

EXECUTIVE SUMMARY SHEET

DATE REPORT ISSUED: May 27, 2009

ATTENTION: Honorable Chair and Members of the Redevelopment Agency

ORIGINATING DEPT.: City Planning and Community Investment, Redevelopment Division
SUBJECT: Sixth Implementation Agreement to the Disposition and Development Agreement for the International Gateway Project

COUNCIL DISTRICT(S): Eight (8)
STAFF CONTACT: Robert Chavez, Redevelopment Coordinator, 236-6263
Xavier Del Valle, Project Manager, 236-6260

REQUESTED ACTION:

Approval of the Sixth Implementation Agreement to the Disposition and Development Agreement between the Redevelopment Agency and International Gateway Associates West, LLC for the International Gateway Project, whereby the Agency provides consent to the Assignment and Assumption of the DDA as it pertains to Parcel A-3, and related actions.

EXECUTIVE SUMMARY:

On May 12, 1998, the Redevelopment Agency (the Agency) entered into a Disposition and Development Agreement (the DDA) with Landgrant Development Unlimited for the development of the International Gateway Project (the Las Americas Project), a 1.4 million square foot mixed-use retail, office, and hotel center located on a 67-acre site on the western end of Camino de la Plaza within the San Ysidro Redevelopment Project Area (the Project Site). To date, this multi-phased project has realized the development of approximately 560,000 square feet of outlet retail and restaurant space, creating a popular shopping destination commonly known as The Shops at Las Americas. The purpose of the requested actions is to facilitate the implementation of the development of Parcel A-3 (the West Parcel), a vacant 8.4-acre parcel within the Project Site.

The Las Americas Project opened its doors November 2001, following Phase I's construction of 370,000 square feet of retail space. Phase IA was completed in Summer 2005, adding another 189,000 square feet of shopping space to the Project Site. Today, there remains approximately 17 acres of vacant land on the Project Site, which is currently in the planning stages of development. This vacant land is comprised of three sets of parcels including the West Parcel (8.4 acres), the East Parcel (8.0 acres), and the Finger Parcel (.4 acres) – please see Attachment 1 – Site Map. The vacant parcels are owned by JER Partners, the developer entity under the existing DDA. JER Partners is under contract to sell the West Parcel and the Finger Parcel to The Shamrock Group (Shamrock), an experienced and qualified development firm that desires to complete the Las Americas Project.

JER Partners (dba IGA West) has requested that the Agency consent to, among other things, the assignment of developer responsibilities under the DDA for the development of the West Parcel from JER Partners to Shamrock. As such, the proposed Sixth Implementation Agreement to the DDA (the Agreement) – see Attachment 2 – includes the following general provisions: 1) Agency consent to assignment to and assumption of the DDA by Shamrock; 2) Revisions to the Scope of Development relative to the West Parcel including removal of residential development and the Agency support of up to 95,000 square feet of commercial development; 3) Revisions to the Schedule of Performance to facilitate development of the West Parcel; 4) Addition of specific language as it relates to developer responsibilities and prevailing wages; 5) Restated Agency support for an iconic Message Center Sign on the Finger Parcel per the DDA; and 6) Revisions to the Agreement Affecting Real Property associated with the West Parcel.

Furthermore, please note that the Agreement only addresses the West Parcel. Pending further due diligence by Shamrock and Agency staff, it is anticipated that a Seventh Implementation Agreement will be presented to the Agency Board at a later date to facilitate Shamrock's assumption of developer responsibilities under the DDA for the development of the East Parcel. Shamrock generally intends to develop the Las Americas Project in two

phases. The first phase would consist of 95,000 square feet of commercial space on the West Parcel which would complement the existing outlet shopping center (see Attachment 3 – Site Plan). This development proposal shall be processed through the City’s development review process as it relates to the original development permit (Permit No. 40-0338) approved on April 2001. The Agreement would allow up to three years to begin construction of the West Parcel, in light of today’s unstable retail and financial markets. The second phase would include the development of the vacant East Parcel under a development plan that is yet to be determined. Shamrock intends to conduct planning and financial analyses to determine the best development plan for the East Parcel, and will present their findings to Agency staff for consideration within a few months.

Lastly, there is no Agency or City financial assistance associated with the acquisition or development of the West Parcel. However, there may be a future request for Agency financial assistance for the development of the East Parcel, subject to financial analysis and due diligence by Agency staff.

FISCAL CONSIDERATIONS:

None with this action.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

November 15, 2004 Agency/Council approval of the Fifth Implementation Agreement; May 28, 2002 Agency/Council approval of the Fourth Implementation Agreement; June 19, 2001 Agency approval of the Third Implementation Agreement; November 21, 2000 Agency approval of the Second Implementation Agreement; February 22, 2000 Agency approval of the First Implementation Agreement; and May 12, 1998 Agency/Council approval of the Disposition and Development Agreement.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On April 20, 2009, the San Ysidro Community Planning and Development Group voted unanimously 10-0-0 to recommend approval of the Sixth Implementation Agreement. The San Ysidro Project Area Committee’s (PAC) will consider the subject item on May 26, 2009. A verbal report will be given regarding the PAC’s recommendation.

KEY STAKEHOLDERS & PROJECTED IMPACTS:

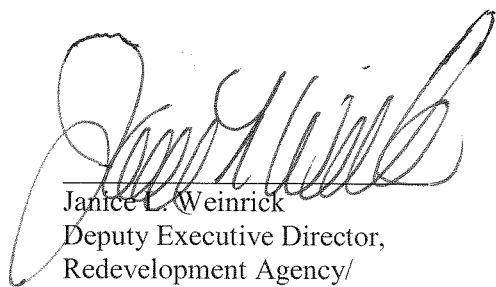
<u>Role</u>	<u>Firm/Contact</u>	<u>Ownership</u>
Developer	The Shamrock Group	Private
Owner of West Parcel	JER Partners	Private

EQUAL OPPORTUNITY CONTRACTING:

This development agreement is subject to the City’s Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2702) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

PREVIOUS AGREEMENTS:

If you would like to view the original Las Americas Disposition and Development Agreement and all five previous Implementation Agreements, please go to the following web link and go to Redevelopment Projects: <http://www.sandiego.gov/redevelopment-agency/sanysidr.shtml>



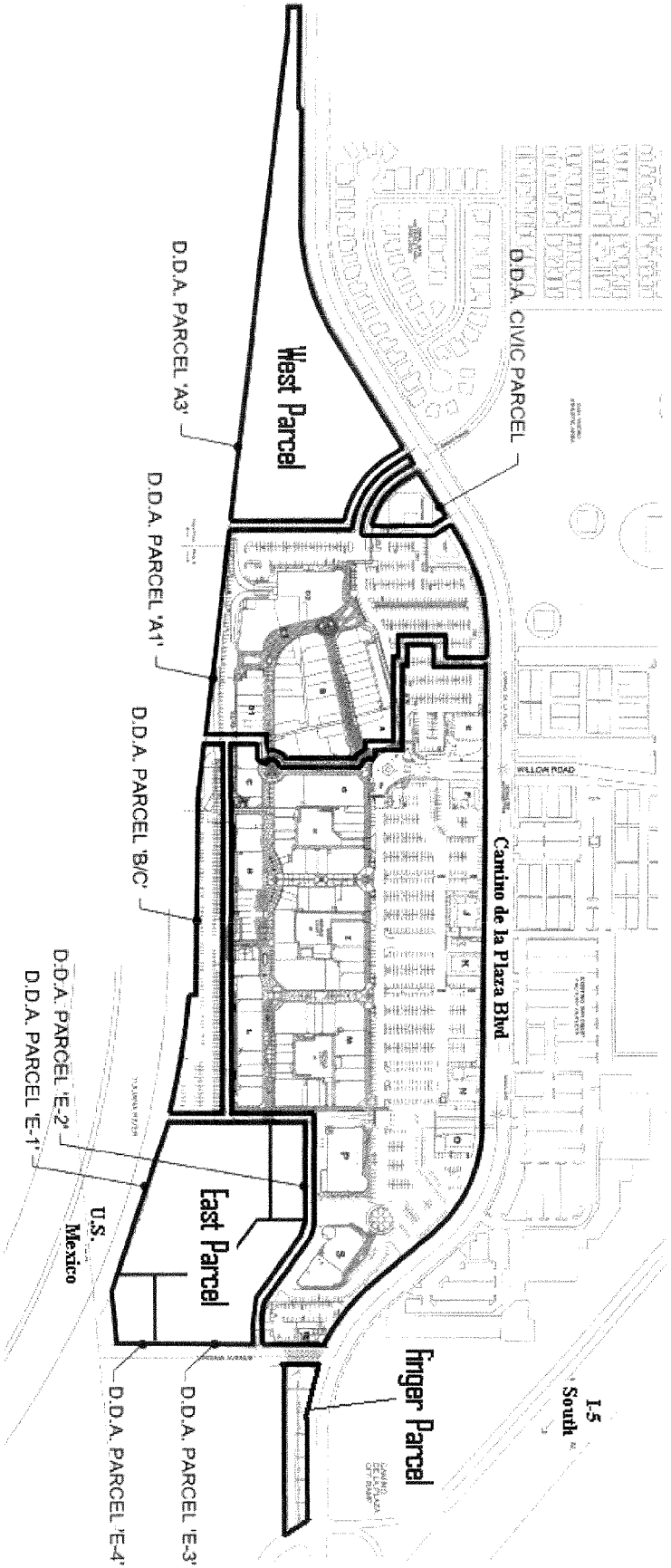
Janice L. Weinrick
Deputy Executive Director,
Redevelopment Agency/
Assistant Director,
City Planning & Community Investment



Approved: William R. Anderson
Assistant Executive Director,
Redevelopment Agency/
Director, City Planning & Community Investment

Attachment 1
Site Map
[Behind this Page]

Las Americas Project Site Map



Attachment 2
Proposed Sixth Implementation Agreement
[Behind this Page]

SIXTH IMPLEMENTATION AGREEMENT

This Sixth Implementation Agreement (Development Parcel A-3) (the "Sixth Implementation Agreement (Development Parcel A-3)") is made and entered into as of _____, 2009 ("Effective Date") by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO (the "Agency"), and INTERNATIONAL GATEWAY WEST, LLC, a Delaware limited liability company (the "Developer" or "IGA West" and together with the Agency, the "Parties").

Recitals

A. Existing DDA. LandGrant Development Unlimited, a California corporation ("LandGrant") and the Agency are the original parties under that certain Disposition and Development Agreement entered into by LandGrant as of May 28, 1998, and by the Agency as of May 29, 1998 (the "Original DDA"), 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 as of November 22, 2004 (the "Fifth Implementation Agreement" and, collectively, the "Existing DDA"). International Gateway Associates, LLC ("IGA") succeeded to all of the rights of LandGrant under the Existing DDA pursuant to an assignment instrument entered in March of 2000. The terms of the Existing DDA have been further clarified by (a) a letter dated March 10, 2000, by and between the Agency and IGA, (b) a letter dated September 21, 2001, among the Agency, IGA and certain entities affiliated with the Developer, including the B/C Developer (the "Clarification Letters").

B. Development Parcels; Prior Assignments of Development Parcels. The Existing DDA divides the property covered by the Existing DDA into various "Development Parcels." With the consent of the Agency, the rights of the Developer under the Existing DDA, insofar as they pertain to Development Parcels B/C and A-1 referenced in the Existing DDA, previously have been assigned by IGA to the party that purchased said Development Parcels from IGA. Separately, and also with the consent of the Agency, IGA previously has assigned to IGA West all rights of the Developer under the Existing DDA insofar as they pertain to Development Parcel A-3 referenced in the Existing DDA.

C. Reciprocal Easement Agreements. As per the requirements of the Existing DDA, and with the approval of the Agency, the Site (or portions thereof, as applicable) has been subjected to certain reciprocal easement agreements, including without limitation: (i) that certain Overall Reciprocal Easement Agreement and Cost Sharing Agreement—International Gateway of the Americas (San Diego, California) dated as of October 1, 2001 and recorded in the official records of the San Diego County Recorder on October 17, 2001 as Document No.

2001-0751836, as amended by an Amendment to Overall Reciprocal Easement and Cost Sharing Agreement dated as of June 12, 2002 and recorded in the official records of the San Diego County Recorder on June 13, 2002 as Document No. 2002-0503988 and as amended by that certain Second Amendment and Overall Reciprocal Easement and Cost Sharing Agreement dated as of November 22, 2004 and recorded in the official records of the San Diego County Recorder on December 21, 2004 as Document No. 2004-1200190 (the "Existing Overall REA"); (ii) that certain Subsequent B/C/D Declaration of Covenants Conditions and Restrictions and Grant and Reservation of Rights and Easements for Gateway Project (Initial Shopping Center Parcel and Parcel D)– International Gateway of the Americas (San Diego, California) dated as of October 1, 2001 and recorded in the official records of the San Diego County Recorder on October 17, 2001 as Document No. 2001-0751838 (the "Existing Parcel B/C/D Subsequent REA"); (iii) that certain Subsequent Parcel A Reciprocal Easement and Cost Sharing Agreement (Second Phase Shopping Center Property and Library Phase Property) dated as of June 13, 2002 and recorded in the official records of the San Diego County Recorder on June 13, 2002 as Document No. 2002-0503517 (the "Previous Parcel A Subsequent REA"), which has been terminated; and (iv) that certain Subsequent Parcel A-1/Civic Parcel/Parcel A-3 Reciprocal Easement and Cost Sharing Agreement dated as of November 22, 2004 and recorded in the official records of the San Diego County Recorder on January 13, 2005 as Document No. 2005-0035335 (the "Subsequent Parcel A-1/Civic Parcel/Parcel A-3 REA").

D. Development Permit. The Site is subject to that certain Coastal Development Permit/Site Development Permit No. 40-0338 issued by the City of San Diego (as clarified and implemented by the City's adoption and execution of the "Approval of the City of San Diego" dated December 13, 2004 that is attached to the Fifth Implementation Agreement, the "Development Permit"). The Existing DDA, the Existing Overall REA, the Existing Parcel B/C/D Subsequent REA, and Subsequent Parcel A-1/Civic Parcel/Parcel A-3 REA, and the Development Permit are collectively referred to herein as the "Governing Documents".

E. Purpose. The Existing DDA contemplates that the redevelopment of the Site will be effected on the various Development Parcels in various phases, and that the Agency and the pertinent developing parties may enter into subsequent implementation agreements from time to time as appropriate in order to further facilitate such redevelopment. The Parties now desire to enter into this Sixth Implementation Agreement (Development Parcel A-3) in order, among other things and subject to the terms and conditions of this Sixth Implementation Agreement (Development Parcel A-3), to modify the redevelopment contemplated for the phase involving Development Parcel A-3, and to effect certain additional changes to the nature and schedule for construction of the redevelopment within the Site and to make other changes deemed appropriate by the Parties.

Agreement

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein set forth, the Agency and IGA West hereby agree as follows:

1. Amendment; Defined Terms. The Parties hereby amend the Existing DDA with respect to Development Parcel A-3 as set forth herein. Henceforth, all references to the

“Agreement” or the “DDA” in the Existing DDA shall be deemed to refer to the Existing DDA as further implemented hereby. In the event of any conflict between the provisions of the Existing DDA or the Clarification Letters and the provisions of this Sixth Implementation Agreement (Development Parcel A-3) with respect to the ownership or development of Development Parcel A-3, the provisions of this Sixth Implementation Agreement (Development Parcel A-3) shall control, and as clarified and implemented hereby (and by any subsequent amendment or implementation agreement entered into in accordance with the provisions of the Existing DDA), the Existing DDA shall continue in full force and effect. Capitalized terms used herein without definition shall have the meanings assigned to such terms in the Existing DDA. As used herein, the term “A-3 Developer” shall mean the party that holds the rights of, and is subject to the obligations of, the Developer under the Existing DDA with respect to Development Parcel A-3. (As of the date hereof, IGA West is the A-3 Developer, but upon consummation of the assignment of the Existing DDA referenced in Section 2 hereof, the “Assignee” shall become the A-3 Developer).

2. Authority to Assign Existing DDA. Pursuant to Sections 108 and 316 of the Existing DDA, the Agency hereby authorizes and directs the Executive Director (or his designee) to approve an assignment of the Existing DDA (insofar as it pertains to Development Parcel A-3) to The Shamrock Group, LLC, a California limited liability company (the “Assignee”), provided that (1) as of the time such consent is given, the A-3 Developer and the Assignee have submitted to the Executive Director (or his designee) evidence reasonably satisfactory to him that the qualifications of the Assignee (including without limitation, financial capability) are not less than such qualifications as of the date of execution of the Sixth Implementation Agreement (Development Parcel A-3) by the Agency; and (2) the assignment of the rights of the A-3 Developer under the Existing DDA (insofar as they pertain to Development Parcel A-3) and the assumption of all obligations and liabilities thereunder (insofar as they pertain to Development Parcel A-3), shall be accomplished by documents reasonably satisfactory to the Executive Director (or his designee), and legal counsel to the Agency, consistent with this Sixth Implementation Agreement (Development Parcel A-3), including the form of Partial Assignment and Assumption Agreement attached hereto as Exhibit “A” and incorporated herein by this reference. Effective as of such assignment and assumption, IGA and IGA West shall be deemed released from any further obligations under the Existing DDA that arise out of or pertain to ownership or development of Development Parcel A-3. The authority granted by this Section shall terminate if the assignment contemplated hereby has not occurred on or before October 31, 2009 (the “Outside Approved A-3 Assignment Date”). If such assignment has not occurred before such date (unless extended by mutual agreement of the A-3 Developer and the Agency), then the Sixth Implementation Agreement (Development Parcel A-3) shall automatically terminate in its entirety, and the Existing DDA existing prior to the execution of the Sixth Implementation Agreement (Development Parcel A-3) shall remain in effect in accordance with its terms.

3. Development Parcel A-3.

3.1. Scope of Development. Section A.1.a-3. of the Scope of Development (as amended by the Fifth Implementation Agreement) is hereby deleted in its entirety and replaced by the following:

a-3. Development Parcel A-3. Development Parcel A-3 consists of approximately 8.415 acres of gross land area and is situated immediately to the west of Development Parcel A-1 and to the south and west of the Civic Parcel. The A-3 Developer shall have the right to develop such Development Parcel with any improvements permitted by applicable law. The A-3 Developer presently intends to seek all appropriate governmental approvals (e.g., re-zoning, amendment to any applicable development permit or coastal development permit (including without limitation the Development Permit), etc.) to develop Development Parcel A-3 with retail/restaurant development. While the obtaining of all such government approvals shall be the sole responsibility of the A-3 Developer, provided that the proposed development meets the "Acceptable Parcel A-3 Development Parameters" described below, the Agency agrees that it will support all such applications and shall take steps reasonably requested and appropriate (without cost to the Agency) in order to facilitate the issuance of said approvals without any requirement that the Developer bear any further "Exactions" as a condition to the issuance of said approvals of the implementation of the development contemplated thereby. For purposes of the foregoing:

(1) The term "Acceptable Parcel A-3 Development Parameters" shall mean (A) no more than a maximum of 95,000 square feet of retail/restaurant development within Development Parcel A-3 (it being understood that such development also shall be subject to the approval of the City of San Diego under the Development Permit following the development review process by the Development Services Department of the City of San Diego contemplated by Subsection (3) below of this Section a-3), and (B) sufficient parking, so that upon completion of such development there shall be a sufficient number of "Eligible Parking Spaces" (when added to any other Eligible Parking Spaces for the Gateway Project), to satisfy the requirements of Section 2.13 of the Overall REA and the requirements of the Development Permit, as the same may be amended from time to time (but in no event shall the number of parking spaces on Development Parcel A-3 be less than 238, unless otherwise approved by the Agency and City).

(2) The term "Exactions" shall mean any requirement that, as a condition to the issuance of a governmental approval necessary or appropriate for the development, or as a condition to the development of the improvements or work contemplated thereby, the A-3 Developer

(A) must provide any further consideration of any type whatsoever, directly or indirectly, to the Agency (and that the term "Sales Parcel" under the DDA henceforth shall not be deemed to include any portion of Development Parcel A-3, which means, accordingly, that the owner of Development Parcel A-3, so long as there is no Loan Agreement from the Agency with respect to Development Parcel A-3, henceforth shall be deemed relieved from any obligation (i) to disgorge any profits, or to pay to the Agency any share of any proceeds or value, arising from the development, mortgaging or sale of Development Parcel A-3 (whether such obligation may arise under the DDA (including without limitation any such obligation arising under Section 316, 512 or 703 of the DDA) or otherwise), or (ii) to otherwise pay any increased or additional purchase price or other consideration to the Agency in connection with any such development, mortgaging or sale (whether such obligation may arise under the DDA (including without limitation any such obligation arising under Section 316, 512 or 703 of the DDA) or otherwise)); or

(B) must bear any other further governmental fees or exactions of any other type whatsoever imposed by the Agency. The A-3 Developer agrees that it (rather than the Agency) shall be solely responsible for any other fees imposed in connection with obtaining the requisite permits for the development of the contemplated improvements for Development Parcel A-3.

(3) Before proceeding with any such development, the A-3 Developer shall obtain approval from Development Services Department of the City of San Diego evidencing that the development as actually proposed complies with the Acceptable Parcel A-3 Development Parameters and the other requirements of the Development Permit.

(4) If the A-3 Developer determines that the contemplated improvements for Parcel A-3 includes multiple buildings, Agency shall not oppose the further subdivision of Parcel A-3. the Agency shall take steps reasonably requested and appropriate (without cost to the Agency) to support the further subdivision of Parcel A-3.”

3.2. Clarification of Loan Amounts. Section 3.5.2 of the Fifth Implementation Agreement is hereby amended by deleting the sentence following the table in said section in its entirety. Furthermore, notwithstanding any provision of the Governing Documents or any other letters, memorandums or understanding related to the Site to the contrary, as of the date of this Sixth Implementation Agreement (Development Parcel A-3) there shall be no requirement that the Agency enter into a Loan Agreement (or, as such may be called, a “Contingent Purchase Price Reimbursement Agreement”) with respect to Development Parcel A-3 with (i) the A-3 Developer or (ii) the owner of any other Development Parcel.

4. Message Center Sign.

(a) Agency acknowledges that the A-3 Developer (either directly or through an affiliate) intends to acquire fee title to what is commonly referred to as the “Finger Parcel” concurrently with the acquisition of fee title to Development Parcel A-3, that the development of a changeable message/animated/diamond vision sign (the “Message Center Sign”) on the Finger Parcel is contemplated by the Development Permit (including in particular in the exhibits to the Development Permit), and that the development and operation of the Message Center Sign on the Finger Parcel is important to the development and operation of Development Parcel A-3.

(b) Agency hereby agrees that it will support any applications or other approvals sought by the owner of the Finger Parcel so that the Message Center Sign may be developed in the manner described in the Development Permit, and shall take steps reasonably requested and appropriate (without cost to the Agency) in order to facilitate the issuance of said approvals, so long as the Message Center Sign otherwise complies with any requirements of the existing Development Permit. The owner of the Finger Parcel shall be solely responsible for any costs incurred in pursuing any such approvals (including any modifications or approvals with respect to the Development Permit).

5. Schedule of Performance. For purposes of clarification, the following subsections of Section IV of the Schedule of Performance (Attachment No. 3 to the Existing DDA, as amended to date, including amendments effected pursuant to the Third Implementation

Agreement, the Fourth Implementation Agreement or the Fifth Implementation Agreement) are hereby amended as follows:

(a) Subsection IV.3 (regarding the schedule for submission of Schematic/Design Development Drawings and Preliminary Landscaping and Grading Plans for the various Development Parcels) is hereby amended to change the date thereof set forth in the Fifth Implementation Agreement from April 30, 2007 to May 31, 2011, (provided that such date may be extended by the terms of subparagraph 5(d) below).

(b) Subsection IV.6 (regarding the schedule for submission of 50% Construction Drawings for the various Development Parcels) is hereby amended to change the date thereof set forth in the Fifth Implementation Agreement from January 31, 2006 to nine (9) months after submission of Schematic/Design Development Drawings and Preliminary Landscaping and Grading Plans for Development Parcel A-3 in accordance with Section 5(a) above, (provided that such date may be extended by the terms of subparagraph 5(d) below).

(c) Subsection IV.22 (regarding the schedule for the closing of the development financings for the various Development Parcels) is hereby amended to change the date thereof set forth in the Fifth Implementation Agreement from May 31, 2007 to three (3) months after submission of 50% Construction Drawings for Development of Parcel A-3 in accordance with Section 5(b) above (it being understood that (1) the outside date set forth in Section 4(a) above for submission of Schematic/Design Development Drawings and Preliminary Landscaping and Grading Plans for Development Parcel A-3, plus the time periods for subsequent submissions as described in Section 5(b) above and this Section 5(c), result in an outside date for the commencement of construction of the improvements on Development Parcel A-3 of June 30, 2012, and (2) that such outside date may be extended by the terms of subparagraph 5(d) below).

(d) The deadlines provided for in subparagraphs 5(a), (b) and (c) above shall be extended as a consequence of Enforced Delay as set forth in Section 604 of the Existing DDA (which is hereby amended to include the unavailability of commercially reasonable non-recourse construction financing) for up to 18 months; provided that (1) such deadlines shall be extended only if the A-3 Developer is not then in default under the Existing DDA or any applicable development permit, including the Development Permit, and (2) in no event shall an extension pursuant to the above cause the deadline for commencement of construction on Development Parcel A-3 to be later than December 31, 2013.

6. Notice of Determination. Following approval of the Sixth Implementation Agreement (Development Parcel A-3), the Agency shall file a Notice of Determination with respect to CEQA findings with the County of San Diego, California.

7. Amendment to Agreement Affecting Real Property. Concurrently with the conveyance of Property to Assignee by the Outside Approved A-3 Assignment Date set forth in Section 2 herein, the Assignee and the executive Director of the Agency shall enter into and record an Amendment to Agreement Affecting Real Property with respect to Parcel A-3 in the form of Exhibit "B" attached hereto and incorporated herein by this reference.

8. Prevailing Wages.

(a) The A-3 Developer hereby agrees to carry out development, construction (as defined by applicable law) and operation of the improvements on Development Parcel A-3, including, without limitation, any and all public works (as defined by applicable law), in conformity with all applicable Federal and State labor laws, including, without limitation, the payment of State prevailing wages, if required for the improvements constructed on Development Parcel A-3.

(b) The A-3 Developer hereby expressly acknowledges and agrees that neither City nor Agency has ever previously affirmatively represented to IGA West or its contractor(s) for the improvements on Development Parcel A-3 in writing or otherwise, in a call for bids or otherwise, that the work on Development Parcel A-3 to be covered by the bid or contract is not a "public work," as defined in Section 1720 of the Labor Code. The A-3 Developer hereby agrees that the A-3 Developer shall have the obligation to provide any and all disclosures, representations, statements, rebidding, and/or identifications which may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law, in each case to the extent applicable in connection with the construction of improvements on Development Parcel A-3. The A-3 Developer hereby agrees that the A-3 Developer shall have the obligation to provide and maintain any and all bonds to secure the payment to contractors (including the payment of wages to workers performing any public work) which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law, in each case to the extent applicable in connection with the construction of improvements on Development Parcel A-3. The A-3 Developer hereby agrees that the A-3 Developer shall have the obligation, at the A-3 Developer's sole cost, risk and expense, to obligate any party as may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law, in each case to the extent applicable in connection with the construction of improvements on Development Parcel A-3. The A-3 Developer shall indemnify, protect, defend and hold harmless the Agency, City and their respective officers, employees, contractors and agents, with counsel reasonably acceptable to Agency and City, from and against any and all loss, liability, damage, claim, cost, expense, and/or "increased costs" (including labor costs, penalties, reasonable attorneys fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction (as defined by applicable law) and/or operation of the improvements on Development Parcel A-3, including, without limitation, any and all public works (as defined by applicable law) on Development Parcel A-3, results or arises in any way from any of the following: (1) the noncompliance by the A-3 Developer of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages) in connection with the construction of improvements on Development Parcel A-3; (2) the implementation of Sections 1726 and 1781 of the Labor Code, as the same may be enacted, adopted or amended from time to time, or any other similar law, in each case to the extent applicable in connection with the construction of improvements on Development Parcel A-3; (3) failure by the A-3 Developer to provide any required disclosure, representation, statement, rebidding and/or identification which may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of

law, in each case to the extent applicable in connection with the construction of improvements on Development Parcel A-3; (4) failure by the A-3 Developer to provide and maintain any and all bonds to secure the payment to contractors (including the payment of wages to workers performing any public work) which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law, in each case to the extent applicable in connection with the construction of improvements on Development Parcel A-3; and/or (5) failure by the A-3 Developer to obligate any party as may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law, in each case to the extent applicable in connection with the construction of improvements on Development Parcel A-3.

(c) It is agreed by the Parties that, in connection with the development, construction (as defined by applicable law) and operation of the improvements on Development Parcel A-3, including, without limitation, any public work (as defined by applicable law) on Development Parcel A-3, the A-3 Developer shall bear all risks of payment or non-payment of state prevailing wages and/or the implementation of Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, and/or any other provision of law, in each case to the extent applicable in connection with the construction of improvements on Development Parcel A-3. "Increased costs" as used in this Section shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, but only to the extent that such Section is applicable in connection with the construction of improvements on Development Parcel A-3.

(d) The foregoing indemnity shall survive termination of the Existing DDA and shall continue after recordation of the Release of Construction Covenants.

9. Approval as to Form of Documents: Implementing Authority of Executive Director. The Agency hereby approves the form of all of the foregoing documents (as the same may be modified in the reasonable discretion of the Executive Director or designee and the other parties thereto in order to implement the transactions contemplated by this Sixth Implementation Agreement (Development Parcel A-3)), and the Agency authorizes the Executive Director or designee to execute, deliver and, as appropriate, record all such documents (as the same may be so modified, as appropriate). The Executive Director or designee further shall be authorized from time to time following execution, delivery and recordation of said documents to enter into such amendments, modifications or supplements to the Existing DDA or said documents as the A-3 Developer and the Executive Director or designee may determine to be reasonably appropriate in order to further implement or facilitate the transactions contemplated by this Sixth Implementation Agreement (Development Parcel A-3).

10. Time for Acceptance of This Sixth Implementation Agreement (Development Parcel A-3) by the Agency; Date of This Sixth Implementation Agreement (Development Parcel A-3). This Sixth Implementation Agreement (Development Parcel A-3) when executed by IGA West and delivered to the Agency, must be authorized, executed and delivered by the Agency by June 12, 2009 or this Sixth Implementation Agreement (Development Parcel A-3) may be terminated by IGA West on written notice to the Agency. This Sixth Implementation

Agreement (Development Parcel A-3) is executed in five (5) duplicate originals, each of which is deemed to be an original. The effective date of this Sixth Implementation Agreement (Development Parcel A-3) shall be the date first set forth above.

[signatures appear on following page]

IN WITNESS WHEREOF, the Agency and IGA West have signed this Sixth Implementation Agreement (Development Parcel A-3) as of the Effective Date set forth above.

INTERNATIONAL GATEWAY WEST LLC,
a Delaware limited liability company

THE REDEVELOPMENT AGENCY OF
THE CITY OF SAN DIEGO

By: International Gateway Associates, LLC, a
Delaware limited liability company, its
Manager and Sole Member

By:  _____

Name: CRAIG SMITH

Title: DIRECTOR

By: _____

Name: Jerry Sanders

Title: Executive Director

APPROVED AS TO FORM AND
LEGALITY ON THIS ____ day of
_____, 2009

Agency General Counsel
Jan I. Goldsmith

By: _____

Kimberly K. Kaelin

Deputy General Counsel

APPROVED:
KANE BALLMER BERKMAN
Agency Special Counsel

By: _____

Murray O. Kane

Exhibit "A"

Form of Assignment and Assumption Agreement

[behind this page]

Exhibit "A"

Form of Partial Assignment and Assumption Agreement

THIS PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment"), is made and entered into as of _____, 2009 (the "Effective Date") by and between INTERNATIONAL GATEWAY WEST, LLC, a Delaware limited liability company ("IGA West") and The Shamrock Group, LLC, a California limited liability company ("Assignee").

RECITALS

A. WHEREAS, LandGrant Development Unlimited, a California corporation ("LandGrant") and the Agency are the original parties under that certain Disposition and Development Agreement entered into by LandGrant as of May 28, 1998, and by the Agency as of May 29, 1998 (the "Original DDA"), 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"), (5) that certain Fifth Implementation Agreement dated as of November 22, 2004 (the "Fifth Implementation Agreement"), and (6) that certain Sixth Implementation Agreement (Development Parcel A-3) dated as of _____, 2009 (the "Sixth Implementation Agreement" and collectively, the "Existing DDA"). The terms of the Existing DDA have been further clarified by (a) a letter dated March 10, 2000, by and between the Agency and International Gateway Associates, LLC ("IGA"), (b) a letter dated September 21, 2001, among the Agency, IGA and certain entities affiliated with the Developer, including the B/C Developer (the "Clarification Letters").

B. WHEREAS, IGA previously has assigned its interest as the "Developer" under the Existing DDA, insofar as the same pertain to Development Parcel A-3 referenced in the Existing DDA, to IGA West pursuant to a Partial Assignment and Assumption dated as of January 10, 2005 (and in connection therewith IGA further transferred to IGA West fee title to Development Parcel A-3); and

C. WHEREAS, IGA West now desires to transfer to Assignee all of IGA West's rights under the Existing DDA that pertain to Development Parcel A-3 and fee title to all of Development Parcel A-3.

NOW, THEREFORE, in consideration of the Recitals, the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. Capitalized terms used in this Assignment and not otherwise defined in this Assignment shall have the meanings set forth in the Existing DDA (as clarified in the Clarification Letters).

2. Assignment. Concurrently herewith, IGA West is delivering to Assignee a deed conveying to Assignee fee title to Parcel A-3. IGA West hereby further assigns, transfers and conveys to Assignee, effective as of the Effective Date, all right, title and interest of the “Developer” under the Existing DDA insofar as the same pertains to Development Parcel A-3 under the Existing DDA.

3. Representations and Warranties. IGA West represents and warrants to Assignee that IGA West has not previously assigned or conveyed to any other person or entity any rights or interests in the rights of the “Developer” under the Existing DDA insofar as they relate to Development Parcel A-3.

4. Assumption. Assignee hereby assumes, effective as of the Effective Date, all rights and obligations of the “Developer” under the Existing DDA insofar as they relate to Development Parcel A-3.

5. Reliance. Each of the City and the Agency shall be entitled to rely upon the foregoing assumption.

6. Attorney’s Fees. Whenever an attorney is used to obtain payment under, or to otherwise enforce, this Assignment or to enforce, declare, or adjudicate any rights or obligations under this Assignment, whether by suit or by any other means whatsoever, the costs and expenses thereof, including reasonable attorney’s fees and expenses, shall be payable to the non-prevailing party.

7. Counterparts. This Assignment may be executed in any number of counterparts, provided each of the parties hereto executes at least one counterpart; each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

8. Modification. This Assignment and Assumption may be modified or rescinded only by a writing signed by Assignor and Assignee and first approved in writing by each of the City and the Agency. This Assignment and Assumption shall be governed by and construed under the laws of the State of California.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the Effective Date.

INTERNATIONAL GATEWAY WEST LLC,
a Delaware limited liability company

THE SHAMROCK GROUP, LLC, a California
limited liability company

By: International Gateway Associates, LLC, a
Delaware limited liability company, its
Manager and Sole Member

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

CONSENT OF AGENCY
AND INDEMNIFICATION BY ASSIGNEE

THIS CONSENT OF AGENCY AND INDEMNIFICATION BY ASSIGNEE (the "Consent") is provided as of _____, 2009 by the Redevelopment Agency of the City of San Diego (the "Agency") in connection with the Partial Assignment and Assumption Agreement to which it is attached (the "A-3 Assignment Agreement"). Capitalized terms used herein shall have the meanings assigned to such term in said Assignment Agreement. The Agency hereby confirms the following:

(1) As of the date hereof, the Agency has not entered into any amendments or modifications to the Original DDA except as referenced in the A-3 Assignment Agreement. The Existing DDA, insofar as it pertains to Development Parcel A-3, continues in full force and effect.

(2) The Agency consents to the conveyance of fee title to Development Parcel A-3 to Assignee, and to the partial assignment and assumption of the Existing DDA to Assignee, as referenced in the A-3 Assignment Agreement.

(3) As of the date hereof, (i) Agency is not aware of any existing defaults or events of defaults under the Existing DDA insofar as the same pertains to Development Parcel A-3, and (ii) the Agency is not aware of any facts or circumstances which, with the giving of notice or the passage of time or both, would constitute a default or an event of default, with the exception in either case of the following: (a) the April 30, 2007 deadline for the submission of

Schematic/Design Development Drawings and Preliminary Landscaping and Grading Plans for Development Parcel A-3 as set forth in Section IV.3 of the Schedule of Performance (as amended by the Fifth Implementation Agreement) has passed without such submission by IGA West; (b) the January 31, 2006 deadline for the submission of 50% Construction Drawings for Development Parcel A-3 as set forth in Section IV.3 of the Schedule of Performance (as amended by the Fifth Implementation Agreement) has passed without such submission by IGA West; (c) the May 31, 2007 deadline for the closing of development financings as set forth in Section IV.3 of the Schedule of Performance (as amended by the Fifth Implementation Agreement) has passed without such closing by IGA West; and (d) the deadline for the commencement of construction of the improvements on Development Parcel A-3 as set forth in Section IV.3 of the Schedule of Performance (as amended through the Fifth Implementation Agreement) has passed without such commencement. These deadlines have been extended by the Sixth Implementation Agreement, and the undersigned hereby confirms that these defaults shall be deemed to have been cured as of the date this Consent is executed by Agency.

(4) As of the date hereof, IGA and IGA West are released from any further obligations under the Existing DDA insofar as the same arise out of or pertain to Development Parcel A-3.

(5) Agency has reviewed the facts relating to the proposed development of Development Parcel A-3, and it understands that, to its information and belief, the following are true and correct as of the date hereof (it being understood, however, that in no event shall the Agency have any liability to the Assignee or to any successor to the Assignee, or to any lender or other party claiming through Assignee or any such successor, should any of the following statements prove to be inaccurate and the Assignee agrees to indemnify Agency pursuant to Section 7 of the Sixth Implementation Agreement from and against any and all judgments, costs, expenses any and all loss, liability, damage, claim, cost, expense, and/or "increased costs" (as defined therein) resulting from any such inaccuracy or the reliance thereon by any party): (i) the Existing DDA contemplates that the separate Development Parcels might be developed by different developers, different contractors, different timetables and with different financings; (ii) the Assignee in fact is not related to the developer of Development Parcels B/C or A-1, or to the current owner of Development Parcels B/C or A-1 or the Civic Parcel; (iii) the proposed development of Development Parcel A-3 will trail the issuance of the Certificates of Completion for the development of Development Parcels B/C and A-1 by at least 4 years; (iv) there are no currently active plans for development of the Civic Parcel, and the development of Development Parcel A-3 is not coordinated with or to the development of the Civic Parcel; and (v) while public funds may have been used in part to finance a portion of the acquisition or development costs for the improvements on Development Parcels B/C and A-1, no public funds have been used to acquire or contribute to the costs of developing Development Parcel A-3 (nor does the Existing DDA call for any use of public funds hereafter to cover any portion of the costs of developing Development Parcel A-3).

In order to evidence the foregoing matters, the Agency has executed and delivered this Consent with the understanding that except as limited by the terms of Section (5) of this Consent with respect to the non-liability of Agency resulting from any inaccuracy of those statements, (a) IGA and IGA West may rely upon the provisions of this Consent in executing and delivering the A-3 Assignment Agreement and (b) Assignee and its respective successors and assigns (including without limitation their respective present and future lenders) may rely upon the provisions of this Consent in proceeding with the financing and redevelopment contemplated by, or as otherwise

reasonably necessary or appropriate to achieve the redevelopment contemplated by, the Existing DDA, and in acquiring interests in the properties covered by the Existing DDA.

THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO

By: _____
Name: Jerry Sanders
Title: Executive Director

APPROVED AS TO FORM AND LEGALITY
ON THIS ____ day of _____, 2009

Agency General Counsel
Jan I. Goldsmith

By: _____
Kimberly K. Kaelin
Deputy General Counsel

APPROVED:
KANE BALLMER BERKMAN
Agency Special Counsel

By: _____
Murray O. Kane

ASSIGNEE:

THE SHAMROCK GROUP, LLC,
a California limited liability company

By: _____

Name: _____

Title: _____

Attachment A to
Partial Assignment and Assumption Agreement
(Parcel A-3)

The real property in the City of San Diego, County of San Diego, State of California, described as follows:

Parcel 1 as shown on the 2004 West Side Map (as defined in the attached "Map Attachment")

Lots 1 and 2 as shown on Map 14406 recorded on June 13, 2002 in the Official Records of the San Diego County Recorder's Office as File No. 2002-0503512

Exhibit "B"

Amendment to Agreement Affecting Real Property

Parcel A-3

[behind this page]

RECORDING REQUESTED BY

WHEN RECORDED RETURN TO:

THE SHAMROCK GROUP LLC
9191 Towne Centre Drive, Suite 540
San Diego, CA 92122
Attn: Mr. Duncan A. Budinger

SAN YSIDRO REDEVELOPMENT PROJECT

**FIRST AMENDMENT TO
AGREEMENT TO BE RECORDED AFFECTING REAL PROPERTY**

(Parcel A-3)

SAN YSIDRO REDEVELOPMENT PROJECT

**FIRST AMENDMENT TO
AGREEMENT TO BE RECORDED AFFECTING REAL PROPERTY**

(Parcel A-3)

THIS FIRST AMENDMENT TO AGREEMENT TO BE RECORDED AFFECTING REAL PROPERTY is entered into this ____ day of _____, 2009 (this “**Amendment**”), by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body corporate and politic (the “**Agency**”) and INTERNATIONAL GATEWAY WEST, LLC, a Delaware limited liability company (the “**Developer**”) with reference to the following:

A. *Development Parcel A-3.* Developer is the present owner of the real property (the “**Property**”) located in the City of San Diego, County of San Diego, State of California legally described in the attached Exhibit “A”.

B. *DDA.* The Developer has succeeded to the rights of the “Developer” under that certain Disposition and Development Agreement entered into by LandGrant Development Unlimited as of May 28, 1998, and by the Agency as of May 29, 1998 (the “**Original DDA**”), insofar as such rights pertain to the Property (which is referred to therein as “**Development Parcel A-3**”) 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**”), (5) that certain Fifth Implementation Agreement dated November 22, 2004, (the “**Fifth Implementation Agreement**”) and (6) that certain Sixth Implementation Agreement of even date herewith (the “**Sixth Implementation Agreement (Development Parcel A-3)**”). The Original DDA, as the same has been clarified, amended and implemented by the First Implementation Agreement, the Second Implementation Agreement, the Third Implementation Agreement, the Fourth Implementation Agreement, the Fifth Implementation Agreement and the Sixth Implementation Agreement (Development Parcel A-3), and as the same may be further clarified, amended and implemented from time to time hereafter in accordance with its terms, sometimes is referred to herein as the “**DDA.**”

C. *A-3 Agreement to be Recorded Affecting Real Property.* Per the terms of the DDA, the Agency and a predecessor “Developer” under the DDA have executed and recorded that certain Agreement to be Recorded Affecting Real Property (Parcel A-3) dated as of November 22, 2004 and recorded in the Official Records of the San Diego County Recorder on December 21, 2004 as Document No. 2004-1200182 (the “**A-3 Agreement to be Recorded Affecting Real Property**”).

D. *Purpose.* The Sixth Implementation Agreement (Development Parcel A-3) is being executed substantially concurrently herewith. Sixth Implementation Agreement (Development Parcel A-3) effects certain modifications to the contemplated development of the Property. The parties now desire to enter into this Amendment in order to cause the A-3 Agreement to be Recorded Affecting Real Property to be consistent with the DDA, as so amended.

Agreement

NOW, THEREFORE, in consideration of the covenants and conditions hereinafter contained, and subject to the following terms and conditions, the Developer and the Agency hereby agree as follows:

1. Amendment to Section 2.b of the A-3 Agreement to be Recorded Affecting Real Property.
The parties hereby delete Section 2.b of the A-3 Agreement to be Recorded Affecting Real Property and replace such section in its entirety with the following:

“b. The Property may be developed with any improvements permitted under applicable law. As more fully set forth in the DDA, the Agency confirms and agrees that it shall permit and support the development of the Property with retail/restaurant development and related improvements, so long as such development meets the “Acceptable Parcel A-3 Development Parameters” described in the DDA. Such support shall include support of all applications for governmental approvals (e.g., re-zoning, amendment to any applicable development permit or coastal development permit, etc.) necessary or appropriate in order to permit such development of the Property, and the Agency shall take steps reasonably requested and appropriate (without cost to the Agency) in order to facilitate the issuance of said approvals without any requirement that the Developer bear any further “Exactions” (as said term is defined in the DDA) imposed by the Agency as a condition to the issuance of said approvals.”

2. Continuing Effect. As amended hereby, the A-3 Agreement to be Recorded Affecting Real Property shall continue in full force and effect.

IN WITNESS WHEREOF, the Agency and the Developer have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized this _____ day of _____, 2009.

INTERNATIONAL GATEWAY WEST LLC,
a Delaware limited liability company

THE REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

By: International Gateway Associates, LLC, a
Delaware limited liability company, its
Manager and Sole Member

By: _____
Name: Jerry Sanders
Title: Executive Director

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM AND LEGALITY ON
THIS ___ day of _____, 2009
Agency General Counsel
Jan I. Goldsmith

By: _____
Deputy General Counsel

APPROVED:
KANE BALLMER BERKMAN
Agency Special Counsel

By: _____
Murray O. Kane

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

On _____, before me, _____, Notary Public,
(Name And Title Of 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 Of Notary

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

On _____, 2009, before me, _____,
(Name And Title Of 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 Of Notary

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

On _____, 2009, before me, _____,
(Name And Title Of 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 Of Notary

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

On _____, 2004, before me, _____,
(Name And Title Of 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 Of Notary

Exhibit "A"
Description of Property
(Parcel A-3)

The real property in the City of San Diego, County of San Diego, State of California, described as follows:

Parcel 1 as shown on the 2004 West Side Map (as defined in the attached "Map Attachment")

Lots 1 and 2 as shown on Map 14406 recorded on June 13, 2002 in the Official Records of the San Diego County Recorder's Office as File No. 2002-0503512

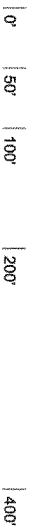
Attachment 3
Proposed Site Plan
[Behind this Page]



THE SHAMROCK GROUP

REAL ESTATE DEVELOPMENT & INVESTMENT
CONTACT: BRUCE A. BROTHMAN
1.855.677.5888 X13

LAS AMERICAS - WEST PARCEL SITE PLAN



April 20, 2008

WEST PARCEL SUMMARY

BUILDING W	90,000 SF
BUILDING X	3,500 SF
BUILDING Y	2,000 SF
SUB-TOTAL	95,500 SF
PARKING	430 SPACES
PARKING RATIO	4.50 SPACES / 1,000 SF

