

THE CITY OF SAN DIEGO



HILLEL OF SAN DIEGO

LEASE AGREEMENT

Table of Contents

SECTION 1: PREMISES	1
1.1 <u>Leased Premises</u>	1
1.2 <u>Easements and Reservations</u>	1
1.3 <u>Eminent Domain</u>	1
1.4 <u>Related Council Actions</u>	2
1.5 <u>Quiet Possession</u>	3
1.6 <u>Operation of Facilities</u>	3
SECTION 2: TERM	3
2.1 <u>Term</u>	3
2.2 <u>Option to Extend</u>	3
2.3 <u>Holdover</u>	4
2.4 <u>Quitclaim and Surrender of LESSEE'S Interest</u>	4
SECTION 3: USES	4
3.1 <u>Sole Permitted Uses</u>	4
3.2 <u>Failure to Use Premises</u>	5
3.3 <u>Competent Management</u>	5
SECTION 4: RENT	5
4.1 <u>Time and Place of Payment</u>	5
4.2 <u>Rent</u>	6
4.3 <u>Annual Rent Adjustments</u>	6
4.4 <u>Market Rent Adjustment - By Appraisal</u>	7
4.5 <u>Inspection of Records</u>	8
4.6 <u>Delinquent Rent</u>	8
4.7 <u>Unauthorized Use Charge</u>	9
SECTION 5: ASSIGNMENT	9
5.1 <u>Assignment and Subletting</u>	9
5.2 <u>Encumbrance</u>	10
5.3 <u>Additional Consideration to CITY</u>	11
5.4 <u>Control by Specified Individuals or Entities</u>	11
SECTION 6: DEFAULTS AND REMEDIES	11
6.1 <u>Defaults and Remedies</u>	12
SECTION 7: INSURANCE RISKS/SECURITY	15
7.1 <u>Indemnity</u>	15
7.2 <u>Insurance</u>	16
7.3 <u>Waste, Damage, or Destruction</u>	18
7.4 <u>Security Deposit</u>	18

SECTION 8:	IMPROVEMENTS/ALTERATIONS/REPAIRS	19
8.1	<u>Acceptance of Premises</u>	19
8.2	<u>Entry and Inspection</u>	20
8.3	<u>Maintenance</u>	20
8.4	<u>Improvements/Alterations</u>	22
8.5	<u>Utilities</u>	21
8.6	<u>Construction Bond</u>	21
8.7	<u>Liens</u>	21
8.8	<u>Taxes</u>	21
8.9	<u>Signs</u>	22
8.10	<u>Ownership of Improvements and Personal Property</u>	22
8.11	<u>Unavoidable Delay</u>	23
8.12	<u>Development Plan</u>	23
8.13	<u>Hazardous/Toxic Waste</u>	23
8.14	<u>Quitclaim of Cul de Sac Area</u>	25
SECTION 9:	CITY POLICY IMPLEMENTATION PROVISIONS	25
9.1	<u>Compliance with Law</u>	25
9.3	<u>CITY Approval</u>	25
9.4	<u>Nondiscrimination</u>	25
9.5	<u>Compliance with CITY'S Equal Opportunity Contracting Program</u>	25
9.2	<u>Local Business and Employment</u>	26
9.6	<u>CITY Employee Participation Policy</u>	26
9.7	<u>Drug-free Workplace</u>	26
9.8	<u>Disabled Access Compliance</u>	27
9.9	<u>Water Quality - Best Management Practices and Stormwater Pollution Prevention Plan</u>	28
SECTION 10:	GENERAL PROVISIONS	28
10.1	<u>Notices</u>	28
10.2	<u>Partial Invalidity</u>	29
10.3	<u>Legal Fees</u>	29
10.4	<u>Number and Gender</u>	29
10.5	<u>Captions</u>	29
10.6	<u>Entire Understanding</u>	29
10.7	<u>Lease Modifications</u>	29
10.8	<u>Time is of Essence; Provisions Binding on Successors</u>	29
10.9	<u>Bylaws</u>	30
10.10	<u>Corporate Authority</u>	30
10.11	<u>Survival</u>	30
10.12	<u>Planting Strips</u>	30
10.13	<u>Standard of Employees</u>	30
10.14	<u>Relocation Payments</u>	30
10.15	<u>Broker Fees</u>	30

10.16	<u>Cost Recovery</u>	30
10.17	<u>San Diego's Strong Mayor Form of Governance</u>	31
10.18	<u>Governing Law</u>	31
SECTION 11: SIGNATURES		32
11.1	<u>Signature Page</u>	32
EXHIBITS		33
	EXHIBIT "A" Premises	33
	EXHIBIT "B" Area Map	34
	EXHIBIT "C" Quitclaim Deeds	35
	EXHIBIT "D" Development Plan	36
	EXHIBIT "E" Corporate Authority	37
	EXHIBIT "F" Planting Strips	38
	EXHIBIT "G" Cost Recovery Fee Schedule	39

**CITY OF SAN DIEGO
LEASE AGREEMENT**

This Lease Agreement ("Lease") is entered into between the CITY OF SAN DIEGO, a municipal corporation, ("CITY") and Hillel of San Diego, a California nonprofit corporation ("LESSEE").

SECTION 1: PREMISES

- 1.1 Leased Premises. CITY leases to LESSEE and LESSEE leases from CITY all of that City-owned real property situated in the City of San Diego, County of San Diego, State of California, consisting of approximately 33,567 square feet, described in Exhibit "A" Premises attached to this Lease and by this reference made part of this Lease. The real property is hereinafter called the "Premises."
- 1.2 Easements and Reservations.
- a. CITY reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
 - b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as it deems advisable, in its sole discretion, for the public good.
 - c. CITY has the right to enter the Premises for the purpose of making repairs to or developing municipal resources and services.

CITY shall not unreasonably or substantially interfere with LESSEE'S use of the Premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the Premises resulting from CITY exercising the rights reserved in this section. The reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

- 1.3 Eminent Domain. If all or part of the Premises is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

- a. Entire Take of Premises. If the entire Premises is taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - b. Partial Take of Premises - Remainder Unusable. If a partial taking of the Premises occurs, and in the opinion of CITY and LESSEE, the remaining part of the Premises is unsuitable for the lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - c. Partial Take of Premises - Remainder Usable. If a partial taking of the Premises occurs, and in the opinion of CITY and LESSEE, the remaining part of the Premises is suitable for continued lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced to reflect the portion of the Premises taken.
 - d. Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both. LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
 - e. Transfer. CITY has the right to transfer CITY'S interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this Lease.
 - f. No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.
- 1.4 Related Council Actions. By entering into this Lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes, but is not limited to, rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the Premises. LESSEE shall diligently seek all entitlements and

actions, from both CITY and other governmental agencies with jurisdiction over the Premises, as are necessary to develop and operate the uses contemplated by this Lease, all at no cost to CITY. If LESSEE's application for development as described in Exhibit "D"- Development Plan is denied or overturned and LESSEE is unable to obtain the required permits to build, LESSEE may terminate this Lease upon thirty (30) days written notice to CITY.

- 1.5 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements in this Lease, shall at all times during the Term (defined in Section 2.1) peaceably and quietly have, hold, and enjoy the Premises. If CITY for any reason cannot deliver possession of the Premises to LESSEE at the commencement of the Term, or if during the Term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or resulting damage, but there shall be determined and stated in writing by the City Manager a proportionate reduction of the rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the Premises.
- 1.6 Operation of Facilities. LESSEE shall adhere to all permit conditions with respect to the development, use and occupancy of the Premises.

SECTION 2: TERM

- 2.1 Term. The term of this Lease shall be Twenty (20) years ("Term"). The Term of this Lease is effective following execution by the City Manager, and approval by City Attorney ("Commencement Date"). If the Commencement Date is not the first day of a calendar month, then the Term shall include the partial calendar month from and including the Commencement Date through the last day of the full Term, so that the Term shall expire on the last day of a calendar month. "Lease Year" as used in this Lease shall mean the 12-month period commencing on the first day of the calendar month following the Commencement Date and each succeeding 12-month period thereafter during the Term.
- 2.2 Option to Extend. Provided that LESSEE is not in default of this Lease, LESSEE has the option to extend the Term for two (2) additional term(s) of ten (10) years, subject to all original agreements, considerations, covenants, and conditions, except that the rent shall be adjusted to as provided herein. To exercise the option(s) to extend, LESSEE must give CITY ninety (90) days prior written notice before the expiration date of this Lease.

- 2.3 Holdover. Any holding over by LESSEE after the expiration or earlier termination of this Lease shall not be considered a renewal or extension of this Lease. The occupancy of the Premises after the expiration or earlier termination of this Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease shall continue in full force and effect. At the sole discretion of the City Manager, CITY shall have the right to increase the rent to bring the rent to a minimum of one hundred twenty-five percent (125.0%) of fair market value and to terminate the holdover tenancy at will with thirty (30) days prior written notice.
- 2.4 Quitclaim and Surrender of LESSEE'S Interest.
- a. Quitclaim Deed. On execution of this Lease, LESSEE shall deliver to CITY a quitclaim deed (attached as Exhibit "C" Quitclaim Deed) in recordable form quitclaiming all its rights in and to the Premises. CITY may record the deed only on the expiration or earlier termination of this Lease. CITY may not record the Quitclaim Deed until a final resolution of any judicial action effecting the termination of this Lease, if this Lease is alleged to have been terminated due to early termination of this Lease due to a breach or default by LESSEE. If CITY requires any subsequent quitclaim deed, LESSEE or its successor in interest shall deliver the deed within five (5) days after receiving written demand from CITY. If LESSEE fails or refuses to deliver the required subsequent deed, CITY may prepare and record a notice reciting LESSEE'S failure to execute this Lease provision, and the notice will be conclusive evidence of the termination of this Lease and all LESSEE'S rights to the Premises.
- b. Surrender and Restoration of Premises. At the expiration or earlier termination of this Lease, LESSEE shall surrender the Premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the Commencement Date of this Lease, and in a decent, safe, and sanitary condition. In the case of termination of this Lease by CITY prior to the end of the Term, any liens and encumbrances must be approved in writing by the City Manager.

SECTION 3: USES

- 3.1 Sole Permitted Uses. The Premises are leased to LESSEE solely and exclusively for the purposes of operation of a Hillel Student Center, in accordance with the Development Plan referenced in Section 8.12 of this Lease, and for other related purposes or incidental purposes as may be first approved in writing at the sole discretion of City Manager and for no other purpose whatsoever. The use of the

Premises for any unauthorized, illegal or unpermitted purpose shall constitute a substantial default and subject this Lease to termination at the sole option of the CITY, subject to the provisions on notice and opportunity to cure. If LESSEE is reasonably in doubt as to the propriety of any particular use, LESSEE may request a written determination from CITY that the use is permitted or is not permitted. The approval or determination will be at the sole discretion of the CITY and shall not be unreasonably conditioned, denied or delayed.

- 3.2 Failure to Use Premises. LESSEE shall use the Premises for the purposes described in Section 3.1 and diligently pursue the purposes throughout the Term of this Lease. Failure to continuously use the Premises for the purposes permitted under this Lease, or the use of the Premises for purposes not authorized in this Lease, shall be grounds for termination by CITY.
- 3.3 Competent Management. Throughout the Term of this Lease, LESSEE shall provide competent management of the Premises for the permitted uses to the satisfaction of the City Manager. For purposes of this section, "competent management" shall mean demonstrated ability in the management and operation of a student center and related activities in a fiscally responsible manner.

SECTION 4: RENT

- 4.1 Time and Place of Payment. Rent is due monthly in advance on or before the first day of each calendar month. If the Commencement Date is not the first day of a calendar month, then the accrued rent for the partial month at the beginning of the Term shall be prorated on a per diem basis, and paid in conjunction with the rent for the first full month of the Term. At LESSEE's option, Rent may be prepaid for up to one full Lease Year in advance on or before the first day of the months or Lease Year for which payment has been received. LESSEE shall state in writing with the payment the time period covered by the payment. All rents required by this Lease must be made payable to the City Treasurer and mailed to:

The Office of the City Treasurer
City of San Diego
P.O. Box 122289
San Diego, California 92112-4165

or hand delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue

First Floor
San Diego, California

The place of payment may be changed at any time by CITY upon thirty (30) days written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

- 4.2 Rent. The initial rent is seventy five thousand two hundred dollars (\$75,200) per Lease Year or six thousand two hundred sixty seven dollars (\$6,267) per month. The rent is subject to adjustments based on increases in the Consumer Price Index ("CPI") and in the fair market value of the Premises as provided in this Lease.
- 4.3 Annual Rent Adjustments. At the beginning of the second Lease Year and at the beginning of each Lease Year thereafter during the Term, the rent shall be adjusted to reflect increases in the CPI. The CPI used will be the "All Urban Consumers" index for Los Angeles - Riverside - Orange County, California with a base year of 1982-84. If the CPI is no longer published, the substitute index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the CPI in the opinion of the City Manager. If a rental adjustment is calculated using a substitute index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the base figure used will first be converted under a formula supplied by the Bureau of Labor Statistics or its successor. If the Department of Labor indices are no longer published, another substitute index generally recognized as authoritative will be substituted by CITY.

Until the rent adjustment is calculated by CITY, LESSEE shall continue to make payments at the existing rental rate. When the adjustment is determined, LESSEE shall pay the balance of rents due at the adjusted rent within thirty (30) days of notice of the adjusted rent. In no event shall the adjusted rent be less than the rent in existence immediately prior to the adjustment date.

The rent for each rental period following the rent adjustment until the next rent adjustment or other rental determination, as provided in this Lease, shall be determined prior to the adjustment date by multiplying the initial monthly rent by the "adjustment multiplier" established as follows:

The "adjustment multiplier" shall be established by dividing the "current index" by the "base index", both as defined below:

The "base index" for each adjustment shall be the average monthly value of the CPI for the third, fourth, and fifth full months immediately preceding the Commencement Date of this Lease. To illustrate, if the Commencement Date is August 1, the CPI figures for March (fifth month), April (fourth month) and May (third month) would be averaged to establish the "base index."

The "current index" for each adjustment shall be the average monthly value of the CPI for the third, fourth and fifth full months immediately preceding the adjustment date for each Lease Year.

The current index is then divided by the base index to obtain the adjustment multiplier, which then is multiplied by the initial monthly rent. The CPI indices for the third, fourth and fifth months preceding the Commencement Date and adjustment date are used to ensure that the CPI figures for the calculation are published and available prior to the adjustment date.

Example 1 - First year rent adjustment

$$\begin{array}{rcll} \text{Current Index} & & \underline{181.9667} & \\ \text{Base Index} & = & 176.7667 & = 1.0294 \quad (\text{adjustment multiplier}) \end{array}$$

Initial monthly rent x 1.0294 = adjusted rent

Example 2 - Second and subsequent rent adjustments

$$\begin{array}{rcll} \text{Current Index} & & \underline{187.4000} & \\ \text{Base Index} & = & 176.7667 & = 1.0596 \quad (\text{adjustment multiplier}) \end{array}$$

Initial monthly rent x 1.0596 = adjusted rent

Using the foregoing examples, if the rent is now \$1,000 per month, after the first adjustment it will be \$1,000 x 1.0294 = \$1,029.40 per month. The second adjustment it will be \$1,000 x 1.0596 = \$1,059.60 per month.

- 4.4 Market Rent Adjustment - By Appraisal. At the end of the tenth Lease Year, the rent for the ensuing ten (10) years, subject to the adjustments described in Section 4.3 above, shall be determined by an appraisal of the Premises as of the adjustment date by a qualified, competent and experienced professional real estate appraiser, who has expertise in determining rent for similar type sites/properties

("Qualified Appraiser") selected by mutual consent of the parties from the list of Qualified Appraisers approved by CITY. CITY and LESSEE agree to accept and be bound by the valuation determined by the selected or appointed Qualified Appraiser. In establishing the fair market rent of the Premises, the Qualified Appraiser shall consider the property as a fee simple absolute estate and as vacant and available for lease or sale for the authorized purposes of this Lease at the commencement of the rental period under review, and that the authorized use is considered the highest and best use. The date of value of the appraisal shall be the date of rental adjustment as established in this section. If the appraisal is not completed in time to permit the adjustment to be made upon the date specified, LESSEE shall continue to pay rent in accordance with the then existing Lease rates, and the adjustment, when determined, will be retroactive to the effective date of rental adjustment. Any deficiency shall be paid by LESSEE to CITY within thirty (30) days after determination of the new rental rate. In no event shall the adjusted rent be less than the rent in existence immediately prior to the adjustment date. The City Manager, in his sole discretion, may determine that no market value adjustment is necessary and waive the requirement for the appraisal process for any specific adjustment period.

4.5 Inspection of Records. LESSEE shall maintain complete and accurate records and accounts showing all income and receipts from use. LESSEE shall make any and all records and accounts available to CITY for inspection on the Premises at all reasonable times so that CITY can determine LESSEE'S compliance with the Lease. LESSEE'S failure to keep and maintain records and make them available for inspection by CITY is a breach of this Lease and cause for termination. LESSEE shall maintain all records and accounts for a minimum period of five (5) years. This section shall survive the expiration or earlier termination of this Lease.

4.6 Delinquent Rent.

- a. Late Payment. If LESSEE fails to pay the rent when due, LESSEE shall pay, in addition to the unpaid rents, ten percent (10.0%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days from the due date, LESSEE shall pay an additional ten percent (10.0 %) [being a total of forty percent (20.0%)], which is agreed by CITY and LESSEE to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. **In no event shall the charge for late payments of rent be less than two hundred fifty dollars (\$250).**
- b. LESSEE shall pay the amounts and further agrees that the late charges represent a fair and reasonable estimate of the costs that CITY will incur

from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this Lease.

- 4.7 Unauthorized Use Charge. LESSEE shall pay CITY fifty percent (50%) of the gross receipts for any service or use that is not permitted by this Lease or a use not previously authorized by CITY in each instance. This payment is subject to the due date provided in this Lease for rental payments and is subject to the provision for delinquent rent. The existence of the fifty percent (50%) charge in this section and the payment of this charge or any part of it, does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the Premises.

SECTION 5: ASSIGNMENT

- 5.1 Assignment and Subletting. LESSEE shall not assign this Lease or any interest in this Lease and shall not sublet the Premises or any part of the Premises, or any right or privilege appurtenant to the Premises, or allow any other person, except employees, agents, and guests of LESSEE, to use or occupy the Premises, or any part of the Premises, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any assignment or subletting without consent shall be void and shall, at the option of CITY, terminate this Lease. This Lease shall not, nor shall any interest in this Lease, be assignable as to the interest of LESSEE by operation of law, without the written consent of the City Manager. "Assignment" for the purposes of this section shall include any transfer of any ownership interest in this Lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners, or principals. Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this Lease which are applicable to the rights acquired. The City Manager shall require, as a condition to approval of any sublease of the majority portion of the leasehold or any assignment, that the LESSEE pay additional consideration to CITY, as set forth in Section 5.3, Additional Consideration to CITY of this Lease, commencing on the effective date of the proposed sublease of the majority portion of the leasehold or assignment. City Manager may further require that this Lease or the requested sublease be revised to comply with standard CITY lease requirements that are then current. Pursuant to City Charter Section 225, which is incorporated into this

Lease by reference, the City Manager must review and approve every person or entity which will have an interest in this Lease as a sublessee or assignee. The City Manager's approval will not be unreasonably withheld or delayed.

- 5.2 Encumbrance. Subject to prior consent by City Manager, which shall not be unreasonably withheld, LESSEE may encumber this Lease, its leasehold estate, and its improvements on the Premises by deed of trust, mortgage, chattel mortgage, or other security instrument to assure the payment of a promissory note or notes of LESSEE, upon the condition that the proceeds of the loan or loans be devoted exclusively to the purpose of developing the Premises in accordance with Section 8.12 Development Plan of this Lease. A reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the Premises; on-site improvements; escrow charges; premiums for hazard insurance or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest, and commissions; and architectural, engineering, and attorneys fees and other normal expenses incidental to the construction. Any subsequent encumbrances on the Premises or on any permanent improvements on the Premises must first have the approval in writing of the City Manager. Subsequent encumbrances shall also be for the exclusive purpose of development of the Premises. After the Premises are fully developed in accordance with said Development Plan to the satisfaction of the City Manager, proceeds from refinancing or from subsequent encumbrances may be used to reduce LESSEE'S equity so long as LESSEE pays additional consideration to CITY as set forth in Section 5.3 Additional Consideration to CITY of this Lease. City Manager shall have the sole and absolute discretion to approve, disapprove, or condition any proposed subsequent encumbrance, including but not limited to amending the Lease to provide then current rents and provisions. If any approved deed of trust or mortgage or other security-type instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, CITY will accept the approved mortgagee or beneficiary as its new tenant under this Lease with all the rights, privileges, and duties granted and imposed in this Lease.

Upon prior written approval by City Manager, the mortgagee or beneficiary may assign this Lease to its nominee, if nominee is a reputable, qualified, and financially responsible person or entity in the opinion of City Manager. Any deed of trust, mortgage, or other security instrument shall be subject to all of the terms, covenants, and conditions of this Lease and shall not be deemed to amend or alter any of the terms, covenants, or conditions of this Lease. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have a financial interest in this Lease. The City Manager's approval will not be unreasonably withheld, provided all persons and entities are of good character and reputation in the community.

5.3 Additional Consideration to CITY. LESSEE and CITY agree that in the event of an assignment, in the event of a subletting of the majority portion of the leasehold, or in the event of a refinancing creating an encumbrance against the leasehold after the permanent improvements have been constructed, pursuant to the Development Plan as described in Section 8.12 of this Lease, LESSEE shall pay to CITY two percent (2%) of the gross amount paid for the leasehold in connection with an approved assignment of the Lease, two percent (2%) of any amount paid LESSEE in consideration of a sublease of all or a majority portion of the leasehold, or two percent (2%) of the amount of any increased loan or encumbrance against the property over and above the amount of the then existing balance(s) of the existing encumbrance(s). The amount upon which the two percent (2%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of noncash consideration, including but not limited to stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY'S consent to any assignment, majority subletting, or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this section, together with an acknowledgment from the proposed assignee, sublessee, or refinancing agency as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction, be it an assignment, a sublease, or a refinancing. Any assignment, subletting, or refinancing in violation of the terms and conditions of this section shall be void. The provisions of this section shall not apply to:

- a. An assignment or transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession, or by operation of law for the benefit of the spouse or descendants (i) of LESSEE (if an individual) or (ii) of LESSEE'S principal owner or chief executive officer (if LESSEE is other than an individual);
- b. An assignment for which the City Manager determines that the legal and equitable ownership interests in the leasehold have remained unchanged, such as a change in the legal or fictitious name of the LESSEE without any other change in the equity, in beneficial use of, or legal title to, the leasehold as an asset or the income produced by the leasehold.

5.4 Control by Specified Individuals or Entities. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have a financial interest in this Lease as an assignee. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

SECTION 6: DEFAULTS AND REMEDIES

- 6.1 Defaults and Remedies. On the occurrence of a default by LESSEE, CITY shall have the right to pursue any one or more of the remedies listed in this section in addition to any other remedies now or later available to CITY in law or equity. These remedies are not exclusive but cumulative.
- a. Defaults. Each of the following shall constitute an event of default under this Lease:
- (1) LESSEE'S failure to make any payment required under this Lease when due; or
 - (2) LESSEE defaults in the performance of any covenant or condition required by this Lease, other than those requiring payment to CITY, to be performed by LESSEE and fails to cure the default within thirty (30) days following written notice from CITY; or if any default, other than those not requiring payment to CITY, is not curable within thirty (30) days, and LESSEE fails to commence to cure the default(s) within thirty (30) days and diligently pursue the cure to completion; or
 - (3) LESSEE voluntarily files any petition under any bankruptcy or insolvency act or law; or
 - (4) LESSEE has involuntarily filed against it any petition under any bankruptcy or insolvency act or law and the matter is not dismissed by a court of competent jurisdiction within ninety (90) days of filing; or
 - (5) LESSEE is adjudicated a bankrupt; or
 - (6) LESSEE makes a general assignment for the benefit of creditors; or
 - (7) LESSEE uses the Premises for any unauthorized purpose.
- b. Remedies.
- (1) Upon default by LESSEE, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, a written Three-Day Notice to Pay or Quit, if the default is based upon Section 6.1a (1), or CITY may terminate the Lease and all right of LESSEE and of all persons claiming right through LESSEE to the Premises or to possession of the Premises, and CITY may enter and take possession of the Premises. If any default described in Section

6.1a (2) - (7) Default and Remedies of this Lease, is not curable within thirty (30) days after notice to LESSEE, CITY will not terminate this Lease pursuant to the default, if LESSEE immediately commences to cure the default and diligently pursues the cure to completion), and may recover from the sum of:

- (a) the worth at the time of award of any unpaid rent that had been due at the time of termination;
 - (b) the worth at the time of award of the amount by which (i) the unpaid rent that would have been earned after termination until the time of award minus (ii) the amount of the rent lost, if any, and LESSEE affirmatively proved could have been reasonably avoided;
 - (c) the worth at the time of award of the amount by which (i) the unpaid rent for the balance of the Term after the time of the award minus (ii) the amount of rent lost, if any, as LESSEE affirmatively proves could be reasonably avoided;
 - (d) any other amount necessary to compensate CITY for the detriment proximately caused by LESSEE'S failure to perform LESSEE'S obligations or that, in the ordinary course of things, would be likely to result; and
 - (e) all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law. As used in clauses (a) and (b) of this section, the "worth at time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (c) of this section, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section the terms "rent" shall include Base Rent, Percentage Rent and any other payments required by LESSEE.
- (2) If there is a deed of trust or mortgage on the leasehold interest, and LESSEE has provided CITY with an address where notice can be sent to the mortgagee or beneficiary, CITY will give the mortgagee or beneficiary written notice of the defaults complained of, and the mortgagee or beneficiary will have thirty (30) days from the notice to cure the default(s) or, if any default is not curable within thirty

(30) days, to commence to cure the defaults and diligently pursue the cure to completion. The thirty (30) day period may be extended upon written request by mortgagee or beneficiary if mortgagee or beneficiary is pursuing the cure with reasonable diligence.

If the mortgagee or beneficiary is required to exercise its right to cure one or more default(s) through litigation or through foreclosure, then CITY will have the option of the following courses of action in order that the default(s) may be expeditiously corrected:

- (a) CITY may correct the default(s) and charge the costs incurred to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after presentation by CITY to LESSEE and mortgagee or beneficiary of a statement of the costs.
- (b) CITY may correct the default(s) and may recover the costs incurred from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default(s) or to pay the cost of correction performed by or at the direction of CITY.
- (c) CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute for the terminated LESSEE a new tenant reasonably satisfactory to the mortgagee or beneficiary. Any reasonable costs incurred by CITY in entering into a new lease with the same terms and conditions as this Lease with the new tenant will be the responsibility of the terminated LESSEE, and LESSEE shall reimburse CITY for any costs.

Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY,

will have the right to substitute itself in the place of LESSEE under this Lease and to assume all the obligations of LESSEE under this Lease. If the mortgagee or beneficiary gives notice in writing of its election to substitute itself within the thirty (30) day period after receiving written notice by CITY of the default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Lease will not terminate pursuant to the default. In that event, CITY consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary and LESSEE shall assign all its interest in this Lease to mortgagee or beneficiary.

- c. Abandonment by LESSEE. If LESSEE breaches the Lease and abandons the Premises, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all its rights and remedies under this Lease, including but not limited to the right to recover the rent as it becomes due, plus damages.

- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. The property constituting the Premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego. Any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any default when the default is discovered or when the City Council directs the City Manager to take action or require the cure of any default after the default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

SECTION 7: INSURANCE RISKS/SECURITY

- 7.1 Indemnity. LESSEE shall defend, indemnify, protect, and hold the CITY, its elected officials, officers, representatives, agents, and employees harmless from

and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the leasehold or the work and operations to be performed under this Lease, and all expenses of investigating and defending against same. LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its elected officials, officers, representatives, agents, and employees.

7.2 Insurance.

a. LESSEE shall take out and maintain at all times during the Term of this Lease the following insurance at its sole expense:

- (1) Public Liability and Property Damage. Public liability and property damage insurance in the amount of not less than two million dollars (\$2,000,000) combined single limit liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the Premises.
- (2) Fire, Extended Coverage and Vandalism. Fire, extended coverage, and vandalism insurance policy on all insurable property on the Premises in an amount to cover one hundred percent (100%) of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with Section 5.2 Encumbrance of this Lease, the proceeds may be paid to the approved mortgagee or beneficiary if mortgagee or beneficiary has provided CITY evidence that all proceeds shall be used for repair and restoration of damaged or destroyed improvements on the Premises.

b. LESSEE'S responsibility to maintain the insurance also includes the following:

- (1) Additional Insured. All insurance policies, by separate endorsement, shall name the CITY, its elected officials, officers, representatives, agents, and employees as additional insureds,

protect CITY against any legal costs in defending claims, and shall not terminate without sixty (60) days prior written notice to CITY.

- (2) Evidence of Insurance. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies shall be in effect on or before the Commencement Date, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the Premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy or certificate of insurance shall be furnished to CITY prior to the Commencement Date and shall remain on file with CITY during the entire Term of this Lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this Lease.
- (3) Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the Term by giving LESSEE sixty (60) days prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Premises. LESSEE shall obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Lease.
- (4) Accident Reports. LESSEE shall report to CITY any accident causing more than ten thousand dollars (\$10,000) worth of property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- (5) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. The reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection (5), if LESSEE fails or refuses to take out or maintain insurance as required in this Lease or fails to provide the proof of insurance, CITY has the right to declare this Lease in default without further notice to LESSEE, and CITY shall be entitled to exercise all legal remedies in the event of a default.

- 7.3 Waste, Damage, or Destruction. LESSEE shall give notice to CITY of any fire or any other damage that occurs on the Premises within ten (10) days of the fire or damage. LESSEE shall not commit or allow to be committed any waste or injury or any public or private nuisance. LESSEE shall keep the Premises clean and clear of refuse and obstructions, and dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Premises is damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE shall make or cause to be made full repair of the damage and restore the Premises to the condition which existed prior to the damage; or, at CITY'S option, LESSEE shall clear and remove from the Premises all debris resulting from the damage and rebuild the Premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to the damage, using for either purpose the insurance proceeds as set forth in Section 7.2 Insurance of this Lease. LESSEE shall commence preliminary steps toward performing repairs, restoration, or replacement of the Premises within ninety (90) days of the occurrence of the fire or damage, and shall complete the required repairs, restoration, or replacement within one hundred eighty (180) days. CITY may determine an equitable deduction in the rent requirement for the period or periods that the Premises are untenable by reason of the damage.

7.4 Security Deposit.

- a. LESSEE shall pay to CITY a security deposit in the sum of Ten Thousand Dollars (\$10,000) on or before the Commencement Date. All or any portion of the security deposit shall be available unconditionally to CITY for correcting any default or breach of this Lease by LESSEE, LESSEE'S successors or assigns, or for payment of expenses incurred by CITY as a result of LESSEE'S failure to faithfully perform all terms, covenants, and conditions of this Lease.
- b. The security deposit shall take one of the forms set out below:
 - i. Cash. Cash deposits shall be deposited with CITY, and CITY shall not pay LESSEE any interest on the deposit. Any interest earned by CITY from the security deposit shall be and remain the property of CITY.

- ii. Instrument(s) of Credit. An instrument(s) of credit from one or more financial institutions, subject to regulation and insurance by the state or federal government, shall pledge that the funds are on deposit and guaranteed for payment and agree that any or all funds shall be paid to CITY upon demand by CITY. The financial institution and the form of any instrument pledging the funds must be approved by CITY. LESSEE will maintain the required security deposit throughout the Term and for ninety (90) days after the expiration or earlier termination of this Lease unless previously released by CITY. Failure to maintain the instrument of credit shall be considered a default and is grounds for immediate termination of this Lease. This provision shall survive the expiration or earlier termination of this Lease.
 - iii. Faithful Performance Bond. LESSEE shall maintain with CITY a faithful performance bond in the amount of Ten Thousand dollars (\$10,000) satisfactory to CITY, payable to CITY for loss resulting from failure of LESSEE to comply with the covenants and conditions of this Lease, or for reimbursement to CITY for expenses incurred in performing itself the covenants or conditions after breach of LESSEE, including the costs and reasonable attorneys' fees for defending CITY against any claims resulting from the failure of LESSEE. The bond shall also assure payment of rent.
- c. If CITY uses all or any portion of the security deposit, LESSEE shall bring the security deposit up to the full specified amount within ten (10) days notice from CITY. The security deposit or any unused portion will be returned to LESSEE within ninety (90) days following the expiration or earlier termination of this Lease, if LESSEE has faithfully complied with all terms, covenants, and conditions of this Lease. CITY may, at its option, require LESSEE to increase the security deposit proportionate to any increased performance or rental liability of LESSEE upon sixty (60) days prior written notice from CITY of the required increase.

SECTION 8: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 8.1 Acceptance of Premises. By signing this Lease, LESSEE represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises. LESSEE agrees it is relying solely on independent inspection, tests, investigations, and observations in entering into this Lease. LESSEE acknowledges that the Premises are in the condition called for by this Lease, that

CITY has performed all work with respect to the Premises, and that LESSEE does not hold CITY responsible for any defects whether apparent or latent, in the Premises. It is LESSEE'S responsibility to investigate the Premises for the presence of any hazardous substances. LESSEE shall notify CITY if LESSEE'S investigations indicate the presence of any hazardous substances on the Premises. If LESSEE fails to investigate the Premises for the presence of any hazardous substances, or fails to notify CITY of the presence of hazardous or toxic substances after its investigation, LESSEE waives any claims against CITY which may result from the presence of hazardous substances on the Premises.

- 8.2 Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, to enter the Premises for the purpose of viewing and ascertaining the condition of the Premises, or to protect its interests in the Premises, or to inspect the operations conducted on the Premises. Any such entry shall be upon prior reasonable notice and shall be done in a manner that does not unreasonably interfere with LESSEE's use and enjoyment of the Premise. If entry or inspection by CITY discloses that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE shall pay promptly any and all costs incurred by CITY in having the necessary maintenance work done, in order to keep the Premises in a decent, safe, healthy, and sanitary condition. If at any time CITY determines that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. The bond shall be in an amount adequate in the opinion of CITY to correct the unsatisfactory condition. LESSEE shall pay the cost of the bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Lease imposed on CITY.
- 8.3 Maintenance. LESSEE shall assume full responsibility and cost for the operation and maintenance of the Premises throughout the Term of this Lease. LESSEE shall make all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with the Development Plan described in Section 8.12 Development Plan of this Lease and with all applicable laws. All applicable codes and standards of CITY, state and federal agencies shall be observed in all maintenance, repairs, and replacements on the Premises.
- 8.4 Improvements/Alterations. LESSEE shall not construct any improvements, structures, or installations on the Premises, or make any alterations to the Premises without prior written approval by the City Manager. LESSEE shall not make major structural or architectural design alterations to approved

improvements, structures, or installations on the Premises without prior written approval by the City Manager and that the approval shall not be unreasonably withheld. LESSEE shall notify City Manager or his designee of improvement projects on the Premises and shall inform the permitting authority that the Premises is City-owned property. This provision shall not relieve LESSEE of any obligation under this Lease to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.

- 8.5 Utilities. LESSEE shall order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the Premises. All utilities shall be installed underground.
- 8.6 Bonds. Whenever there is any construction to be performed on the Premises, LESSEE shall deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction will be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.
- 8.7 Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against claims, including reasonable attorney's fees.

If improvements, alterations, or repairs are made to the Premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of the filing either:

- a. take all actions necessary to record a valid release of lien, or
 - b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.
- 8.8 Taxes. LESSEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the Premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or

property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the Premises, including any licenses or permits. LESSEE recognizes and agrees that this Lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on the leasehold interest. LESSEE shall pay all possessory interest taxes. LESSEE'S payment of taxes, fees and assessments will not reduce any rent due CITY.

8.9 Signs. LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising on the Premises without the prior written consent of CITY. If any unauthorized items are found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours notice by CITY. After the twenty-four (24) hour period transpires, CITY may enter the Premises and remove the item at LESSEE'S cost. The minimum cost of removal shall not be less than five hundred dollars (\$500).

8.10 Ownership of Improvements and Personal Property.

- a. Any and all improvements, trade fixtures, structures, and installations or additions to the Premises existing on the Commencement Date or constructed on the Premises by LESSEE during the Term shall at the expiration or earlier termination of this Lease be deemed to be part of the Premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except as otherwise provided in this Lease. All trade fixtures, furnishings and equipments shall remain the property of LESSEE and shall be removed by LESSEE upon expiration of the Term of this Lease.
- b. LESSEE shall remove LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property by the date of the expiration or earlier termination of this Lease. Any items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove the items at LESSEE'S expense.
- c. If removal of any personal property by LESSEE results in damage to the remaining improvements on the Premises, LESSEE shall repair all damage.
- d. For any necessary removal by either CITY or LESSEE which takes place beyond the expiration or earlier termination of this Lease, LESSEE shall pay rent to CITY at the rate in effect immediately prior to the expiration or earlier termination of this Lease.

- e. If LESSEE desires to dispose of any of its personal property used in the operation of the Premises upon the expiration or earlier termination of this Lease, then CITY shall have the first right to acquire or purchase the personal property.
- 8.11 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, the party shall be excused from performing that act for the period equal to the period of the prevention or delay. This provision shall not apply to obligations to pay rent pursuant to this Lease. If LESSEE or CITY claims the existence of a delay, the party claiming the delay shall notify the other party in writing of the fact within ten (10) days after the beginning of the claimed delay.
- 8.12 Development Plan. LESSEE shall develop the Premises in accordance with the Development Plan approved by the City Manager and filed in the Office of the City Clerk. The Development Plan is attached as Exhibit "D." The City Manager shall have the authority to authorize changes to the Development Plan provided that the principal components defined in the Development Plan may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk. Failure by LESSEE to comply with the Development Plan shall constitute a default and subject this Lease to termination by CITY. The City Manager, in his sole discretion, may approve an extension to the date specified for completion in the Development Plan of up to one (1) year without further City Council approval.
- 8.13 Hazardous/Toxic Substances.
- a. LESSEE shall not allow the release of hazardous substances in, on, under, or from the Premises. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Lease.
 - b. If any release of a hazardous substance occurs, LESSEE shall be responsible for all costs of remediation and removal of the substances in

accordance with all applicable rules and regulations of governmental authorities.

- c. LESSEE shall defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S operations on the Premises, including but not limited to, costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- d. If LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Premises, LESSEE shall give written notice to the City Manager within ten (10) days of receipt of the knowledge or cause for belief. If LESSEE knows or has reasonable cause to believe that the substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate the danger. LESSEE shall notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the Premises. LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the Premises without the prior written consent of CITY.
- e. Within twelve (12) months prior to the expiration of this Lease, or prior to any earlier termination of this Lease, LESSEE shall obtain an environmental assessment of the Premises conducted by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at the sole cost and expense of LESSEE and shall establish what, if any, hazardous substances exist on, in, or under the Premises, and in what quantities. If any hazardous substances exist in quantities greater than which existed on the Commencement Date or greater than allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to restore the Premises to the condition which existed on the Commencement Date or to comply with those laws or statutes. Estimates of the cost of the remediation or removal shall be included in the environmental assessment. LESSEE shall cause the remediation and/or removal recommended in the environmental assessment and shall be solely responsible for all costs and expenses incurred.

- 8.14 Quitclaim of Cul de Sac Area. LESSEE shall obtain a quit claim deed from the owner of the 8976 Cliffridge Avenue, La Jolla, CA 92037 quit claiming to the CITY any portion of the La Jolla Scenic Drive North right-of-way that may inure to the benefit of such property by reason of the vacation of the public right-of-way as shown on the attached Lease Plat of the Premises attached hereto as Exhibit A, except for that portion reserved for the benefit of such property as shown on the attached plat. The quit claimed area will then be included in the leasehold Premises.

SECTION 9: CITY POLICY IMPLEMENTATION PROVISIONS

- 9.1 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE'S sole cost and expense. LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of all current or future laws, statutes, ordinances, or regulations.
- 9.2 CITY Approval. The approval or consent of CITY, wherever required in this Lease, shall mean the written approval or consent of the City Manager or his designee unless otherwise specified, without need for further resolution by the City Council.
- 9.3 Nondiscrimination. LESSEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE'S use of the Premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
- 9.4 Compliance with CITY'S Equal Opportunity Contracting Program. LESSEE shall comply with City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated into this Lease. LESSEE, its sublessees and all of its subcontractors are individually responsible to abide by its contents. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment on any basis prohibited by law. On or before the Commencement Date, LESSEE shall submit a current Work

by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that LESSEE will take to achieve the CITY'S commitment to equal employment opportunities. LESSEE and its sublessees shall insert the foregoing provisions in all contracts and subcontracts for any work covered by this Lease so that the provisions will be binding upon each contractor and subcontractor. Compliance with EEO provisions will be implemented, monitored, and reviewed by the CITY'S Equal Opportunity Contracting Program staff. LESSEE'S failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY lease and/or contracts for a period of not less than one (1) year.

- 9.5 Local Business and Employment. LESSEE acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms in all CITY leases and contracts. LESSEE shall, to the extent legally possible, solicit applications for employment, and bids and proposals for contracts and subcontracts, for work associated with this Lease from local residents and firms as opportunities occur. LESSEE shall hire qualified local residents and firms whenever feasible.
- 9.6 CITY Employee Participation Policy. This Lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if LESSEE employs an individual who, within the twelve months immediately preceding the employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the LESSEE. These provisions do not apply to members of the City Council.
- 9.7 Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition.
 - b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The LESSEE'S policy of maintaining a drug-free workplace.

- (3) Any available drug counseling, rehabilitation, and employees assistance programs.
 - (4) The penalties that may be imposed upon employees for drug abuse violations.
- c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

9.8 Disabled Access Compliance. LESSEE shall at all times, in the construction, maintenance, occupancy and operation of the Premises, comply with the 1990 Americans with Disabilities Act ("ADA") and Title 24 California Code of Regulations ("Building Code") as defined in Section 18910 of the California Health and Safety Code ("Title 24") and any other applicable federal, state or local laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE shall comply with Council Policy 100-04, incorporated into this Lease by reference, adopted by Resolution No. R-282153, relating to the federally-mandated ADA. LESSEE will be individually responsible for administering its own ADA and Title 24 program. LESSEE'S compliance shall include but not necessarily be limited to the following:

- a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
- c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place on the Premises.
- d. Where required by law, LESSEE shall comply with CITY'S disabled access requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All improvements and alterations shall be at the sole cost of LESSEE.
- e. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.

- f. LESSEE'S failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this Lease.

- 9.9 Water Quality - Best Management Practices and Stormwater Pollution Prevention Plan. LESSEE shall comply with the Best Management Practices ("BMP") including the Stormwater Pollution Prevention Plan ("SWPPP") approved by CITY'S Stormwater Management Program. LESSEE shall submit within ninety (90) days of the Commencement Date of this Lease, BMP and a SWPPP that are satisfactory to the City Manager that will control erosion and reduce the amount of pollutants and other sediments discharged from the Premises. The BMP and SWPPP will be reviewed periodically by CITY. Upon written notice from the City Manager requesting an update of the BMP and SWPPP, LESSEE shall submit updated BMP and a SWPPP that are satisfactory to the City Manager within ninety (90) days of receipt of notice. LESSEE shall implement any necessary changes to the BMP and SWPPP as a result of any review by CITY to ensure compliance with any changes in laws or regulations. It is LESSEE's responsibility to inform employees, contractors, subcontractors, agents and vendors of the BMP and SWPPP.

SECTION 10: GENERAL PROVISIONS

10.1 Notices.

- a. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or sent by United States mail, postage prepaid, addressed as follows:

If to CITY:

The City of San Diego
c/o Real Estate Assets Director
1200 Third Avenue, Suite 1700
San Diego, CA 92101-4155

If to LESSEE:

Hillel of San Diego
c/o Robert B. Lapidus
750 B Street, Suite 2330
San Diego, CA 92101

or to any mortgagee, trustee, or beneficiary, as applicable, at the appropriate address designated in writing by that party.

- b. Any party entitled or required to receive notice under this Lease may by like notice designate a different address to which notices shall be sent.
- 10.2 Partial Invalidity. If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 10.3 Legal Fees. In the event of any litigation regarding this Lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.
- 10.4 Number and Gender. Words of any gender used in this Lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 10.5 Captions. The section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Lease. The numbers of the paragraphs and pages of this Lease may not be consecutive. The lack of consecutive numbers is intentional and shall have no effect on the enforceability of this Lease.
- 10.6 Entire Understanding. This Lease contains the entire understanding of the parties. LESSEE, by signing this Lease, agrees that there is no other written or oral understanding between the parties with respect to the Premises. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each of the parties to this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Lease. The failure or refusal of any party to read the Lease or other documents, inspect the Premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions.
- 10.7 Lease Modifications. This Lease shall not be modified, altered or amended unless the modification, alteration or amendment is in writing and signed by all parties duly authorized to execute and deliver this Lease.
- 10.8 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants, and conditions of this Lease. Except as otherwise provided in this Lease, all of the terms, covenants, and conditions of this Lease

shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.

- 10.9 Bylaws. Membership in LESSEE'S organization shall be open to anyone meeting the requirements of its rules and bylaws. All restrictions, rules, bylaws, and fees, if any, and any changes to restrictions, rules, bylaws, and fees proposed by LESSEE'S organization shall, before being put into effect, be submitted to and receive the written approval of the City Manager. Bylaws shall be on file in the office of the Real Estate Assets Department prior to the Commencement Date of this Lease.
- 10.10 Corporate Authority. Each individual executing this Lease on behalf of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of the corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation (attached as Exhibit "E" Corporate Authority). This Lease is binding upon the corporation in accordance with its terms. On or before the Commencement Date, LESSEE shall provide CITY with evidence, satisfactory to City Manger, that LESSEE is a duly qualified corporation and is qualified to do business in California.
- 10.11 Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive the expiration or earlier termination of this Lease.
- 10.12 Planting Strips. LESSEE shall, at its sole cost, landscape and maintain all areas adjoining the Premises as shown on Exhibit "F" Planting Strips.
- 10.13 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner.
- 10.14 Relocation Payments. LESSEE shall not be entitled to any relocation payment whatsoever upon the expiration or earlier termination of this Lease.
- 10.15 Broker Fees. LESSEE warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation and/or execution of this Lease. If a broker makes a claim for monies owed, LESSEE shall indemnify, defend and hold CITY harmless.
- 10.16 Cost Recovery. CITY maintains a schedule of fees to be paid by LESSEE as an offset to administrative costs incurred for CITY staff services that are of benefit to LESSEE. LESSEE shall pay all applicable fees as shown in Exhibit "G" Cost Recovery Fee Schedule. CITY shall process applicable requests upon receipt of LESSEE'S payment of fee. The fee schedule may be updated from time to time at the sole discretion of CITY.

- 10.17 San Diego's Strong Mayor Form of Governance. All references to "City Manager" in this Lease and all subsequent amendments to this Lease shall be deemed to refer to "Mayor." This section becomes effective on January 1, 2006 and shall remain in effect for the duration the City operates under the mayor-council (commonly referred to as 'strong mayor') form of governance pursuant to article XV of the City of San Diego City Charter.
- 10.18 Governing Law. The Lease shall be governed, construed and enforced in accordance with the laws of the State of California.

SECTION 11: SIGNATURES

11.1 Signature Page.

This Lease is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date _____

By _____
Michael F. Boyle, Acting Director
Real Estate Assets Department

LESSEE: HILLEL OF SAN DIEGO

Date 5/2/06

By 
Robert Lapidus, Vice President

APPROVED as to form and legality this _____ day of _____, 19__.

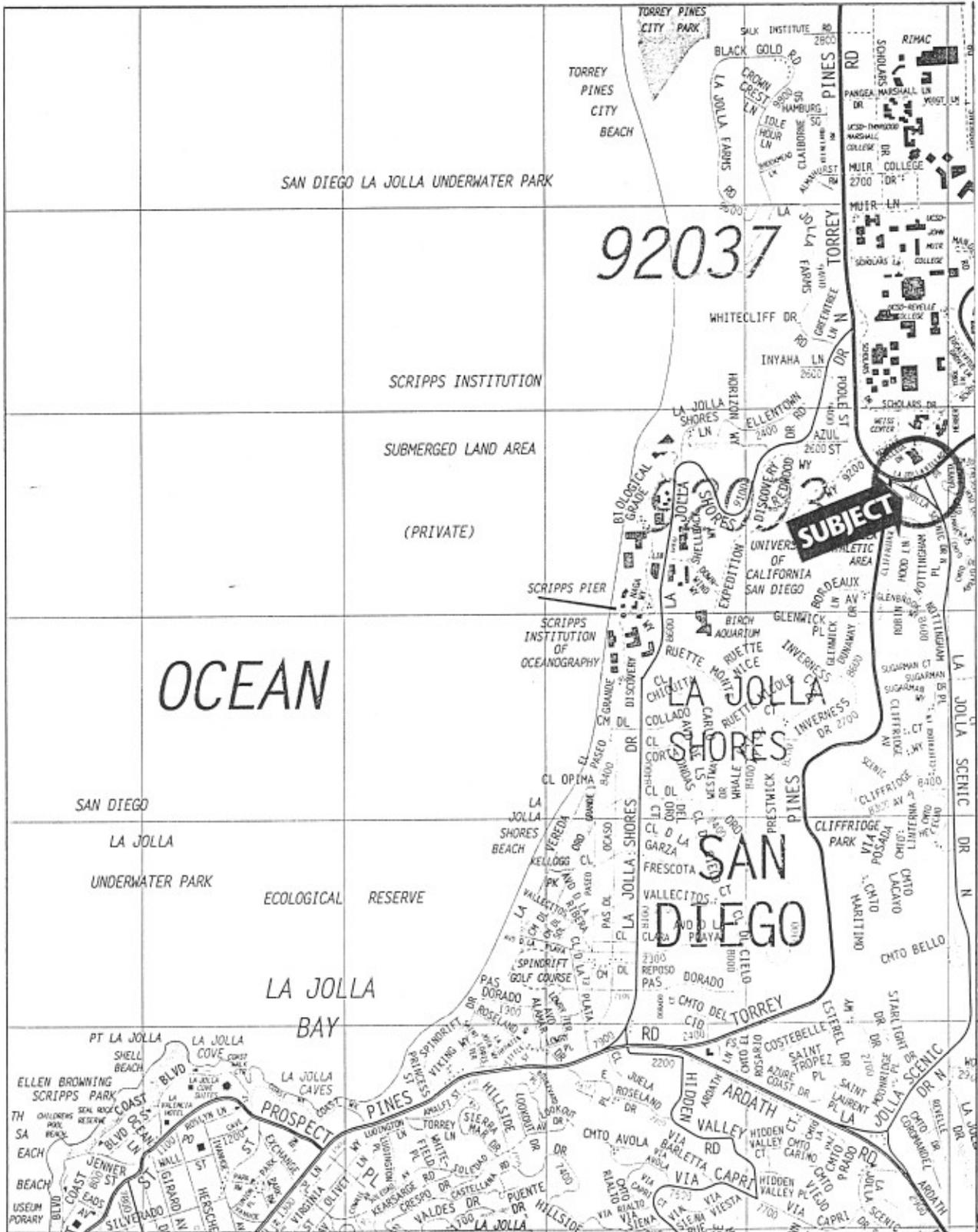
MICHAEL J. AGUIRRE, City Attorney

By _____
Leslie FitzGerald
Deputy City Attorney

JPA
5/1/06

C:\Documents and Settings\janthony\Desktop\Lease- Hillel - final.wpd

EXHIBIT "B" - Area Map



After recording mail to:

EXHIBIT "C" Quitclaim Deed

City Clerk
City of San Diego
Mail Station 2A

				ALL
				PTN

SPACE ABOVE THIS LINE FOR RECORDER'S USE
NO DOCUMENTARY TAX DUE - R&T 11922 (amended)
Presented for record by the CITY OF SAN DIEGO

QUITCLAIM DEED

Hillel of San Diego, a California nonprofit corporation

for a valuable consideration, does hereby Remise, Release and QUITCLAIM to

The City of San Diego, a California municipal corporation,

All Right, Title and Interest in and to the following described Real Property situated in the City of San Diego, County of San Diego, State of California:

That portion of Pueblo Lot 1299 of Pueblo Lands of San Diego, according to Map thereof made by James Pascoe in 1870, a copy of said Map was filed in the office of the County Recorder of said County of San Diego November 14, 1921 as is known as Miscellaneous Map No. 36, being more particularly described in the attached EXHIBIT "A" entitled LAND SALE

This is to certify that the interest in real property conveyed by this instrument to the City of San Diego, a municipal corporation, is hereby accepted by the undersigned officer on behalf of the City of San Diego pursuant to authority conferred by Resolution No. 250320, adopted by the Council of the City of San Diego on October 1, 1979, and pursuant to the authority conferred by San Diego City Charter Article XV, Section 260(b), and the grantee consents to recordation thereof by its duly authorized officer.

Hillel of San Diego, a California nonprofit corporation

Robert Lipidus, Vice President

Dated _____ By _____
Deputy Director

EXHIBIT "D" - Development Plan

a. General Development Plan.

The General Development Plan consists of:

- a. Plot Plan
- b. Development Schedule
- c. Estimated Construction Costs
- d. Financial Plan
- e. Schematic Elevations
- f. Landscape Plan
- g. Others as applicable

and is filed in the Office of the City Clerk referenced in this Lease.

EXHIBIT "E" - Corporate Authority.

CORPORATE NAME

I, _____, certify that I am the
_____ of the corporation named in the attached agreement; that
_____, who signed this agreement on behalf of the corporation, was then
_____ of said corporation; that said agreement was duly signed for and
on behalf of said corporation by authority of its governing body, pursuant to a resolution duly
adopted by its Board of Directors on _____, 19 __, and is within the scope
of its corporate powers; and that set out below are the names of the officers and directors of said
corporation.

By _____

CORPORATE SEAL

Name _____
Title

Name _____
Title

Name _____
Title

Name _____
Title

EXHIBIT "F" - Planting Strips

EXHIBIT "G" - Cost Recovery Fee Schedule

Real Estate Assets Department Transaction Processing Fees (Effective July 1, 2003)

Category	Rate
Consent to Sublease	• \$600
Consent to Assignment of Leasehold Interest or Other Modification/Document for Lessee's Benefit <ul style="list-style-type: none"> • Short-term or Non-Revenue Agreements¹ • Long-term Agreements¹ 	<ul style="list-style-type: none"> • \$560 • \$1,680
Easements or Rights on City Property	• \$1,590
Permits, Rights of Entry & Other Temporary Uses	• \$600
Valuation Processing Fee	• \$1000 min. ²
Leases – New, Renewed or Amended <ul style="list-style-type: none"> • Short-term or Non-Revenue Agreements¹ • Long-term Agreements¹ 	<ul style="list-style-type: none"> • \$600 • \$3,970
Unsolicited Proposals	• \$1,030
Exclusive Negotiation Agreements (ENA) Minimum Fee – Actual to be based on time and expenses	• \$9,950 min. ³
Option Fee	• % of Value

¹ Short Term Agreements: 3 years or less; Long Term Agreements: over 3 years.

² City should be reimbursed for the actual cost of the valuation which can range from \$1,000 (in-house) to in excess of \$5,000 (third party consultant).

³ Fee should reflect cost recovery based on an estimated budget including third party consultants.