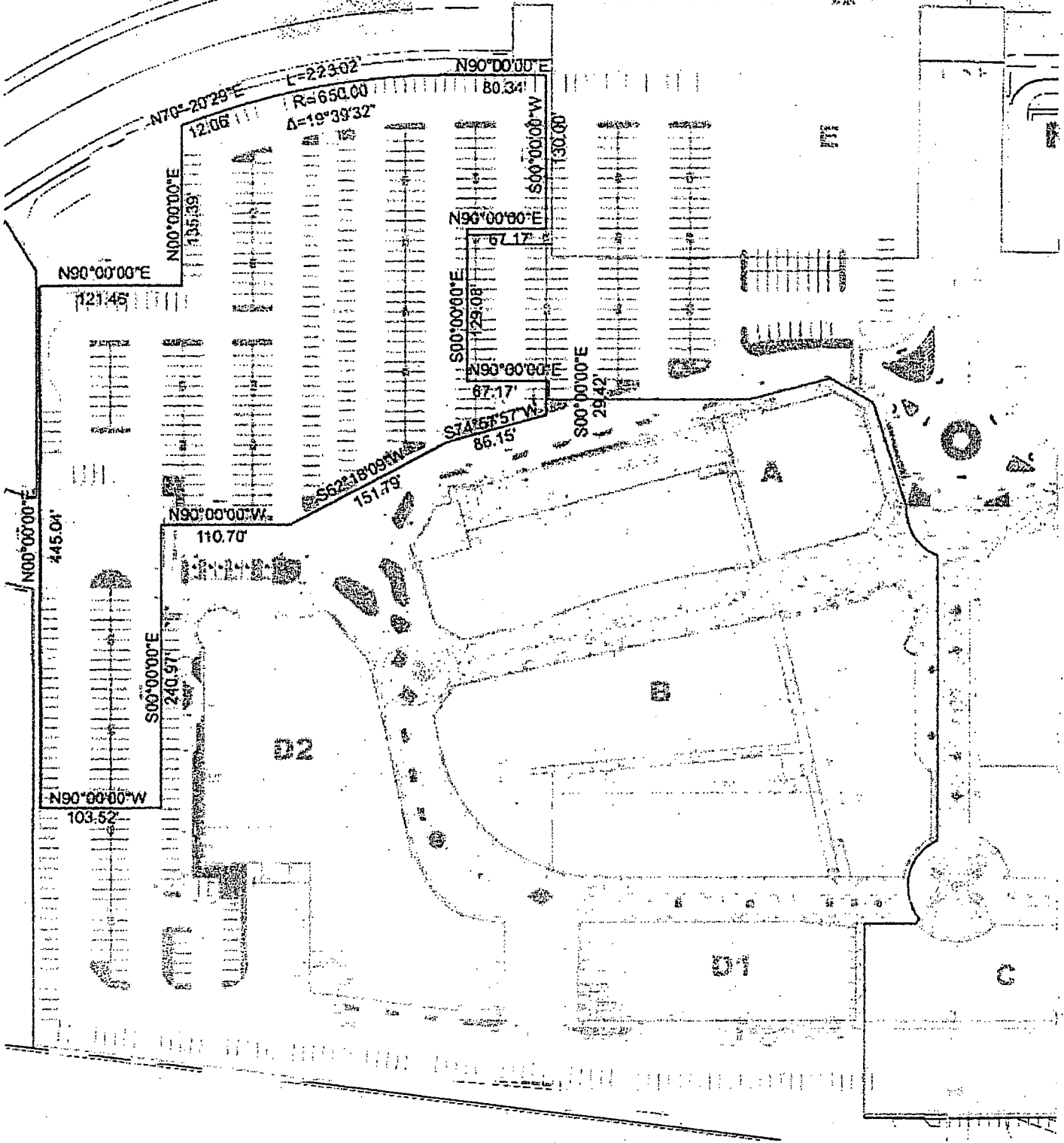
Robert M. Sergeant
Robert M. Sergeant, RCE 29685
License Expires 3/31/2007
Date: October 18, 2004





WILLOW

CAMINO DE LA PLAZA



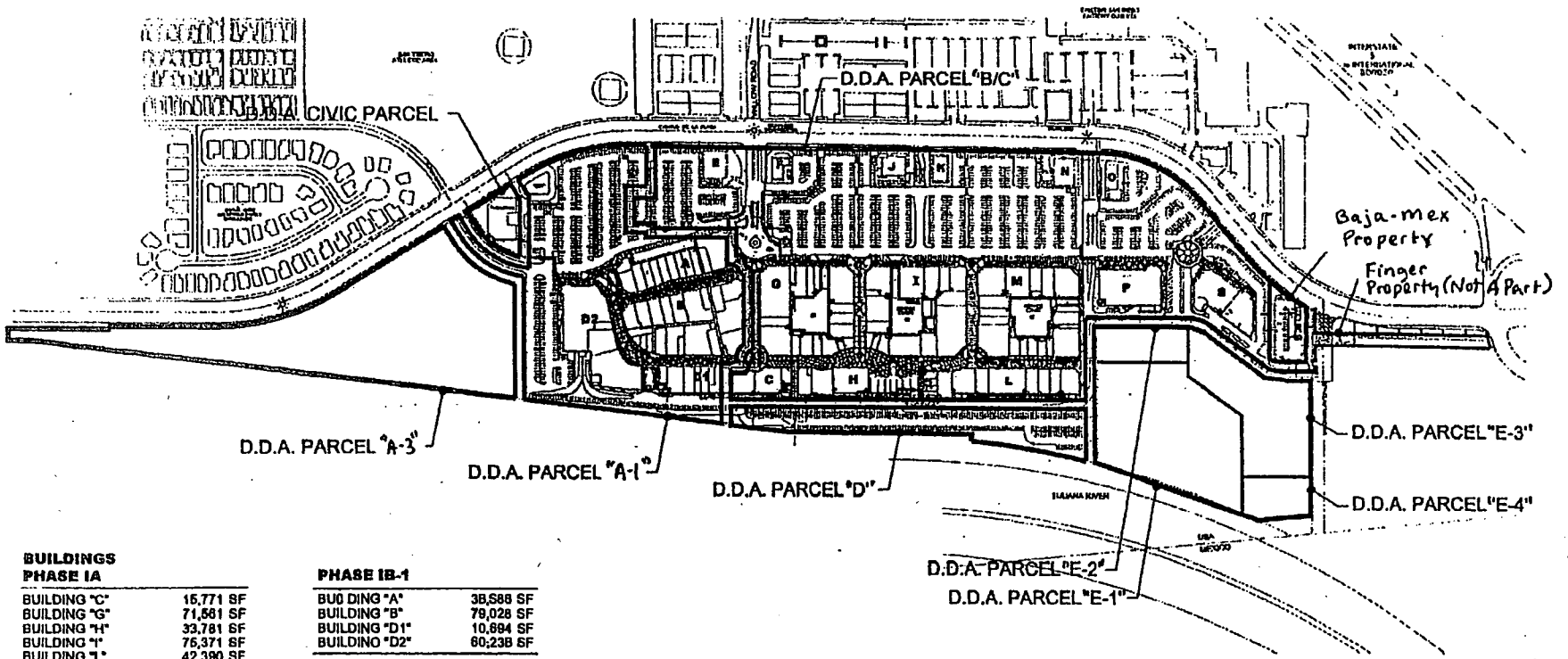
Parking Area for Public
Use Lease for Parcel A-1



PARSONS
110 WEST A STREET, SUITE 1050
SAN DIEGO, CA 92101
(619) 685-0085

EXHIBIT D

Plan for Improvements for DDA Parcel A-1



**BUILDINGS
PHASE IA**

BUILDING "C"	15,771 SF
BUILDING "G"	71,561 SF
BUILDING "H"	33,781 SF
BUILDING "I"	75,371 SF
BUILDING "L"	42,390 SF
BUILDING "M"	76,787 SF
BUILDING "P"	26,192 SF
BUILDING "S"	23,892 SF

SUB-TOTAL 383,865 SF

PAD "F"	4,880 SF
PAD "J"	5,000 SF
PAD "K"	8,000 SF
PAD "N"	8,005 SF
PAD "O"	4,821 SF

SUB-TOTAL 25,508 SF

TOTAL PHASE 1A 389,391 SF

PHASE IB-1

BUILDING "A"	38,588 SF
BUILDING "B"	78,028 SF
BUILDING "D1"	10,894 SF
BUILDING "D2"	60,238 SF

SOB-TOTAL 187,643 SF

PAD "E" 8,000 SF

TOTAL OLA 195,643 SF

GRAND-TOTAL PHASE IA & IB-1 884,904 SF

0-19344



Las Americas
La Puerta • The Gateway



Douglas Wilson Companies

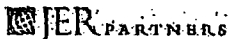
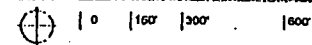


EXHIBIT 6-1
AMENDED SITE PLAN
19 OCTOBER, 2004



AWBREY
COOK
MCGILL

MAP ATTACHMENT

The following terms shall have the following meanings in the document to which this Map Attachment is attached (to the extent used therein):

2004 East Side Map: Map No. _____ recorded on _____, 2004 in the Official Records of the San Diego County Recorder's Office as File No. _____.

2004 West Side Map: Map No. _____ recorded on _____, 2004 in the Official Records of the San Diego County Recorder's Office as File No. _____.