



DATE: January 2, 2013

TO: Honorable Mayor and City Council Members

FROM: Property Management

SUBJECT: **APPROVAL OF A RECREATIONAL DISPOSITION AND DEVELOPMENT AGREEMENT INCLUDING AN ATHLETIC FIELDS LEASE AGREEMENT, AND A DISPOSITION AND DEVELOPMENT AGREEMENT FOR THE COMMERCIAL AREA AND BALANCE OF RECREATIONAL AREA DEVELOPMENT OF EL CORAZON**

SYNOPSIS

Staff recommends that the City Council approve a recreational disposition and development agreement, including an athletic fields lease agreement, for the development of multiuse athletic fields at El Corazon, and a disposition and development agreement for the commercial area development and the balance of the recreational area development at El Corazon, with Sudberry Development, Inc., as the developer; and authorize the City Manager to execute the agreements as the requisite documents applicable thereto are provided and reviewed.

BACKGROUND

At the August 31, 2011, City Council meeting, the City Council unanimously approved the selection of The Sudberry Properties/Soccer Field of Dreams ("Sudberry") as the developer of El Corazon. At the meeting, staff was also authorized to negotiate and prepare an exclusive negotiation agreement ("ENA") with Sudberry for the purpose of entering into disposition and development agreements (collectively "DDAs") for the development of El Corazon.

Subsequently, staff negotiated an ENA with Sudberry and at the November 11, 2011, City Council meeting, the City Council unanimously approved the ENA with the Developer. The ENA, in addition to providing assurances to Sudberry that the City will not enter into discussions with another developer while the parties negotiate the DDAs for the development of El Corazon, also addressed other important requirements. The ENA period was subsequently extended by the City Council on June 27, 2012.

As part of the negotiations between the City and Sudberry for the development of a portion of El Corazon ("Premises") with multiuse athletic fields, the City agreed to provide a graded pad and parking area for the multiuse athletic fields to be developed by Sudberry, as a condition to their development. In order to facilitate this requirement, Sudberry's engineer, as the consultant responsible for designing the multi-use athletic fields, will also prepare the grading plan for the City. Accordingly, the ENA also provided for the reimbursement by the City for costs incurred by Sudberry's engineer.

ANALYSIS

Subsequent to the approval of the ENA, staff began negotiating the DDAs needed to control the development of El Corazon by Sudberry. Staff and Sudberry have negotiated separate agreements for the development of a portion of El Corazon as multiuse athletic fields ("Athletic Fields DDA"), together with a lease agreement for the use of the Premises ("Lease Agreement"), and the development of the commercial areas and the balance of the remaining recreational areas of El Corazon ("El Corazon DDA").

The purpose for entering into a separate Athletic Fields DDA and the El Corazon DDA is primarily for financing purposes, and to move the development of the multiuse athletic fields forward as quickly as possible. In light of the current commercial real estate development market, it is prudent to separate the developments so that the complexities and uncertainties of the commercial real estate market will not impede the development of the multiuse athletic fields. Notwithstanding this separation, Sudberry has agreed that it cannot begin development of the commercial component of El Corazon without first completing the multiuse athletic fields.

The development of the multiuse athletic fields will consist of two parts. The first component will consist of the grading of the Premises and installation of other improvements by the City, which will require a grading plan. The grading plan will be prepared pursuant to the approved El Corazon Reclamation Plan. The second component will consist of the development of the Premises through the installation of the actual fields and the construction of the ancillary improvements. A development plan will be prepared and submitted by Sudberry for the field installation and other related improvements.

The improvements to be constructed by the City will include the grading of the site that will allow for the development of the Premises by Sudberry and will also include a Class II base parking lot, graded basin for water retention, a pedestrian walking trail, and water and electrical infrastructure to the site. The development improvements to be constructed by Sudberry will consist of installing topsoil and sod for 20 multiuse athletic fields and ancillary improvements (e.g., maintenance yard, etc.), and two additional all-purpose fields and a park-like open area.

Athletic Fields DDA and Lease Agreement

The document that governs the development and operation of the multiuse athletic fields at El Corazon is essentially divided into two parts. The Athletic Fields DDA sets

forth the terms and conditions of both parties regarding the development of the multiuse athletic fields at El Corazon prior to the commencement of the Lease Agreement. Thereafter, the Lease Agreement (which is attached to the Athletic Fields DDA as an exhibit) sets forth the obligations and responsibilities of the parties to construct, operate and maintain the Premises.

The essential terms and conditions of the Athletic Fields DDA are as follows:

1. Sudberry has the right to develop 97+/- acres of the recreational portion of El Corazon (out of the 212+/- acres for outdoor recreational activities), which shall include 68+/- acres for 20 multiuse athletic fields and ancillary uses (e.g., maintenance area, retention pond for watering, event staging area, etc.) for tournament use, a 21+/- acre parking lot area (Class II base), and 8+/- acres for 2 all-purpose fields for open play by the public together with other public amenities such as a park-like area and a pedestrian walking trail.
2. Preparation of a grading plan by the City for the grading of the Premises to allow for the proposed uses.
3. The City has 60 days to confirm the grading and related improvements costs and verify available funding; otherwise the City can terminate the agreement.
4. Upon the City's confirmation of the grading and related improvement costs, Sudberry has 90 days to conduct its due diligence of the subject property, which includes securing financing for the project.
5. Sudberry shall bring the application for a development plan and related environmental review for a public hearing within 90 days of the expiration of the due diligence period.
6. Sudberry to provide construction assurances for its development obligations prior to the City's grading of the Premises.

The essential terms and conditions of the Lease Agreement are as follows:

1. The term for the lease of the Premises shall be 25 years with two 10-year options to extend. Provided, however, prior to the exercise of each 10-year option period, the City has the right to terminate the lease if the City identifies a source of financing to construct the recreational components per the El Corazon Specific Plan and make a negotiated buy-out payment to Sudberry.
2. The Premises are leased to Sudberry for the purpose of operating athletic fields, athletic field tournaments and events, together with related activities

and programs and other prior approved activities, such as concerts and seasonal activities (e.g., pumpkin patch, Christmas tree lot, etc.).

3. Sudberry shall be required to enter into a use agreement with the Soccer Club of Oceanside ("SCO") and Surf Cup Soccer for use of the athletic fields.
4. Sudberry can have up to 28 major athletic field events per year (defined as using 10 or more of the athletic fields) with at least two committed for the Surf Cup Soccer tournaments.
5. Sudberry shall pay the City rent equal to 10 percent of annual gross revenue in excess of \$1,400,000 generated at the Premises, which increases to 15 percent of annual gross revenue in excess of \$4,000,000.
6. Maintenance and management of the Premises shall be the sole responsibility of Sudberry, including the 2 all-purpose fields for open play by the public, the public park-like area, and the pedestrian walking trail. The City will not be responsible for programming any use of the Premises.
7. In the future, the City has the right to relocate the Premises to other areas of El Corazon should the City decide to develop the balance of the recreational area per the El Corazon Specific Plan.
8. The City shall be required to provide improvements to the Premises that consist of: grading over 1,000,000 cubic yards of material to create a rough graded pad for 20 multiuse athletic fields, 2 additional all-purpose fields, a park-like area, a pedestrian walking trail, and a parking lot; placing Class II base over the parking lot area to accommodate over 2,200 vehicles; constructing an access road to the Moody's reclamation operation currently at El Corazon; constructing associated drainage improvements; placement of erosion control measures; construct improvements to bring well water to the Premises (e.g., drilling a well, installing a pump system and water lines); and pay for all related fees and permits associated with the project (collectively "City Improvements").
9. Sudberry shall be required to provide improvements to the Premises consisting of finish grading, topsoil installation and planting sod on the 20 multiuse athletic fields, 2 additional all-purpose fields, the park-like area; installation of temporary electrical; installation of over 7,000 feet of perimeter fencing; installation of an above-ground irrigation system (including a reservoir and integration of the well water system); construction of a maintenance yard; the acquisition of maintenance equipment (e.g., tractors, mowers, aerators, etc.); and the acquisition of tournament-related equipment (e.g., goals, benches, tents, etc.).

The Lease Agreement with Sudberry will give Sudberry the exclusive private use of the Premises other than the 2 all-purpose fields for open play, the adjacent park-like area and the pedestrian walking trail, which are open to the public. Provided however, by requiring Sudberry to enter into an agreement with SCO for use of fields at the Premises additional fields in the City of Oceanside are available to an Oceanside youth athletic group that are not maintained by the City. Also, some of the fields that are currently used by SCO at other City parks can potentially be made available for other Oceanside youth athletic group activities.

Under the terms of the El Corazon DDA as hereinafter described, the balance of the recreational area can potentially be developed by either the City or through Sudberry's first right of refusal. However, due to significant economic constraints of developing recreational facilities, it is highly likely that the 20 multiuse athletic fields, the 2 all-purpose fields, park-like area and the pedestrian walking trail that are proposed under the Recreational DDA and Lease Agreement will be the only recreational amenities developed in the foreseeable future along with the commercial area.

At this time, the estimated Recreational DDA and Lease Agreement development and construction schedule, should all prior contingencies be satisfied and otherwise completed, is anticipated to be as follows:

- 3/2013 Verification of City Improvement costs
- 6/2013 Completion of Sudberry due diligence
- 6/2013 Obtain development plan approvals
- 7/2013 Commencement of construction of City Improvements
- 5/2014 Completion of field development improvements by Sudberry
- 7/2014 First major tournament scheduled at the Premises

When the City Council approved the ENA with Sudberry, both the City and Sudberry were hopeful that the first major tournament at the Premises would occur in November 2013. Unfortunately, due to habitat constraints to perform certain environmental tests, the complexity of the documents involved, the need to plant sod during a certain time of the year, and the Surf Cup Soccer tournament schedule, the date was extended by mutual agreement of both the City and Sudberry. If ready, the parties will endeavor to open portions of the Premises prior to the first major tournament date.

El Corazon DDA

The document that governs the development and operation of the commercial areas of El Corazon and the balance of the recreational area of El Corazon is the El Corazon DDA. The El Corazon DDA sets forth the terms and conditions of both parties regarding

the development of the commercial area and the balance of the recreational area of El Corazon.

1. Sudberry has, pursuant to the El Corazon Specific Plan, the right to develop approximately 60 acres of the commercial portion of El Corazon, including development of commercial, office, hotel and mixed-use residential. Additionally, Sudberry will have the right to develop the balance of the recreational area at El Corazon.
 - a. An allocation of the developable square footage (i.e., 335,000 sf of commercial, 245,000 sf of office, 300 hotel rooms, and 300 mixed-use residential units) will be allocated between Sudberry and Stirling Development, the other developer at El Corazon, based on a gross acreage owned/controlled basis. This allocation between the two developers does not increase the developable commercial area of El Corazon.
2. Term of El Corazon DDA:
 - a. Commercial Area – Sudberry shall have an initial term of 7 years together with three 5-year options to extend, subject to satisfying certain conditions.
 - i. First 5-year option – Sudberry must obtain development entitlements within 5 years of initial term and start construction within the initial term.
 - ii. Second 5-year option – develop at least 20 percent of commercial area during the prior periods.
 - iii. Third 5-year option – develop an additional 20 percent of commercial area during the prior periods.
 - b. Balance of Recreational Area – Sudberry shall have an initial term of 12 years together with two 5-year options to extend. There are no conditions that need to be satisfied to request the options.
 - i. Under the terms of the El Corazon DDA together with the costs and revenue associated with typical recreational uses it may be unlikely that any other recreational uses will be developed on El Corazon unless the City initiates the development.
 - c. The City has the ability to develop the balance of the recreational area with Sudberry having a right of first refusal.
3. The preference is to ground lease the commercial area with an option to acquire the land in fee under certain market and financial economic

conditions. The balance of the recreational areas will be under a ground lease.

4. Sudberry shall have the opportunity to acquire (either by lease or purchase) the commercial area and the balance of the recreational area in phases consisting of no less than 2 acres per phase.
 - a. A condition of acquisition (either by lease or purchase) is that Sudberry must create legal parcels (e.g., compliance with the Subdivision Map Act).
 - b. Another condition is that Sudberry must provide construction assurances prior to the close of escrow that the development for each particular phase will get built as proposed.
5. Consideration:
 - a. Commercial land – purchase price based on a land residual value (“LRV”) with a ground lease rent based on a percentage of the LRV.
 - b. LRV formula – capitalized rental revenue from proposed development less developer costs and developer return on costs (“ROC”) equals LRV.
 - i. Developer Costs include hard and soft costs (e.g., construction, entitlements, engineering and architects, permits, financing, etc.), plus: an 11 percent cumulative preferred return on pre-development equity; 1 percent construction fee; 5 percent development fee; a 7.5 percent vacancy and credit loss factor (for commercial, office and apartments with the hotel vacancy factor to be determined by then market conditions); a property management fee of 3 percent; and a leasing over-ride of \$2.00 psf.
 - ii. Developer ROC of 10.5 percent blended rate for all product types.
 - c. Ground Lease Rent formula – 10 percent of LRV.
 - d. Future LRV Calculation – Since the major components to determine the LRV (capitalized rental revenue, financing terms and development costs) are presently unknown for a future project (especially the grading and infrastructure costs), depending on these variables the LRV could have a zero or negative value.
6. Completion of temporary athletic fields and commencement of operations per the terms and conditions of the Athletic Fields DDA and Lease

Agreement is a condition to developing the commercial area and the balance of the recreational area pursuant to the El Corazon DDA.

In analyzing the specific terms of both the Recreational DDA/Lease Agreement and the El Corazon DDA, staff worked with its financial consultant, Keyser Marston Associates ("KMA"). Additionally, staff and KMA took into consideration today's volatile commercial development and institutional financial markets, and the varied developer returns by product type regarding future development when examining each document. Further, staff and KMA analyzed the unique benefits of a 20-field multiuse athletic facility in a Southern California coastal zone (compared to other areas of the state and well as the country) coupled with users such as Surf Cup Soccer and what they have brought to the San Diego area.

Staff and KMA not only examined the terms and conditions of each document separately, but also looked at both documents together when analyzing the proposed overall benefit to the City. Further, by not only analyzing the terms and conditions of the El Corazon DDA together with the development of a unique multiuse athletic fields project per the Recreational DDA/Lease Agreement, staff also analyzed the continuing requirement of the City to reclaim the El Corazon property as a former mining site. In conclusion, staff recommends approval of the Recreational DDA/Lease Agreement and the El Corazon DDA with Sudberry.

Another reason to move forward with the DDAs and create the potential for revenue to the City (e.g., rent, possible sale of real property, additional Transient Occupancy Tax ("TOT") from future hotel development, and increased sales tax revenue from retail development, etc.) is to pay back the General Fund for funds associated with the prior entitlement and development of El Corazon. Those costs are approximately \$3,000,000 and include the infrastructure (e.g., roads, utilities, etc.) for the Senior Center at El Corazon, and the Master Plan, Specific Plan and Environmental Impact Report expenses.

FISCAL IMPACT

Costs

Per the ENA, City is required to reimburse Sudberry for the cost incurred by Sudberry's engineer to prepare the grading plan for the Premises. Reimbursement is on a time-and-material basis in an amount not to exceed \$66,000. Said funds will be expensed out of Capital Improvement Project Account No. 912121700501.5326.10410, which was created to pay for the City's share of planning and engineering costs associated with the development of El Corazon. The account has sufficient funds to pay for the associated cost.

Per the amendment to the ENA, in order to expedite the development process, Sudberry agreed to contract for services needed to prepare the development plan for the field improvements prior to the approval of the Athletic Fields DDA. As a condition thereto, the City agreed to reimburse said costs in the event that Sudberry did not move

forward under the Athletic Fields DDA. The reimbursement of said costs is on a time-and-material basis in an amount not to exceed \$120,000. If the City is required to reimburse said costs, the funds would be expensed out of Capital Improvement Project Account No. 912121700501.5326.10410. The account has sufficient funds to pay for the associated cost.

Per the terms of the Athletic Fields DDA/Lease Agreement, the City is required to construct the City Improvements in order to make the Premises ready for the field-related development improvements to be constructed by Sudberry, whose total costs are estimated at \$3,318,000. It is estimated that City Improvements will be at a cost not to exceed \$1,400,000.

Of said total, \$737,000 of the funding for the construction of the City Improvements will be transferred out of the General Capital Projects Fund 501 Assigned Reserves for Reclamation Project Account No. 501.3020.0025 and \$100,000 from the Silica Reclamation Fund Account No. 912880500501.4501 and put into the Silica Reclamation Fund Account No. 912880500501.5703.10600. Those accounts have sufficient funds to pay for a portion of the associated cost. The funds in those accounts have been earmarked for the reclamation of the El Corazon site as a former mining operation pursuant to the El Corazon Reclamation Plan.

Another portion of the funds needed to pay for the City Improvements will be from the sale of surplus property (i.e., Cleveland Street and Washington Avenue) in the amount of \$430,000, which sale was approved by the City Council in 2012 and is scheduled to close in the first quarter of 2013 (with said funds being placed into the Silica Reclamation Fund Account No. 912880500501.4501). Upon the close of escrow said \$430,000 will also be transferred to the Silica Reclamation Fund Account No. 912880500501.5703.10600.

The remaining \$133,000 needed will be in the form of in-lieu services pursuant to the Professional Services Agreement between the City and JMM Diversified, Inc., dba Moody's Excavation of Bonsall ("Moody's"). The in-lieu services by Moody's would be in the form of materials needed for the project (e.g., Class II base) and earthwork preparation. Since these are in-lieu services there is no further transfer or allocation of funds.

Revenue

Lease Agreement

Direct revenue under the Lease Agreement comes in the form of a rental payment of 10 percent of the gross revenue generated at the Premises in excess of \$1,400,000. Based on rental projections it is anticipated that beginning in lease year 4, the City will begin actualizing rental revenue. Once the project has stabilized at 24 major tournaments a year, the City could be receiving rental revenue of over \$100,000 per year. This figure could increase should additional major tournaments (up to a maximum of 28 per year) or lesser tournaments be held at the Premises.

The indirect revenue under the Lease Agreement is where the City could receive potentially significant income. This indirect revenue comes in the form of additional Transient Occupancy Tax and increased Sales Tax Revenue that is generated from the participants, spectators and visitors of the major tournaments held at the Premises. Based on the revenue figures from the 5 weekends a year that the Surf Cup Soccer Tournaments is held in San Diego for the past twenty years, more than \$22 million dollars a year is generated to the local economy.

Another indirect benefit to the City is the availability of fields to a City of Oceanside youth group, such as SCO, that does not cost the City anything to maintain. Further, the City will also have available to the public for open play 2 multiuse fields and a pedestrian walking trail that will be maintained by Sudberry.

El Corazon DDA

Direct revenue under the El Corazon DDA comes in the form of ground lease payments (for commercial land and the balance of recreational land) or a purchase price in the event of an acquisition (of the commercial land only). Inasmuch as the commercial area and the balance of the recreational area will be developed in the future, with a yet-to-be-defined product, a specific land price and corresponding ground lease payment is not determined at this time. Due to this uncertainty of development, the acquisition price is determined by a land residual value ("LRV") payment.

Additional indirect revenue, from the El Corazon DDA resulting from the commercial development and the balance of recreational development by Sudberry, can be generated from increased Sales Tax Revenue from commercial development, Transient Occupancy Tax from the development of the hotels, and increased Property Tax Revenue from the private use and development of El Corazon rather than a vacant parcel of land owned by the City.

Also, commercial development at El Corazon will reduce the annual cost to maintain the El Corazon property. Over the years, the City has incurred expenses for weed abatement, storm water mitigation measures, and some of the reclamation activities under the El Corazon Reclamation Plan. Last year, the City spent over \$250,000 on such maintenance.

Current City Council policy is to have revenue such as rent, sale of real property, TOT, and sales tax revenue, etc., go into the General Fund. Prior El Corazon committees had indicated a desire for all revenue generated at El Corazon to remain at El Corazon as a separate enterprise fund. However, inasmuch as such revenue generated at El Corazon is not anticipated to occur in the immediate future (i.e., multiuse athletic fields need to be completed before rent is paid, retail and hotel development needs to occur, etc.) and to what extent (e.g., increase in hotel rooms onsite and offsite from tournaments, etc.), this decision does not have to be made at this time.

INSURANCE REQUIREMENTS

Sudberry will comply with the City minimum coverage requirements throughout the term of the agreements.

COMMISSION OR COMMITTEE REPORT

At the December 11, 2012, meeting of the Economic Development Commission ("EDC"), EDC recommended approval of the essential terms and conditions of the Athletic Fields DDA and El Corazon DDA to be presented to the City Council for its approval.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

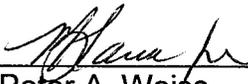
Staff recommends that the City Council approve a recreational disposition and development agreement, including an athletic fields lease agreement, for the development of multiuse athletic fields at El Corazon, and a disposition and development agreement for the commercial area development and the balance of the recreational area development at El Corazon, with Sudberry Development, Inc., as the developer; and authorize the City Manager to execute the agreements as the requisite documents applicable thereto are provided and reviewed.

PREPARED BY:



Douglas E. Eddow
Real Estate Manager

SUBMITTED BY:



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Teri Ferro, Financial Services Director





RECREATIONAL DISPOSITION AND DEVELOPMENT AGREEMENT

This Recreational Disposition and Development Agreement ("Agreement"), dated _____, solely for identification purposes, is entered into by the City of Oceanside, a charter city ("City"), and Sudberry Development, Inc. a California corporation ("Developer"). The City and Sudberry are collectively referred to as the "Parties".

RECITALS

- A. In 1994, the City acquired the approximate 465-acre former sand mining site known as El Corazon, located south of Mesa Drive, east of El Camino Real, west of Rancho del Oro Drive and north of Oceanside Boulevard. The El Corazon site presently includes vacant undeveloped property as well as existing development, including a senior center opened in 2009, a green waste composting facility, and reclamation activities with a mine tailings pond. The entire El Corazon site is more particularly described in Exhibit A.
- B. Following a multi-year public planning effort, the City Council of the City of Oceanside ("City Council") adopted the El Corazon Specific Plan ("Specific Plan") and certified a Final Environmental Impact Report ("EIR"). The Specific Plan provides for wide range of active and passive park activities, natural open space and habitat, civic service uses, and commercial land uses including hotel, office, and retail development.
- C. In September 2009, the City issued a Request for Qualifications ("RFQ") to the general public to solicit statements of qualifications from parties interested in the development of the various developable areas set forth in the Specific Plan. Three qualified commercial developers were selected to participate in a Request for Proposal ("RFP") for development of the commercial areas of the El Corazon site. Each developer had an option to submit proposals for the recreational, civic and habitat areas of the El Corazon property as well.
- D. On August 31, 2011, the City Council selected Developer as the proposed master developer for the El Corazon site and on November 30, 2011, the City and the Developer entered into a Negotiation Agreement to negotiate the terms and conditions for the conveyance and development of the El Corazon site to the developer in accordance with the Specific Plan.
- E. To effectuate the purposes of the Specific Plan, the City intends to lease a portion of the El Corazon site to Developer, more particularly described in Exhibit B, for the development and operation of recreational fields (hereinafter referred to as the "Premises") subject to the terms and conditions of this Agreement and to the Lease between the City of Oceanside and Sudberry Development, Inc., attached as Exhibit C to this Agreement.

- F. This Agreement is intended by the Parties to establish the roles and responsibilities of the City and Developer pending the close of escrow for the creation and commencement of the leasehold estate for the recreational development as more particularly described below (the "Close of Escrow"). The lease of the recreational fields shall establish all development obligations of the Developer as tenant.
- G. Concurrent with the approval of this Agreement, the City and Developer have approved a Disposition and Development Agreement for the development of the commercial component of the El Corazon site.

THEREFORE, the City and the Developer agree as follows:

ARTICLE 1 DEFINITIONS

100.1 Approvals. Any and all permits, approvals, consents, certificates, and/or licenses necessary to construct and operate the Recreational Development in accordance with applicable law.

100.2 City. The City of Oceanside.

100.3 Commencement Date. The date representing the actual Close of Escrow and commencement of the Lease between City and Developer for the Premises, attached as Exhibit C.

100.4 Construction Financing. Evidence of a lender-accepted Application or a lender-issued commitment, subject to commercially customary conditions, relative to a construction loan sufficient to provide for the funding of the monies needed to satisfy Developer's obligation to construct and operate the Recreational Development as provided in Section 500.2 of this Agreement after taking into account reasonable evidence of any equity contributions from non-lender sources which are to provide funds towards such obligation.

100.5 Construction Assurances. The evidence of debt financing and equity contributions required to be furnished to City pursuant to Section 500.2 of this Agreement.

100.6 Developer. Sudberry Development Inc., or an affiliate entity, whose Management Control, as defined below, is held, directly by Sudberry Development, Inc. and/or its principals.

100.7 Developer Entity Documents. The organizational documents of the entity that is the Developer, including all amendments, all of which the Developer shall certify as accurate and update on the date of the Close of Escrow, and a certificate of Good Standing from the applicable Secretary of State of the State of its formation, together with a resolution or certification of the directors, members or partners as the case may be, authorizing the Developer and designating the signer(s) to bind the Developer and enter into and perform this Agreement and the Lease.

100.8 Effective Date. The date on which all of the following has occurred: (a) The City has received three notarized, counterpart original signatures of this Agreement executed by the

authorized representatives of the Developer; (b) This Agreement has been approved by the City Council at an open, public meeting; and (c) this Agreement is executed by the authorized representative of the City and delivered to Developer;

100.9 Escrow Agent. Stewart Title Company in San Diego, Ca. attn. _____, (address), or such other Person mutually agreed to in writing by the Parties.

100.10 Escrow Closing Date. The earlier of: (a) on or before the fifth (5th) business day following the Escrow Agent's receipt of written confirmation from both the City and Developer of the satisfaction or waiver of all conditions precedent to the Close of Escrow or (b) the date that is 210 days following the Effective Date.

100.11 Event of Default. A default by either party hereunder which is not cured within thirty (30) days of written notice of such default; provided, however, if any such cure will reasonably require more than thirty (30) days to complete, and the defaulting party commences to cure same within the first ten (10) days of such thirty (30) day period and pursues such cure to completion with due diligence, then such thirty (30) day period shall be deemed automatically extended to such period of time as is reasonably required to cure such default.

100.12 Insurance Documents. Certified copies of insurance policies and endorsements evidencing all insurance coverage required to be obtained by the Developer, as tenant under the Lease, on or before the Commencement Date of the Lease.

100.13 Lease Memorandum. A short memorandum of the Lease to be executed by the City and Developer and recorded in the Official Records of San Diego County, California at the Close of Escrow, in substantially the form of Exhibit D attached to this Agreement.

100.14 Management Control. Regarding a specified Person, possession of the power to direct or cause the direction of the day to day management of such Person, whether by ownership of the equity interests, by contract or otherwise.

100.15 Person. Any association, corporation, government, individual, joint venture, joint-stock company, limited liability company, partnership, trust unincorporated organization or any other entity of any kind.

100.16 Premises. That certain portion of the El Corazon property identified in Exhibit B.

100.17 Recreational Development. The description of the Recreational Development to be constructed and operated by Developer is more particularly described on attached Exhibit "E", incorporated herein by this reference.

100.18 Title Company. Stewart Title Company in San Diego, California or such other title company mutually agreed in writing between the City and Developer.

100.19 Transfer. Any of the following: (a) any sale, transfer, conveyance, trust, pledge, hypothecation in any mode or form, of all or any portion of Developer's interest in this Agreement; or (b) any transaction that is in substance equivalent to the transactions described in

subsection (a). Notwithstanding the foregoing, City acknowledges that that the tenant under the Lease will be a newly formed California limited partnership or limited liability company under the Management Control of Developer and the foregoing will not be deemed a Transfer. Accordingly, references herein to the Developer taking action or executing the Lease, or the Lease Memorandum (or documents relating thereto) will be deemed to, in fact, refer to the entity created by Developer to serve as the tenant under the Lease.

100.20 Transferee. Each person, other than a Prohibited Transferee, acquiring an Equity Interest in Developer through an Equity Interest Transferee or acquiring all or a portion of Developer's Interest in this Agreement through a Transfer. A Prohibited Transferee shall never be a Transferee.

ARTICLE 2 REPRESENTATION AND WARRANTIES

200.1 City Representations and Warranties. The City represents and warrants to the Developer that the following facts and conditions exist and are true as of the Effective Date:

200.1.1 The City is a charter city under the California Constitution and is authorized to enter into this Agreement. This Agreement was approved by the City Council authorizing the City Manager to sign and deliver this Agreement and such other agreements and documents as may be required for the Close of Escrow, including without limitation the Lease.

200.1.2 The City owns fee title to the Premises, as of the Commencement Date, subject to the Permitted Exceptions and the disclaimers, waivers and releases set forth in the Lease.

200.1.3 To the City's knowledge, there is no existing, pending or threatened litigation, suit, action, or proceeding before any court affecting the Premises that would, if adversely determined, materially adversely affect the Premises, this Agreement, the leasehold estate to be created pursuant to the Lease (the "Leasehold Estate"), or the Developer's ability to develop and operate the Premises.

200.1.4 To City's knowledge, there is no existing or threatened court order that materially adversely affects the Premises, this Agreement, the Leasehold Estate, or the Developer's ability to develop and operate the Premises as the Recreational Development.

200.1.5 City was represented by legal counsel of its own selection throughout the negotiation and documentation of this Agreement.

200.2 Developer's Representations and Warranties. The Developer represents and warrants to the City that the following facts and conditions exist and are true as of the Effective Date:

200.2.1 Developer has the authority to enter into and the authority to perform this Agreement and no consent of any member, partner, shareholder, creditor, investor, judicial or administrative body, governmental agency, City or other Person is required for Developer to enter into or perform its obligations under this Agreement, except as has already been obtained and except as necessary to cause the satisfaction of the conditions to be satisfied as set forth in this Agreement and/or the Lease.

200.2.2 To Developer's knowledge Developer's entry into this Agreement and performance of its obligations under this Agreement do not violate any provisions of any agreement to which Developer is a party or is subject.

200.2.3 To Developer's knowledge there is no existing, pending or threatened litigation, suit, action, or proceeding before any court or administrative body affecting Developer, any Person owning an Equity Interest in Developer, or the Premises that would, if adversely determined, materially adversely affect the Premises, this Agreement, the Leasehold Estate or the Developer's ability to develop and operate the Premises as the Recreational Development.

200.2.4 To Developer's knowledge there is no existing or threatened court order that materially adversely affects the Premises, this Agreement, the Leasehold Estate, or the Developer's ability to develop and operate the Premises as the Recreational Development.

200.2.5 Developer is a corporation duly formed, organized, validly existing, and in good standing under the laws of the State of California (the "State") and is qualified to do business in the State with the California Secretary of State.

200.2.6 Developer was represented by independent legal counsel of its own selection in throughout the negotiation and documentation of this Agreement.

ARTICLE 3 TERMINATION OF NEGOTIATION AGREEMENT

300.1 Upon the occurrence of the Effective Date of this Agreement, the Parties intend and agree that the Negotiation Agreement shall expire, terminate and be of no further force or effect.

ARTICLE 4 TRANSFERS OF THE PREMISES OR AGREEMENT

400.1 Assignment and Transfer. The specific identity of Developer is of material importance to the City. It is because of those qualifications that the City enters into this Agreement with Developer. For the period commencing upon the Effective Date of this Agreement until the termination of this Agreement and commencement of the Lease, except as provided herein, no Transferee shall acquire any rights or powers under this Agreement, nor shall Developer make any Transfer of the Premises or any portion of the Premises without the prior written approval of the City which approval may be granted or withheld in the reasonable discretion of the City. Developer shall not have any right to transfer its interest in this Agreement, except as expressly set forth in Section 400.2.

400.2 Permitted Transfers. Notwithstanding any provision of this Agreement to the contrary, City approval of an assignment of this Agreement shall not be required in connection with any transfers to an entity in which the Developer and/or its principals retain, directly or indirectly a minimum of fifty-one percent (51%) of the ownership or beneficial interest in the Transferee or retains Management Control of the Transferee entity.

In the event of an assignment by Developer under this Section 400.2 not requiring prior approval by the City, Developer nevertheless agrees that a least ten (10) days prior to such

assignment it shall give written notice to the City of such assignment and satisfactory evidence that the assignee has assumed jointly with Developer the obligations of this Agreement.

400.3 Assignment and Assumption Agreement An executed Assignment and Assumption Agreement (or a document effecting a Transfer that includes the substantive provisions of the Assignment and Assumption Agreement) shall also be required for all proposed Transfers, with respect to the portion of the Premises so transferred whether or not City's consent is required. City agrees to cooperate in the negotiation of an alternative transfer document containing the substantive provisions of the Assignment and Assumption Agreement if so requested by Developer or the proposed Transferee, provided City shall not be required to amend any material part of this Agreement in any such negotiations.

400.4 City Action On Requested Transfer. Within thirty (30) days after the receipt of a written notice requesting City approval of a Transfer pursuant to Section 400.1, the City shall either approve or disapprove (with any such disapproval setting forth the reasons therefore) such proposed assignment or shall respond in writing by stating what further information, if any, the City requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, Developer shall promptly furnish to the City such further information as may be reasonably requested.

ARTICLE 5 DEVELOPMENT OF THE SITE

500.1 Construction of the Recreational Development. The Developer shall develop the Recreational Development in one phase in accordance with the plans, drawings and documents submitted by the Developer and approved by the City as set forth in the Lease. The development shall generally consist of the development of a recreational site as more particularly described in Exhibit "E" attached hereto and incorporated herein by this reference and required on-site and off-site improvements, but may additionally include other ancillary elements and uses consistent with the overall development scheme (such as, by way of example, additional parking facilities, a desilting basin, maintenance/equipment facilities/improvements, and pedestrian pathways/promenades). All Developer requirements for the construction and operation of the Recreational Development, including but not limited to, Developer submissions, city review and approval, necessary land use approvals, schedule of performance, allocation of construction costs, insurance costs, indemnity, taxes and assessments, and liens and stop notices, shall be governed by the Lease unless expressly provided for in this Disposition and Development Agreement.

500.2 Financing the Costs To Develop.

500.2.1 Approval of Debt and Equity Financing. As required herein and as a City condition to the Close of Escrow, Developer shall submit to City evidence that Developer has obtained sufficient equity capital or has obtained, and has provided to City, reasonable evidence of a commercial lender's intention, subject to industry standard customary terms and conditions, to provide the construction and/or permanent financing necessary to undertake development of the Recreational Development and all in accordance with Developer's obligations under this

Agreement and the Lease. City shall approve or disapprove such evidence of financing within ten (10) days of receipt of a complete submission. Approval shall not be unreasonably withheld or conditioned. If City shall disapprove any such evidence of financing, City shall do so by written notice to Developer stating the reasons for such disapproval and Developer shall promptly obtain and submit to City new evidence of financing. City shall approve or disapprove such new evidence of financing in the same manner and within the same times established in this Section for the initial submittal of Developer financing.

Such evidence of financing shall include the following: (a) a copy of a term sheet, lender-signed application, or formal commitment, obtained by Developer from an unrelated financial institution(s) for the loan of funds needed (in excess of the funds described in clause (b) below) to fund the construction, completion and operation and maintenance (to the extent funds are not anticipated to be provided through operating income) of the Recreational Development subject to such lender's reasonable and customary conditions and terms; and/or (b) a certification from the chief financial officer of the Developer that Developer has the necessary funds or committed equity partner/sources for construction, beyond those to be borrowed pursuant to the above-referenced lender financing to fund the costs described in clause (a) above. City may, as a condition of its approval of evidence of such financing and as a condition to the City's obligation to commence grading and the construction of its improvements of the Premises, require that funds consisting of equity partner/sources be set aside in a "cash control account" for the sole and specific purpose of constructing the Recreational Development. The "cash control account" shall be set up by the Developer in an escrow or fund control account in accordance with terms and conditions as approved by City, in its reasonable discretion. For the avoidance of doubt, it is the intent of the Parties that the purpose of obtaining construction financing commitment or equivalent is to provide assurances that the City will not be obligated to commence the grading of the Premises until such time as the Developer has provided documentation, to the City's reasonable satisfaction, that a combination of construction financing and sufficient equity for the Recreational Development has been secured so that once the City has completed its grading and improvements of the Premises, Developer has the funding necessary to complete the Recreational Development.

500.3 Approvals for the Recreational Development.

500.3.1 Grading Plan/City Work. In connection with the future construction of the Recreational Development, a grading plan will be prepared; which grading plan is more particularly described on attached Exhibit "F", incorporated herein by this reference. The City shall reimburse the Developer for all reasonable expenses incurred in preparing said grading plan for the City of Oceanside approval (as a regulatory agency). The City shall provide reimbursement at the times, in the amounts, and for the activities set forth in Exhibit "G" attached to this Agreement and incorporated herein by this reference. The Parties agree that the grading plan shall be in substantial conformance with Exhibit "F". Notwithstanding anything in this Agreement to the contrary, City shall have no duty to provide reimbursement in excess of the total reimbursement amount for preparation of the grading plan identified in Exhibit "F" unless such excess costs are due to actions of the City including changes to the grading plan required by the City or required in connection with obtaining the below referenced grading

permit; in which event Exhibit "F" shall be deemed automatically adjusted to reflect such additional cost, provided City is notified in writing before such costs are incurred. In addition to the foregoing, the City shall be responsible for performing the work described on attached Exhibit "F" including processing all required permit applications for such activities and, following issuance of all necessary permits and following the Close of Escrow, City shall perform the work described on attached Exhibit "F" in accordance with such permits and the Lease. The City's approval of a permit for the City's work (as described on attached Exhibit "F"), on terms and conditions reasonably acceptable to the Developer is a condition to the Developer's obligation to lease the Premises from the City as further described in Article 7.

500.3.2 Development Application for Operation of the Recreation

Development. The Parties anticipate that the development and operation of the Recreational Development will require approval by the City of an application for a development plan as well as required environmental review under the California Environmental Quality Act ("CEQA"). Developer shall prepare and process all required applications and associated environmental review for the development and operation of the Recreational Development prior to the Escrow Closing Date. The City's zoning, building and land use regulations (whether contained in ordinances, the City's municipal code, conditions of approval or elsewhere), shall be applicable to the operation of the Recreational Development on the Premises by the Developer, pursuant to this Agreement and the Lease. Developer shall bring the application for a development plan and related environmental review to a public hearing before the Planning Commission within ninety (90) days following the expiration of the Due Diligence Period; but so long as the Developer is proceeding in good faith and with reasonable due diligence, Developer shall be entitled to request from the City an extension of such target deadline to the extent there are reasonable delays or matters which require more time than anticipated, including delays caused by the City (as a regulatory agency) or other third parties. City, in its reasonable discretion, shall have the right to extend such target deadline. City shall pay the Developer for its reasonable expenses incurred in processing the application for a development plan and environmental review up to \$120,000 on a time and material basis. Upon the Close of Escrow, Developer shall reimburse the City for all expenses incurred by the City for payment made in furtherance of the development plan and environmental review expenses up to \$120,000, excluding planning staff time spent processing the application – it being agreed that Developer shall not at any time, be responsible for payment (or reimbursement) of any internal City costs, including staff time, relative to this DDA. Notwithstanding City's reimbursement set forth above, City shall not be responsible for permit fees associated with the development plan, which permit fees shall be borne by the Developer.

Approval of the development plan and related environmental review on the terms and conditions reasonably acceptable to the Developer is a condition to the Developer's obligation to lease the Premises from the City as further described in Article 7.

500.3.3 Reservations. The City cannot legally pre-commit its discretion in acting upon required applications for development of the Premises, including the grading permit, the development plan application and necessary environmental review. The approval of this Agreement by the City shall not bind the City Council, any other commission, committee, board

or decision-maker of the City or the City regarding any of the discretionary permits for the Recreational Development. No action by the City or the City with reference to this Agreement or any related documents shall be deemed to constitute issuance or waiver of any required City approval regarding the Premises. The Parties acknowledge and agree that this Agreement is not a statutory development agreement pursuant to Government Code Sections 65864, *et seq.*

500.4 Developer Attendance at City Meetings. The Developer agrees to have one or more of its employees or consultants who are knowledgeable regarding this Agreement, the Lease and the development of the Recreational Development such that employees or consultants can meaningfully respond to City questions regarding the progress of this Agreement and the Recreational Development.

500.5. City Financial Obligations. Other than the obligations set forth in this Article 35, the Developer and the City agree that the City does not have any financial obligations regarding the Recreational Development under the terms of this Agreement.

500.6 City Not to Encumber. City agrees not to place any matter of record against the Premises (other than Permitted Exceptions and any matter arising from the City's issuance or exercise of any authority related to any Approval for the Recreational Development) prior to the Close of Escrow without the prior written consent of the Developer.

500.7 Due Diligence. Developer shall have up to one hundred (100) days, commencing on the City Improvements Cost Deadline (as defined in Section 6.6.10 below) ("Due Diligence Period") to conduct its due diligence of the Premises to include, but not be limited to, review and approval or disapproval of the suitability of the physical and geotechnical condition of the Premises for Lessee's intended use, availability and costs of utility services (e.g., electricity, water, etc.) to the Premises, ingress and egress to the Premises, condition of title to the Premises, and obtaining equity and a term sheet, lender-signed application, or formal written commitment for a construction loan secured by a first deed of trust against Developer's leasehold interest in the Premises. City makes no representations or warranties, express or otherwise, regarding the physical condition of the Premises or the condition of title to the Premises. During the period of Due Diligence, Developer shall have the right to terminate this Agreement in accordance with Section 700.8 of this Agreement if Developer determines in good faith during the Due Diligence period that the Premises are not suitable for the intended use, that the proposed project is not economically satisfactory to Developer, or that the necessary equity and/or financing to undertake Developer's obligations hereunder are not available upon terms acceptable to Developer.

500.8 Property Documents. Within ten (10) business days after the date of this Agreement, City shall deliver to Developer current copies of all permits, soils tests, hazardous or toxic waste reports, geological studies, environmental impact studies, topographical maps, licenses, utility contracts, operating contracts, leases, maintenance contracts, service contracts, and other documents pertaining to the Premises ("Documents") in the possession of City, or in the possession of third parties who have prepared such Documents for the benefit of City. Prior to the end of the Due Diligence Period, Developer shall review and approve or disapprove each of the Documents.

ARTICLE 6 CONVEYANCE OF LEASEHOLD ESTATE/JOINT ESCROW INSTRUCTIONS

600.1 Lease Escrow. Upon the Close of Escrow the City shall enter into the Lease with the Developer and the Developer shall enter into the Lease with the City, pursuant to the terms and conditions of this Agreement and the Lease Memorandum shall be recorded in the Official Records of San Diego County, California. For the purposes of exchanging funds and documents to enter into the Lease, the City and the Developer agree to open the Escrow with the Escrow Agent. The provisions of this Article 6 of this Agreement are the joint escrow instructions of the Parties to the Escrow Agent for conducting the Escrow. If requested by the Escrow Agent, the Developer and the City shall execute the Escrow Agent's General Escrow Instructions and such further instructions as Escrow Agent may reasonably request. In the event of any conflict between the provisions of this Agreement and the Escrow Agent's General Escrow Instructions, the provisions of this Agreement shall be controlling.

600.2 Opening of Escrow. The City and the Developer shall cause the Escrow to be opened within seven (7) days following the Effective Date by delivering one or more copies of this Agreement signed by the Parties to the Escrow Agent. The Escrow Agent shall promptly confirm the Escrow Opening Date in writing to each of the Parties, with a copy of the Escrow Agent Consent executed by the authorized representative(s) of the Escrow Agent.

600.3 Escrow Agent Authority. The City and the Developer authorize the Escrow Agent to:

600.3.1 Charges. Pay and charge the City and the Developer for their respective shares of the applicable fees, taxes, charges and costs payable by either the City or the Developer regarding the Escrow with the Escrow Agent's fees being split equally between City and Developer;

600.3.2 Settlement/Closing Statements. Release each Party's Escrow settlement/closing statement to the other such Party;

600.3.3 Document Recording. File any documents delivered for recording through the Escrow with the office of the Recorder of the County for recordation in the official records of the County, pursuant to the joint instructions of the Parties; and,

600.3.4 Counterpart Documents. Utilize documents that have been signed by the City and the Developer in counterparts.

600.4 Preliminary Title Report. Upon opening of Escrow, City shall request a preliminary title report for the Premises ("Preliminary Report") issued by Stewart Title Insurance Company or another title insurance company mutually approved by the Parties containing such exceptions as the Title Company would specify in an American Land Title Association with Western Regional Exceptions ("ALTA WRE") Standard Policy of Title Insurance (or, provided Developer so requests in writing, as the Title Company would specify, any additional title insurance coverage),

together with copies of all exceptions and plotted easements and the legible copies of the documents supporting the exceptions.

600.5 Developer's Conditions to Close of Escrow. The Developer's obligation to lease the Premises from the City pursuant to the Lease on the Escrow Closing Date shall be subject to the satisfaction or waiver of each of the following conditions precedent, each of which can only be waived on behalf in writing by the Developer, and the decision whether or not to waive same shall be subject to Developer's sole, good faith discretion:

600.5.1 Document Approval. The Developer shall have all of the following described documents completed and signed by all of the Persons required to make such documents operative and the City shall have approved such documents if required by this Agreement:

600.5.1.1 A copy of the Developer Entity Documents;

600.5.1.2 A certified copy of the contract for construction of the Recreational Development;

600.5.1.3 A Memorandum of Agreement between the Developer and the San Diego Surf Cup for use of the Premises for Youth Soccer Tournaments for a minimum of five years.

600.5.1.4 All Insurance Documents;

600.5.1.5. The construction assurances described in Section 100.5;

600.5.1.5 An Approved Construction Financing Plan and evidence that all required equity is in Developer's possession or available to Developer subject to only commercially customary conditions;

600.5.2 Title Policy. The Title Company is, upon payment of the Title Company's premium for the Title Policy, irrevocably and unconditionally committed to issue the Title Policy to the Developer, at the Close of Escrow;

600.5.3 Approvals. Final issuance of all discretionary Approvals required from all governments and agencies for the construction and operation of the Recreational Development on the Premises, on terms and conditions reasonably acceptable to the Developer;

600.5.4 CEQA Documents. Final adoption, approval or certification of the required CEQA documents;

600.5.5 City Escrow Deposits. The City deposits all of the items into the Escrow required by Section 600.8;

600.5.6 Settlement/Closing Statement. The Developer approves the Escrow Agent's estimated Escrow closing/settlement statement;

600.5.7 City Representations and Warranties. The representations and warranties of the City specifically set forth in Article 2 are true and correct, as of the Escrow Closing Date;

600.5.8 City Pre-Closing Obligations. The City performs all of its material obligations required to be performed by the City under this Agreement prior to the Close of Escrow;

600.5.9 Construction Financing. The Developer has delivered all documents evidencing and securing the Construction Financing, including a Promissory Note and a Leasehold Deed of Trust (constituting the "Construction Financing Documents") into the Escrow;

600.5.10 Construction Financing Closing. The Construction Financing is in a position to close following the delivery of the Lease and the recordation of the Lease Memorandum;

600.5.11 No New Information. No change has occurred in the Developer's knowledge in a manner that would result in a material violation of any of the Developer's representations or warranties set forth in Article 2;

600.5.12 All of the City Work (as defined below) has been fully completed by City;

600.5.13 No Change in Condition. No change has occurred in the condition of the Premises; nor has any previously undisclosed adverse condition relating thereto been disclosed; and

600.5.14 Initial Equity. All required equity is in Developer's possession or available to Developer subject to only commercially customary conditions.

600.6 City's Conditions to Close of Escrow. The City's obligation to lease the Premises to the Developer pursuant to the Lease on or before the Escrow Closing Date shall be subject to the satisfaction or waiver of each of the following conditions precedent, each of which can only be waived in writing by the City:

600.6.1 Document Approval. The City has received from the Developer all of the documents and other items described in Section 600.5.1 completed and signed by all of the Persons required to make such documents operative and the City has approved all such documents and other items as consistent with this Agreement, the Lease and applicable law.

600.6.2 Approvals. Final issuance of all discretionary Approvals required from any Government for the Construction of the Recreational Development on the Premises, on terms and conditions reasonably acceptable to the City, including adoption or certification of required CEQA Documents;

600.6.3 Construction Financing. The Developer has delivered all documents constituting the Construction Financing Documents into the Escrow;

600.6.4 Construction Financing Closing. The Construction Financing is in a position to close immediately following the delivery of the Lease and the recordation of the Lease Memorandum;

600.6.5 No New Information. No change has occurred in the City's knowledge in a manner that would result in a material violation of any of the Developer's representations or warranties set forth in Article 2;

600.6.6 Developer Escrow Deposits. The Developer deposits all of the items into the Escrow required by Section 600.7;

600.6.7 Settlement/Closing Statement. The City approves the Escrow Agent's estimated Escrow closing/settlement statement;

600.6.8 Developer Representations and Warranties. The representations and warranties of the Developer specifically set forth in Article 2 are true and correct, as of the Escrow Closing Date; and

600.6.9 Developer Pre-Closing Obligations. The Developer performs all of its material obligations required to be performed by the Developer under this Agreement prior to the Close of Escrow.

600.6.10 City Improvement Costs. On or before 60 days after the Effective Date (the "City Improvements Cost Deadline"), City has obtained and approved an estimate of the cost (the "City Improvements Cost") to perform the City Improvements required to be performed by the City pursuant to the Lease). If City disapproves the City Improvements Cost, it must give the Developer written notice on or before the City Improvements Cost Deadline, which notice shall state the maximum amount of City Improvements Cost that the City is willing to approve. Unless the Developer, within 30 days after such notice from the City, agrees in writing to pay the difference between the City approved amount and the actual estimate, this Agreement shall terminate. If the Developer agrees to contribute to the City Improvements Cost, all amounts so paid by the Developer shall be treated as prepaid rent under the Lease and applied to rent first becoming due. If City fails to give written notice of a disapproval of the City Improvements Cost by the City Improvements Cost Deadline, it shall be deemed to have approved the City Improvements Cost and shall thereafter have no right to terminate this Agreement based on the amount of the City Improvements Cost.

600.7 Developer's Escrow Deposits. At least one (1) business day prior to the Escrow Closing Date scheduled by the Escrow Agent in a writing delivered to both of the Parties, the Developer shall deposit the following described funds and documents into the Escrow which copies thereof will be delivered to City by Escrow upon closing:

600.7.1 Lease. The Lease signed by the authorized representative(s) of the Developer and acknowledged by a notary public;

600.7.2 Insurance Documents. All Insurance Documents, as approved by the City;

600.7.3 Lease Memorandum. The Lease Memorandum signed by the authorized representative(s) of the Developer in recordable form and acknowledged by a notary public;

600.7.4 Construction Financing Security Instrument. The Leasehold Deed of Trust securing repayment of the Construction Financing, executed by the authorized representative(s) of the Developer in recordable form and acknowledged by a notary public, to be recorded against the Leasehold Estate and all of Developer's right, title, and interest under the Lease at the Close of Escrow;

600.7.5 Non-Disturbance and Attornment Agreement. An agreement, duly signed by the authorized representative(s) of the Developer in recordable form (and acknowledged by a notary public), between City, Developer, and the lender providing the Construction Financing by which such parties agree to typical non-disturbance and attornment concepts (and other commercially customary concepts) upon a default by Developer under the Lease or the Construction Financing Documents (the "NDA");

600.7.-6 Initial Equity Investment. The full amount of the Initial Equity Investment has been placed in a fund control or lender-controlled account or Developer has otherwise provided the City with reasonable assurances that such funds are available to Developer without material conditions other than customary fund control/construction lender-type conditions which are within Developer's ability to perform and Developer will provided evidence of such as provided above, but will not be required to deposit same with the City;

600.7.7 Other Funds and Documents. Such other funds or documents required from the Developer under the terms of this Agreement to close the Escrow or by the Escrow Agent in the performance of the Escrow Agent's contractual or statutory obligations relating to the Escrow.

600.8 City's Escrow Deposits. At least one (1) business day prior to the Escrow Closing Date scheduled by the Escrow Agent in a writing delivered to both of the Parties, the City shall deposit the following described funds and documents into the Escrow which copies thereof will be delivered to City by Escrow upon closing:

600.8.1 Lease. The Lease signed by the authorized representative(s) of the City (and acknowledged by a notary public);

600.8.2 Lease Memorandum. The Lease Memorandum signed by the authorized representative(s) of the City in recordable form and acknowledged by a notary public;

600.8.3 FIRPTA Certificate. The FIRPTA Certificate signed by the authorized representative(s) of the City.

600.8.4 Form 593. A Form 593 signed by the authorized representative(s) of the City;

600.8.5 Non-Disturbance and Attornment Agreement. The NDA, duly signed by the authorized representative(s) of the City in recordable form (and acknowledged by a notary public); and

600.8.6 Other Funds and Documents. Such other funds or documents required from the City under the terms of this Agreement to close the Escrow or by the Escrow Agent in the performance of the Escrow Agent's contractual or statutory obligations regarding the Escrow.

600.9 Closing Procedure. When each of the Developer's Escrow deposits and each of the City's Escrow deposits, are deposited into the Escrow, the Escrow Agent shall request confirmation in writing from both the Developer and the City that each of their respective conditions to the Close of Escrow, are satisfied or waived; which confirmation shall be promptly provided by each Party. Upon the Escrow Closing Date, Escrow Agent shall close the Escrow by doing all of the following in the following order:

600.9.1 Recordation and Distribution of Recorded Documents. The Escrow Agent shall file the following documents with the office of the Recorder of the County for recording in the official records of the County, in the following order, at the Close of Escrow: (a) the Lease Memorandum; (b) the Leasehold Deed of Trust securing the Construction Financing and the NDA, and (c) any other documents to be recorded through the Escrow upon the joint instructions of the Parties. The Escrow Agent shall deliver conformed copies of all documents filed for recording in the official records of the County through the Escrow to the City, the Developer, the lender providing the Construction Financing and any other Person designated in the written joint escrow instructions of the Parties to receive an original or conformed copy of each such document. Each copy of a document filed for recording shall show all recording information.

600.9.2 Distribution of Other Documents. The Escrow Agent shall deliver a fully executed original of the Lease to both the City and the Developer. The Escrow Agent shall deliver copies of all other documents delivered through the Escrow to the City, the Developer and any other Person designated in the written joint escrow instructions of the Parties to receive an original or copy of each such document;

600.9.3 Developer Title Policy. The Escrow Agent shall obtain and deliver the Title Policy to the Developer;

600.9.4 Funds. The Escrow Agent shall deliver all funds held by the Escrow Agent for the account of the City (if any) to the City, less the City's share of the Escrow closing costs, and less any other charges to the account of the City pursuant to the terms of this Agreement, and return all remaining funds held by the Escrow Agent for the account of the Developer (if any) to the Developer, less the Developer's share of the Escrow closing costs, and less any other charges to the account of the Developer pursuant to the terms of this Agreement;

600.9.5 FIRPTA Certificate. The Escrow Agent shall file the FIRPTA Certificate with the United States Internal Revenue Service;

600.9.6 Form 593. The Escrow Agent shall file the Form 593 with the State of California Franchise Tax Board; and

600.9.7 Report to IRS. Following the Close of Escrow and prior to the last date on which such report is required to be filed with the United States Internal Revenue Service, if such report is required pursuant to Section 6045(e) of the United States Internal Revenue Code, the Escrow Agent shall report the gross proceeds of the lease of the Premises pursuant to this Agreement and the Lease to the United States Internal Revenue Service on Form 1099-B, Form W-9 or such other form(s) as may be specified by the United States Internal Revenue Service

pursuant to Section 6045(e) or its associated Federal regulations. Upon the filing of such reporting form with the United States Internal Revenue Service, the Escrow Agent shall deliver a copy of the filed form to both the City and the Developer.

600.10 Close of Escrow. The Close of Escrow, as evidenced by the recordation of the Lease Memorandum, shall occur on or before the Escrow Closing Date; The Parties may mutually agree to change the Escrow Closing Date by joint written instruction to the Escrow Agent. If for any reason the Close of Escrow has not occurred on or before the Escrow Closing Date, then any Party not then in default under this Agreement may cancel the Escrow and terminate this Agreement, without liability to the other Party or any other Person for such cancellation and termination, by delivering written notice of termination to both the other Party and the Escrow Agent. Following any such notice of termination of this Agreement and cancellation of the Escrow, the Parties and the Escrow Agent shall proceed pursuant to Section 600.12. Without limiting the right of either Party to cancel the Escrow and terminate this Agreement, if the Escrow does not close on or before the Escrow Closing Date and neither Party has exercised its contractual right to cancel the Escrow and terminate this Agreement before the first date on which the Escrow Agent notifies both Parties that the Escrow is in a position to close, then the Escrow shall close as soon as reasonably possible following the first date on which the Escrow Agent notifies both Parties that the Escrow is in a position to close, pursuant to the terms and conditions of this Agreement.

600.11 Escrow Closing Costs, Taxes and Title Policy Premium. The City and the Developer shall each pay one-half (1/2) of the Escrow fees and such other costs as the Escrow Agent may charge for conducting the Escrow. The City shall pay the premium charged by the Title Company for the Title Policy issued upon the Close of Escrow; provided, however, if the Developer requests extended ALTA coverage, Developer shall pay such increased premium amount. The City shall pay any County documentary transfer tax arising from entry into the Lease at the Close of Escrow and all recording fees. The Developer shall pay the cost of any endorsements or supplements to the coverage of the Title Policy requested by the Developer. All other fees and charges shall be borne by the parties in accordance with custom and practice for similar transactions in San Diego County, California. The Escrow Agent shall notify the Developer and the City in advance of the costs to be borne by each of them at the Close of Escrow by delivering the Escrow Agent's estimated Escrow closing/settlement statement to both the City and the Developer, at least two (2) business days prior to the scheduled Escrow Closing Date.

600.12 Escrow Cancellation Charges. If the Escrow fails to close due to an Event of Default attributable to the City, the City shall pay all customary and reasonable cancellation charges regarding cancellation of the Escrow and the Title Policy order, if any. If the Escrow fails to close due to an Event of Default attributable to the Developer, the Developer shall pay all customary and reasonable cancellation charges regarding cancellation of the Escrow and the Title Policy order, if any. If the Escrow fails to close for any reason other than an Event of Default attributable to either the Developer or the City, the Developer and the City shall each pay one-half (1/2) of all customary and reasonable cancellation charges regarding cancellation of the Escrow and the Title Policy order.

600.13 Escrow Cancellation. If the Escrow is cancelled and this Agreement is terminated pursuant to a contractual right granted to a Party in this Agreement to cancel the Escrow and terminate this Agreement, the Parties shall pay any associated cancellation charges in accordance with Section 600.12 and do each of the following:

600.13.1 Cancellation Instructions. The Parties shall, within three (3) business days following receipt of the Escrow Agent's written request, execute any reasonable Escrow cancellation instructions requested by the Escrow Agent; and

600.13.2 Return of Funds and Documents. Within seven (7) days following receipt by the Parties of a settlement statement from the Escrow Agent of cancellation charges regarding cancellation of the Escrow and the Title Policy order, (a) the Developer or the Escrow Agent, respectively, shall return to the City any documents previously delivered by the City to the Developer or the Escrow Agent regarding this Agreement, the Lease, the Premises or the Escrow; (b) the City or the Escrow Agent, respectively, shall return to the Developer all documents previously delivered by the Developer to the City or the Escrow Agent regarding this Agreement, the Lease, the Premises or the Escrow; (c) the Escrow Agent shall return to the Developer any funds deposited into the Escrow by the Developer (if any), less the Developer's share of any customary and reasonable cancellation charges regarding cancellation of the Escrow, the Title Policy order; and (d) the Escrow Agent shall return to the City any funds deposited into the Escrow by the City (if any), less the City's share of any customary and reasonable cancellation charges regarding cancellation of the Escrow, the Title Policy order, and the City Title Policy order, if any, in accordance with Section 600.12.

600.14 Escrow Notices. All notices from the Escrow Agent to the Parties shall be given in the manner provided in Section 800.1 of this Agreement.

600.15 Post-Closing Obligations Pursuant to Lease. The rights and obligations of the City and the Developer regarding the Leasehold Estate and the Recreational Development, following the Close of Escrow, shall be governed exclusively by the terms and conditions of the Lease and upon the recordation of the Lease Memorandum, this Agreement shall be of no further force or effect except Sections 700.6, 800.2 and 800.6.

ARTICLE 7. DEFAULTS, REMEDIES AND TERMINATION

700.1 Defaults-General.

a. Subject to the extensions of time set forth in Section 800.3, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who fails or delays must commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence in the time frame set forth in Section 100.11.

b. The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

700.2 Institution of Legal Actions

In addition to any other rights or remedies (and except as otherwise provided in this Agreement), either party may institute legal action to cure, correct or remedy any Event of Default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of San Diego, State of California, in any other appropriate court of that county, or in the United States District Court for the Southern District of California.

700.3 Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

700.4 Acceptance of Service of Process

a. In the event that any legal action is commenced by Developer against the City, service of process on the City shall be made by personal service upon the City Clerk, or in such other manner as may be provided by law.

b. In the event that any legal action is commenced by the City against Developer, service of process on Developer shall be made by personal service upon Developer (or upon the General Partner or General Partner's managing member, as applicable, or any officer of the General Partner or General Partner's managing member, as applicable) and shall be valid whether made within or without the State of California, or in such manner as may be provided by law.

700.5 Rights and Remedies Are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

700.6 Damages

Subject to the notice and cure provisions of Section 700.1 and Section 100.11, if either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured prior to becoming an Event of Default, as provided in Section 100.11, the defaulting party shall be liable to the non-defaulting party for any damages caused by such Event of Default, and the non-defaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such Event of Default. Neither City nor Developer shall be entitled to, and each hereby waives, any right to seek special or consequential damages of any kind or nature arising out of or in connection with this Agreement.

700.7 Specific Performance

In addition to the remedies provided for under Section 700.6, above, upon the occurrence of an Event of Default, the non-defaulting party, at its option, may thereafter (but not before) commence an action for specific performance of the terms of this Agreement pertaining to such Event of Default.

700.8 Termination by Developer Prior to Closing

Prior to the Close of Escrow, Developer shall have the right to terminate this Agreement, by providing written notice to the City, in the event of an Event of Default by City pursuant to this Agreement or in the event of a failure of a condition to Developer's obligations hereunder (as described above) which is not waived by Developer or cured prior to the outside date for the Escrow Closing Date described in Section 100.10. In addition, Developer shall have the right to terminate this Agreement during the period of Due Diligence, if during the period of Due Diligence, Developer in good faith determines that the Premises is not suitable for the intended use, that the proposed project is not economically satisfactory to Developer, or that the necessary equity and/or financing to undertake Developer's obligations hereunder and under the Lease are not available upon terms acceptable to Developer.

700.9 Termination by City Prior to Closing

Prior to the Close of Escrow, City shall have the right to terminate this Agreement, by providing written notice to the Developer, in the event of an Event of Default by Developer pursuant to this Agreement. In addition, City shall have the right to terminate this Agreement under the conditions set forth in Section 600.6.10.

ARTICLE 8 GENERAL PROVISIONS

800.1 Notices, Demands and Communications. Formal notices, demands, and communications between the Parties shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, by reputable overnight delivery service, or delivered personally, to the principal office of the City and the Developer as follows:

City: City of Oceanside
Office of City Manager
300 North Coast Highway
Oceanside, CA 92054
Attention: City Manager

With a copy to: City of Oceanside
Office of City Attorney
300 North Coast Highway
Oceanside, CA 92054

Developer: Sudberry Development, Inc.
Attention: c/o Sudberry Properties, Inc.
5465 Morehouse Drive, Suite 260
San Diego, CA 92121
Attention: Colton T. Sudberry

And to: Charlie Abdi
c/o Finest City Realty Advisors
12651 High Bluff Drive, Suite 250
San Diego, CA 92130

With copies by email to: chuck@sudprop.com and gis@smclawoffices.com

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section 11.1. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

800.2 Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement. No member, official, employee or agent of the Developer shall be personally liable to the City, or any successor in interest, in the event of any default or breach by the Developer or for any amount which may become due to the City or successor or on any obligation under the terms of this Agreement.

800.3 Forced Delay. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due directly or indirectly to war; insurrection; strikes or other labor unrest; lock-outs; riots; floods; earthquakes; fires; casualties; acts of god; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; litigation (including suits filed by third parties concerning or arising out of this

Agreement); acts or failure to act of any public or governmental City or entity; or any other causes (other than Developer's inability to obtain financing for the Development) beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the party claiming such extension is sent to the other within fifteen (15) days from the date the party seeking the extension first discovered the cause (and the delay resulting therefrom) and such extension of time is not validly rejected (due to such original request for an extension not meeting the requirements for an extension provided above) in writing by the other party within ten (10) days of receipt of the notice. In no event shall the cumulative delays exceed one hundred eighty (180) days; provided, however, that delays caused by one Party affecting the other Party shall be excluded from such 180 day maximum.

800.4 Inspection of Books and Records. Upon request, the Developer shall permit the City to inspect, at reasonable times, those books, records and other documents of the Developer necessary to determine Developer's compliance with the terms of this Agreement, provided, however, such right shall not extend to any documents which are otherwise protected by a privilege, such as attorney-client privilege. The Developer also has the right at all reasonable times to inspect the books, records and all other documentation of the City pertaining to its obligations under this Agreement, provided, however, such right shall not extend to any documents which are otherwise protected by a privilege, such as attorney-client privilege.

800.5 Title of Parts and Sections. Any titles of the articles, sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.

800.6 Indemnification. The Developer agrees to defend (by counsel reasonably satisfactory to the City), indemnify, protect, hold harmless the City, its Council members, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of the Developer's performance or non-performance under this Agreement or any action taken pursuant to this Agreement except to the extent caused by the willful misconduct or negligence of the City (or any member, official, employee, contractor, or agent of the City). The provisions of this section shall survive termination of this Agreement, and shall remain in full force and effect.

800.7 Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California.

800.8 No Brokers. Each party represents to the other that it has not had any contact or dealings regarding the Premises, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, the party through whom the broker or finder makes this claim shall indemnify, defend with counsel of the indemnified party's choice, and hold the indemnified party harmless from all expense, loss, damage and claims, including the indemnified

party's attorneys' fees, if necessary, arising out of the broker's or finder's claim. The provisions of this section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

800.9 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

800.10 Representations.

800.10.1 Organization. The Developer is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of California, with full power and authority to conduct its business as presently conducted and to execute, deliver and perform its obligations under this Agreement. The City is a charter city, duly organized, validly existing and in good standing under the laws of the State of California, with full power and authority to conduct its business as presently conducted and to execute, deliver and perform its obligations under this Agreement.

800.10.2 Authorization. The Developer and the City each represent and warrant to the other that: (i) it has taken all necessary action to authorize its execution, delivery and, subject to any conditions set forth in this Agreement, performance of this Agreement; and (ii) upon the date of this Agreement, this Agreement shall constitute a legal, valid and binding obligation of such party, enforceable against it in accordance with its terms subject to principles of equity and laws affecting creditors' rights generally. Prior to the execution of this Agreement, the Developer shall provide the City with certified copies of corporate resolutions authorizing this Agreement to be executed by the Developer.

800.10.3 No Conflict. The Developer and the City each represent and warrant to the other that execution, delivery and performance of this Agreement by it does not and will not conflict with, or constitute a violation or breach of, or constitute a default under (i) the charter or incorporation documents of such party, (ii) any applicable law, rule or regulation binding upon or applicable to such party, or (iii) any material agreements to which such party is a party.

800.10.4 No Material Adverse Change. There has been no material adverse change in the financial condition of the Developer since the date of this Agreement.

800.10.5 Default Under Other Agreements. The Developer and the City each represent and warrant to the other that there is no event, act or omission which constitute, or but for the passage of time or the giving of notice, or both, would constitute a breach, violation or default under any agreement materially related to the Recreational Development or operation of the Recreational Development. Until the expiration or earlier termination of this Agreement, Developer and City shall each, upon learning of any fact or condition which would cause any of the warranties and representations in Article 2 or this Section 880.10 not to be true, immediately

give written notice of such fact or condition to the other party. Upon the Developer's Transfer, as approved by the City in accordance with Article 4, the Developer shall cause the Developer's assignee to update the representations and warranties set forth above.

800.11 Multiple Originals; Complete Understanding of the Parties. This Agreement may be executed in multiple counterparts, each of which is deemed to be an original. This Agreement and the attached exhibits constitute the entire understanding and agreement of the Parties with respect to the matters set forth in this Agreement.

800.12 Right of Entry to Perform Studies.

800.12.1 Temporary Right of Entry. The City hereby grants a right of entry to the Premises to the Developer for the sole purposes of performing a land survey, and conducting soils and other testing and due diligence activities which require access to the Premises (the "Temporary Right of Entry"). Such right of entry shall continue throughout the effective period of this Agreement and shall terminate concurrently with the termination of this Agreement.

The Developer agrees at all times to keep the Premises free and clear of all liens, encumbrances, and clouds upon title resulting from the exercise of the Temporary Right of Entry but excluding any matter arising from Developer's mere discovery of an existing condition. Any preliminary work by the Developer shall be undertaken only after securing the insurance required under the Lease and all necessary permits from the appropriate governmental agencies and such work shall be done without disturbing any existing third-party operating at the El Corazon property. In addition, in the event that the Developer causes any damage to any portion of the Premises, the Developer shall promptly restore the Premises as nearly as possible to the physical condition existing immediately prior to the Developer's entry onto the Premises. The Developer shall promptly provide the City a copy of all reports and test results of the Premises conducted on behalf of the Developer. The Developer shall approve or disapprove the physical, geotechnical, and environmental condition of the Premises no later than the time set forth in the Section 500.7. The Developer's failure to disapprove the condition of the Premises by the time set forth in Section 500.7 shall be deemed approval. Upon the Developer's approval of the physical, geotechnical and environmental condition of the Premises, the Developer shall have no right to terminate this Agreement on account of the physical, geotechnical, or environmental condition of the Property except as a result of a discovery pursuant to Section 600.5.12.

800.13.2 Indemnity. Without limiting the generality of the indemnification forth above, the Developer agrees to indemnify, defend (by counsel reasonably satisfactory to the City), and hold the City, its officials, employees and agents, harmless against all claims, including but not limited to mechanics liens and personal or property damage, arising from the entry of the Developer or its agents, employees, contractors or subcontractors onto the Premises, or created as a result of the exercise of this Temporary Right of Entry; excluding, however, any matter arising out of the mere discovery of an existing condition. The Developer further agrees that all survey and testing work performed pursuant to this Temporary Right of Entry shall be made at

the Developer's sole cost. Notwithstanding any provision to the contrary in this Agreement, this obligation shall survive termination of this Agreement.

800.14 Amendments. Amendments to this Agreement shall be in writing and approved by the authorized representatives of the Parties. Any amendment to this Agreement shall be approved by the City Council at a public meeting.

800.15 Recordation of Agreement. This Agreement shall be recorded in the Official Records of San Diego County, California following execution by the parties. However, upon the recordation of the Lease Memorandum, this Agreement shall be of no further force or effect and each Party shall, at the request of the other Party execute an instrument evidencing the termination hereof in recordable form and such instrument shall be recorded in the Official Records of San Diego County, California.

800.16 No Other Representations or Warranties. Except as expressly set forth in this Agreement, no Party makes any representation or warranty material to this Agreement to any other Party.

800.17 Tax Consequences. The Developer acknowledges and agrees that it shall bear any and all responsibility, liability, costs, and expenses connected in any way with any tax consequences experienced by the Developer related to this Agreement or the Lease.

800.18 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party.

800.19 No Waiver. Failure to insist on any one occasion upon strict compliance with any term, covenant, condition, restriction or agreement contained in this Agreement shall not be deemed a waiver of such term, covenant, condition, restriction or agreement, nor shall any waiver or relinquishment of any rights or powers under this Agreement, at any one time or more times, be deemed a waiver or relinquishment of such right or power at any other time or times.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO RECREATIONAL DISPOSITION AND DEVELOPMENT AGREEMENT

CITY

THE CITY OF OCEANSIDE
a municipal corporation

Date _____

By: _____
City Manager

APPROVED AS TO FORM:

By: _____
City Attorney

DEVELOPER

SUDBERRY DEVELOPMENT, INC., a California corporation

Date 12-20-12

By: 
Name: Cotton T. Sudberry
Title: President

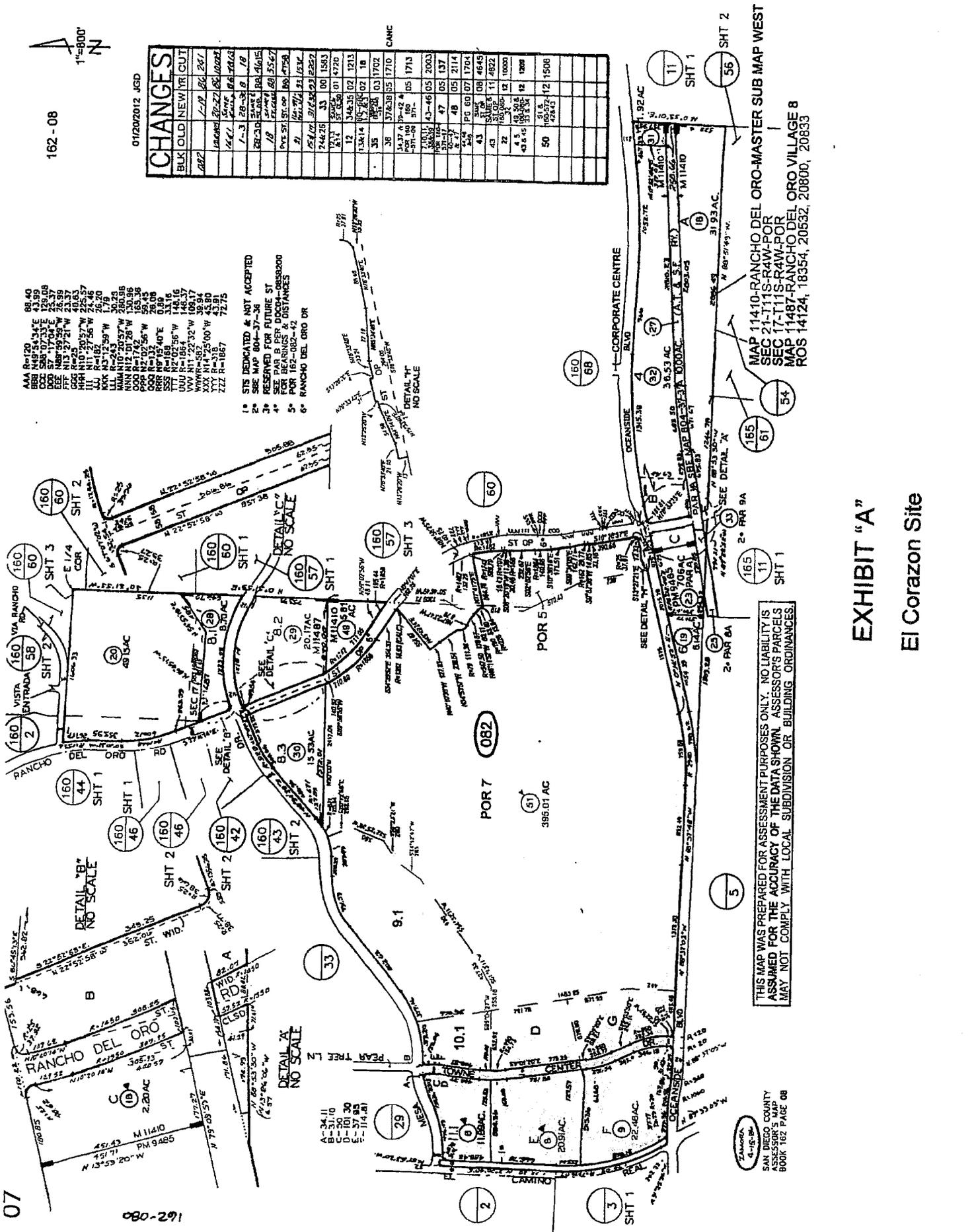


01/20/2012 JGD

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 DDD N48°54'34"E 43.99
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 YYY R=1857 72.75
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- 3° RESERVED FOR FUTURE ST
- 4° SEE PAR B PER DDDC04-088300
- 5° FOR BEARINGS & DISTANCES
- 6° RANCHO DEL ORO DR



THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. ASSESSOR'S PARCELS MAY NOT COMPLY WITH LOCAL SUBDIVISION OR BUILDING ORDINANCES.

SAN DIEGO COUNTY ASSESSOR'S MAP BOOK 162 PAGE 08

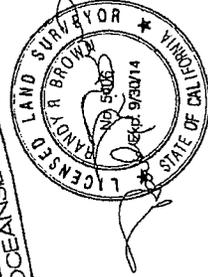
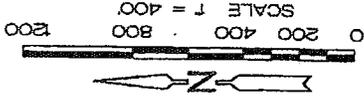
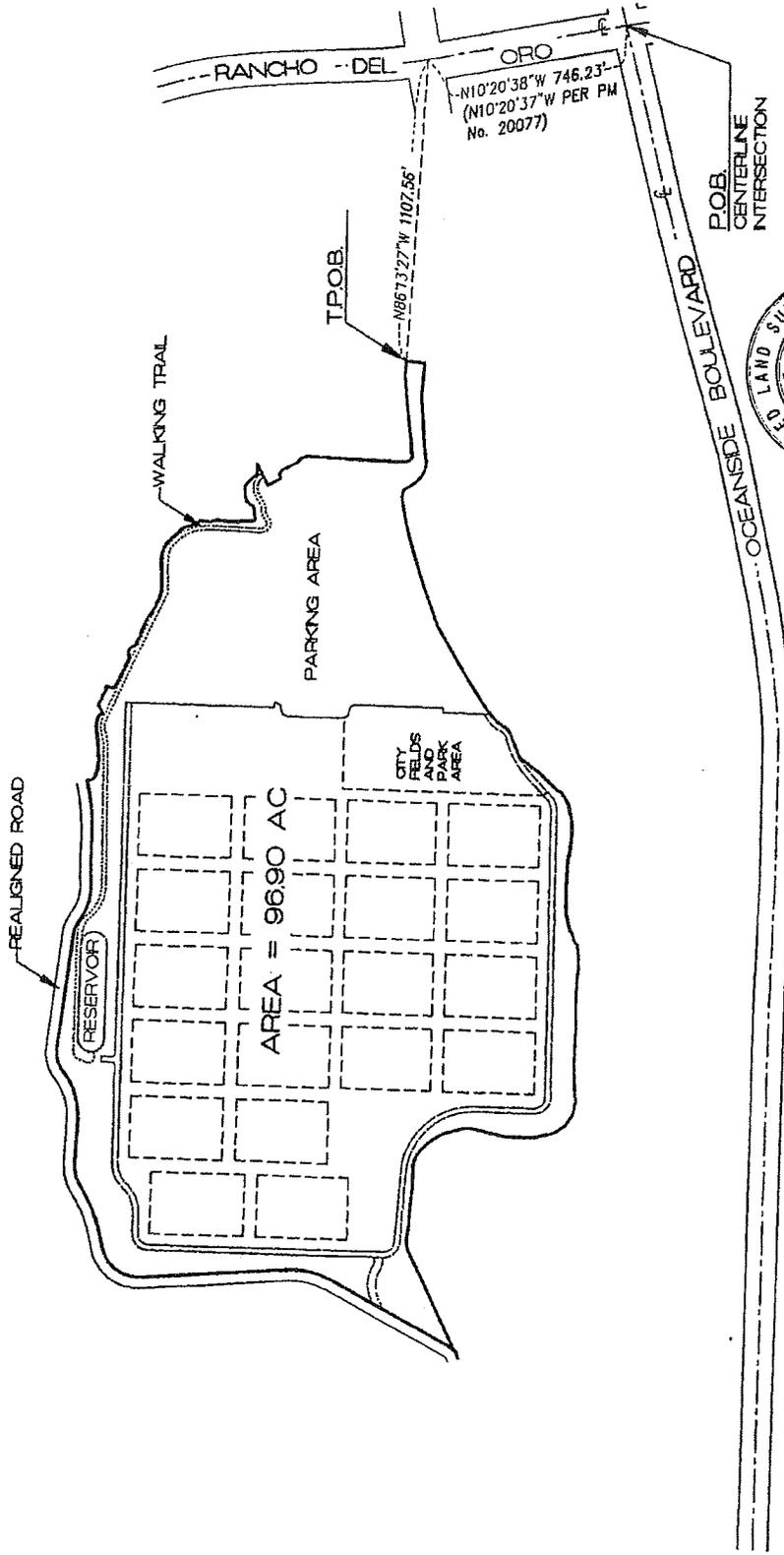
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 SEC 21-T11S-R4W-POR
 SEC 17-T11S-R4W-POR
 MAP 11487-RANCHO DEL ORO VILLAGE 8
 ROS 14124, 18354, 20532, 20800, 20833

EXHIBIT "A"

El Corazon Site

EXHIBIT "B"

PLAT FOR PREMISES



SOWARDS & BROWN ENGINEERING
CONSULTING ENGINEERS
3750 CALIFORNIA AVENUE, SUITE 103
CARLSBAD BY THE SEA, CA, 92007
TEL: 760/438-8500 FAX: 760/438-0003

JOB No. 12-001 12/2/12

Exhibit "C"

**LEASE AGREEMENT
BY AND BETWEEN
THE CITY OF OCEANSIDE
AND
SOCAL SC L.P.
A CALIFORNIA LIMITED PARTNERSHIP**

**FOR THE LEASE OF REAL PROPERTY
LOCATED AT
EL CORAZON**

DATED

_____, 2012

LEASE AGREEMENT

ATHLETIC FIELDS AT EL CORAZON OCEANSIDE, CA

THIS LEASE AGREEMENT, herein after called "Lease", dated as of _____, 2012 is executed between the **CITY OF OCEANSIDE**, a municipal corporation, hereinafter called "City", and **SOCAL SC L.P.**, a California limited partnership, hereinafter called "Lessee". Notwithstanding the date set forth above, the effective date of this Lease shall be the Close of Escrow as hereinafter defined ("Effective Date").

RECITALS

WHEREAS, City is the owner of that certain real property commonly known as the "Athletic Fields Site at El Corazon" located in the City of Oceanside, County of San Diego, State of California;

WHEREAS, Lessee is a duly authorized limited partnership in the State of California in the business of developing, operating, managing and maintaining real property projects similar to the athletic fields;

WHEREAS, City and an affiliate of Lessee, Sudberry Development, Inc. ("Developer"), have entered into a Development and Disposition Agreement for the development and use of the "Athletic Fields Site at El Corazon" ("Recreational DDA"), which provided for a feasibility period in which to conduct a due diligence review of the site as well as obtain financing for the project, and also provided Lessee an opportunity to obtain the requisite regulatory approvals for Lessee's development plan therefore;

WHEREAS, the terms of the Development and Disposition Agreement for the development and use of the Athletic Field Site at El Corazon have been satisfied;

WHEREAS, City and Lessee are now desirous of leasing the "Athletic Field Site at El Corazon" to Lessee to enable Lessee to develop, operate, manage and maintain athletic fields thereon together with related programs and activities;

WHEREAS, City and Lessee are mutually committed to act in good faith to see that the Athletic Fields at El Corazon are developed, operated, managed and maintained in accordance with the terms and condition as set forth herein; and

WHEREAS, City and Lessee are also desirous of Lessee entering into separate use agreements with parties interested in using the athletic fields ("Use Agreements") in conjunction with the leasing of the "Athletic Fields Site at El Corazon" so that Lessee can provide athletic field related services in the City of Oceanside.

NOW THEREFORE, the parties in consideration of the terms, conditions, covenants and provisions contained herein do mutually agree as follows:

AGREEMENT

SECTION 1: USES

1.01 Premises. City hereby leases to Lessee and Lessee hereby leases from City, in accordance with the terms, conditions, covenants, and provisions of this Lease, all that certain real property situated in the City of Oceanside, County of San Diego, State of California, commonly known as the "Athletic Fields Site at El Corazon" and more particularly described and depicted in Exhibits "A" and "B" attached hereto and by this reference made a part of this Lease. Said real property is hereinafter called the "Premises." The Premises shall also include that portion of the Premises depicted as the "City Fields and Park Area" as more particularly depicted in Exhibit "B". The Premises shall exclude that portion of real property that is commonly referred to as the "walking trail", provided, however, Lessee shall be responsible for the periodic maintenance thereof, as more particularly described herein below.

1.02 Uses. It is expressly agreed that the Premises is leased to Lessee solely and exclusively for the purpose of operating athletic fields, athletic field tournaments and events (e.g., soccer, field hockey, lacrosse, football, special Olympics, and senior Olympics), together with related activities and programs, for Other Approved Activities (as defined below), and for such other related or incidental purposes as may be first approved in writing by the City Manager of the City of Oceanside and for no other purpose whatsoever. Provided, however, the portion of the Premises described as the City Fields and Park Area, when not being used for tournaments and events, and not closed for renovation or maintenance, shall be made available for open public use as recreational fields and typical park related activities.

As used in this Lease, "Other Approved Activities" include, subject to all applicable regulatory approvals, associated maintenance, temporary facilities to facilitate a 24-hour security/caretaker and temporary storage facilities for maintenance equipment and supplies, employing temporary lighting for events, car shows, hobby shows, farmer's markets, trade shows, seasonal and holiday sales (including but not limited to Christmas tree and/or fall pumpkin lot) and other similar community type events open to the public, as well as concessions related to all of the foregoing permitted uses and the right to sell alcohol at Premises—subject to the approval of all applicable licenses by the California Alcohol Beverage Control Department. Further, the approval of the Discretionary Application Permit submitted as a requirement for the development of the

improvements to the Premises associated with the use of thereof and this Lease, will constitute approval of all needed general assembly permits for allowed uses and Other Approved Activities—*i.e.* Lessee will not need to apply for individual permits for the individual events set forth thereon. Portions of the Premises shall also be used to provide areas for the parking of vehicles to support all of the foregoing permitted uses. Notwithstanding the foregoing, Other Approved Activities shall not materially adversely affect Lessee's capacity to facilitate and promote athletic events at the Premises.

Lessee covenants and agrees to continuously make the Premises available to users pursuant to Use Agreements, except for a failure to so use caused by Force Majeure Events (as defined in Section 6.15 below). In addition, as to that portion of the Premises shown as the "City Fields and Park Area" on attached Exhibit "B" only, Lessee covenants and agrees to continuously make such areas of the Premises available to the general public (subject to reasonable operating hours and restrictions, and only when such City Fields and Park Area are not in use by Lessee) for the primary uses permitted under this Lease. Said continuous availability, and the use and operation of the Premises enhances the value of the public's asset, provides additional employment, taxes and other benefits to the general economy of the area. In the event that Lessee fails to continuously make the Premises available for said purposes, or uses the Premises for purposes not authorized herein, City may give Lessee written notice of such failure pursuant to Section 6.11(c) below. If such failure is not caused by Force Majeure Events and continues for a period of forty-five (45) days after such written notice, then Lessee shall be deemed in default under this Lease. Notwithstanding the foregoing, the term continuous shall not be interpreted as meaning "that the Premises are in use at all the times" (it being recognized that such term will mean that it is available for such uses on a daily basis; but, in fact, such uses may be ongoing only sporadically, as and when there are interested users). However, such term shall mean that the Premises are continuously maintained as available (during reasonable hours each week) for the intended uses described herein. Furthermore, notwithstanding the foregoing, Lessee shall not be in default under this paragraph for failing to continuously use the Premises during any period in which the Premises are undergoing renovation, construction, closure to avoid over-use, or maintenance.

1.03 Use Agreements. It is expressly agreed that the Premises is leased to Lessee in conjunction with the fulfillment of Use Agreements entered into from time to time between Lessee and users of the athletic fields for the use of athletic fields. Such Use Agreements will be on terms reasonably acceptable to Lessee and to users. Prior to commencement of the Lease Term, Lessee shall have entered into Use Agreements with the Soccer Club of Oceanside and San Diego Surf Cup. A Memorandum of Use Agreement with the Soccer Club of Oceanside and a Memorandum of Use Agreement with the San Diego Surf Cup substantially in the forms of attached Exhibit "C-1" and "C-2," which are incorporated herein by this reference. As additional consideration for the lease of the Premises, Lessee agrees to timely satisfy its obligations under the terms and conditions of the Use Agreements, subject to Force Majeure Events and defaults by the other party to such Use Agreements.

1.04 Premises and Tenant Improvements.

a. **City Improvement Obligations.** City shall deliver the Premises to Lessee in an "as is, where is" condition without any representation or warranties as to the suitability of the Premises for Lessee's intended use. Notwithstanding the foregoing, said "as is, where is" condition shall be subject to City's performance of the improvements to be constructed on the Premises by City as set forth on, and in accordance with the schedule of performance set forth on Exhibit "D", attached hereto and incorporated herein by this reference ("City Improvements"), subject to Force Majeure Events. Lessee hereby accepts the Premises in said "as is, where is" condition and shall construct improvements thereon (as hereinafter described) which are necessary for Lessee to occupy the Premises for its intended use. In the event that Lessee finds that the City Improvements are not timely and properly completed, City must correct any defects or failure to complete within thirty (30) days after written notice from Lessee. In the event City fails to complete such work within such thirty (30) day period or such longer period of time that is necessary due to the nature of such maintenance, repair, or replacement work, Lessee shall have the right, upon written notice to City, to have any necessary work done at the expense of City, and City shall promptly pay any and all costs incurred by Lessee in having such work done, in order to complete the City Improvements in accordance with the requirements of such Exhibit "D". City shall make payment to Lessee no later than ten (10) days after Lessee's written demand therefore.

b. **Entry by the City.** During the construction of the City Improvements, the City's representatives shall have access to the Premises at all reasonable times (without notice) to perform the City Improvements. In addition, following completion of the Lessee Improvements (as defined below) the Lessee shall permit the City, through its officers, agents, or employees, at all reasonable times, and accompanied by a representative of the Lessee, to enter into the Premises following reasonable written notice from the City (a) to inspect the work of construction to determine that the same is in conformity with the requirements of this Lease, and (b) following completion of construction, to inspect the ongoing operation and management of the Premises to determine that the same is in conformance with the requirements of this Lease. The City shall not cause any delay or damage by its entry pursuant to this Section, nor shall the City cause any interference with Lessee's operation or management of the Premises. The Lessee acknowledges that the City is under no obligation to supervise, inspect, or inform the Lessee of the progress of construction, or operations and the Lessee shall not rely upon the City or the City's representative therefore. Any inspection by the City or the City's representative during the construction is entirely for its purposes in determining whether the Lessee is in compliance with this Lease and is not for the purpose of determining or informing the Lessee of the quality or suitability of construction. With respect to the Lessee Improvements, the Lessee shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers.

property) and City shall be responsible for any damage or liability arising from any such entry.

1.08 Use and Special Event Permits. Those events listed on attached Exhibit "F" incorporated herein by this reference ("Events List"), and all similar events listed in a subsequently delivered Events List (as provided below), shall not require any City of Oceanside special event permit, use permit, or similar City permits, licenses, or approvals for the uses permitted under this Lease. The Events List will be updated and provided to City at least thirty (30) days prior to the commencement of each Lease Year. As used in this Section 1.08, a "Major Athletic Event" means an athletic event that uses at least ten (10) of the athletic fields at the Premises, and "Excess Major Athletic Events" means Major Athletic Events which are scheduled in excess of twenty-eight (28) weekends during any calendar year (with the first such 28-weekends being designated by Lessee). To the extent that the Events List provides for Excess Major Athletic Events, the City shall have the right to approve the scheduling of such Excess Major Athletic Events. The City's right to approve scheduling of Excess Major Athletic Events shall be for the sole purpose of allowing the City to coordinate schedules and events between the Premises and the City's Senior Center at El Corazon ("Senior Center"). The City shall not require Lessee to seek approval of or require Lessee to pay City for any Special Events permits with regard to Lessee's uses per Section 1.02 and/or Other Approved Activities at the Premises. If the City's approval is required pursuant hereto, the City's approval will not be unreasonably withheld or delayed—and such approval shall be deemed granted unless the City has disapproved any such event within ten (10) business days of receipt of such Events List (and all other events which are not timely disapproved will be deemed approved). Lessee shall have the right to update a previously-submitted Events List from time-to-time by delivering same to the City. Such updated Events List shall be subject to the same approval procedure as described above except that if Lessee adds a Major Athletic Event on a weekend upon which the City has already scheduled an event at the Senior Center; otherwise, no approval shall be required for such an update. If any additional permits, licenses, or approvals are required from another governmental agent, board, commission, or agency outside of City's control, City shall cooperate with Lessee's efforts to obtain such permits, licenses, or approvals. Notwithstanding anything to the contrary contained herein, Lessee shall not be required to list events which are permitted as Other Approved Activities, or events which are not Major Athletic Events on any such Events List.

1.09 Competing Uses. To the extent permitted by applicable law, City shall not allow parking (nor grant permits for parking uses) at the Senior Center or the public streets adjacent to the Senior Center or on Rancho Del Oro or on any other portion of the El Corazon project during the weekends when Lessee is using the Premises for athletic tournaments and/or events as set forth on the Events List except for activities at the Senior Center or other similar El Corazon community facility. Provided, however, Lessee agrees that as part of its traffic control programs for said athletic tournaments and/or events, Lessee will be responsible for the appropriate "No Parking" signage and barriers.

c. **Lessee Improvement Obligations.** Lessee shall perform all of the work required to be performed by Lessee pursuant to the scope of work and schedule set forth in Lessee's development plan as more specifically set forth in Exhibit "E" ("Lessee Improvements") attached hereto and incorporated herein by this reference. Failure by Lessee to perform the work as described and/or as scheduled (subject to extension for Force Majeure Events) shall be deemed a default under this Lease.

1.05 Related Discretionary Actions. Except as provided in Section 1.08 below, by the granting of this Lease, neither City nor the City Council 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 rezoning, variances, conditional use permits, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the Premises.

1.06 Quiet Possession. Lessee, paying the rent and performing the covenants and agreements herein, shall at all times during the term hereof peaceably and quietly have, hold and enjoy the Premises.

1.07 Reservation of Rights. City shall not unreasonably or substantially interfere with Lessee's use of the Premises while Lessee is in possession of the Premises; however the City specifically retains the following rights:

a. **Subsurface Rights.** Except for Lessee's rights to access underground well water for Lessee's use under this Lease, City hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the Premises.

b. **Easements.** 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 for the public good, provided that the granting or exercise of such easements, rights of way, or similar rights do not adversely affect the use, enjoyment, and operation of the Premises by Lessee or any of Lessee's rights under this Lease, including parking.

c. **Right to Enter.** City has the right, but not the obligation, to enter the Premises for the purpose of performing maintenance, inspections, repairs or improvements, or developing municipal resources and services, but will provide Lessee with at least seven (7) days written notice of any such entry that may adversely affect Lessee's operations at the Premises (or one days' notice if there will be no such adverse affect), except where such prior notice is impossible due to an emergency involving public safety or imminent material damage to property. Any such entry shall be made at times and in a manner that will minimize any interference with Lessee's operations and after consultation with Lessee (except where such prior consultation is impossible due to an emergency involving public safety or imminent material damage to

SECTION 2: TERM

2.01 Commencement. The term of this Lease shall be for a period of twenty five (25) years commencing on the earlier of the date Lessee substantially completes the Lessee Improvements to the Premises as set forth in Exhibit "E", as evidenced by a Notice of Satisfaction or one (1) year from the Effective Date ("Commencement Date"). Provided, however, said one (1) year period of time shall not commence until such time as the City has completed the City Improvements and shall be subject to extension for delays caused by Force Majeure Events. Upon determination of the Commencement Date, Lessee shall execute a Commencement Date Memorandum confirming the actual date the Lease commences and the date upon which the initial term is due to expire. A copy of the Commencement Date Memorandum is shown in Exhibit "G" attached hereto and by this reference made a part of this Lease. As used in this Lease, the term "Lease Year" means each calendar year, or portion thereof, during the term of this Lease. Promptly after completion (subject to customary punch-list type items) of the Lessee Improvements, and written request therefor by Lessee, the City shall deliver to Lessee a "Notice of Satisfaction," having the effect of conclusively determining that Lessee has satisfactorily completed the Lessee Improvements required by this Lease. If the City fails to deliver a Notice of Satisfaction within thirty (30) days after written request from Lessee, the City shall provide Lessee with a written statement of its reasons (the "Statement of Reasons") within that thirty (30) day period. The Statement of Reasons shall also set forth the steps Lessee must take to obtain the subject Notice of Satisfaction.

2.02 Extension of Term. The Lessee shall have the option to extend the term of this Lease for the Premises, on the same terms, conditions and covenants contained in this Lease for two (2) additional ten (10) year terms provided that, at the time of exercise of such extension option, Lessee has one or more Use Agreements which, in the aggregate, provide financial benefits to the City of Oceanside substantially equivalent to or greater than that presented by the "Surf Cup" (e.g., lesser magnitude of tournament but more tournament weekends) hereinafter referred to in this Lease as "Minimum Beneficial Use." Upon Lessee providing documentation evidencing such Minimum Beneficial Use, said condition for extension shall be deemed satisfied and Lessee shall have the right to exercise such option to extend, subject only to the satisfaction of the condition set forth above.

Further, Lessee shall have the options to extend only if there does not exist any Event of Default at the time of such exercise. Lessee shall provide a written notice of its intention to extend the term of the Lease at least ninety (90) days prior to the expiration of the then current term, but in no event more than three hundred sixty-five (365) days prior to said expiration date.

2.03 Condition of Extension Term. Notwithstanding anything to the contrary contained in this Lease, upon receipt of Lessee's written notice of its intention to extend the term of this Lease as set forth above, should the City obtain funding and/or

financing to develop the Premises pursuant to the El Corazon Specific Plan dated September 9, 2009 ("Recreational Funding"), City shall have the right to terminate this Lease by providing Lessee with no less than twenty-four (24) months prior written notice delivered within thirty-six (36) months after Lessee's written notice of its intention to extend the term of this Lease. Provided however, as a condition thereto, City shall pay Lessee (in the aggregate, the "Buy-Out Compensation") (a) any remaining unamortized costs of the improvements constructed by Lessee to develop the Premises (amortized on a straight line basis over the remainder of the term of this Lease, including all exercised and unexercised extension options), and (b) an amount equal to the value of Lessee's business being operated at the Premises as a going concern (assuming unrestricted transferability of all assets). Until such time as City has obtained the Recreational Funding and has approved a construction contract to develop the Premises, Lessee, at its option, shall have the right to remain on the Premises pursuant to the terms and conditions of this Lease. City shall not, following any termination under this Section 2.03, during the remainder of the term of this Lease and any unexercised extension terms, permit any third person to operate the Premises as athletic fields for tournament use or otherwise operate a business similar to that contemplated under this Lease. City shall pay Lessee the Buy-Out Compensation in cash within thirty (30) days after it has been established pursuant to the terms of this Section 2.03.

2.03.1 Procedure to Determine Buy-Out Compensation. Within sixty (60) days after City notifies Lessee that City is exercising its right to terminate the Lease as set forth above, Lessee shall furnish City with the amount of the Buy-Out Compensation together with a written explanation in reasonable detail of the basis for Lessee's calculation of the Buy-Out Compensation. If Lessee's notice is timely received by City within said sixty (60) day period and in the event the City agrees with the amount of the Buy-Out Compensation proposed by Lessee, such amount of Buy-Out Compensation shall be established. However, in the event City disagrees with the Lessee's amount of the Buy-Out Compensation or if Lessee fails to furnish its calculation of the Buy-Out Compensation within such 60-day period, then City shall notify Lessee in writing of the City's Buy-Out Compensation amount together with reasonable detail of the basis for City's calculation of such amount (the "City Buy-Out Notice"). In the event the Lessee disagrees with the City's Buy-Out Compensation amount the parties agree as follows:

(i) No later than 30 days following the receipt of the City's Buy-Out Notice, Lessee shall select an individual or entity of its choice to serve as an expert under this Section 2.03.1 and give City such expert's name and contact information.

(ii) Within 30 days after receipt of City's Buy-Out Notice, City shall select such an expert of its choice and give Lessee written notice of such expert's name and contact information.

(iii) The respective experts so selected by City and Lessee shall then select an individual or entity as a third expert within 30 days after City's Buy-Out Notice as to its selection of its expert, and furnish Lessee and City written notice of such third

expert's name and contact information. All experts selected pursuant to this Section shall be independent experts with at least ten (10) years experience in the field of valuation of business operations in the United States.

(iv) The expert that is mutually selected as such third expert shall then determine, within 30 days of mutual selection, the compensation amount of the Lessee's operation in order to terminate the Agreement as set forth in this Section 2.03 ("Final Buy-Out Compensation Amount"). The opinion of the third expert selected shall be binding on the Lessee and the City as to the Final Buy-Out Compensation Amount.

(v) Lessee and City shall each be responsible for all fees, costs and expenses of their respective expert as well as their own attorney's fees incurred with respect to this procedure, and the parties shall share equally in the fees, costs and expenses of the third expert.

(vi) In the event City disagrees with the Final Buy-Out Compensation Amount, City has the option to withdraw its right to terminate the Lease pursuant to this Section 2.03, by providing Lessee with written notice of such election within sixty (60) days of obtaining the Final Buy-Out Compensation Amount.

2.04 Further Extension. If Lessee desires to improve the Premises with permanent infrastructure (defined as any structure requiring the installation of permanent footings or the installation of underground/permanent utilities pursuant to a development plan and related construction drawings), submitted and approved by the City (as a regulatory agency and not as landlord and approved by all applicable regulatory agencies) at its sole expense at any time, Lessee shall present, in writing, said development plan and any desired extension of the term of this Lease all on the same terms, conditions and covenants contained in this Lease to the City of Oceanside for its approval. Thereafter, City shall, within sixty (60) days, inform Lessee of its acceptance or denial of Lessee requested development plan and extension of the term, if any, which acceptance or denial shall be in the City's sole and absolute discretion. No denial of any such requested development plan shall affect Lessee's rights under this Lease or result in a termination of the term of this Lease before the expiration of the existing term (as it may be extended pursuant to Lessee's other extension rights set forth in this Lease).

2.05 Termination. In addition to the termination rights set forth in Section 6.11 below, subject to the rights of Permitted Mortgagees (as defined in Section 5.07 below), in the event that Lessee has not commenced use and operation of the Premises as athletic fields within one year after the Commencement Date, City has the right (as its sole and exclusive remedy) to terminate this Lease if Lessee has not commenced such use and operation within ninety (90) days after written notice, subject to delays caused by Force Majeure Events. Further, subject to the rights of Permitted Mortgagees, if, at any time after the fifth full year after Lessee has commenced operations at the Premises, Lessee does not have one or more Use Agreements in place that provide Minimum Beneficial Use, City may give Lessee written notice of City's intent to

terminate this Lease as its sole and exclusive remedy. This Lease shall terminate eighteen (18) months after such notice if Lessee has not, within such period of time, entered into one or more Use Agreements that collectively provide Minimum Beneficial Use.

2.06 Holdover. Any holding over by Lessee after expiration or termination shall not be considered as a renewal or extension of this Lease. The occupancy of the Premises by Lessee or by Lessee's property after the expiration or termination of this Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease, including rental adjustments, shall continue in full force and effect. In the event of any holding over, Lessee shall continue to, and pay monthly, the Rent as set forth in this Lease or the fair market value for similar operations in the Southern California area, whichever is higher during the holdover period.

2.07 Abandonment by Lessee. Even if Lessee breaches the Lease and abandons the Premises, this Lease shall continue in effect for so long as City does not terminate this Lease, and City may enforce all its rights and remedies hereunder, including but not limited to the right to recover any amounts owing under the Lease as said amount becomes due, plus damages.

2.08 Quitclaim of Lessee's Interest. On the expiration or earlier termination of this Lease for any reason, at City's sole discretion, City shall provide Lessee with and Lessee shall deliver to City a quitclaim deed in recordable form quitclaiming all its rights in and to the Premises. Lessee or its successor in interest shall deliver the same within five (5) days after receiving written demand thereof. City may record such deed only on the expiration or earlier termination of this Lease.

2.09 Surrender 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 created by Lessee, except those liens and encumbrances which existed on the date of the execution of this Lease by City and those which have been approved by City. The Premises, when surrendered by Lessee, shall be in a safe and sanitary condition and shall be in as good or better condition as the condition at commencement of this Lease, absent normal wear and tear.

2.10 Time is of Essence. Time is of the essence of all of the terms, covenants, conditions and provisions of this Lease.

SECTION 3: CONSIDERATION

3.01 Time and Place of Payment. Estimated payments of Percentage Rent (calculated pursuant to Section 3.03(e) below, "Percentage Rent") shall be due to City and payable by Lessee quarterly in arrears on or before the fifteenth (15th) day of the month following the end of each calendar quarter for which the percentage rent is calculated. Concurrently with each such payment of estimated Percentage Rent,

Lessee shall provide City with a Gross Revenue Report showing how the Percentage Rents were calculated. Also, Lessee shall, concurrently with the filing of its quarterly State Board of Equalization tax statement, provide City with a copy of said statement. The requirements of this Section shall survive the expiration or earlier termination of this Lease; provided, however, nothing contained herein shall be interpreted as requiring that Percentage Rent shall be due or owing for any period following the Term (except as to Percentage Rent accruing during the Term).

Checks should be made payable to the City of Oceanside and delivered to the City at the address set forth in Section 6 of this Lease. The place of payment may be changed at any time by City upon thirty (30) days written notice to Lessee. Lessee assumes all risk of loss and responsibility for late payment charges. Lessee agrees to pay City an additional Twenty-Five and No/100 Dollars (\$25.00) for any returned check which is not honored by the financial institution from which the check is drawn. If requested by Lessee (in its sole discretion), the City shall provide Lessee with wire transfer information so that payments may be made electronically.

3.02 Rent.

a. General. The total annual rent amount shall be equal to the Percentage Rent amount calculated pursuant to Section 3.02(b) below, without setoff or deductions except as expressly permitted under the terms of this Lease.

b. Percentage Rent. The amount payable by Lessee as Percentage Rent shall be the amount equal to (a) ten percent (10%) of Gross Revenues in excess of One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000.00), up to \$4,000,000, for the initial Lease Year of the Lease term, and (b) fifteen percent (15%) of Gross Revenues in excess of \$4,000,000 for the initial Lease Year of the Lease term (such \$1,400,000 and \$4,000,000 amounts shall hereafter be referred to as the "Base Amounts"). If the Commencement Date falls on a date other than the first day of a Lease Year, the Base Amounts shall be prorated for the first and final Lease Years based on the number of days remaining in such Lease Years. Commencing on the second full Lease Year and continuing as of January 1 of each Lease Year thereafter, the Gross Revenues Base Amounts shall be adjusted by the Adjustment Index (as defined in Subsection 3.02(c) below). Provided however, in no event shall the Gross Revenues Base Amounts increase more than five percent (5%) per year.

c. Adjustment Index. The index used will be the semi-annual Consumer Price Index for "All Urban Consumers" for San Diego, California ("CPI"). If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most compatible to the aforesaid index. If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by the City. Any reference in this Agreement to "CPI" or "index" shall mean the index used in accordance with this Subsection 3.02(c). The percentage change in the CPI shall be the percent change in the San Diego All Consumer Index over the preceding twelve (12)-month period

covered by the most recent publications of the index.

d. Gross Revenues. Gross Revenues shall mean any and all revenue and income of any nature or other thing of value received for the operation and use of the Premises or in connection with the use of Premises, including revenue and income typically referred to as "user fees" and parking fees, but excluding commissions on travel arrangements. Gross Revenues shall exclude any capital investment received by Lessee, charitable donations, or funds received from sponsors, whether or not such charity or sponsor receives consideration therefore, including without limitation public acknowledgement of sponsorship or naming rights. Further, in no event shall any of the following be included in "Gross Revenues": (i) any sales taxes, excise taxes, gross receipt taxes or similar charges; (ii) proceeds from any financing or refinancing; or (iii) any federal, state or municipal taxes collected from Lessee's customers regardless of whether the amount thereof is stated to the users as a separate charge and paid periodically by Lessee to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by Lessee in computing Gross Revenue.

3.03 Utilities. On or before the Commencement Date, City shall bring electricity, potable water and well water to the Premises in quantities deemed reasonably adequate by Lessee for Lessee's use (stubbed to a physical location specified in the plans for the City Improvements) for use at the Premises. Lessee shall have access to underground well water at no cost during the term of this Lease (including all extensions or renewals thereof), except that Lessee shall be responsible for the cost of connecting to such well lines and the associated irrigation system once Lessor has stubbed such lines to the Premises. Lessee agrees to order, obtain and pay for all other utilities (e.g. electricity), telephone and refuse collection to and for the Premises in connection with the development, occupation, operation, management and maintenance of the Premises.

3.04 Inspection of Records. Lessee shall maintain accurate financial books and records for the operation of its business provided at, or from, the Premises. Said books and records shall be maintained in accordance with normal business standards and good accounting practice. Lessee agrees to make any and all records and accounts available to City for inspection at all reasonable times upon not less than 15 business days' notice, so that City can determine Lessee's compliance with this Lease. These records and accounts will be made available by Lessee at Lessee's management office or City's offices and will be complete and accurate showing all Gross Revenue receipts attributable to or incurred in connection with Lessee's use of the Premises. Lessee's failure to keep and maintain such records and make them available for inspection by City is a default of this Lease. These records include but are not limited to business books, documents, and records maintained in accordance with normal business standards and good accounting practice. Lessee shall maintain all such books, records and accounts for the term of this Lease. This provision shall survive the expiration or sooner termination of this Lease.

3.05 Delinquent Payments. If Lessee fails to pay any amount within thirty (30) days after written notice of delinquency, Lessee will pay in addition to the unpaid amount, five percent (5%) of the delinquent rent. If said amount is still unpaid at the end of fifteen (15) days after such notice, Lessee shall pay an additional five percent (5%) [being a total of ten percent (10%)]. Notwithstanding the foregoing, no late charge shall be payable by Lessee on the first occasion that Lessee is late on a payment by ten days in any 12 month period, provided that such payment is made within ten (10) days after City has delivered such written delinquency notice. The following late fees are hereby mutually agreed by the parties to be appropriate to compensate City for loss resulting from delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Acceptance of late charges and any portion of the late payment by City shall in no event constitute a waiver by City of Lessee default with respect to late payment, nor prevent City from exercising any of the other rights and remedies granted in this Lease.

SECTION 4: INSURANCE RISKS/SECURITY

4.01 Indemnity. Lessee shall indemnify and hold harmless the City and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the Lessee or its employees and agents in connection with its use and occupation of the Premises under this Lease, including but limited to the construction, maintenance and operation of Lessee Improvements, except only for those claims arising from the negligence or willful conduct of the City, its officers, agents, or employees. Lessee's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the City, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, Lessee at its own expense shall, upon written request by the City, defend any such suit or action brought against the City, its officers, agents, or employees.

City shall indemnify and hold harmless Lessee and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the City or its employees or agents on or about the Premises, including the construction of the City Improvements, except only for those claims arising from the negligence or willful conduct of Lessee, its officers, agents, or employees. City's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the City, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, the City at its own expense shall, upon written request by Lessee, defend any such suit or action brought against Lessee, its officers, agents, or employees.

4.02 Insurance. Lessee shall take out and maintain at all times during the term of this Lease, commencing the Effective Date of the Lease, the following insurance at its sole expense:

- a. Lessee shall maintain the following minimum limits:

General Liability

Combined Single Limit Per Occurrence	\$2,000,000
General Aggregate	\$4,000,000

All Risk

Insurance covering all of the Lessee Improvements, trade fixtures, merchandise and personal property in the Premises, alterations and additions made by Lessee, in an amount not less than 100% of their full replacement, providing protection against perils included in the standard state form of all-risk insurance policy, plus insurance against vandalism and malicious mischief.

b. All insurance companies affording coverage to the Lessee shall be required to add the City of Oceanside as "additional insured" under the insurance policy(s) required in accordance with this Lease.

c. All insurance companies affording coverage to the Lessee shall be insurance organizations authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

d. All insurance companies affording coverage shall provide, in accordance with the policy provisions, thirty (30) days written notice to the City, should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

e. Lessee shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Lease.

f. Lessee shall provide a substitute certificate of insurance no later than thirty (30) days prior to the policy expiration date. Failure by the Lessee to provide such a substitution and extend the policy expiration date within fifteen (15) days after written notice from City shall be considered a default by Lessee and may subject the Lessee to a termination of this Lease.

g. Maintenance of insurance by the Lessee as specified in this Lease shall in no way be interpreted as relieving the Lessee of any responsibility whatever and the Lessee may carry, at its own expense, such additional insurance as it deems necessary.

h. If Lessee fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, within fifteen (15) days after written notice from City, City has the right to obtain the insurance. Lessee shall reimburse City for the premiums paid with interest at 10 percent per annum. City shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid; the names of the insurer(s); and the rate of interest. Said 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, any failure or refusal by Lessee to take out or maintain insurance as required in this Lease, or failure to provide the proof of insurance, shall be deemed a default under this Lease.

i. **Modification.** If, at any time during the term of this Lease, City reasonably determines that the amounts and coverage of insurance required to be maintained by Lessee pursuant to the terms of this Lease are offer less coverage than that required to be carried by tenants of leases within the same geographic area involving similar uses, then City may require the revision of amounts and coverage by giving Lessee sixty (60) days prior written notice, provided that such modified coverage is available at a commercially reasonable cost. City's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Premises. Lessee also agrees to obtain any additional insurance reasonably required by City for new improvements, in order to meet the requirements of this Lease.

4.03 Accident Reports. Lessee shall, within seventy-two (72) hours after occurrence, report to City any accident causing material 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; the names and addresses of any witnesses; and other pertinent information.

4.04 Waiver of Subrogation. City and Lessee each hereby release the other and their respective employees, agents and every person claiming by, through or under either of them, from any and all liability or responsibility (to them or anyone claiming by, through or under them by way of subrogation or otherwise) for any loss or damage to any property (real or personal) caused by fire or any other insured peril required under this Lease to be covered or actually covered by any insurance policies for the benefit of either party, even if such loss or damage shall have been caused by the fault or negligence of the other party, its employees or agents, or such other tenant or any employee or agent thereof. In addition, Lessee shall cause any property insurance policy carried by it insuring the Premises or the contents thereof to be written to provide that the insurer waives all rights of recovery by way of subrogation against the other in connection with any loss or damage covered by their respective policies.

SECTION 5: IMPROVEMENTS/ALTERATIONS/REPAIRS

5.01 Acceptance of Premises. 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, including but not limited to an environmental assessment and/or geotechnical analysis of the Premises. Lessee acknowledges it is relying solely on such independent inspection, tests, investigations, and observations in making this Lease. Lessee further acknowledges that Premises are in the condition called for by this Lease and that Lessee does not hold City responsible for any defects in the Premises which were not directly caused by City; provided, however, nothing contained herein shall obviate the City's obligations relative to the construction of the City Improvements.

5.02 Waste, Damage, or Destruction. Lessee shall give written notice to City of any fire or other damage that occurs on the Premises within seventy-two (72) hours of such fire or damage. Lessee shall not commit or suffer to be committed any waste or injury or any public or private nuisance, agrees to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a commercially reasonable manner and in accordance with applicable law. If the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy and sanitary, Lessee agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition which existed prior to said damage; or, at City's option, and upon receipt of written demand thereof, Lessee agrees to clear and remove from the Premises all debris resulting from said 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 such damage. Subject to 5.13(a) below, Lessee shall be responsible for all costs incurred in the repair and restoration, or rebuilding of the Premises.

5.03 Maintenance. As part of the consideration for the Lease, Lessee agrees to assume full responsibility and cost for the operation, maintenance and repair of the Premises, the City Improvements and the Lessee Improvements throughout the term of this Lease and without expense to City (provided, however, nothing contained herein shall obviate the City's obligations relative to the construction of the City Improvements or require Lessee to maintain road improvements for the use by the other users at El Corazon). Lessee's maintenance obligations with regard to the City Fields and Park Area will consist of ordinary and customary maintenance, which will exclude the obligation to repair damage or deterioration caused by mis-use or over-use of the City Fields and Park Area. Lessee will perform all maintenance, 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 all applicable laws. Lessee further agrees to provide approved containers for trash and garbage and to keep the Premises free and clear of rubbish and litter, or any other fire hazards. Lessee waives all right to make repairs at the expense of City as provided in Section 1942 of the California Civil Code and all rights provided by Section 1941 of said code.

For the purpose of keeping the Premises in a good, safe, healthy and sanitary

condition, City shall always have the right, but not the duty, to enter, view, inspect, determine the condition of, and protect its interests in, the Premises, pursuant to Section 1.07(c) above. In the event that City finds that the Premises are not in a decent, safe, healthy, and sanitary condition, Lessee must commence to perform the necessary maintenance, repair or replacement work within thirty (30) days after written notice from City. In the event Lessee fails to complete such work within such thirty (30) day period or such longer period of time that is necessary due to the nature of such maintenance, repair, or replacement work, City shall have the right, upon written notice to Lessee, to have any necessary maintenance work done at the expense of Lessee, and Lessee shall promptly pay any and all costs incurred by City in having such necessary maintenance work done, in order to keep said Premises in a decent, safe, healthy, and sanitary condition. Lessee shall make payment no later than ten (10) days after City's written demand therefore. City shall not be required at any time to perform maintenance or to make any improvements or repairs whatsoever, on or for the benefit of the Premises, other than the maintenance and repair of the City Improvements as more particularly described Section 1.04(a) above, including road improvements used by the other users at El Corazon). The rights reserved in this section shall not create any obligations or increase obligations for City elsewhere in this Lease.

5.04 Improvements/Alterations. Except as set forth in Exhibit "D", or otherwise permitted under this Lease, no permanent improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be materially altered by Lessee without prior written approval by the City Manager; which approval shall not unreasonably be withheld or delayed. Further, Lessee agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Premises without prior written approval by the City Manager; which approval shall not be unreasonably withheld or delayed. 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 other than the obligation to construct the City Improvements.

5.05 Liens. Except for a Permitted Mortgage to a Permitted Mortgagee pursuant to Section 5.07 below, Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, and encumbrance or claim on or with respect to all or any portion of the Premises without the prior written consent of the City Manager. Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, and encumbrance or claim on or with respect to all or any portion of the Premises which is not permitted by the terms of this Lease or for which Lessee does not have the prior written consent of the City Manager.

5.06 Encumbrance. Upon receiving prior consent by the City Manager pursuant to Section 5.07 below, Lessee may initially encumber this Lease, its leasehold estate and its improvements thereon 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 express condition that the net proceeds of such loan or loans be devoted exclusively to the purpose of developing and/or improving the Premises. However, 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 attorney's fees and such other normal expenses incidental to such construction.

Any subsequent encumbrances on the Premises or on any permanent improvements thereon shall also have prior approval in writing of City Manager pursuant to Section 5.07 below. Such subsequent encumbrances shall also be for the exclusive purpose of development of the Premises, the refinance of earlier encumbrances on the Premises, the return of capital previously expended by Lessee, or otherwise to the benefit of the Premises. 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 amend or alter any of the terms, covenants or conditions of this Lease.

5.07 Permitted Mortgages. From time to time during the term of this Lease, provided the conditions set forth in this Section 5.07 are satisfied, Lessee shall have the right to mortgage, pledge, encumber by deed of trust, assign rents, issues and profits (for purposes of security if required by any lender), or otherwise encumber the leasehold interest of Lessee under this Lease, in whole or in part, and any interests or rights appurtenant to this Lease, and to assign or pledge the same as security for any debt (the holder of any such mortgage, pledge or other encumbrance, and the beneficiary of any such deed of trust being hereafter referred to as "Permitted Mortgagee" and the mortgage, pledge, deed of trust or other instrument hereafter referred to as "Permitted Mortgage").

a. Lessee shall not make or enter into an agreement to make any Permitted Mortgage without the prior written approval of City Manager. Upon Lessee's request for approval of a proposed Permitted Mortgage and Lessee's submission to City of such information concerning the proposed Permitted Mortgage as City may reasonably request, City shall not unreasonably delay, condition, or deny its approval of the proposed Permitted Mortgage and, in any event, shall approve or disapprove the proposed Permitted Mortgage within ten (10) business days. The City Manager shall be authorized to approve non-material changes to this Lease as reasonably requested by a proposed Permitted Mortgagee.

b. The Permitted Mortgage shall cover no interest in any real property other than Lessee's leasehold interest in the Premises and any improvements thereon. The Permitted Mortgage shall state on its face that it does not encumber in any way City's fee interest in the real property which is the subject of this Lease.

c. All rights acquired by said Permitted Mortgagee under said Permitted Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of City thereunder, subject to the rights of Permitted Mortgagees pursuant to Section 5.08 below.

5.08 Mortgagee Protection. As long as any such Permitted Mortgage shall remain unsatisfied of record, the following provisions shall apply:

a. Except for the natural expiration of the Term of this Lease, there shall be no cancellation, surrender, termination, or modification of this Lease by joint or unilateral action of City and/or Lessee without the prior written consent of the Permitted Mortgagee except if, in the case of an Event of Default, and after having been afforded the cure rights specified below, the Permitted Mortgagee fails to cure Lessee's Event of Default as provided below.

b. City shall, upon serving Lessee with any notice of the existence of a default, simultaneously serve a copy of such notice upon the Permitted Mortgagee, and, if no such notice of default is required to be provided by City to Lessee under this Lease, City shall nevertheless give Permitted Mortgagee notice of Lessee's default. The Permitted Mortgagee shall thereupon have, in addition to any grace period provided to Lessee, an additional 30-day period either to:

(i) cure such default or breach, if the same can be cured by the payment of money; or

(ii) if such default or breach is not so curable or cannot be remedied within said 30-day period, to (a) commence in good faith to cure such default or breach if curable by said Permitted Mortgagee and thereafter diligently prosecute such cure to completion, or (b) institute proceedings for the foreclosure of the Permitted Mortgage and thereafter diligently prosecute the same to completion. During the time that said Permitted Mortgagee is permitted to cure or pursue foreclosure, whether for 30 days or for such additional time as is necessary to prosecute such cure or foreclosure to completion under this subparagraph, City agrees not to exercise any right, power, or remedy with respect to any Event of Default or breach by Lessee hereunder. Notwithstanding anything to the contrary in this Section 5.08, Permitted Mortgagee shall not be required to perform any construction or development obligations under this Lease, but Permitted Mortgagee shall use reasonable efforts to comply with all other terms and provisions of this Lease which it is capable of performing itself or which it is reasonably capable of performing by and through any authorized agents which it is reasonably possible to engage for such purposes; provided, however, that until the issuance of a Notice of Satisfaction pursuant to this Lease, the preceding sentence shall only be effective if there exists a "cash control account" as described in Section 500.2.1 of the Recreational DDA and/or another mechanism reasonable acceptable to City (such as a set aside letter from a lender) whereby the availability of funds for the completion of Lessee's Improvements is assured.

c. City shall, in the event of a termination of this Lease, give written notice of such termination to the Permitted Mortgagee, which notice shall specify the date of termination. City agrees that in the event of termination of this Lease by reason of any default by Lessee, that City will, provided Permitted Mortgagee has complied with Section 5.08(b)(ii) above, enter into a new lease of the Premises with the Permitted Mortgagee (or its nominee) for the remainder of the Lease Term, which new lease shall be effective as of the date of such termination, at the rent and upon all of the terms, provisions, covenants, and agreements as are contained in this Lease and subject only to the same condition of title as this Lease is subject to on the Commencement Date and such other matters as were of record as of the recordation date of the Permitted Mortgage, and such other matters as Lessee may have joined in or consented to, and to the rights, if any, of any parties then in possession of any part of the Premises under the rights of Lessee, provided:

(i) The Permitted Mortgagee or nominee shall make written request upon City for such new lease within 180 days of the date of the Permitted Mortgagee's receipt of such termination notice;

(ii) The Permitted Mortgagee (or nominee) shall pay to the City at the time of the execution and delivery of the new lease, any and all rent and other sums in the possession of the Permitted Mortgagee which would, at the time of the execution and delivery thereof, be due pursuant to this Lease but for such termination.

d. In the event such new lease is entered into as specified above, the following shall apply:

(i) The tenant under such new lease shall have the same right, title, and interest in and to the Premises, and any improvements and personal property, that Lessee had under the terminated Lease;

(ii) Such new lease shall have the same priority as this Lease, and shall contain all of the same provisions and rights in favor of and for the benefit of Permitted Mortgagees thereof, as are contained in this Lease;

(iii) After the termination of this Lease and during the period thereafter during which the holder of any Permitted Mortgage or nominee shall be entitled to enter into a new lease of the Premises, City will not terminate any sublease or the rights of the subtenant thereunder unless such subtenant shall be in default under such sublease. All rents collected by City during the interval following termination of this Lease and prior to the commencement of the term of the new lease, shall be credited against amounts which would have been due under this Lease but for the termination; and

(iv) City shall assign to the tenant under the new lease any and all rights of City under any subleases of Lessee which have theretofore been assigned by Lessee to City or where the sublessees thereunder have attorned to City subject to City's rights to have the sublessees attorn in the event of a default under the new lease.

e. Nothing in this Lease shall require the Permitted Mortgagee (or its nominee) to cure any default of Lessee hereunder, except (a) as a condition to obtaining a new lease as provided for herein, and (b) in connection with City's agreement to forebear the immediate exercise of its rights hereunder to allow the curing of Lessee's defaults or the foreclosure of the Permitted Mortgage by the Permitted Mortgagee pursuant to Section 5.08(b)(ii) above.

f. Any obligations required to be performed by Lessee pursuant to the terms of this Lease may be performed by a Permitted Mortgagee or nominee on Lessee's behalf and the performance of such act shall be deemed to be performed by Lessee and shall be acceptable as Lessee's act by City; provided, however, that nothing contained in this Lease shall impose upon the Permitted Mortgagee (or its nominee) personal liability under this Lease except for any obligations or liabilities which arise or accrue during the period of time that the Permitted Mortgagee is the owner of this Leasehold Estate and prior to the reassignment of its interest therein. A Permitted Mortgagee who shall acquire title to the Leasehold Estate of Lessee by foreclosure or deed in lieu of foreclosure or otherwise shall have no duty to perform the obligations of Lessee under this Lease which accrue after the Permitted Mortgagee reassigns its interest therein to a successor tenant.

g. City agrees that a lender loss payable endorsement in a form reasonably satisfactory to the Permitted Mortgagee will be added to the insurance maintained by Lessee and that the Permitted Mortgagee shall have the right to join in the settlement or adjustment of any insurance claim.

h. The proceeds arising from a condemnation of the Premises or resulting from severance damages are to be held and distributed pursuant to the provisions of this Lease, but the Permitted Mortgagee shall have the right to apply to the debt secured by the Permitted Mortgage all, or any part, of Lessee's share of such proceeds pursuant to the terms of the Permitted Mortgage. Any condemnation award proceeds shall, to the extent required by the Permitted Mortgage, be delivered to said Permitted Mortgagee, who shall act as trustee for disbursement of such award proceeds pursuant to, and in accordance with, the provisions of this Lease concerning condemnation or, as between Lessee and such Permitted Mortgagee only, Lessee's share of such proceeds shall be disbursed/retained by such Permitted Mortgagee in accordance with the provisions of the Permitted Mortgage.

i. If City or Lessee shall acquire the interest of the other hereunder, or if any two interests in the Premises shall be acquired by the same party, this Lease shall remain outstanding and no merger of interests shall be deemed to have occurred.

j. City shall cooperate with Lessee in connection with its efforts from time to time to obtain Permitted Mortgages. Such cooperation will include, without limitation, executing such estoppel certificates, consents, non-disturbance and attornment agreements, and similar documents as the Permitted Mortgagee may reasonably request. In addition, in the event any such prospective Permitted Mortgagee reasonably requests that the parties amend this Lease in connection with the making of a Permitted Mortgage, City Manager, on behalf of City, and Lessee shall promptly execute such reasonably requested amendments; provided, however, City shall not be required to execute any such amendment which materially and adversely affects City's rights and benefits hereunder.

5.09 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, 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 such interest, and that Lessee shall pay all such possessory interest taxes.

5.10 Signs. Lessee shall have the right, subject to compliance with all City of Oceanside ordinances and regulations, and subject to obtaining any approval of the City of Oceanside as a regulatory agency (as opposed to as landlord hereunder) to install such lighting and signs at the Premises as Lessee deems necessary or desirable in connection with the operation of the Premises.

5.11 Ownership of Improvements and Personal Property.

a. Any and all improvements, trade fixtures, structures, and installations or additions to the Premises constructed on the Premises by Lessee shall constitute the property of Lessee; however, excepting such improvements and operating equipment placed on the Premises by Lessee which may be removed without causing damage to the Premises, all such improvements, trade fixtures, structures, and installations or additions shall at Lease expiration or termination 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.

b. If City elects not to assume ownership of all or any improvements, trade fixtures, structures and installations, City shall so notify Lessee in writing thirty (30) days prior to expiration or termination of this Lease, and Lessee shall remove all such improvements, structures and installations as directed by City at Lessee's sole cost and expense on or before Lease expiration or termination. If Lessee fails to remove any improvements, structures, and installations as directed, Lessee agrees to pay City the

full cost of any removal.

c. Lessee owned machines, equipment (other than trade fixtures), and other items of personal property, except as described as Lessee Improvements shall be removed by Lessee by the date of the expiration or termination of this Lease. At City's election, any said 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 said items at Lessee's expense.

d. If any removal of such personal property by Lessee results in damage to the remaining improvements on the Premises, Lessee shall repair all such damage.

5.12 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. **Total Taking.** In the event the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

b. **Partial Taking.** In the event of a partial taking, if, in the opinion of 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.

In the event of a partial taking, if, in the opinion of Lessee, the remainder 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 minimum rent shall be equitably reduced to reflect the portion of the Premises taken.

c. **Award.** All monies awarded in any such taking of the Premises shall belong to City; provided, however, Lessee shall be entitled to any award attributable to diminution in value, severance damages, goodwill, and the taking of or damages to Lessee's then remaining leasehold interest in the installations or improvements of Lessee. City shall have no liability to Lessee for any award not provided by the condemning authority.

d. **Repayment of Lessee Improvements.** In the event of a total taking and the City is not awarded any monies by the condemning authority in connection therewith, the City shall not be responsible for any remaining unamortized portion cost of the Lessee Improvements as more specifically set forth in Exhibit "D" subject to Section 5.12(c) above. In the event of a partial taking and the City is not awarded any monies by the condemning authority in connection therewith, the Lessee Improvements

shall be allocated according to the remainder of the Premises and Lessee shall be responsible for the unamortized portion of the cost of the Lessee Improvements applicable to the portion of the Premises so taken.

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 so long as such rights do not unreasonably or substantially interfere with Lessee's operations.

5.13 Damage or Destruction to Improvements.

a. City Reconstruction. If the City Improvements upon the Premises are damaged or destroyed by any risk against which City has insured, City (subject to being able to obtain all necessary permits and approvals) shall, within one hundred and twenty (120) days after such damage or destruction repair and reconstruct the Premises to substantially the same condition as the Premises were originally delivered to Lessee. City shall not be liable for interruption to Lessee's operation or for damage to or for the repair or reconstruction of any items which Lessee is required to insure, provided that City uses commercially reasonable efforts to minimize such interruption.

b. Lessee Reconstruction. If any item which Lessee is required to insure pursuant to the terms of this Lease is damaged or destroyed by fire or other risks to be so insured, Lessee (subject to being able to obtain all necessary permits and approvals) shall, within thirty (30) days after City has repaired or reconstructed the Premises that City is obligated to repair or reconstruct pursuant Section 5.13(a) above, or ninety (90) days after such damage or destruction, whichever is later, Lessee shall commence to repair or reconstruct such items to substantially the same condition in which they were prior to such damage or destruction and prosecute the same diligently to completion.

SECTION 6: GENERAL PROVISIONS

6.01 Notices. All notices, demands, requests, consents or other communications which this Lease contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered, mailed, or otherwise delivered to the respective party as follows:

To City:

CITY OF OCEANSIDE

Property Management Division
300 North Coast Highway
Oceanside, CA 92054

Attention: Real Estate Manager

To Lessee:

Sudberry Development, Inc.
c/o Sudberry Properties, Inc.
5465 Morehouse Drive, Suite 260
San Diego, CA 92121
Attention: Colton T. Sudberry

And to: Charlie Abdi
c/o Finest City Realty Advisors
12651 High Bluff Drive, Suite 250
San Diego, CA 92130

With a copy of each notice sent to Lessee also sent by e-mail to: colton@sudprop.com, chuck@sudprop.com, and gis@smcdslaw.com.

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur of: (i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above; or (ii) three (3) working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, or by overnight courier, addressed to the offices of the party to whom the communication is to be sent, as designated above; or (iii) by facsimile or email, provided that such communication is also sent pursuant to the method set forth in clause (ii) above.

6.02 City Approval. The City Manager shall be the City's authorized representative in the interpretation and enforcement of all work performed in connection with this Lease. The City Manager may delegate authority in connection with this Lease to the City Manager's designee(s). The City Manager shall be authorized to approve non-material changes to this Lease as reasonably requested by Lessee, including those requested by Lessee's capital partners and potential assignees.

6.03 Nondiscrimination. Lessee agrees not to discriminate in any manner against any person or persons on account of race, marital status, familial status, sex, religious creed, color, ancestry, national origin, age, disability, medical condition or sexual orientation in Lessee's use of the Premises.

6.04 Equal Opportunity. Lessee shall take affirmative action to assure users of the Premises and employees are treated during employment without regard to race, religious creed, color, religion, sex or national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation. Lessee shall certify in writing to City that Lessee is in compliance and throughout the term of this Lease will comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal, State and Local law, regulation and policy (including without limitation those adopted by City) related to equal employment opportunity and affirmative action programs, including any such law, regulation, and policy hereinafter enacted.

Compliance and performance by Lessee of the equal employment opportunity and affirmative action program provision of this Lease is an express condition hereof and any failure by Lessee to so comply and perform shall be a default of this Lease and City may exercise any right as provided herein and as otherwise provided by law.

6.05 Entire Agreement. This Lease contains the entire understanding between the City and Lessee concerning the use and occupation of the Premises and supersedes all prior negotiations, representations, or agreements. 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.

6.06 Interpretation. The interpretation, validity and enforcement of the Lease shall be governed by and construed under the laws of the State of California. The venue of any judicial action brought to enforce any condition, covenant or provision of this Lease shall be in San Diego County, California. The Lease does not limit any other rights or remedies available to City.

The Lessee shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Lease shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Lease are severable.

This Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, and assigns.

6.07 Agreement Modification. This Lease may not be modified orally or in any manner other than by an Agreement in writing signed by the parties hereto.

6.08 Waiver. Any waiver by City or Lessee of a default of the other is not a waiver of any other default. Any waiver of a default must be in writing and any waiver by City must 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 amounts associated with this Lease is not a waiver of any default preceding the amount payment. City and Lessee specifically agree that the property constituting the Premises is City owned and held in trust for the benefit of the citizens of the City of Oceanside and that the failure of 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, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

6.09 Attorney's Fees. In the event of any litigation, arbitration, mediation, or other proceeding by either party against the other to enforce payment of amounts due, or to enforce any of the terms and conditions hereof, or in the case of any summary action under the laws of the State of California relating to the unlawful detention of property, for forfeit of this Lease, and the possession of the Premises, the prevailing party in any such proceeding is entitled to recover from the unsuccessful party all costs, expenses, and reasonable attorney's fees and expert witness fees relating to or arising out of such proceeding.

6.10 Assignment and Subletting. A major consideration for this Lease is the unique expertise of Lessee in the operation and management of athletic fields at a municipally owned facility. Accordingly, notwithstanding anything herein to the contrary, without the prior written consent of the City Manager, Lessee shall not assign to, contract for and/or allow another individual or entity to operate and/or manage the athletic field operation at the Premises. Further, this Lease and any portion thereof shall not be assigned or transferred, or sublet, nor shall any of the Lessee's duties be delegated, without the express written consent of the City Manager which shall not be unreasonably denied, conditioned, or withheld. As a condition of approving an assignment, the City Manager may reasonably demand that the proposed assignee have the same level of experience in managing athletic field operations. Any attempt to assign or delegate this Lease without the express written consent of the City Manager shall be void and of no force or effect. Consent by City to one assignment, transfer, sublease, or delegation shall not be deemed to be consent to any subsequent assignment, transfer, sublease, or delegation. Notwithstanding the foregoing, Lessee may, without City's approval, enter into temporary license or concession agreements with individuals or entities in connection with the sale of merchandise or services during events, Use Agreements, and subleases of less than the entirety of the Premises.

6.11 Defaults and Termination. It shall be an event of default hereunder (each an "Event of Default") if:

- a. Lessee fails to pay rent or other moneys due under this Lease for more

than thirty (30) days after City provides written notice to Lessee of the non-payment;

b. Lessee fails to perform or comply with the covenants or other obligations of Lessee under this Lease and such default continues for thirty (30) or more days after written notice of such failure to Lessee, provided that if such covenants or obligations cannot be performed within such 30-day period, then such longer period as may be necessary to perform such covenant, condition, or agreement using reasonable diligence; or,

c. Lessee fails to perform or comply with the use covenants set forth in Section 1.02 above and such default continues for forty-five (45) days after written notice of such failure.

Upon the occurrence of any Event of Default by Lessee under Sections 6.11(a) through (c) above, in addition to all other rights and remedies of City provided hereunder or by law, City shall have the right to terminate this Lease and shall have the remedies available at law or in equity described in California Civil Code section 1951.2, as amended.

6.12 Bankruptcy. In the event Lessee makes an assignment for the benefit of creditors, becomes the subject of a bankruptcy proceeding, reorganization, arrangement, insolvency, receivership, liquidation, or dissolution proceedings, or in the event of any judicial sale of Lessee's interest under this Lease, City shall have the right to declare this Lease in default, except in the case where such proceeding is dismissed within 60 days after filing.

The conditions of this section shall not be applicable or binding on Lessee or any Permitted Mortgagee, as long as any indebtedness under such Permitted Mortgage remains outstanding; provided that such Permitted Mortgagee complies with the provisions of Section 5.08 above.

6.13 Section Headings. The Table of Contents and the section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

6.14 Gender/Singular/Plural. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, partnership, or other legal entity when the context so requires. The singular number includes the plural whenever the context so requires.

6.15 Force Majeure. As used in this Lease, the term "Force Majeure Events" means and refers to any prevention, delay or stoppage due to strikes, lockouts, acts of God, acts of the other party to this Lease (or such party's agents, employees, or representatives), enemy or hostile governmental action, civil commotion, fire or other casualty or similar event beyond the reasonable control of the party obligated to

perform. Force Majeure Events shall excuse the performance by Lessee for a period equal to any such prevention, delay or stoppage, except the obligations imposed with regard to rental and other monies to be paid by Lessee pursuant to this Lease and any indemnification obligations imposed upon Lessee under this Lease.

SECTION 7: SPECIAL PROVISIONS

7.01 Relocation Provision. If during the initial term of this Lease, the City determines that it is necessary to reconfigure the athletic fields within the Premises for purposes of extending the existing road to enable additional development of recreational facilities within El Corazon, the City shall have the right to reconfigure the Premises on the following conditions: (a) the reconfigured Premises shall be equal to or greater in square footage and configured in order to provide the same utility and number of athletic fields, the same or greater amount of parking area, and the same amount and quality of ancillary areas, and is otherwise reasonably acceptable to Lessee, (b) the City shall, at its expense, provide Lessee with improvements to said new space substantially similar to those that were constructed at the Premises, provided that the cost of such new improvements shall not exceed the amount originally incurred by Lessee for such Lessee Improvements as adjusted for inflation per the San Diego All-Urban Consumers, Consumer Price Index, (c) City shall reimburse Lessee for its reasonable out-of-pocket expenses incurred in connection with any such reconfiguration, (d) such reconfiguration will be performed in a manner designed to minimize any interruption to the operations of Lessee at the Premises, and shall not render any portion of the Premises unusable until adequate replacement facilities are made available to Lessee. City shall provide Lessee with at least twelve (12) months prior written notice of City's intention to reconfigure the Premises. City and Lessee shall amend this Lease to reflect said new property.

7.02 Standards of Operation. Lessee agrees that it shall operate and manage the services and facilities offered upon or from the Premises in a first class manner.

7.03 Intentionally Omitted.

7.04 Manner of Providing Service. Lessee shall provide an experienced and well qualified "on-site" supervisor to oversee all operations conducted by Lessee on the Premises during operating hours. Said supervisor shall be empowered with authority to act on behalf of Lessee in response to reasonable requests from City to perform maintenance, repairs, and replacements on the Premises to insure the public's health, safety, and welfare. Lessee shall ensure that its employees shall at all times conduct themselves in a creditable and dignified manner, and they shall conform to all laws, rules, regulations and requirements, as well as all rules and regulations as hereafter may be promulgated, or put into operation by the City. Lessee shall maintain a staff in adequate size and number, to City's satisfaction, to effectively operate, maintain and administer all services offered and facilities located on the Premises.

7.05 Intentionally Omitted.

7.06 Intentionally Omitted.

7.07 Hazardous Substances. No goods, merchandise or material shall be kept, stored or sold in or on the Premises which are in any way explosive or hazardous; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said Premises, which will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon said or other premises and the improvements thereon. Notwithstanding anything to the contrary in this Lease, Lessee shall be permitted to store and use at the Premises limited amounts of items that may be considered hazardous (such as, but not limited to, fuel, solvents, insecticides, and fertilizer), provided that such storage and use is in compliance with applicable law and there is no underground storage of hazardous materials.

No machinery or apparatus shall be used or operated on or about the Premises which will in any way injure the Premises or improvements thereon, or adjacent or other premises, or improvements thereon, or to persons; provided, however, that nothing contained in this section shall preclude Lessee from bringing, keeping or using on or about the Premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all usual respects.

7.08 Memorandum of Lease Agreement. City and Lessee agree the Lease shall not be recorded but that the parties shall execute a Memorandum of Lease Agreement to be recorded. The form of this Memorandum of Lease Agreement is as shown on Exhibit "G" attached hereto and incorporated herein by this reference, and shall be recorded in the Official Records of the County of San Diego.

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SECTION 8: SIGNATURES

8.01 Signature Page. The individuals executing this Lease represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Lease on behalf of the respective legal entities of the Lessee and the City.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Lease Agreement be executed by setting hereunto their signatures on the day and year respectively written herein below.

CITY

THE CITY OF OCEANSIDE
a municipal corporation

Date _____

By: _____
City Manager

APPROVED AS TO FORM:

By: _____
City Attorney

LESSEE

SOCAL SC L.P.,
a California limited partnership

Date _____

By: Sudberry Development, Inc., its general partner

By: _____

Title: _____

NOTARY ACKNOWLEDGMENTS OF LESSEE'S SIGNATURE(S) MUST BE ATTACHED

EXHIBIT "A"

LEGAL DESCRIPTION

FOR

PREMISES

THAT PORTION OF LOTS 7 AND 9.1 OF RANCHO DEL ORO MASTER SUBDIVISION MAP WEST, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA ACCORDING TO MAP NO. 11410, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, RECORDED DECEMBER 27, 1985 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTERLINE INTERSECTION OF OCEANSIDE BOULEVARD AND RANCHO DEL ORO DRIVE; THENCE ALONG THE CENTERLINE OF RANCHO DEL ORO DRIVE

1. NORTH 10°20'38" WEST 746.23 FEET TO THE BEGINNING OF A 1800 FOOT RADIUS
(NORTH 10°20'37" WEST CURVE CONCAVE EASTERLY; THENCE LEAVING
PER PARCEL MAP NO. 20077) SAID CENTERLINE
2. NORTH 86°13'27" WEST 1107.56 FEET TO THE TRUE POINT OF BEGINNING; THENCE
3. SOUTH 5°14'30" WEST 68.16 FEET; THENCE
4. NORTH 83°22'39" WEST 119.12 FEET; THENCE
5. SOUTH 85°54'30" WEST 199.45 FEET; THENCE
6. SOUTH 83°12'46" WEST 40.10 FEET TO THE BEGINNING OF A TANGENT 65.00 FOOT
RADIUS CURVE CONCAVE NORTHERLY, A RADIAL
TO SAID POINT BEARS SOUTH 6°47'14" EAST;
THENCE ALONG THE ARC OF SAID CURVE
7. NORTHWESTERLY 33.42 FEET THROUGH A CENTRAL ANGLE OF 29°27'40" TO A
POINT ON A COMPOUND CURVE CONCAVE
NORTHEASTERLY HAVING A RADIUS OF 125.00
FEET, A RADIAL TO SAID POINT BEARS SOUTH
22°40'26" WEST; THENCE ALONG THE ARC OF SAID
CURVE

8.	NORTHWESTERLY	91.14 FEET	THROUGH A CENTRAL ANGLE OF 41°46'28" TO A POINT ON A REVERSE CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 37.00 FEET, A RADIAL TO SAID POINT BEARS NORTH 64°26'54" EAST; THENCE ALONG THE ARC OF SAID CURVE
9.	NORTHWESTERLY	48.01 FEET	THROUGH A CENTRAL ANGLE OF 74°20'56"; THENCE
10.	SOUTH 80°05'58" WEST	108.97 FEET;	THENCE
11.	SOUTH 74°30'39" WEST	179.89 FEET;	THENCE
12.	SOUTH 70°12'49" WEST	197.82 FEET;	THENCE
13.	SOUTH 60°11'16" WEST	160.16 FEET;	THENCE
14.	SOUTH 58°49'03 WEST	128.51 FEET	TO THE BEGINNING OF A TANGENT 700.00 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY, RADIAL TO SAID POINT BEARS NORTH 31°10'57" WEST; THENCE ALONG THE ARC OF SAID CURVE
15.	SOUTHWESTERLY	99.35 FEET	THROUGH A CENTRAL ANGLE OF 8°07'55" TO A POINT ON A COMPOUND CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 135.00 FEET, A RADIAL TO SAID POINT BEARS NORTH 39°18'52" WEST; THENCE ALONG THE ARC OF SAID CURVE
16.	SOUTHWESTERLY	49.84 FEET	THROUGH A CENTRAL ANGLE OF 21°09'10" TO A POINT ON A REVERSE CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 62.00 FEET, A RADIAL TO SAID POINT BEARS SOUTH 60°28'02" EAST; THENCE ALONG THE ARC OF SAID CURVE
17.	SOUTHWESTERLY	42.50 FEET	THROUGH A CENTRAL ANGLE OF 39°16'31"; THENCE
18.	SOUTH 68°48'29" WEST	88.98 FEET;	THENCE
19.	SOUTH 37°07'57" WEST	99.64 FEET;	THENCE
20.	SOUTH 45°40'34" WEST	80.56 FEET	THENCE
21.	SOUTH 17°18'43" WEST	12.69 FEET;	THENCE
22.	SOUTH 59°36'13" WEST	55.60 FEET;	THENCE
23.	SOUTH 82°48'40" WEST	17.71 FEET;	THENCE
24.	SOUTH 76°25'07" WEST	45.13 FEET;	THENCE

- | | | | |
|-----|----------------------|--------------|---|
| 25. | SOUTH 89°44'40" WEST | 50.48 FEET; | THENCE |
| 26. | NORTH 75°58'09" WEST | 20.91 FEET; | THENCE |
| 27. | NORTH 83°14'40" WEST | 35.75 FEET; | THENCE |
| 28. | NORTH 78°47'23" WEST | 38.95 FEET; | THENCE |
| 29. | NORTH 87°52'15" WEST | 82.94 FEET; | THENCE |
| 30. | NORTH 79°44'42" WEST | 12.58 FEET; | THENCE |
| 31. | SOUTH 88°26'49" WEST | 27.65 FEET; | THENCE |
| 32. | SOUTH 72°41'28" WEST | 4.39 FEET; | THENCE |
| 33. | NORTH 88°00'16" WEST | 18.22 FEET; | THENCE |
| 34. | NORTH 76°43'15" WEST | 8.78 FEET; | THENCE |
| 35. | SOUTH 86°16'22" WEST | 39.67 FEET; | THENCE |
| 36. | SOUTH 80°42'10" WEST | 36.04 FEET; | THENCE |
| 37. | SOUTH 74°49'54" WEST | 23.46 FEET; | THENCE |
| 38. | SOUTH 43°18'32" WEST | 9.23 FEET; | THENCE |
| 39. | SOUTH 72°58'02" WEST | 40.75 FEET; | THENCE |
| 40. | SOUTH 35°54'21" WEST | 10.20 FEET; | THENCE |
| 41. | NORTH 88°31'44" WEST | 13.22 FEET; | THENCE |
| 42. | SOUTH 82°03'32" WEST | 35.87 FEET; | THENCE |
| 43. | NORTH 89°22'57" WEST | 34.91 FEET; | THENCE |
| 44. | NORTH 79°29'10" WEST | 29.38 FEET; | THENCE |
| 45. | NORTH 87°27'31" WEST | 97.63 FEET; | THENCE |
| 46. | SOUTH 89°53'10" WEST | 94.73 FEET; | THENCE |
| 47. | NORTH 87°42'50" WEST | 120.42 FEET; | THENCE |
| 48. | SOUTH 89°35'57" WEST | 105.60 FEET; | THENCE |
| 49. | SOUTH 85°05'33" WEST | 23.67 FEET | TO THE BEGINNING OF A TANGENT 132.00 FOOT
RADIUS CURVE CONCAVE NORTHEASTERLY, A
RADIAL TO SAID POINT BEARS SOUTH 4°54'27"
EAST; THENCE ALONG THE ARC OF SAID CURVE |
| 50. | NORTHWESTERLY | 186.76 FEET | THROUGH A CENTRAL ANGLE OF 81°03'48";
THENCE |
| 51. | NORTH 13°50'40" WEST | 27.07 FEET | TO THE BEGINNING OF A TANGENT 155.00 FOOT
RADIUS CURVE CONCAVE EASTERLY, A RADIAL TO
SAID POINT BEARS SOUTH 76°09'20" WEST;
THENCE ALONG THE ARC OF SAID CURVE |
| 52. | NORTHERLY | 41.20 FEET | THROUGH A CENTRAL ANGLE OF 15°13'46";
THENCE |
| 53. | NORTH 1°23'07" EAST | 87.03 FEET; | THENCE |

54.	NORTH 13°39'35" EAST	103.81 FEET	TO THE BEGINNING OF A TANGENT 130.00 FOOT RADIUS CURVE CONCAVE WESTERLY, A RADIAL TO SAID POINT BEARS SOUTH 76°20'25" EAST; THENCE ALONG THE ARC OF SAID CURVE
55.	NORTHERLY	68.12 FEET	THROUGH A CENTRAL ANGLE OF 30°01'23"; THENCE
56.	NORTH 16°21'48" WEST	60.53 FEET;	THENCE
57.	NORTH 30°11'01" WEST	38.85 FEET	TO THE BEGINNING OF A TANGENT 165.00 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY, A RADIAL TO SAID POINT BEARS NORTH 59°48'59" EAST; THENCE ALONG THE ARC OF SAID CURVE
58.	NORTHWESTERLY	79.10 FEET	THROUGH A CENTRAL ANGLE OF 27°28'06" TO A POINT ON A COMPOUND CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 95.00 FEET, A RADIAL TO SAID POINT BEARS NORTH 32°20'53" EAST; THENCE ALONG THE ARC OF SAID CURVE
59.	WESTERLY	51.74 FEET	THROUGH A CENTRAL ANGLE OF 31°12'28"; THENCE
60.	NORTH 88°51'35" WEST	67.42 FEET;	THENCE
61.	NORTH 83°42'16" WEST	98.51 FEET;	THENCE
62.	NORTH 88°53'12" WEST	35.36 FEET;	THENCE
63.	NORTH 81°36'40" WEST	60.25 FEET	TO THE BEGINNING OF A TANGENT 80.00 FOOT RADIUS CURVE CONCAVE SOUTHERLY, A RADIAL TO SAID POINT BEARS NORTH 8°23'20" EAST; THENCE ALONG THE ARC OF SAID CURVE
64.	WESTERLY	46.78 FEET	THROUGH A CENTRAL ANGLE OF 33°30'19" THENCE;
65.	SOUTH 64°53'01" WEST	350.06 FEET;	THENCE
66.	SOUTH 65°02'39" WEST	35.34 FEET;	THENCE
67.	SOUTH 53°00'27" WEST	22.67 FEET;	THENCE
68.	SOUTH 82°08'10" WEST	18.96 FEET	TO THE BEGINNING OF A TANGENT 60.00 FOOT RADIUS CURVE CONCAVE NORTHWESTERLY, A RADIAL TO SAID POINT BEARS SOUTH 8°07'06" EAST; THENCE ALONG THE ARC OF SAID CURVE
69.	NORTHEASTERLY	55.97 FEET	THROUGH A CENTRAL ANGLE OF 53°26'49"; THENCE

70. NORTH 28°26'05" EAST	492.82 FEET	TO THE BEGINNING OF A TANGENT 300.00 FOOT RADIUS CURVE CONCAVE WESTERLY, A RADIAL TO SAID POINT BEARS SOUTH 61°33'55" EAST; THENCE ALONG THE ARC OF SAID CURVE
71. NORTHERLY	168.13 FEET	THROUGH A CENTRAL ANGLE OF 32°06'40"; THENCE
72. NORTH 3°40'35" WEST	513.64 FEET	TO THE BEGINNING OF A TANGENT 135.00 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY, A RADIAL TO SAID POINT BEARS SOUTH 86°19'25" WEST; THENCE ALONG THE ARC OF SAID CURVE
73. NORTHEASTERLY	193.98 FEET	THROUGH A CENTRAL ANGLE OF 82°19'37"; THENCE
74. NORTH 78°39'02" EAST	40.46 FEET	TO THE BEGINNING OF A TANGENT 500.00 FOOT RADIUS CURVE CONCAVE NORTHWESTERLY, A RADIAL TO SAID POINT BEARS SOUTH 11°20'58" EAST; THENCE ALONG THE ARC OF SAID CURVE
75. NORTHEASTERLY	151.71 FEET	THROUGH A CENTRAL ANGLE OF 17°23'05"; THENCE
76. NORTH 61°15'57" EAST	48.81 FEET	TO THE BEGINNING OF A TANGENT 150.00 FOOT RADIUS CURVE CONCAVE SOUTHERLY, A RADIAL TO SAID POINT BEARS NORTH 28°44'03" WEST; THENCE ALONG THE ARC OF SAID CURVE
77. EASTERLY	83.87 FEET	THROUGH A CENTRAL ANGLE OF 32°02'11"; THENCE
78. SOUTH 86°41'51" EAST	155.03 FEET	TO THE BEGINNING OF A TANGENT 265.00 FOOT RADIUS CURVE CONCAVE NORTHERLY, A RADIAL TO SAID POINT BEARS SOUTH 3°18'09" WEST; THENCE ALONG THE ARC OF SAID CURVE
79. NORTHEASTERLY	193.16 FEET	THROUGH A CENTRAL ANGLE OF 41°45'51" TO A POINT ON A REVERSE CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 100.00 FEET, A RADIAL TO SAID POINT BEARS NORTH 38°27'42" WEST; THENCE ALONG THE ARC OF SAID CURVE
80. EASTERLY	80.07 FEET	THROUGH A CENTRAL ANGLE OF 45°52'40"; THENCE

81. SOUTH 82°35'03" EAST	424.96 FEET	TO THE BEGINNING OF A TANGENT 112.00 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY, A RADIAL TO SAID POINT BEARS NORTH 7°24'58" EAST; THENCE ALONG THE ARC OF SAID CURVE
82. SOUTHEASTERLY	48.97 FEET	THROUGH A CENTRAL ANGLE OF 25°03'13"; THENCE
83. SOUTH 57°31'49" EAST	26.25 FEET	TO THE BEGINNING OF A TANGENT 200.00 FOOT RADIUS CURVE CONCAVE NORTHERLY, A RADIAL TO SAID POINT BEARS SOUTH 32°28'11" WEST; THENCE ALONG THE ARC OF SAID CURVE
84. EASTERLY	120.68 FEET	THROUGH A CENTRAL ANGLE OF 34°34'24"; THENCE
85. NORTH 87°53'47" EAST	51.30 FEET	TO THE BEGINNING OF A TANGENT 500.00 FOOT RADIUS CURVE CONCAVE SOUTHERLY, A RADIAL TO SAID POINT BEARS NORTH 2°06'13" WEST; THENCE ALONG THE ARC OF SAID CURVE
86. EASTERLY	38.37 FEET	THROUGH A CENTRAL ANGLE OF 4°23'50"; THENCE
87. SOUTH 87°42'24" EAST	79.86 FEET	TO THE BEGINNING OF A TANGENT 750.00 FOOT RADIUS CURVE CONCAVE NORTHERLY, A RADIAL TO SAID POINT BEARS SOUTH 2°17'36" WEST; THENCE ALONG THE ARC OF SAID CURVE
88. EASTERLY	208.96 FEET	THROUGH A CENTRAL ANGLE OF 15°57'49"; THENCE
89. SOUTH 10°28'43" EAST	8.08 FEET	TO THE BEGINNING OF A TANGENT 30.00 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY, A RADIAL TO SAID POINT BEARS SOUTH 79°31'17" WEST; THENCE ALONG THE ARC OF SAID CURVE
90. SOUTHEASTERLY	31.05 FEET	THROUGH A CENTRAL ANGLE OF 59°17'36"; THENCE
91. SOUTH 69°46'19" EAST	17.32 FEET;	THENCE
92. SOUTH 84°08'59" EAST	41.41 FEET;	THENCE
93. NORTH 87°42'07" EAST	54.96 FEET;	THENCE
94. NORTH 83°32'35" EAST	71.33 FEET;	THENCE
95. SOUTH 79°29'47" EAST	27.88 FEET;	THENCE
96. SOUTH 10°30'14" WEST	15.00 FEET;	THENCE
97. NORTH 68°49'13" EAST	15.00 FEET;	THENCE

98. SOUTH 21°10'47" EAST	9.94 FEET;	THENCE
99. NORTH 72°10'33" EAST	4.06 FEET;	THENCE
100. NORTH 55°49'59" EAST	9.50 FEET;	THENCE
101. NORTH 62°48'29" EAST	22.31 FEET;	THENCE
102. SOUTH 72°35'55" EAST	10.69 FEET;	THENCE
103. SOUTH 58°16'29" EAST	17.60 FEET.	THENCE
104. SOUTH 76°55'49" EAST	12.82 FEET;	THENCE
105. SOUTH 52°08'25" EAST	12.41 FEET;	THENCE
106. SOUTH 72°22'56" EAST	15.08 FEET;	THENCE
107. NORTH 18°27'04" EAST	3.17 FEET;	THENCE
108. SOUTH 23°25'12" EAST	3.17 FEET;	THENCE
109. NORTH 66°34'48" EAST	3.88 FEET;	THENCE
110. SOUTH 0°30'25" WEST	3.75 FEET;	THENCE
111. SOUTH 16°16'18" WEST	4.06 FEET;	THENCE
112. SOUTH 12°55'23" WEST	16.44 FEET;	THENCE
113. SOUTH 2°35'54" EAST	9.62 FEET;	THENCE
114. SOUTH 77°45'26" EAST	4.24 FEET;	THENCE
115. NORTH 61°09'15" EAST	3.49 FEET;	THENCE
116. SOUTH 47°23'00" EAST	7.45 FEET;	THENCE
117. SOUTH 64°21'06" EAST	45.64 FEET;	THENCE
118. SOUTH 65°31'18" EAST	56.57 FEET;	THENCE
119. SOUTH 48°41'11" EAST	6.42 FEET;	THENCE
120. NORTH 76°08'09" EAST	10.40 FEET;	THENCE
121. NORTH 65°26'01" EAST	11.23 FEET;	THENCE
122. SOUTH 63°37'25" EAST	17.80 FEET;	THENCE
123. SOUTH 21°28'22" EAST	9.57 FEET;	THENCE
124. SOUTH 40°29'59" EAST	16.52 FEET;	THENCE
125. SOUTH 76°13'14" EAST	12.92 FEET;	THENCE
126. SOUTH 59°05'23" EAST	24.40 FEET;	THENCE
127. SOUTH 69°27'53" EAST	56.18 FEET;	THENCE
128. SOUTH 58°42'29" EAST	55.29 FEET;	THENCE
129. SOUTH 65°33'31" EAST	38.48 FEET	TO THE BEGINNING OF A TANGENT 115.00 FOOT RADIUS CURVE CONCAVE NORTHERLY, A RADIAL TO SAID POINT BEARS SOUTH 24°26'30" WEST; THENCE ALONG THE ARC OF SAID CURVE
130. EASTERLY	53.72 FEET	THROUGH A CENTRAL ANGLE OF 26°45'50"; THENCE

131. NORTH 87°40'40" EAST	89.96 FEET;	THENCE
132. SOUTH 79°44'34" EAST	25.26 FEET	TO THE BEGINNING OF A TANGENT 90.00 FOOT
		RADIUS CURVE CONCAVE SOUTHWESTERLY, A
		RADIAL TO SAID POINT BEARS NORTH 10°15'26"
		EAST; THENCE ALONG THE ARC OF SAID CURVE
133. SOUTHEASTERLY	57.41 FEET	THROUGH A CENTRAL ANGLE OF 36°32'45";
		THENCE
134. SOUTH 43°11'49" EAST	45.20 FEET	TO THE BEGINNING OF A TANGENT 70.00 FOOT
		RADIUS CURVE CONCAVE SOUTHWESTERLY, A
		RADIAL TO SAID POINT BEARS NORTH 46°48'11"
		EAST; THENCE ALONG THE ARC OF SAID CURVE
135. SOUTHERLY	38.58 FEET	THROUGH A CENTRAL ANGLE OF 31°34'38";
		THENCE
136. SOUTH 11°37'12" EAST	28.89 FEET;	THENCE
137. SOUTH 52°16'13" EAST	19.12 FEET;	THENCE
138. SOUTH 8°25'03" WEST	34.83 FEET;	THENCE
139. SOUTH 24°37'25" EAST	11.35 FEET;	THENCE
140. SOUTH 8°57'28" EAST	21.33 FEET;	THENCE
141. SOUTH 13°26'31" WEST	14.00 FEET;	THENCE
142. SOUTH 3°04'21" WEST	60.79 FEET;	THENCE
143. SOUTH 28°19'46" EAST	10.78 FEET;	THENCE
144. SOUTH 9°06'24" WEST	12.83 FEET;	THENCE
145. SOUTH 0°48'50" WEST	26.27 FEET;	THENCE
146. SOUTH 21°33'39" EAST	6.30 FEET;	THENCE
147. SOUTH 56°15'05" EAST	10.60 FEET;	THENCE
148. NORTH 72°14'01" EAST	14.54 FEET;	THENCE
149. NORTH 84°11'46" EAST	27.17 FEET;	THENCE
150. NORTH 38°12'26" EAST	21.06 FEET;	THENCE
151. NORTH 61°17'31" EAST	32.52 FEET;	THENCE
152. SOUTH 89°00'15" EAST	19.33 FEET;	THENCE
153. NORTH 89°16'52" EAST	20.08 FEET;	THENCE
154. SOUTH 39°52'52" EAST	19.26 FEET;	THENCE
155. SOUTH 49°10'39" EAST	24.46 FEET;	THENCE
156. SOUTH 24°05'03" EAST	8.65 FEET;	THENCE
157. SOUTH 61°05'40" EAST	10.08 FEET;	THENCE
158. NORTH 87°34'18" EAST	13.88 FEET;	THENCE
159. SOUTH 88°16'31" EAST	18.44 FEET;	THENCE

160. SOUTH 62°53'53" WEST	84.65 FEET;	THENCE
161. SOUTH 26°50'11" EAST	41.11 FEET;	THENCE
162. SOUTH 35°17'39" EAST	12.12 FEET;	THENCE
163. NORTH 76°40'45" EAST	18.51 FEET;	THENCE
164. SOUTH 51°53'12" EAST	16.92 FEET;	THENCE
165. SOUTH 26°31'37" EAST	56.36 FEET;	TO THE BEGINNING OF A TANGENT 31.00 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY, A RADIAL TO SAID POINT BEARS SOUTH 63°28'23" WEST; THENCE ALONG THE ARC OF SAID CURVE
166. SOUTHEASTERLY	15.80 FEET	THROUGH A CENTRAL ANGLE OF 29°12'06" TO A POINT ON A REVERSE CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 33.00 FEET, A RADIAL TO SAID POINT BEARS NORTH 34°16'17" EAST; THENCE ALONG THE ARC OF SAID CURVE
167. SOUTHERLY	33.85 FEET	THROUGH A CENTRAL ANGLE OF 58°46'01"; THENCE
168. SOUTH 3°02'18" WEST	215.67 FEET;	THENCE
169. SOUTH 1°37'42" WEST	138.58 FEET;	THENCE
170. SOUTH 1°26'17" EAST	16.61 FEET;	THENCE
171. SOUTH 27°58'53" EAST	12.84 FEET;	THENCE
172. NORTH 62°01'07" EAST	18.00 FEET;	THENCE
173. SOUTH 3°16'31" EAST	18.00 FEET;	THENCE
174. NORTH 86°43'29" EAST	40.89 FEET;	THENCE
175. NORTH 83°25'43" EAST	61.95 FEET;	THENCE
176. NORTH 83°30'39" EAST	88.35 FEET;	THENCE
177. NORTH 86°22'51" EAST	104.44 FEET;	THENCE
178. SOUTH 85°40'50" EAST	50.67 FEET	TO THE TRUE POINT OF BEGINNING.

CONTAINS 96.90 ACRES MORE OR LESS.

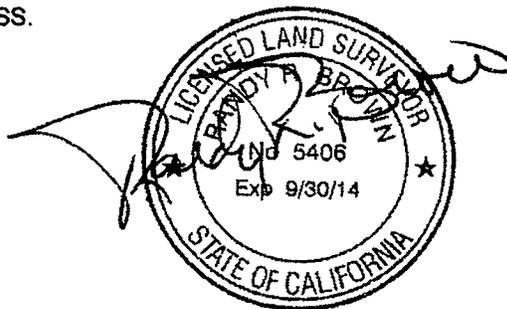
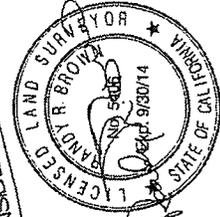
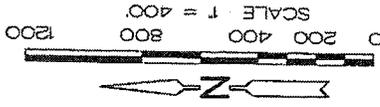
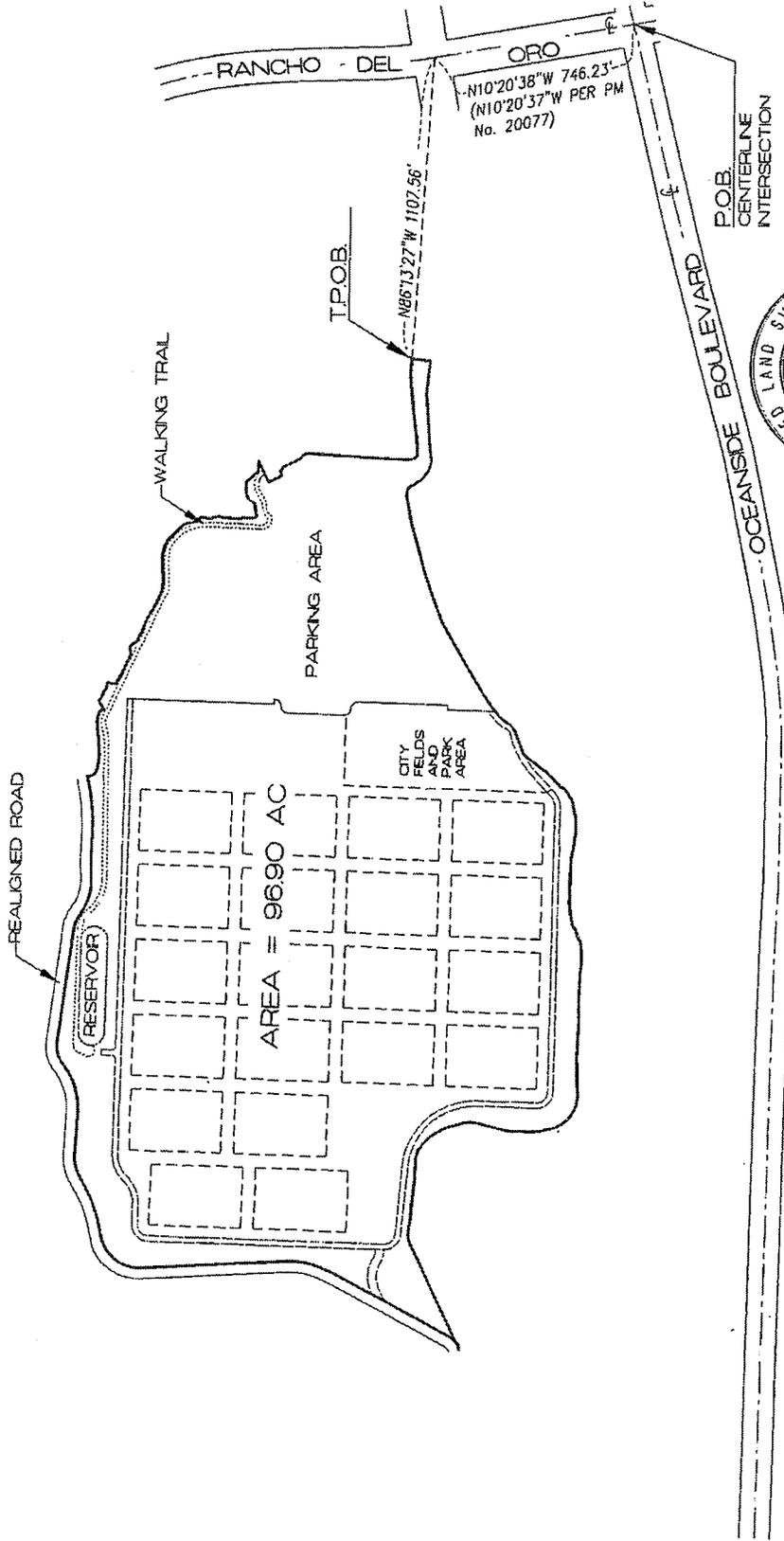


EXHIBIT "B"

PLAT FOR PREMISES



SOWARDS & BROWN ENGINEERING
CONSULTING ENGINEERS
2187 NEWCASTLE AVENUE SUITE 103
CARDIFF BY THE SEA, CA., 92007
TEL. 760/436-8800
FAX 760/436-8803

JOB No. 12-001 12/12/12

Exhibit "C-1" (Soccer Club)

MEMORANDUM OF ATHLETIC FIELD USE AGREEMENT SOCCER CLUB OF OCEANSIDE

This Memorandum of Athletic Use Agreement (this "Memorandum") is being entered into as of December 20, 2012 between SOCAL SC L.P., a California limited partnership, an entity in formation ("Operator"), and OCEANSIDE SOCCER CLUB, a California nonprofit corporation, dba Soccer Club of Oceanside ("SCO"), with respect to SCO's use of the Athletic Fields located at El Corazon in Oceanside, California (the "Facilities").

Operator and SCO intend to enter into an Athletic Field Use Agreement (the "Agreement") whereby SCO will be granted the right to use the Facilities Monday through Friday of each week for 10 months during the year and during certain weekends during the year, all subject to availability and other restrictions and limitations set forth in the Agreement, the terms of which have been agreed upon between Operator and SCO. The Agreement is conditioned upon the effectiveness of Operator's Lease with the City of Oceanside after the approval of Operator's feasibility and due diligence investigations and subject and subordinate to the continued effectiveness of such Lease.

The initial term of the Agreement shall be for twenty five years, subject thereafter to renewal for successive periods of three years each unless either of Operator or SCO gives written notice of its election not to renew within 60 days before or after any renewal date.

This Memorandum is not intended to amend, modify, or supplement in any way the terms of the Agreement. In the event of any conflict between the terms hereof and of the Agreement, the terms of the Agreement shall prevail.

Operator:

SCO:

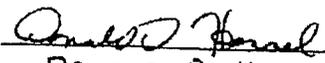
SOCAL SC L.P., a California limited partnership in formation	OCEANSIDE SOCCER CLUB, a California nonprofit corporation
By: Sudberry Development, Inc., its general partner	By: 
By:  Name: Colton T. Sudberry	Name: DONALD D. HENSEL
Its: President	Its: TREASURER

Exhibit "C-2" (Surf Cup)

MEMORANDUM OF ATHLETIC FIELD USE AGREEMENT SURF CUP INC.

This Memorandum of Athletic Use Agreement (this "Memorandum") is being entered into as of December 17, 2012 between SOCAL SC L.P., a California limited partnership, an entity in formation ("Operator"), and SAN DIEGO SURF CUP, INC. a California nonprofit corporation ("Surf Cup"), with respect to Surf Cup's use of the Athletic Fields located at El Corazon in Oceanside, California (the "Facilities").

Operator and Surf Cup have entered into an Athletic Field Use Agreement (the "Agreement") whereby Surf Cup has been granted the right to conduct soccer tournaments each year at the Facilities. Pursuant to the Agreement, Surf Cup has committed to holding a minimum of two soccer tournaments per year at the Facilities for a minimum of five years. The Agreement is subject to other terms and conditions more particularly set forth in that Agreement. The Agreement is conditioned upon the effectiveness of Operator's Lease with the City of Oceanside after the approval of Operator's feasibility and due diligence investigations and subject and subordinate to the continued effectiveness of such Lease.

The initial term of the Agreement shall be for five years, subject to renewal for up to four successive periods of five (5) years thereafter unless Operator or Surf Cup gives written notice of its election not to renew within 12 months before any renewal date.

This Memorandum is not intended to amend, modify, or supplement in any way the terms of the Agreement. In the event of any conflict between the terms hereof and of the Agreement, the terms of the Agreement shall prevail.

Operator:

Surf Cup:

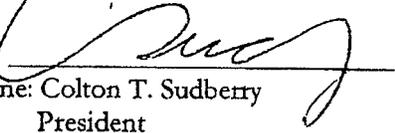
SOCAL SC L.P., a California limited partnership in formation	San Diego Surf Cup, Inc., a California nonprofit corporation
By: Sudberry Development, Inc., its general partner	
By:  Name: Colton T. Sudberry Its: President	By: Name: R. Mike Connerley Its: President

EXHIBIT 'D' CITY IMPROVEMENTS

- CITY IMPROVEMENTS
- GRADING
- INCLUDES
 - A) FIELDS
 - B) PARKING LOT
 - C) RESERVOIR
 - D) ROAD REALIGNMENT
- CLASS II BASE
- DRAINAGE FACILITIES
- EROSION CONTROL MEASURES
- WATER LINE
(WELL TO PROPERTY LINE)

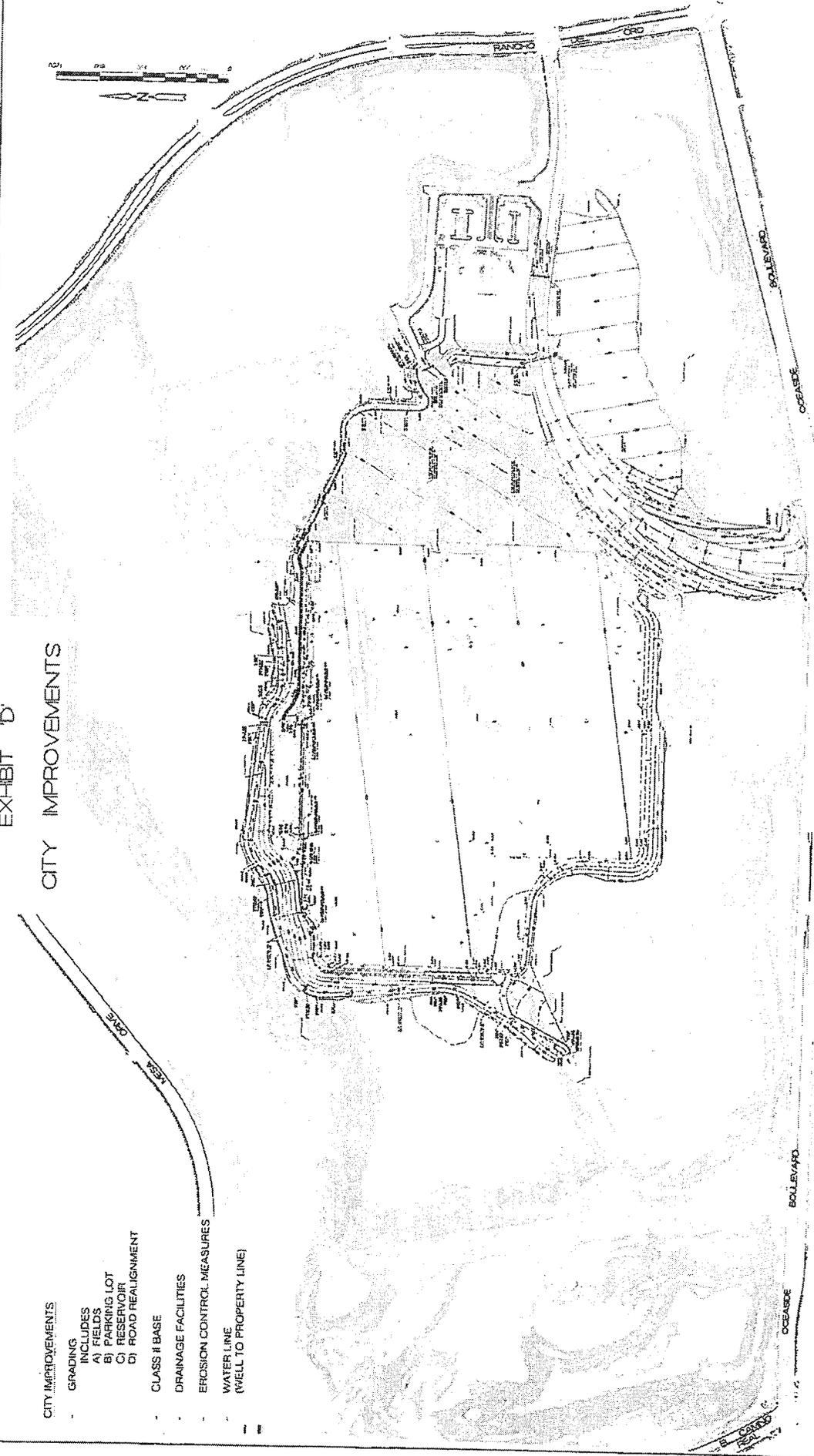
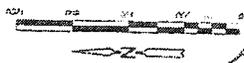


EXHIBIT "D-1"

City Improvements

Description	Quantity	Unit	Estimated Cost
Grading			
Excavation/Embankment	1,005,000	CY	\$910,000
Erosion Control Measures			
Hydroseeding	840,800	SF	
Straw Mulch	45,000	SF	
Silt Fence	12,900	LF	
Fiber Roll	3,100	LF	
Gravel Bags	28,300	EA	
Stabilized Construction Entrance	<u>28,800</u>	SF	
Subtotal			\$150,000
Drainage Improvements			
18" HDPE Pipe	970	LF	
4' x 5' Basin Inlet	6	EA	
Headwall	1	EA	
Rip Rap	1	EA	
Grass Channel	870	LF	
D-75 Drainage Ditch	<u>1,190</u>	LF	
Subtotal			\$80,000
Surface Improvements			
Class II Base (4" base parking lot)	813,700	SF	\$110,000
Fees and Permits			
Grading related fees		LS	<u>\$25,000</u>
		Subtotal	\$1,275,000
Contingency		10%	<u>\$125,000</u>
		Total	\$1,400,000

EXHIBIT E

SUBBERRY IMPROVEMENTS

- SUBBERRY IMPROVEMENTS
- IRRIGATION SYSTEM
- TOPSOIL
- SOD
- RESERVOIR LINING
- ELECTRICAL INSTALLATION
- FENCE
- EQUIPMENT

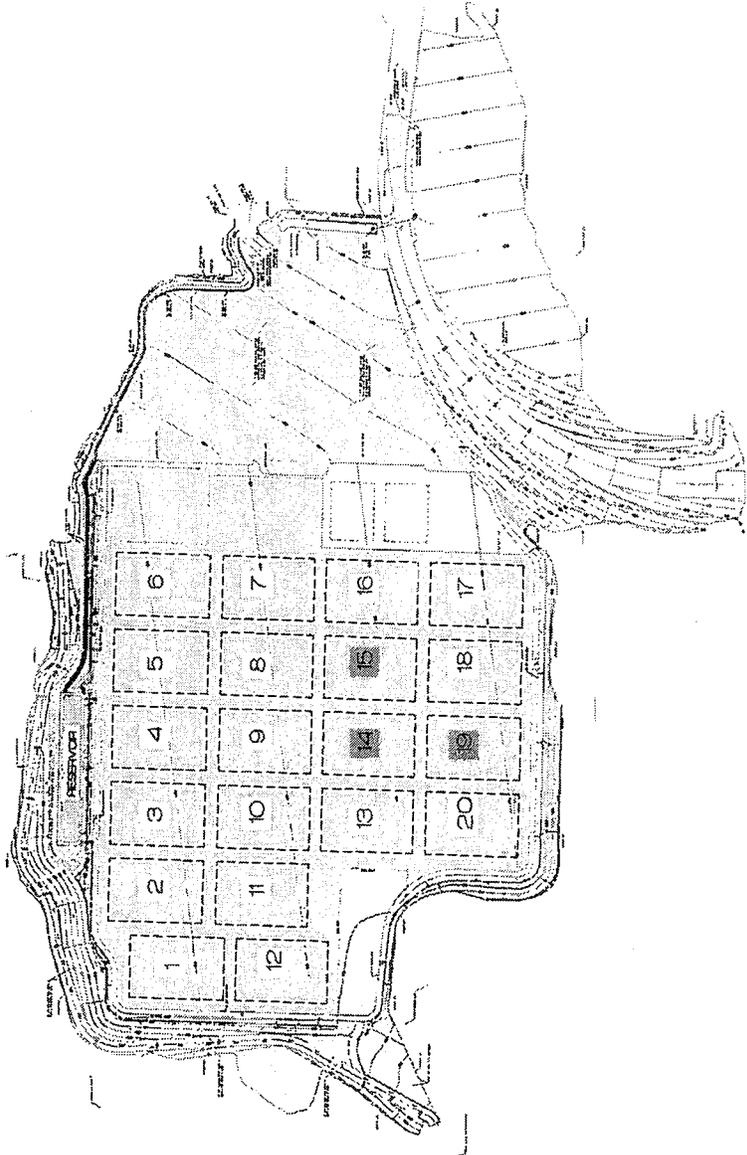


EXHIBIT "E-1"

Sudberry Improvements

<u>Item</u>	<u>Cost</u>
CONSTRUCTION	
Irrigation System	
Consisting of water pumps, underground PVC , water guns, reservoir lining, etc. and 3,030 lf of PVC piping with 16 hookups	
Subtotal	\$175,000
 Topsoil, Grading and Sod	
2,420,000 sq. ft. @ \$0.14 psf	\$338,000
Soils amendments - 2,420,000 sf @ \$0.01 psf	\$15,000
Landscaped finished grade - 2,420,000 sf @ \$0.14 psf	\$363,000
Sod 2,420,00 sq. ft. @ \$.38 per sq. ft.	<u>\$919,600</u>
Subtotal	\$1,635,600
 Electrical Installation	
Distribute power to reservoir and maintenance areas	
Subtotal	\$40,900
 Fencing	
Perimeter fence - approx. 7,000 lf	
	\$125,000
 PERSONAL PROPERTY	
On-site Facilities	
Shop & storage facilities	
Mobile office w/ portable bathroom and hand wash station	
Fencing for facilities area	
Subtotal	\$49,000
 Equipment	
Tractor and Trimax mower	\$50,000
Water truck	\$30,000
Utility tractor/loader	\$30,000
Goals & flags	\$60,000
Maintenance truck (used)	\$6,000
Tournament tents	\$15,000
Utility vehicles (4 golf carts)	\$20,000
Benches	\$10,000
Fertilizer spreader	\$4,500
Vacuum (natural grass)	\$8,000
Blower and aerator	\$8,000
Generator/air compressor	\$2,000
Miscellaneous	<u>\$3,000</u>
Subtotal	\$246,500
 DEVELOPMENT AND OPERATIONAL COSTS	
Well & start up water costs	\$215,000
Grow in period maintenance costs	\$116,000
Field growth consultants	\$15,000
Development fee	\$150,000
Entitlement and process fees	\$150,000
Permits, etc. fees	\$150,000
Signage	<u>\$250,000</u>
Subtotal	\$1,046,000
 Total	 \$3,318,000

EXHIBIT "F"

LEASE AGREEMENT

INITIAL LEASE YEAR EVENTS LIST

Set forth below is a list of the events ("Events List") that can be scheduled to take place at the Premises without the requirement of obtaining a City of Oceanside Special Events Permit or similar City permit, license or approval for each such event. Said events have been approved through the approval process of the Application for Development Permit for the development and construction of the athletic fields and related improvements. It is agreed by the parties that this Events List will be updated and provided to the City at least thirty (30) days prior to the commencement of each Lease Year.

List of Events

18 Soccer Tournaments (16 Major Events)

4 Lacrosse Tournaments (4 Major Events)

2 Field Hockey Tournaments (1 Major Event)

2 Rugby Tournaments (1 Major Event)

2 Football Tournaments (1 Major Event)

3 High School Football Passing League events

3 Frisbee Tournaments

2- Special Olympics

2-Senior Olympics

3-Cross Country events

Day concerts

Color Run

Pumpkin Patch Sales

Christmas Tree Lot Sales

Farmer's Market

Dog Show

Car Show

Soccer Club of Oceanside daily soccer practice and weekend soccer games (year round)

Staging area for running events, bicycling events, triathlon and marathon events

EXHIBIT "G"

COMMENCEMENT DATE MEMORANDUM

This Commencement Date Memorandum, dated as of _____, _____ is executed between the City of Oceanside, a municipal corporation ("CITY") and _____, a _____ ("LESSEE").

RECITALS

WHEREAS, CITY and LESSEE have entered into that certain Lease Agreement ("Agreement") dated _____, _____ for premises at _____ in the City of Oceanside, County of San Diego, State of California; and

WHEREAS, pursuant to the terms of the Agreement the parties are to execute a memorandum to confirm the commencement date of the Agreement.

NOW, THEREFORE, in consideration of the conditions and covenants contained herein, the parties hereto mutually agree as follows:

- 1. The CITY and LESSEE agree that the commencement date of the Agreement is _____, _____ and the termination date is _____, _____.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors and assigns do hereby agree to the above, as of the day and year first written above.

"CITY"
City of Oceanside,
a municipal corporation

By: _____

Title: City Manager

"LESSEE"
_____.

a _____

By: _____

Name: _____

Title: _____

EXHIBIT "D"

Recording Requested by:
When Recorded Return to:

CITY CLERK, CITY OF OCEANSIDE
300 North Coast Highway
Oceanside, CA 92054

(For Recorder's Use)

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is made as of _____, 201_, by and between THE CITY OF OCEANSIDE, a municipal corporation ("City") and _____ [name of other party], a _____ [type of entity] ("Lessee").

City and Lessee have entered into that certain Lease Agreement dated _____, (the "Lease"), pursuant to which City has leased to Lessee, and Lessee has leased from City, that certain property located in the City of Oceanside, County of San Diego, State of California and more particularly described in Exhibit "A-1", which is attached and incorporated by this reference, all subject to the terms and covenants set forth in the Lease. The purpose of this Memorandum is to give notice of the existence of the Lease and the provisions thereof, including without limitation provisions providing for the expiration of the Lease term on _____, and providing for ___ () successive ___ () years option to renew requests [if applicable]. To the extent that any provision of this Memorandum conflicts with any provision of the Lease, the Lease shall control.

This Memorandum may be executed in counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date first written above.

"CITY"

CITY OF OCEANSIDE,
a municipal corporation

By: _____

Name: _____

Title: _____

"LESSEE"

a _____

By: _____

Name: _____

Its: _____

Title: _____

EXHIBIT "E"

Recreational Field Improvements

Item

CONSTRUCTION

Irrigation System

Consisting of water pumps, underground PVC , water guns, reservoir lining, etc. and 3,030 lf of PVC piping with 16 hookups

Topsoil, Grading and Sod

2,420,000 sq. ft. @ \$0.14 psf

Soils amendments - 2,420,000 sf @ \$0.01 psf

Landscaped finished grade - 2,420,000 sf @ \$0.14 psf

Sod 2,420,00 sq. ft. @ \$.38 per sq. ft.

Electrical Installation

Distribute power to reservoir and maintenance areas

Fencing

Perimeter fence - approx. 7,000 lf

Signage

Monument sign

Directional signs

PERSONAL PROPERTY

On-site Facilities

Shop & storage facilities

Mobile office w/ portable bathroom and hand wash station

Fencing for facilities area

Equipment

Tractor and Trimax mower

Water truck

Utility tractor/loader

Goals & flags

Maintenance truck (used)

Tournament tents

Utility vehicles (4 golf carts)

Benches

Fertilizer spreader

Vacuum (natural grass)

Blower and aerator

Generator/air compressor

Miscellaneous

EXHIBIT "F"

Grading Plan/City Improvements

Description	Quantity	Unit	
Earthwork			
Excavation/Embankment	1,005,000	CY	
Erosion Control Measures			
Hydroseeding	840,800	SF	
Straw Mulch	45,000	SF	
Silt Fence	12,900	LF	
Fiber Roll	3,100	LF	
Gravel Bags	28,300	EA	
Stabilized Construction Entrance	28,800	SF	
Drainage Improvements			
18" HCPE Pipe	970	LF	
4' x 5' Basin Inlet	6	EA	
Headwall	1	EA	
Rip Rap	1	EA	
Grass Channel	870	LF	
D-75 Drainage Ditch	1,190	LF	
Surface Improvements			
Class II Base (4" base parking lot)	813,700	SF	
Well Water Improvements			
Well and Pump	1	LS	
Well Water line (to site)	1,000	LF	

EXHIBIT "G"

Reimbursements for Grading Plan

Pursuant to the terms and conditions of the Exclusive Negotiation Agreement ("ENA") between the City of Oceanside ("City") and Sudberry Development, Inc. ("Developer"), Developer retained the services of civil engineering firm to prepare a grading plan on a portion of El Corazon during the term of the ENA. The Developer shall prepare the grading plan to the reasonable satisfaction of the City Engineer, and City agreed to reimburse Developer on a time and material basis in the following amount and for the following services:

1. Civil Engineering Firm: Sowards & Brown Engineering
2. Contract Amount: Not to exceed \$66,000
3. Scope of Work: Preparation of a final grading plan and related improvements under the El Corazon Reclamation Plan for approximately 100 acres at a location to be determined by the City for submittal and approval to and by the City of Oceanside Development Services Department.
4. Terms of Payment: Developer to submit invoices from Sowards & Brown to City for approval and payment on a monthly basis.

DISPOSITION AND DEVELOPMENT AGREEMENT

This Disposition and Development Agreement ("Agreement"), dated _____, solely for identification purposes, is entered into by the City of Oceanside, a charter city ("City"), and Sudberry Development, Inc. a California corporation ("Developer"). The City and Developer are collectively referred to as the "Parties" and each individually as a "Party".

RECITALS

- A. In 1994, the City acquired the approximate 465-acre former sand mining site known as "El Corazon", located south of Mesa Drive, east of El Camino Real, west of Rancho del Oro Drive and north of Oceanside Boulevard. The El Corazon site presently includes vacant undeveloped property as well as existing development, including a senior center opened in 2009, a green waste composting facility, and reclamation activities with a mine tailings pond. The entire El Corazon site is more particularly described in Exhibit A.
- B. Following a multi-year public planning effort, the City Council of the City of Oceanside ("City Council") adopted the El Corazon Specific Plan ("Specific Plan") and certified a Final Environmental Impact Report ("EIR"). The Specific Plan provides for wide range of active and passive park activities, natural open space and habitat, civic service uses, and commercial land uses including hotel, office, and retail development.
- C. In September 2009, the City issued a Request for Qualifications ("RFQ") to the general public to solicit statements of qualifications from parties interested in the development of the various developable areas set forth in the Specific Plan. Three qualified commercial developers were selected to participate in a Request for Proposal ("RFP") for development of the commercial areas of the El Corazon site. Each developer had an option to submit proposals for the recreational, civic and habitat areas of the El Corazon property as well.
- D. On August 31, 2011, the City Council selected Developer as the proposed master developer for the El Corazon site and on November 30, 2011, the City and the Developer entered into an Exclusive Negotiation Agreement to negotiate the terms and conditions for the conveyance and development of the El Corazon site to the developer in accordance with the Specific Plan.
- E. To effectuate the purposes of the Specific Plan in part, the City intends to lease a portion of the El Corazon site to Developer, more particularly described in Exhibit B (the "Recreational Premises"), for the development and operation of recreational fields subject to the terms and conditions of a Recreational Development and Disposition Agreement, and to the "Lease", attached thereto, between the City of Oceanside and Sudberry Development, Inc. or an entity which is at least 51% owned and controlled by Sudberry Development, Inc. and/or members of the Sudberry family

- F. To further effectuate the purposes of the Specific Plan, this Agreement is intended by the Parties to establish the roles and responsibilities of the City and Developer for the development of the commercial components of El Corazon as more particularly described below (the "Commercial Premises") and the balance of the recreational components of El Corazon as more particularly described below (the "Balance of Recreational Premises"). This Agreement shall also establish all the development obligations of the Developer and City for the Commercial Premises and the Balance of Recreational Premises.
- G. Concurrent with the approval of this Agreement, the City and Developer have approved a Recreational Disposition and Development Agreement for the development of the Recreational Premises of the El Corazon site.

THEREFORE, the City and the Developer agree as follows:

ARTICLE 1 BASIC TERMS AND DEFINITIONS

- 100.1 Acquisition. Pursuant to the El Corazon Specific Plan, the preference for the disposition of a real property interest is to ground lease portions of the Commercial Premises. However, in the event that Developer satisfies certain conditions, Developer can acquire, in fee, portions of the Commercial Premises.
- 100.2 Allocation of Developable Commercial Uses. The developable commercial/retail square footage, number of hotel rooms and number of vertical mixed-use residential units as set forth in the El Corazon Specific Plan shall be allocated between Stirling Development and the Developer in accordance with attached Exhibit C, however the allocations set forth in Exhibit C shall be subject to final approval of necessary Approvals by the City Council.
- 100.3 Approvals. The term "Approvals" shall mean and refer to any and all permits, approvals, consents, certificates, and/or licenses necessary to acquire an interest in and to construct upon the Commercial Premises in accordance with applicable law.
- 100.4 Assignment and Assumption Agreement. The term "Assignment and Assumption Agreement" shall mean and refer to an agreement to be entered into by Developer, City and a Transferee (as defined below) in connection with a Transfer (as defined below), as more particularly described below.
- 100.5 Balance of Recreational Development. The development of the Balance of the Recreational Premises shall be pursuant to the El Corazon Specific Plan.
- 100.6 Balance of Recreational Premises. The term "Balance of Recreational Premises" shall mean and refer to the recreational areas as set forth in the El Corazon Specific Plan excluding the portion of the recreational area designated as the Recreational Premises pursuant to the terms of the Recreational Development and Disposition Agreement.
- 100.7 City. The term "City" shall mean and refer to the City of Oceanside.

100.8 Commencement Date. The term “Commencement Date” shall mean and refer to the date of execution of this Agreement by the last of the City and the Developer to so execute.

100.9 Commercial Development. The term “Commercial Development” shall mean and refer to the development of all or any portion of the Commercial Premises to be undertaken in accordance with the provisions of this Agreement and the El Corazon Specific Plan.

100.10 Commercial Premises. The term “Commercial Premises” shall mean and refer to the areas of the El Corazon Specific Plan described as the Village Commercial, Oceanside Boulevard Commercial, and the two (2) hotel sites, excluding 8.69 acres owned by Stirling Development (as reflected on attached Exhibit B).

100.11 Construction Assurances. Except as provided for in Section 500.10.2 below, prior to commencing Developer’s obligation to construct and operate the Commercial Development and/or the Balance of Recreational Development as provided in Sections 500.2 and 500.3 of this Agreement, Developer shall provide the City with documentation that the funds necessary to pay for the full and complete construction of the applicable development component are part of a loan that is scheduled to close or has already closed.

100.12 Construction Financing. Evidence of a lender-accepted Application or a lender-issued commitment, subject to commercially customary conditions, relative to an acquisition and/or construction loan(s); which loan(s) represents a legally binding obligation which will be sufficient to provide (subject to commercially customary conditions) for the funding of the monies needed to satisfy Developer’s obligation to acquire and construct upon the Commercial Premises and/or the Balance of Recreational Premises as provided in Sections 500.2 and 500.3 of this Agreement after taking into account reasonable evidence of any equity contributions from non-lender sources which are to provide funds towards such obligation.

100.13 Developer. The term “Developer” shall mean and refer to Sudberry Development Inc., or an affiliated entity, whose Management Control, as defined below, is held, directly (or indirectly, through one or more intermediary Sudberry owned and controlled entities), by Sudberry Development, Inc. and/or its principals (or any permitted Transferee—as defined below—of all of the Developer’s rights and obligations hereunder).

100.14 Developer Entity Documents. The term “Developer Entity Documents” shall mean and refer to the organizational documents of the entity that is the Developer, including all amendments, all of which the Developer shall certify as accurate and update on the date of the Close of Escrow, and a certificate of Good Standing from the applicable Secretary of State of the State of its formation, together with a resolution or certification of the directors, members or partners as the case may be, authorizing the Developer and designating the signer(s) to bind the Developer and enter into and perform this Agreement and the Lease.

100.15 Effective Date. The term “Effective Date” shall mean and refer to the date on which all of the following has occurred: (a) The City has received three notarized, counterpart original signatures of this Agreement executed by the authorized representatives of the Developer; (b) This Agreement has been approved by the City Council at an open, public

meeting; and (c) this Agreement is executed by the authorized representative of the City and delivered to Developer;

100.16 Escrow Agent. The term "Escrow Agent" shall mean and refer to Stewart Title Company in San Diego, Ca. attn. _____, (address), or such other Person mutually agreed to in writing by the Parties.

100.17 Escrow Closing Date. The term "Escrow Closing Date" shall mean and refer to the date upon which an escrow established pursuant to this Agreement is consummated (such consummation being referred to as the "Close of Escrow") as to one or more phases of the Commercial Development and/or the Balance of the Recreational Development; which Escrow Closing Date shall occur on or before the fifth (5th) business day following the Escrow Agent's receipt of written confirmation from both the City and Developer of the satisfaction or waiver of all conditions precedent to the Close of Escrow in accordance with the phasing of the Commercial Development and/or the Balance of the Recreational Development as hereinafter provided.

100.18 Event of Default. The term "Event of Default" shall mean and refer to a default by either party hereunder which is not cured within thirty (30) days of written notice of such default; provided, however, if any such cure will reasonably require more than thirty (30) days to complete, and the defaulting party commences to cure same within the first ten (10) days of such thirty (30) day period and pursues such cure to completion with due diligence, then such thirty (30) day period shall be deemed automatically extended to such period of time as is reasonably required to cure such default.

100.19 Exclusive Negotiation Agreement. The "Exclusive Negotiation Agreement" is that certain agreement between the City and the Developer for purpose of negotiating the terms and conditions for the conveyance and development of the El Corazon site to the Developer in accordance with the Specific Plan; which instrument resulted in the negotiation and preparation of this Agreement.

100.20 Ground Lease. Upon satisfaction of the conditions set forth in this Agreement providing for the conveyance of a leasehold interest in portions of the Balance of Recreational Premises and/or portions of the Commercial Premises unless certain conditions are satisfied by the Developer in order to have the option to acquire, in fee, portions of the Commercial Premises, the City and Developer shall enter into a ground lease agreement; which ground lease agreement(s) is(are) referred to herein as the "Lease" or the "Ground Lease Agreement." A copy of the standard Ground Lease Agreement is attached hereto as Exhibit D and is incorporated herein by this reference. Notwithstanding that such form of standard Ground Lease Agreement incorporates by reference certain terms and conditions of this Agreement (including without limitation those relating to construction financing and other assurances), the Developer may elect, in lieu of incorporation by reference, to incorporate the relevant provisions of this Agreement directly within the Ground Lease Agreement in a manner reasonably acceptable to the City prior to execution.

100.21 Insurance Documents. The term “Insurance Documents” shall mean and refer to insurance certificates reasonably satisfactory to the City (or certified copies of insurance policies and endorsements) evidencing all insurance coverage required to be obtained by the Developer, as tenant under the Ground Lease Agreement or Purchase and Sale Agreement, on or before the Commencement Date of the Lease or Close of Escrow.

100.22 Land Valuation. The ground lease rent and/or the purchase price of all or portions of the Commercial Premises and the ground lease rent for all or portions of the Balance of the Recreational Premises shall be determined by the Land Valuation Formula as more particularly set forth in Section 500.4 below, unless specifically agreed to otherwise in writing by the parties hereto.

100.23 Lease Memorandum. The term “Lease Memorandum” shall mean and refer to a short memorandum of the Lease to be executed by the City and Developer and recorded in the Official Records of San Diego County, California at the Close of Escrow, in substantially the form of Exhibit E attached to this Agreement.

100.24 Management Control. The term “Management Control” shall mean and refer to, regarding a specified Person, possession of the power to direct or cause the direction of the day to day management of such Person, whether by ownership of the equity interests, by contract or otherwise. However; a Person shall not be deemed to be lacking Management Control if by virtue of a joint venture agreement or loan documents, such person is subject to losing such power to direct or cause the direction of the day to day management by reason of a default by such Person under such joint venture agreement or loan documents.

100.25 Person. The term “Person” shall mean and refer to any association, corporation, government, individual, joint venture, joint-stock company, limited liability company, partnership, trust unincorporated organization or any other entity of any kind.

100.26 [Intentionally Deleted].

100.27 Premises. The term “Premises” shall mean and refer to the area consisting of the Commercial Premises and the Balance of the Recreational Premises.

100.28 Purchase and Sale Agreement. In the event of an acquisition of all or a portion of the Commercial Premises, upon satisfaction of the conditions in connection therewith, the City and Developer shall enter into a purchase and sale agreement. The form of purchase and sale agreement to be used, as the basis for negotiating the terms of a sale, in fee, shall be the standard “Purchase and Sale Agreement” attached hereto as Exhibit F and incorporated herein by this reference.

100.29 Recreational Development. The term “Recreational Development” shall mean and refer to the development of the Recreational Premises pursuant to the terms set forth in the Recreational Development and Disposition Agreement.

100.30 Recreational Development and Disposition Agreement. The term “Recreational Development and Disposition Agreement” shall mean and refer to that certain agreement entered

into between the parties that sets forth the terms to develop and operate the Recreational Premises.

100.31 Recreational Premises. The term "Recreational Premises" shall mean and refer to that portion of the recreational component of the El Corazon Specific Plan that is the subject matter of the Recreational Development and Disposition Agreement.

100.32 Title Company. The term "Title Company" shall mean and refer to Stewart Title Company in San Diego, California or such other title company mutually agreed in writing between the City and Developer.

100.33 Transfer. The term "Transfer" shall mean and refer to any of the following: (a) any sale, transfer, conveyance, trust, pledge, hypothecation in any mode or form, of all or any portion of Developer's interest in this Agreement; or (b) any transaction that is in substance equivalent to the transactions described in subsection (a). Notwithstanding the foregoing, City acknowledges that the tenant under the Ground Lease Agreement(s), or the grantee under Grant Deed(s) (as defined below), as the case may be, will be a newly formed California limited partnership or limited liability company under the Management Control of Developer and the foregoing will not be deemed a Transfer. Accordingly, references herein to the Developer taking action or executing the Ground Lease Agreement(s), or the Lease Memorandum (or documents relating thereto) will be deemed to, in fact, refer to the entity created by Developer to serve as the tenant under the Ground Lease Agreement(s).

100.34 Transferee. The term "Transferee" shall mean and refer to each person, other than a Prohibited Transferee, acquiring an Equity Interest in Developer through an Equity Interest Transferee or acquiring all or a portion of Developer's Interest in this Agreement through a Transfer. A Prohibited Transferee shall never be a Transferee.

ARTICLE 2 REPRESENTATION AND WARRANTIES

200.1 City Representations and Warranties. The City represents and warrants to the Developer that the following facts and conditions exist and are true as of the Effective Date:

200.1.1 The City is a charter city under the California Constitution and is authorized to enter into this Agreement. This Agreement was approved by the City Council authorizing the City Manager to sign and deliver this Agreement.

200.1.2 The City owns fee title to the Commercial Premises and the Balance of Recreational Premises, as of the Commencement Date, subject to the Permitted Exceptions and the disclaimers, waivers and releases set forth in this Agreement.

200.1.3 To the City's knowledge, there is no existing, pending or threatened litigation, suit, action, or proceeding before any court affecting the Commercial Premises and the Balance of Recreational Premises that would, if adversely determined, materially adversely affect the Premises, this Agreement, or the Developer's ability to ground lease or acquire and develop the Commercial Premises or ground lease and develop the Balance of Recreational Premises.

200.1.4 To City's knowledge, there is no existing or threatened court order that materially and adversely affects the Commercial Premises and the Balance of Recreational Premises, this Agreement, or the Developer's ability to ground lease or acquire and develop the Commercial Premises or ground lease and develop the Balance of Recreational Premises.

200.1.5 City was represented by legal counsel of its own selection throughout the negotiation and documentation of this Agreement.

200.2 Developer's Representations and Warranties. The Developer represents and warrants to the City that the following facts and conditions exist and are true as of the Effective Date:

200.2.1 Developer has the authority to enter into and the authority to perform this Agreement and no consent of any member, partner, shareholder, creditor, investor, judicial or administrative body, governmental agency, City or other Person is required for Developer to enter into or perform its obligations under this Agreement, except as has already been obtained and except as necessary to cause the satisfaction of the conditions to be satisfied as set forth in this Agreement and/or the Lease.

200.2.2 To Developer's knowledge Developer's entry into this Agreement and performance of its obligations under this Agreement do not violate any provisions of any agreement to which Developer is a party or is subject.

200.2.3 To Developer's knowledge there is no existing, pending or threatened litigation, suit, action, or proceeding before any court or administrative body affecting Developer, any Person owning an Equity Interest in Developer, or the Commercial Premises and/or the Balance of Recreational Premises that would, if adversely determined, materially adversely affect the Commercial Premises and/or the Balance of Recreational Premises, this Agreement, or the Developer's ability to develop and operate the Commercial Premises as the Commercial Development or to develop and operate the Balance of Recreational Premises with the Balance of Recreational Development.

200.2.4 To Developer's knowledge there is no existing or threatened court order that materially adversely affects the Commercial Premises and/or the Balance of Recreational Premises, this Agreement, or the Developer's ability to develop and operate the Commercial Premises as the Commercial Development or to develop and operate the Balance of Recreational Premises with the Balance of Recreational Development.

200.2.5 Developer was represented by independent legal counsel of its own selection throughout the negotiation and documentation of this Agreement.

ARTICLE 3 TERMINATION OF NEGOTIATION AGREEMENT AND TERM OF AGREEMENT

300.1 Exclusive Negotiation Agreement. Upon the occurrence of the Effective Date of this Agreement, the Parties intend and agree that the Parties shall have no further rights or obligations under the Exclusive Negotiation Agreement.

300.2 Term of Disposition and Development Agreement. The term of this Agreement (“Term”) shall commence as of the Effective Date and continue thereafter until such time as the Escrow Closing Date as to the entire Commercial Development and the entire Balance of the Recreational Development, or such earlier time as this Agreement is terminated, pursuant to Section 700.8 or 700.9, below.

ARTICLE 4 TRANSFERS OF THE PREMISES OR AGREEMENT

400.1 Assignment and Transfer. The specific identity of Developer is of material importance to the City. It is because of those qualifications that the City is entering into this Agreement with Developer. For the period commencing upon the Effective Date of this Agreement until the expiration of the Term or the earlier termination of this Agreement, except as provided herein, no Transferee shall acquire any rights or powers under this Agreement, nor shall Developer make any Transfer of the Commercial Premises and/or the Balance of Recreational Premises or any portion of the Commercial Premises and/or the Balance of Recreational Premises without the prior written approval of the City which approval may be granted or withheld in the reasonable discretion of the City. Developer shall not have any right to transfer its interest in this Agreement, except as expressly set forth in Section 400.2.

400.2 Permitted Transfers. Notwithstanding any provision of this Agreement to the contrary, City approval of an assignment of this Agreement shall not be required in connection with (i) any transfers to an entity in which the Developer and/or its principals retain, directly (or indirectly, through one or more Sudberry owned and controlled intermediary entities) a minimum of fifty-one percent (51%) of the ownership or beneficial interest in the Transferee and retains Management Control of the Transferee entity, and/or (ii) any Transfers to an entity in which Developer is a minority owner provided Developer maintains Management Control over the development of the portion(s) of the Commercial Premises and/or the Balance of Recreational Premises which are Transferred to such entity.

In the event of a Transfer by Developer under this Section 400.2 not requiring prior approval by the City, Developer nevertheless agrees that at least ten (10) days prior to such Transfer (except for a Transfer pursuant to the immediately preceding paragraph as to which such notice may be provided within ten (10) days following such Transfer) it shall give written notice to the City of such Transfer and satisfactory evidence that the Transferee has assumed or is assuming as of the effective date of such Transfer (either individually, or jointly and/or severally with Developer, based upon the circumstances) the obligations of this Agreement.

400.3 Other Permitted Transfers. Notwithstanding any provision of this Agreement to the contrary, in the event Developer has completed the construction of (as evidenced by a Notice of Satisfaction—as defined below) a portion or all of the Commercial Development and/or the Balance of Recreational Development, and has obtained a user and/or tenant (as evidenced by a Notice of Occupancy) for the applicable development, and is desirous of transferring the applicable portion of the Premises to a third party interested in acquiring the subject constructed and leased (or user ready) development, City and Developer agree to effectuate such a Transfer

to such third party pursuant to the applicable provisions of Article 4. In addition to the foregoing, and notwithstanding any provision of this Agreement to the contrary, in the event Developer has identified a prospective tenant or user (for purposes of this Section, a "Prospect") for a portion of the Commercial Development and/or the Balance of Recreational Development, and has obtained a written agreement from such Prospect whereby such Prospect has agreed to undertake the development obligations hereunder as to such portion of the Commercial Development and/or the Balance of Recreational Development, the City agrees to reasonably approve or disapprove such Transfer within thirty (30) days of receipt of a written request therefor, accompanied by reasonably detailed information regarding the Prospect and the proposed development. Upon City approval of such contemplated Transfer, City and Developer agree to effectuate such a Transfer to such Prospect pursuant to the applicable provisions of Article 4.

400.3.1 In addition to the foregoing, if Developer accomplishes an assignment of this Agreement pursuant to a Transfer to an entity pursuant to Section 400.2 above, Developer may present the organizational documents of such entity to the City for approval of the transfer provisions of such organizational documents relative to which the equity party(ies) in such entity could take over Management Control and the City shall, within twenty (20) business days of receipt of such documents, reasonably approve or disapprove such transfer provisions (including the identity and background of such equity party). If the City approves of such transfer provisions, then a Transfer thereafter occurring pursuant to such transfer provisions shall similarly be deemed to be grounds for an assignment of this Agreement which does not require City approval (except as provided in the preceding sentence).

400.4 Assignment and Assumption Agreement An executed Assignment and Assumption Agreement (or a document effecting a Transfer that includes the substantive provisions of an Assignment and Assumption Agreement) shall also be required for all proposed Transfers, with respect to the portion of the Premises so transferred whether or not City's consent is required. City agrees to cooperate in the negotiation of an alternative transfer document containing the substantive provisions of the Assignment and Assumption Agreement if so requested by Developer or the proposed Transferee, provided City shall not be required to amend any material part of this Agreement in any such negotiations. Notwithstanding the foregoing, in connection with any Transfer of all or any portion of the Premises pursuant to Section 400.3 as to which a Notice of Satisfaction and Notice of Occupancy have each been issued, shall not require an Assignment and Assumption Agreement, but in lieu thereof, the Transferee shall agree to the recordation of covenants running with the land reflecting the use restrictions contained herein, a provision comparable to Section 800.2, below, and containing anti-discrimination provisions typically required by City.

400.5 City Action On Requested Transfer. Within thirty (30) days after the receipt of a written notice requesting City approval of a Transfer pursuant to Section 400.1, the City shall either approve or disapprove (with any such disapproval setting forth the reasons therefore) such proposed assignment or shall respond in writing by stating what further information, if any, the City requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, Developer shall promptly furnish to the City such further information as may be reasonably requested.

ARTICLE 5 DEVELOPMENT OF THE SITE

500.1 Condition Precedent to Development of Commercial Premises. As a condition precedent to any development of the Commercial Premises by Developer, the Developer must complete the initial development of the Recreational Premises pursuant to the terms and conditions of the Recreational Development and Disposition Agreement.

500.2 Development of Commercial Premises. The Developer shall have the option to develop, at its sole cost and expense, the Commercial Premises with the Commercial Development in multiple phases as set forth below and in accordance with the plans, drawings and documents submitted by the Developer and approved by the City pursuant to the El Corazon Specific Plan and the City of Oceanside's Development Services Department regulatory process ("City Regulatory Process"). All Developer requirements for the construction and operation of the Commercial Premises, including but not limited to, Developer submissions, City review and approval, necessary land use approvals, schedule of performance, allocation of construction costs, insurance costs, indemnity, taxes and assessments, and liens and stop notices, shall be governed by the City Regulatory Process unless expressly provided for in this Disposition and Development Agreement.

500.2.1 Phasing of Commercial Development. City shall grant Developer a seven (7) year period (the "Initial Period") in which to develop the Commercial Premises. Developer shall have the ability to acquire (either by ground lease or purchase) portions of the Commercial Premises for the purpose of constructing (subject to compliance with all applicable City regulatory processes and all applicable laws) a Commercial Development thereon in accordance with the El Corazon Specific Plan, at a minimum of two (2) acres at a time (such portions are sometimes referred to herein as "phases" and such acquisition process is sometimes referred to as being on a "phased" basis). If less than two (2) acres comprise a portion of the Commercial Premises that Developer elects to develop as a phase with a Commercial Development, Developer must obtain prior written consent from the City to acquire same as an individual parcel. Upon written request from the Developer, City shall grant Developer an extension of five (5) years to the Initial Period to develop the Commercial Premises if Developer has obtained some form of development entitlement on all or a portion of the Commercial Premises within the first five (5) years of the Initial Period and has commenced construction on all or a portion of the Commercial Development within two (2) years thereafter. Further, upon written request from Developer, City shall grant Developer a second extension of five (5) years if Developer has ground leased or purchased and developed a minimum of twenty percent (20%) of the gross Commercial Premises within the Initial Period and first extension thereof, as evidenced by a Notice of Satisfaction. If during the second extension period, Developer has ground leased or purchased and developed a minimum of an additional twenty percent (20%) of the gross Commercial Premises, as evidenced by a Notice of Satisfaction, upon written request from Developer, City shall grant Developer a third and final extension of five (5) years. Written notice from Developer shall be no earlier than three hundred sixty-five (365) days or less than one hundred eighty (180) days prior to the expiration of the initial period or applicable extension period.

500.2.2 Requirement to Develop Commercial Premises. Upon acquiring a portion or portions of the Commercial Premises pursuant to the Section 500.2.1 above, within five (5) years from the Close of Escrow for said respective portion or portions of the Commercial Premises, Developer shall be required to substantially complete the construction of the Commercial Development proposed thereon and in accordance with the El Corazon Specific Plan. Completion of construction for the applicable portion or portions of the Commercial Premises as set forth above shall be defined as obtaining a Notice of Satisfaction for the construction of the Commercial Development proposed thereon. Failure to complete construction of said development within said five (5) year period shall entitle the City to the applicable remedies as more particularly described in Article 7 below.

500.2.3 Allocation of Commercial Development. The maximum commercial/retail square footage, hotel rooms and mixed-use residential units as set forth in the El Corazon Specific Plan that can be developed by Developer shall be based on the gross acreage of land described as the Commercial Premises in this Agreement which Developer is given the right to develop and the other property owner in relation to the total gross acreage available for commercial/retail, hotel and mixed-use residential development at El Corazon. By example only, if Party A owns 40 acres of the total 50 acres of commercial/retail, hotel and mixed-use residential development acreage at El Corazon ("Developable Acreage"), and Party B owns 10 acres of the total 50 acres of Developable Acreage, then Party A shall receive an allocation of 80% (40/50^{ths}) and Party B shall receive an allocation of 20% (10/50^{ths}) of the commercial/retail square footage, hotel rooms and mixed-use residential units set forth in the El Corazon Specific Plan.

500.2.4 Condition to Phasing of Commercial Development. As a further condition to Developer acquiring and developing an individual portion or portions of the Commercial Premises in accordance with Section 500.2.1 above, Developer shall first be required to create a legal parcel or legal parcels pursuant to all applicable state and local laws, regulations and/or ordinances, including but not limited to, by way of example, the California Subdivision Map Act, for the applicable phase(s); it being the understanding of the parties that any such portion so acquired by Developer, whether by fee or leasehold, must comprise one or more legal parcels or legal lots. Any costs in connection therewith shall be borne solely by Developer.

500.2.4 Expansion of Commercial Premises. Upon the completion of an approved development plan for the Commercial Premises and the Balance of the Recreational Premises, provided that additional City-owned land is available at El Corazon (e.g., excess interior slopes, etc.) after taking into account the development the recreational component of El Corazon as per the El Corazon Specific Plan, the Developer may ask the City to expand the Commercial Premises by the acreage amount equivalent to the acreage owned by Stirling Development (within the boundary of the El Corazon Specific Plan). Developer can make this request provided there is excess land within El Corazon that is no longer needed to develop the recreational component of El Corazon per the Specific Plan, once an actual development plan has been completed and approved. Provided, however, under no circumstances shall the total allowable commercial square footage, hotel rooms and mixed-use residential units established

per the El Corazon Specific Plan be increased unless an amendment thereto, or other necessary entitlements and approvals, are obtained by Sudberry at its cost and expense.

500.3 Development of Balance of Recreational Premises. The Developer, at its sole cost and expense, shall also have the right to develop the Balance of the Recreational Premises in accordance with the plans, drawings and documents submitted by the Developer and approved by the City pursuant to the El Corazon Specific Plan and the City Regulatory Process. All Developer requirements for the construction and operation of the Balance of the Recreational Premises, including but not limited to, Developer submissions, city review and approval, necessary land use approvals, schedule of performance, allocation of construction costs, insurance costs, indemnity, taxes and assessments, and liens and stop notices, shall be governed by the City Regulatory Process unless expressly provided for in this Disposition and Development Agreement.

500.3.1 Phasing of Balance of Recreational Development. City shall grant Developer a twelve (12) year period in which to develop the Balance of Recreational Premises. Developer shall have the ability to acquire (by ground lease) phases of the Balance of Recreational Premises for the purpose of constructing (subject to compliance with all applicable City regulatory processes and all applicable laws) the Balance of Recreational Development thereon in accordance with the El Corazon Specific Plan, at a minimum of two (2) acres per phase. If less than two (2) acres comprise a phase of the Balance of Recreational Premises that Developer elects to develop with Balance of Recreational Development, Developer must obtain prior written consent from the City to acquire same as an individual phase. Upon written request from the Developer, City shall grant Developer two (2) extensions of five (5) years each to the original twelve (12) year development period..

500.3.2 City's Right to Develop Balance of Recreational Premises. Notwithstanding Developer's right to develop the Balance of the Recreational Premises pursuant to this Agreement, the Developer gives City the right to pursue a ground lease and development of all or portions of the Balance of the Recreational Premises subject to compliance with Section 500.3.3, below. In no event, however, will the City encumber, transfer, or otherwise take any other action relative to the Balance of the Recreational Premises which might impair the rights of Developer hereunder.

500.3.3 Right of First Refusal to Develop Balance of Recreational Premises. Upon finalizing the terms and conditions for the ground lease and development of all or portions of the Balance of Recreational Premises which have not previously been ground leased to Developer, City shall notify Developer, in writing of City's proposed ground lease and development plan of all or the applicable portion of the Balance of Recreational Premises which City intends to so ground lease. Developer shall have a "Right of First Refusal" to develop the Balance of Recreational Premises (or the portion thereof that is the subject of the City's notice) per the proposed terms and conditions as set forth in the City's notice, by providing written notice to the City within thirty (30) days of Developer's receipt of City's notice, that Developer will exercise its Right of First Refusal. Failure by Developer to enter into an agreement with the City to develop the applicable portion of the Balance of Recreational Premises on the terms described in

the City's notice within one hundred twenty (120) days after notifying the City of its intent to exercise the Right of First Refusal, shall render Developer's Right of First Refusal null and void as to that portion or portions of the Balance of the Recreational Premises as to which Developer had previously notified the City of its intent to exercise such Right of First Refusal, and City shall thereafter have the right to pursue the development thereof with the party identified in the City's original notice to Developer, and upon the same terms and conditions as were set forth in the City's original notice to Developer. In the event that City does not enter into a ground lease and agreement with such third party within one hundred eighty days after the date the Developer's Right of First Refusal terminated or expired, or does not complete the development upon the subject portion or portions of the Balance of the Recreational Premises as contemplated in the City's notice presented to Developer within two years from the date of the original written notice from the City, said portions or portions of the Balance of the Recreational Premises shall again be subject to Developer's Right of First Refusal to so develop the applicable portion or portions of the Balance of the Recreational Premises.

500.4 Property Valuation. City and Developer shall act in good faith to agree upon the form and content of the Commercial Development Proforma when determining the ground lease rent or sales price of all or a portion of the Commercial Premises and/or the form and content of the Balance of Recreational Development Proforma when determining the ground lease rent of all or a portion of the Balance of Recreational Premises. The land valuation shall be derived by calculating a Return on Cost ("ROC") defined as Net Operating Income divided by Total Project Costs (as both hereinafter defined) equaling no less than ten and one-half percent (10.5%). In the event the 10-year U.S. Treasury rate goes above 3% the City Manager or its designee, has the right to approve an increase in the ROC threshold requested by Developer in accordance with any recommendation to ensure that development can continue to proceed at El Corazon. The foregoing calculations/determinations shall be determined by agreement between the Developer and the City Manager, or the City Manager's designee. The 10.5% ROC is based on a blended rate taking into account the various product types that can potentially be developed at El Corazon in the future and the real estate financial and development market as of the Effective Date.

500.4.1 Total Project Costs. The term "Total Project Costs" shall include any and all hard and soft costs attributable to the Commercial Development and/or Balance of Recreational Development, as applicable, including but not limited to, due diligence expenses and testing, entitlement costs and expenses, on-site and off-site work for grading, utilities, landscaping, paving, lighting, striping, and the like, all vertical construction costs, all design and engineering costs, permits and fees, interest carry and other finance costs, taxes, tenant improvement costs, commissions, legal expenses, title and escrow charges, FFE, project art or art related fees, etc. All cash invested by Sudberry and/or its partners/members/joint venturers shall include as a part of Total Project Costs, an eleven percent (11%) cumulative preferred return on all such pre-development expenses and/or as cash co-investment for any project. Total Project Costs shall also include the following expenses to Developer: a Development Fee of five percent (5%) of hard and soft costs, a one percent (1%) Construction Management fee of all hard costs, and a Leasing Over-Ride Fee equal to Two and no/100 Dollars (\$2.00) per square foot of all buildings to be leased.

500.4.2 Net Operating Income. "Net Operating Income" shall mean and refer to the projected gross income from such project as reduced by the following: a Property Management Fee of three percent (3%) of gross income, an Asset Management Fee of one percent (1.0%) of gross income, a vacancy and credit loss adjustment of seven and one-half percent (7.5).

500.5 Property Valuation Determination. When the Commercial Development Proforma (when determining the ground lease rent or sales price of all or a portion of the Commercial Premises) or the Balance of Recreational Development Proforma (when determining the ground lease rent of all or a portion of the Balance of Recreational Premises) is agreed upon by City (through the City Manager and or Real Estate Director—or equivalent City staff member) and Developer (the "Approved Commercial Proforma" or "Approved Balance of Recreational Proforma") the land valuation is to be determined by computing a 10.5% ROC for the land residual return ("Land Residual Return"). If said property is to be ground leased, the ground rent will equal the Land Residual Return from the Approved Proforma divided by 10% (by way of example, assume a land valuation of \$1,000,000 divided by 10% = \$100,000 annual ground rent). For the purpose of calculating the Land Residual Return, the Approved Commercial Proforma or Approved Balance of Recreational Proforma is to be completed at the later of the time Developer gives City notice of its intent to acquire and develop a portion of the Commercial Premises or Balance of Recreational Premises (as applicable) or at such time as a site plan has been created with sufficient detail of the proposed project to allow for the Commercial Development Proforma or Balance of Recreational Development Proforma to be created.

Should City disagree with Developer's cost and revenue assumptions and/or Developer's position on increased interest rates and/or exit CAP rates, both parties shall mediate such disagreement as set forth in Section 800.20 below.

500.6 Ground Lease of Balance of Recreational Premises. As Developer requests a Ground Lease Agreement of a portion of the Balance of Recreational Premises for development, as set forth in Section 500.3, the parties shall enter into a long-term ground lease for each applicable portion of the Balance of Recreational Premises. The term of the long-term ground lease for each applicable portion of the Balance of Recreational Premises to be ground leased shall be for a period not to exceed thirty (30) years, together with three (3) options to extend for a period of ten (10) years each. The long-term ground lease rent for the applicable portion of the Balance of Recreational Premises shall be pursuant to the land valuation formula as set forth in Section 500.5, as adjusted and applicable to a long-term ground lease scenario.

500.7 Ground Lease of Commercial Premises. As Developer requests a portion of the Commercial Premises for development, as set forth in Section 500.2, the preference shall be to enter into a long-term Ground Lease Agreement for each applicable portion of the Commercial Premises—but subject to the provisions of Section 500.8, below. The term of the long-term Ground Lease Agreement for each applicable portion of the Commercial Premises shall be for a period not to exceed sixty-five (65) years, together with three (3) options to extend for a period of ten (10) years each. The long-term ground lease rent for the applicable portion of the Commercial Premises shall be calculated pursuant to the land valuation formula as set forth in

Section 500.5, on a fixed basis for twenty (20) years, with five percent (5%) increases every five (5) years thereafter.

500.8 Purchase of Commercial Premises. If due to potential market and/or financing conditions in existence at the time of the proposed development of a portion of the Commercial Premises, which conditions make a long-term ground lease Economically Disadvantageous (as hereinafter defined) in developing said portion of the Commercial Premises for major commercial tenants/users and/or the ability to procure institutional financing is significantly diminished or the conditions of the financing available from such institutional financing sources is materially less favorable to Developer, Developer shall have the right to purchase the portion of the Commercial Premises in question rather than acquiring a ground lease relative thereto.

500.9 Criteria for Purchase. The criteria to be used to determine whether a long-term ground lease is Economically Disadvantageous giving rise to Developer's right to purchase (as opposed to ground lease) a portion of the Commercial Premises shall be as follows:

500.9.1 Pre-Approved Qualified Experts List. The parties have agreed that the five (5) firms listed on attached Exhibit H, incorporated herein by this reference, are either experts in the fields of commercial, residential, and/or institutional real estate sales and leasing, commercial, residential, and/or institutional real estate financing, and/or land economics and valuation, and are qualified for the purposes of assessing the economic viability of a long-term ground lease for the subject development proposed for the various portions of the Commercial Premises. Such qualifications include the ability to provide: (i) an analysis of the major types of land uses and real estate product types which may or may not be suitable for the subject development, and an analysis of the major types of tenants and users who may or may not be willing to pursue leasing the subject property due to the fact that Developer's interest therein is a ground leasehold (or who would insist on terms and conditions which are materially less favorable to Developer due to the fact that such interest of Developer is not fee ownership), and/or (ii) an analysis of the availability of institutional financing sources for the proposed development and whether such sources, or the terms upon which such sources would be willing to provide financing for the subject development are materially and adversely affected by the fact that Developer's interest in the subject property is a ground leasehold rather than in fee. In the event any of the initial five (5) firms listed on attached Exhibit H are no longer in business, the parties may ask the remaining firms to agree upon a replacement firm.

500.9.2 Conditions to Purchase the Commercial Premises. In order for Developer to have the right to purchase a portion of the Commercial Premises in fee (in lieu of a ground lease), one of the Pre-Approved Qualified Experts, as selected by Developer, shall have provided the City with a letter or report reflecting that one of the following conditions has been met and satisfied, thereby making the proposed development "Economically Disadvantageous": (1) it is highly likely that users or tenants that would be suitable for the proposed development, which are active in the then-current real estate market, are either: (a) not interested in, and/or unwilling to enter into a long-term ground sublease agreement with a developer, and/or (b) the long-term ground sublease rent or other material terms and conditions, that users or tenants would be willing to accept, is materially less favorable to the developer due to the fact that such transaction would be

structured as a ground sublease and/or (c) that the number of customary and suitable users or tenants willing to be a user or tenant under a ground sublease agreement is significantly diminished as opposed to the situation if the Developer owned the land in fee; or (2) an analysis of the then-current institutional lending sources that would customarily be willing to lend on a project of the type proposed shows that it is highly likely that such customary institutional lending sources are either: (i) not interested in lending based on a long-term ground lease agreement as security, or (ii) the financing terms that are available based upon the security for such financing being a long-term ground lease (as opposed to a fee interest) are materially less favorable to a developer, or (iii) the number of customary and suitable lenders willing to lend under a ground lease agreement is significantly diminished as opposed to if the Developer owned the land in fee. The determination of the selected Pre-Approved Qualified Expert shall be final and all costs associated with the Pre-Approved Qualified Expert shall be borne by Developer.

500.10 Financing the Costs To Develop Commercial Premises.

500.10.1 Approval of Financing. Except as provided for in Section 500.10.2, below, as required herein and as a City condition to the Close of Escrow for the Ground Lease Agreement or Purchase and Sale Agreement for the applicable portion of the Commercial Premises, Developer shall submit to City evidence that Developer has obtained sufficient equity capital and has obtained, and has provided to City, reasonable evidence of, a commercial lender's intention, subject to industry standard customary terms and conditions, to provide the construction financing necessary to undertake development of the applicable portion of the Commercial Premises and all in accordance with Developer's obligations under this Agreement and Ground Lease Agreement or Purchase and Sale Agreement, as applicable. City Manager or its designee shall reasonably approve or disapprove such evidence of financing within fifteen (15) calendar days of receipt of a complete submission. Approval shall not be unreasonably withheld or conditioned. If City shall disapprove any such evidence of financing, City shall do so by written notice to Developer stating the reasons for such disapproval and Developer shall promptly obtain and submit to City new evidence of financing. City shall reasonably approve or disapprove such new evidence of financing in the same manner and within the same times established in this Section for the initial submittal of Developer financing. In connection with obtaining such financing, the City agrees to cooperate with any reasonable requests from the subject lender to provide information or assurances regarding the rights of the Parties hereunder and to enter into such commercially reasonable agreements, including the NDA (as defined below), as such lender may request.

Such evidence of financing and equity shall include the following: (a) a copy of a term sheet, lender-signed application, or formal commitment, obtained by Developer from an unrelated financial institution(s) for the loan of funds needed (in excess of the funds described in clause (b) below) to fund the construction, completion and operation and maintenance (to the extent funds are not anticipated to be provided through operating income) of the Commercial Development, subject to such lender's reasonable and customary conditions and terms; and/or (b) a certification from the chief financial officer of the Developer that Developer has the necessary funds or committed equity partner/sources for construction, beyond those to be borrowed pursuant to the above-referenced lender financing to fund the costs described in clause (a) above.

500.10.2 Exception to Providing Financial Assurance Prior to Close of Escrow. In the event that Developer can provide documentation that Developer needs to demonstrate to a prospective user or tenant that Developer has ownership (either by ground lease or fee, as applicable) of a portion of the applicable Commercial Premises, Developer can Close Escrow, subject to all remaining conditions to the Close of Escrow as set forth in Section 600.5, but Developer shall not be required to provide the evidence of financing as set forth in Section 500.10.1, above, or 600.5.8, below. Provided, however, notwithstanding anything to contrary above, Developer will provide such financial assurances as set forth in Section 500.10.1, above, that Developer has the financing to complete any and all construction on said applicable portion of the Commercial Premises prior to commencing construction work thereon. Further, if no construction, as set forth in the development plans and construction documents submitted to the City of Oceanside, as a regulatory body, has commenced within two (2) years from the Close of Escrow, the City has the right, but not the obligation to terminate the lease (in the event the portion of the Commercial Premises was leased) or to re-purchase said applicable portion of the Commercial Premises for the same price that Developer paid to acquire said applicable portion of the Commercial Premises

500.11 Approvals for the Development of the Commercial Premises. The Parties anticipate that the development and operation of the Commercial Development will require approval by the City of an application for a development plan and a tentative parcel map or tentative subdivision map (as applicable), as well as required environmental review under the California Environmental Quality Act ("CEQA"). Developer shall prepare and process all required applications and associated environmental review for the development and operation of the Commercial Development prior to the Escrow Closing Date for the ground lease or acquisition of the applicable portion of the Premises where applicable. The City's zoning, building and land use regulations (whether contained in ordinances, the City's municipal code, conditions of approval or elsewhere), shall be applicable to the operation of the Commercial Development on the applicable portion of the Premises by the Developer, pursuant to this Agreement. Where applicable, Developer shall file and process to hearing the application for a development plan and related environmental review to a public hearing before the Planning Commission as diligently and as soon as reasonably possible. Approval of the development plan and related environmental review on the terms and conditions reasonably acceptable to the Developer is a condition to the Developer's obligation to ground lease or purchase the applicable portion of the Commercial Premises from the City as further described in Article 7.

500.11.1 Reservations. The City cannot legally pre-commit its discretion in acting upon required applications for development of the applicable portion of Commercial Premises, including the grading permit, the development plan application and necessary environmental review. The approval of this Agreement by the City shall not bind the City Council, any other commission, committee, board or decision-maker of the City or the City regarding any of the discretionary permits for the Commercial Development or the Balance of Recreational Development. No action by the City or the City with reference to this Agreement or any related documents shall be deemed to constitute issuance or waiver of any required City approval regarding the Premises. The Parties acknowledge and agree that this Agreement is not a statutory development agreement pursuant to Government Code Sections 65864, *et seq.* Notwithstanding

anything to the contrary contained in this Section or the preceding Section, City will use good faith efforts to process all such matters in a timely manner to prevent delays to Developer's efforts hereunder.

500.12. City Financial Obligations. The City does not have any obligation to provide any form of financial aid or assistance regarding the Commercial Development and the Balance of the Recreational Development under the terms of this Agreement.

500.13 City Not to Encumber. Subject to the City's rights under Section 500.3.3, above, City agrees not to place any matter of record against the Premises (other than Permitted Exceptions and any matter arising from the City's issuance or exercise of any authority related to any Approvals for the Commercial Development prior to the Close of Escrow) without the prior written consent of the Developer.

500.14 Due Diligence. Developer shall have up to one hundred twenty (120) days from the Effective Date ("Due Diligence Period") to conduct its due diligence of the Commercial Premises and the Balance of Recreational Premises; which due diligence may include, without limitation, review and approval or disapproval of the suitability of the physical and geotechnical condition of the Premises for Developer's intended use, availability and costs of utility services (e.g., electricity, water, etc.) to the Commercial Premises and/or Balance of Recreational Premises, ingress and egress to the Commercial Premises and/or Balance of Recreational Premises, condition of title to the Commercial Premises and/or Balance of Recreational Premises,. City makes no representations or warranties, express or otherwise, regarding the physical condition of the Premises or the condition of title to the Commercial Premises and/or Balance of Recreational Premises. During the Due Diligence Period, Developer shall have the right to terminate this Agreement in accordance with Section 700.8 of this Agreement if Developer determines in good faith during the Due Diligence Period that the Commercial Premises and/or Balance of Recreational Premises are not suitable for Developer's intended use, that Developer's proposed project cannot be completed and operated on terms which are economically satisfactory to Developer, or that the necessary equity and/or financing to undertake Developer's obligations hereunder are not available upon terms acceptable to Developer.

500.15 Property Documents. Within ten (10) business days after the Effective Date of this Agreement, City shall deliver to Developer current copies of all permits, soils tests, hazardous or toxic waste reports, geological studies, environmental impact studies, topographical maps, licenses, utility contracts, operating contracts, leases, maintenance contracts, service contracts, and other documents pertaining to the Commercial Premises and/or Balance of Recreational Premises ("Documents") in the possession or control of City, or in the possession of third parties who have prepared such Documents for the benefit of City. Prior to the end of the Due Diligence Period, Developer shall review and approve or disapprove each of the Documents.

500.16 Notice of Satisfaction. Promptly after completion (subject to customary punch-list type items) of development as to one or more phases of the Commercial Development and/or the Balance of the Recreational Development, as evidenced by a written certification of completion

from the subject architect or general contractor, and written request therefor by the Developer, the City shall deliver to the Developer a "Notice of Satisfaction" having the effect of releasing such phase(s) from the lien and scope of this Agreement, and imposing upon such phase(s) covenants running with the land reflecting the use restrictions contained herein, a provision comparable to Section 800.2, below, and containing anti-discrimination provisions typically required by City. Such Notices of Completion, shall be, and shall so state, conclusive determination of satisfactory completion of the construction required by this Agreement relative to such phase(s). The Notices of Satisfaction shall be in such form as to permit them to be recorded in the Official Records of the County of San Diego.

If the City fails to deliver a Notice of Satisfaction within thirty (30) days after written request from the Developer, the City shall provide the Developer with a written statement of its reasons (the "Statement of Reasons") within that thirty (30) day period. The statement shall also set forth the steps the Developer must take to obtain the subject Notice of Satisfaction. If the reasons are confined to the immediate unavailability of specific items or materials, or to items identified by the City which do not affect the Developer's ability to obtain a Certificate of Occupancy (or equivalent), the City will issue the Notice of Satisfaction upon the posting of a bond by the Developer with the City in an amount representing the City's estimate of the cost to complete such items.

500.17 Notice of Occupancy. For purposes of this Agreement, a "Notice of Occupancy" shall be a written certification from the Developer to the City identifying a specific tenant or user which whom Developer has entered into a written agreement providing, subject to commercially reasonable terms and conditions, for the occupancy of a particular portion or all of the Commercial Development and/or the Balance of Recreational Development. Such Notice of Occupancy, when delivered to the City, shall be accompanied by reasonable evidence of such written agreement; however, Developer shall not be required to disclose the economic terms thereof or any provisions thereof which are confidential, and may, in lieu thereof, provide a written abstract of principal (non-economic/non-confidential) terms thereof.

ARTICLE 6 CONVEYANCE OF LEASEHOLD ESTATE OR FEE ESTATE/JOINT ESCROW INSTRUCTIONS

600.1 Conveyance. Upon the determination by Developer to ground lease or purchase and develop all or a portion of the Commercial Premises and/or ground lease and develop all or a portion of the Balance of Recreational Premises (which decision may be made on a phased basis, as provided above), the City shall enter into a Ground Lease Agreement or Purchase and Sale Agreement, as applicable, with the Developer and the Developer shall enter into Ground Lease Agreement or Purchase and Sale Agreement, as applicable, with the City, pursuant to the terms and conditions of this Agreement. In the case of a Ground Lease Agreement, a Lease Memorandum shall be concurrently recorded in the Official Records of San Diego County, California. For the purposes of exchanging funds and documents to enter into a Ground Lease Agreement or Purchase and Sale Agreement, as applicable, the City and the Developer agree to

open the Escrow with the Escrow Agent. The provisions of this Article 6 of this Agreement are the joint escrow instructions of the Parties to the Escrow Agent for conducting the Escrow. If requested by the Escrow Agent, the Developer and the City shall execute the Escrow Agent's General Escrow Instructions and such further instructions as Escrow Agent may reasonably request consistent herewith. In the event of any conflict between the provisions of this Agreement and the Escrow Agent's General Escrow Instructions, the provisions of this Agreement shall be controlling.

600.2 Opening of Escrow. The City and the Developer shall cause the Escrow to be opened within seven (7) days following the Effective Date by delivering one or more copies of this Agreement signed by the Parties to the Escrow Agent. The Escrow Agent shall promptly confirm the Escrow Opening Date in writing to each of the Parties, with a copy of the Escrow Agent Consent executed by the authorized representative(s) of the Escrow Agent.

600.3 Escrow Agent Authority. The City and the Developer authorize the Escrow Agent to:

600.3.1 Charges. Pay and charge the City and the Developer for their respective shares of the applicable fees, taxes, charges and costs payable by either the City or the Developer regarding the Escrow with the Escrow Agent's fees being split equally between City and Developer;

600.3.2 Settlement/Closing Statements. Release each Party's Escrow settlement/closing statement to the other such Party;

600.3.3 Document Recording. File any documents delivered for recording through the Escrow with the office of the Recorder of the County for recordation in the official records of the County, pursuant to the joint instructions of the Parties; and,

600.3.4 Counterpart Documents. Utilize documents that have been signed by the City and the Developer in counterparts.

600.4 Preliminary Title Report. Upon opening of Escrow, City shall request a preliminary title report for the Commercial Premises and the Balance of Recreational Premises ("Preliminary Report") issued by Stewart Title Insurance Company or another title insurance company mutually approved by the Parties containing such exceptions as the Title Company would specify in an American Land Title Association with Western Regional Exceptions ("ALTA WRE") Standard Policy of Title Insurance (or, provided Developer so requests in writing, as the Title Company would specify, any additional title insurance coverage), together with copies of all exceptions and plotted easements and the legible copies of the documents supporting the exceptions.

600.5 Conditions to Close of Escrow Benefitting City. It is understood by the Parties that the Developer may be ground leasing and/or purchasing portions of the Commercial Premises or ground leasing the Balance of Recreational Premises in phases. Accordingly, the Developer's right to ground lease and/or purchase the applicable portions of the Commercial Premises and/or ground lease the applicable portions of the Balance of Recreational Premises from the City may require multiple Escrow Closing Dates, as applicable. Thus, the Developer's right to ground

lease and/or purchase the applicable portion of the Commercial Premises and/or ground lease the applicable portion of the Balance of Recreational Premises from the City may occur on multiple Escrow Closing Dates, and on each Escrow Closing Date or Dates, as applicable, such right to ground lease and/or purchase shall be subject to the satisfaction or waiver of each of the following conditions precedent, each of which can only be waived in writing by the City, and the decision whether or not to waive same shall be subject to City's sole, good faith discretion:

600.5.1 Document Approval. The Developer shall have all of the following described documents completed and signed by all of the Persons (other than City) required to make such documents operative and the City shall have approved such documents if required by this Agreement:

600.5.1.1 A copy of the Developer Entity Documents;

600.5.1.2 A certified copy of the Certificate of Occupancy for the construction of the Recreational Development, or Notice of Satisfaction as applicable, (this condition shall apply only as to the Close of Escrow for the initial acquisition of a portion of the Commercial Premises);

600.5.1.3 All Insurance Documents; and

600.5.1.4. The construction assurances described in Section 500.10.1, as applicable.

600.5.2 Title Policy. The Title Company is, upon payment of the Title Company's premium for the Title Policy (and execution/performance of such instruments and documents as are reasonably required of City by the Title Company), irrevocably and unconditionally committed to issue the Title Policy to the Developer, at the Close of Escrow, as applicable;

600.5.3 Approvals. Final issuance of all discretionary Approvals required from all governments and agencies for the construction and use of the applicable portion of the Commercial Development or the applicable portion of the Balance of Recreational Development on the Commercial Premises or the Balance of Recreational Development, on terms and conditions reasonably acceptable to the Developer;

600.5.4 CEQA Documents. Final adoption, approval or certification of the required CEQA documents;

600.5.5 Settlement/Closing Statement. The City and the Developer have each approved Escrow Agent's estimated Escrow closing/settlement statement;

600.5.6 Representations and Warranties. The representations and warranties of the Developer specifically set forth in Article 2 are true and correct, as of the Escrow Closing Date;

600.5.7 Pre-Closing Obligations. The Developer performs all of its material obligations which are required to be performed by the Developer under this Agreement prior to the Close of Escrow;

600.5.8 Construction Financing. The Developer shall have satisfied its obligations to provide evidence of equity and financing (pursuant to Section 500.10.1, above) and if such financing is to close concurrently with the Close of Escrow, Developer shall have delivered all of the documents which will evidence and secure the construction financing, including a Promissory Note and Deed of Trust (constituting the "Construction Financing Documents"), as applicable, into the Escrow;

600.5.10 Construction Financing Closing. The construction financing, if it is to close concurrently with the Close of Escrow, is in a position to close;

600.5.11 No New Information. No change has occurred in the Developer's knowledge in a manner that would result in a material violation of any of the Developer's representations or warranties set forth in Article 2; and

600.5.12 Initial Equity. All required equity is in Developer's possession or available to Developer subject to only commercially customary conditions.

600.6 Conditions to Close of Escrow Benefitting Developer. The Developer's obligation to lease and/or sell a portion or all of the Commercial Premises, as applicable, and/or to lease a portion or all of the Balance of Recreational Premises from the City on or before the Escrow Closing Date shall be subject to the satisfaction or waiver of each of the following conditions precedent, each of which can only be waived in writing by the Developer, and the decision whether or not to waive same shall be subject to Developer's sole, good faith discretion:

600.6.1 Document Approval. The Developer has received from the City approval of all documents and other items (including those set forth in Sections 600.5.1, above, for which the City's approval is required prior to the Close of Escrow), completed and signed by all of the Persons required to make such documents operative and the Developer has approved all such documents and other items as consistent with this Agreement and applicable law.

600.6.2 Approvals. Final issuance of all discretionary Approvals required from all governments and agencies for the construction of the applicable portion of the Commercial Development or the applicable portion of the Balance of Recreational Development on the Commercial Premises or the Balance of Recreational Development, has been obtained on terms and conditions reasonably acceptable to the Developer;

600.6.3 Title Policy. The Title Company is, upon payment of the Title Company's premium for the Title Policy, irrevocably and unconditionally committed to issue the Title Policy to the Developer, at the Close of Escrow;

600.6.4 Construction Financing Closing. The construction financing, if it is to close concurrently with the Close of Escrow, is in a position to close;

600.6.5 No New Information. No change has occurred in the Developer's knowledge in a manner that would result in a material violation of any of the City's representations or warranties set forth in Article 2;

600.6.6 City Escrow Deposits. City has deposited all of the items into the Escrow required by Section 600.7;

600.6.7 Settlement/Closing Statement. The City and the Developer have each approved the Escrow Agent's estimated Escrow closing/settlement statement;

600.6.8 City Representations and Warranties. The representations and warranties of the City specifically set forth in Article 2 are true and correct, as of the Escrow Closing Date;

600.6.9 City Pre-Closing Obligations. The City performs all of its material obligations which are required to be performed by the City under this Agreement prior to the Close of Escrow;

600.6.10 No Change in Condition. No change has occurred in the condition of the Premises; nor has any previously undisclosed adverse condition relating thereto been disclosed.

600.7 City's Escrow Deposits. At least one (1) business day prior to the Escrow Closing Date scheduled by the Escrow Agent in a writing delivered to both of the Parties, the City shall deposit the following described funds and documents into the Escrow:

600.7.1 Lease Memorandum. The Lease Memorandum, if applicable, signed by the authorized representative(s) of the City in recordable form and acknowledged by a notary public;

600.7.2 Non-Disturbance and Attornment Agreement. An agreement, duly signed by the authorized representative(s) of the City in recordable form (and acknowledged by a notary public), between City, Developer, and the lender providing the construction financing by which such parties agree to typical non-disturbance and attornment concepts (and other commercially customary concepts) upon a default by Developer under the Lease or the Construction Financing Documents (the "NDA");

600.7.3 Lease. The Lease signed by the authorized representative(s) of the City (and acknowledged by a notary public);

600.7.4 FIRPTA Certificate. The FIRPTA Certificate signed by the authorized representative(s) of the City;

600.7.5 Form 593. A Form 593 signed by the authorized representative(s) of the City;

600.7.6 Other Funds and Documents. Such other funds or documents required from the City under the terms of this Agreement to close the Escrow or by the Escrow Agent in the performance of the Escrow Agent's contractual or statutory obligations regarding the Escrow.

Notwithstanding the foregoing, if the subject Escrow relates to a phase of the Premises which is to be acquired by Developer in fee pursuant to a Purchase and Sale Agreement, rather than pursuant to a Ground Lease Agreement, the items described in Sections 600.7.1, 600.7.2, and 600.7.3 shall be replaced with a grant deed, duly executed by the authorized representative(s) of the City (and acknowledged by a notary public) conveying title to the subject

phase of the Commercial Premises to Developer (the "Grant Deed") and the NDA will contain customary provisions addressing such difference in circumstances.

600.8 Developer's Escrow Deposits. At least one (1) business day prior to the Escrow Closing Date scheduled by the Escrow Agent in a writing delivered to both of the Parties, the Developer shall deposit the following described funds and documents into the Escrow:

600.8.1 Lease Memorandum. The Lease Memorandum signed by the authorized representative(s) of the Developer in recordable form and acknowledged by a notary public;

600.8.2 Non-Disturbance and Attornment Agreement. The NDA duly signed by the authorized representative(s) of the Developer in recordable form (and acknowledged by a notary public);

600.8.3 Lease. The Lease signed by the authorized representative(s) of the Developer (and acknowledged by a notary public); and

600.8.4 Other Funds and Documents. Such other funds or documents required from the City under the terms of this Agreement to close the Escrow or by the Escrow Agent in the performance of the Escrow Agent's contractual or statutory obligations regarding the Escrow.

Notwithstanding the foregoing, if the subject Escrow relates to a phase of the Premises which is to be acquired by Developer in fee pursuant to a Purchase and Sale Agreement, rather than pursuant to a Ground Lease Agreement, the items described in Sections 600.8.1, 600.8.2, and 600.8.3 shall not be required but Developer shall deposit with Escrow Agent the purchase price provided for under the subject Purchase and Sale Agreement in lieu thereof.

600.9 Closing Procedure. The Parties shall use their good faith efforts to satisfy all of their obligations hereunder relative to the Close of Escrow for any portion of the Commercial Premises and/or Balance of Recreational Premises within ten (10) business days following the date that Developer notifies City and Escrow Agent of the portion of the Commercial Premises and/or Balance of Recreational Premises desires to acquire pursuant hereto, along with Developer's target Escrow Closing Date therefor. When each of the Developer's Escrow deposits and each of the City's Escrow deposits, are deposited into the Escrow, the Escrow Agent shall request confirmation in writing from both the Developer and the City that each of their respective conditions to the Close of Escrow, are satisfied or waived; which confirmation shall be promptly provided by each Party. Upon the Escrow Closing Date Escrow Agent shall close the Escrow by doing all of the following in the following order:

600.9.1 Recordation and Distribution of Recorded Documents. The Escrow Agent shall file the following documents with the office of the Recorder of San Diego County for recording in the Official Records of San Diego County, in the following order, at the Close of Escrow: (a) the Lease Memorandum or the Grant Deed, as applicable; (b) the Deed of Trust or Leasehold Deed of Trust, as applicable, securing the construction financing, if such construction financing is closing concurrently therewith, (c) the NDA, if applicable, and (d) any other documents to be recorded through the Escrow upon the joint instructions of the Parties. The Escrow Agent shall deliver conformed copies of all documents filed for recording in the official records of San

Diego County through the Escrow to the City, the Developer, the lender providing the construction financing and any other Person designated in the written joint escrow instructions of the Parties to receive an original or conformed copy of each such document. Each copy of a document filed for recording shall show all recording information.

600.9.2 Distribution of Other Documents. The Escrow Agent shall deliver a fully executed original of the Lease to both the City and the Developer or, if applicable, a conformed copy of the recorded Grant Deed. The Escrow Agent shall deliver copies of all other documents delivered through the Escrow to the City, the Developer and any other Person designated in the written joint escrow instructions of the Parties to receive an original or copy of each such document;

600.9.3 Developer Title Policy. The Escrow Agent shall obtain and deliver the Title Policy to the Developer;

600.9.4 Funds. The Escrow Agent shall deliver all funds held by the Escrow Agent for the account of the City (if any) to the City, less the City's share of the Escrow closing costs, and less any other charges to the account of the City pursuant to the terms of this Agreement, and return all remaining funds held by the Escrow Agent for the account of the Developer (if any) to the Developer, less the Developer's share of the Escrow closing costs, and less any other charges to the account of the Developer pursuant to the terms of this Agreement;

600.9.5 FIRPTA Certificate. The Escrow Agent shall file the FIRPTA Certificate with the United States Internal Revenue Service;

600.9.6 Form 593. The Escrow Agent shall file the Form 593 with the State of California Franchise Tax Board; and

600.9.7 Report to IRS. Following the Close of Escrow and prior to the last date on which such report is required to be filed with the United States Internal Revenue Service, if such report is required pursuant to Section 6045(e) of the United States Internal Revenue Code, the Escrow Agent shall report the gross proceeds of the lease of the Premises pursuant to this Agreement and the Lease to the United States Internal Revenue Service on Form 1099-B, Form W-9 or such other form(s) as may be specified by the United States Internal Revenue Service pursuant to Section 6045(e) or its associated Federal regulations. Upon the filing of such reporting form with the United States Internal Revenue Service, the Escrow Agent shall deliver a copy of the filed form to both the City and the Developer.

600.10 Close of Escrow. The Close of Escrow, as evidenced by the recordation of the Lease Memorandum or Grant Deed, as applicable, shall occur on or before the Escrow Closing Date; The Parties may mutually agree to change the Escrow Closing Date by joint written instruction to the Escrow Agent. If for any reason the Close of Escrow has not occurred on or before the Escrow Closing Date, then any Party not then in default under this Agreement may cancel the Escrow and terminate this Agreement, without liability to the other Party or any other Person for such cancellation and termination, by delivering written notice of termination to both the other Party and the Escrow Agent. Following any such notice of termination of this Agreement and

cancellation of the Escrow, the Parties and the Escrow Agent shall proceed pursuant to Section 600.12. Without limiting the right of either Party to cancel the Escrow and terminate this Agreement, if the Escrow does not close on or before the Escrow Closing Date and neither Party has exercised its contractual right to cancel the Escrow and terminate this Agreement before the first date on which the Escrow Agent notifies both Parties that the Escrow is in a position to close, then the Escrow shall close as soon as reasonably possible following the first date on which the Escrow Agent notifies both Parties that the Escrow is in a position to close, pursuant to the terms and conditions of this Agreement.

600.11 Escrow Closing Costs, Taxes and Title Policy Premium. The City and the Developer shall each pay one-half (1/2) of the Escrow fees and such other costs as the Escrow Agent may charge for conducting the Escrow. The City shall pay the premium charged by the Title Company for the Title Policy issued upon the Close of Escrow; provided, however, if the Developer requests extended ALTA coverage, Developer shall pay such increased premium amount. The City shall pay any County documentary transfer tax arising from entry into the Lease at the Close of Escrow and all recording fees. The Developer shall pay the cost of any endorsements or supplements to the coverage of the Title Policy requested by the Developer. All other fees and charges shall be borne by the parties in accordance with custom and practice for similar transactions in San Diego County, California. The Escrow Agent shall notify the Developer and the City in advance of the costs to be borne by each of them at the Close of Escrow by delivering the Escrow Agent's estimated Escrow closing/settlement statement to both the City and the Developer, at least two (2) business days prior to the scheduled Escrow Closing Date.

600.12 Escrow Cancellation Charges. If the Escrow fails to close due to an Event of Default attributable to the City, the City shall pay all customary and reasonable cancellation charges regarding cancellation of the Escrow and the Title Policy order, if any. If the Escrow fails to close due to an Event of Default attributable to the Developer, the Developer shall pay all customary and reasonable cancellation charges regarding cancellation of the Escrow and the Title Policy order, if any. If the Escrow fails to close for any reason other than an Event of Default attributable to either the Developer or the City, the Developer and the City shall each pay one-half (1/2) of all customary and reasonable cancellation charges regarding cancellation of the Escrow and the Title Policy order.

600.13 Escrow Cancellation. If the Escrow is cancelled and this Agreement is terminated pursuant to a contractual right granted to a Party in this Agreement to cancel the Escrow and terminate this Agreement, the Parties shall pay any associated cancellation charges in accordance with Section 600.12 and do each of the following:

600.13.1 Cancellation Instructions. The Parties shall, within three (3) business days following receipt of the Escrow Agent's written request, execute any reasonable Escrow cancellation instructions requested by the Escrow Agent; and

600.13.2 Return of Funds and Documents. Within seven (7) days following receipt by the Parties of a settlement statement from the Escrow Agent of cancellation charges regarding cancellation of the Escrow and the Title Policy order, (a) the Developer or the Escrow Agent,

respectively, shall return to the City any documents previously delivered by the City to the Developer or the Escrow Agent regarding this Agreement, the Lease, the Premises or the Escrow; (b) the City or the Escrow Agent, respectively, shall return to the Developer all documents previously delivered by the Developer to the City or the Escrow Agent regarding this Agreement, the Lease, the Premises or the Escrow; (c) the Escrow Agent shall return to the Developer any funds deposited into the Escrow by the Developer (if any), less the Developer's share of any customary and reasonable cancellation charges regarding cancellation of the Escrow and the Title Policy order; and (d) the Escrow Agent shall return to the City any funds deposited into the Escrow by the City (if any), less the City's share of any customary and reasonable cancellation charges regarding cancellation of the Escrow, the Title Policy order, and the City Title Policy order, if any, in accordance with Section 600.12.

600.14 Escrow Notices. All notices from the Escrow Agent to the Parties shall be given in the manner provided in Section 800.1 of this Agreement

600.15 Post-Closing Obligations Pursuant to Lease. The rights and obligations of the City and the Developer regarding each portion of the Premises as to which a Close of Escrow occurs shall, following such Close of Escrow, be governed exclusively by the terms and conditions of the Ground Lease Agreement and upon the recordation of the Lease Memorandum this Agreement shall be of no further force or effect, except Sections 500.10.2 (to the extent such evidence of construction financing was not approved prior to the Close of Escrow), 800.2 and 800.6.

ARTICLE 7. DEFAULTS, REMEDIES AND TERMINATION

700.1 Defaults-General.

a. Subject to the extensions of time set forth in Section 800.3, failure by either party to perform any term or provision of this Agreement when required constitutes a default under this Agreement. The party in default must commence to cure, correct or remedy such default and shall complete such cure, correction or remedy with reasonable diligence.

b. The injured Party shall give written notice of default to the Party in default specifying the default complained of by the injured Party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failures or delays by either Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either Party in asserting any of its rights and remedies shall not deprive either Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

700.2 Institution of Legal Actions

In addition to any other rights or remedies (and except as otherwise provided in this

Agreement), either party may institute legal action to cure, correct or remedy any Event of Default, to recover damages for any Event of Default, or to obtain any other remedy consistent with the purpose of this Agreement, including but not limited to any rights or remedies that City may have to require Developer to complete construction, as more particularly set forth in Subsection 500.2.2 above. Such legal actions must be instituted in the Superior Court of the County of San Diego, State of California, in any other appropriate court of that county, or in the United States District Court for the Southern District of California.

700.3 Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

700.4 Acceptance of Service of Process

a. In the event that any legal action is commenced by Developer against the City, service of process on the City shall be made by personal service upon the City Clerk, or in such other manner as may be provided by law.

b. In the event that any legal action is commenced by the City against Developer, service of process on Developer shall be made by personal service upon Developer (or upon the General Partner or General Partner's managing member, as applicable, or any officer of the General Partner or General Partner's managing member, as applicable) and shall be valid whether made within or without the State of California, or in such manner as may be provided by law.

700.5 Rights and Remedies Are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

700.6 Damages

Subject to the notice and cure provisions of Section 700.1, if either Party defaults with regard to any of the provisions of this Agreement, the non-defaulting Party shall serve written notice of such default upon the defaulting Party. If the default is not cured prior to becoming an Event of Default, as provided in Section 100.18, the defaulting Party shall be liable to the non-defaulting Party for any damages caused by such Event of Default, and the non-defaulting Party may thereafter (but not before) commence an action for damages against the defaulting Party with respect to such Event of Default, subject to compliance with applicable governmental claim requirements. Neither City nor Developer shall be entitled to, and each hereby waives, any right

to seek special or consequential damages of any kind or nature arising out of or in connection with this Agreement.

700.7 Specific Performance

In addition to the remedies provided for under Section 700.6, above, upon the occurrence of an Event of Default or the failure to complete construction as set forth in Section 500.2.2, the non-defaulting Party or the damaged Party per Section 500.2.2, at its option, may thereafter (but not before) commence an action for specific performance of the terms of this Agreement pertaining to such Event of Default or the failure to complete construction as set forth in Section 500.2.2.

700.8 Termination by Developer Prior to Closing

Prior to the final Close of Escrow, Developer shall have the right to terminate this Agreement, by providing written notice to the City, in the event of an Event of Default by City pursuant to this Agreement or in the event of a failure of a condition to Developer's obligations hereunder (as described above) which is not waived by Developer or cured within ten (10) business days following the scheduled Escrow Closing Date relating thereto. In addition, Developer shall have the right to terminate this Agreement during the Due Diligence Period, if during the Due Diligence Period, Developer in good faith determines that the Premises is not suitable for the intended use, that the proposed project is not economically satisfactory to Developer, or that the necessary equity and/or financing to undertake Developer's obligations hereunder and under the Lease are not available upon terms acceptable to Developer.

700.9 Termination by City Prior to Closing

Prior to the Close of Escrow, City shall have the right to terminate this Agreement, by providing written notice to the Developer, in the event of an Event of Default by Developer pursuant to this Agreement.

ARTICLE 8 GENERAL PROVISIONS

800.1 Notices, Demands and Communications. Formal notices, demands, and communications between the Parties shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, by reputable overnight delivery service, or delivered personally, to the principal office of the City and the Developer as follows:

City: City of Oceanside
Office of City Manager
300 North Coast Highway
Oceanside, CA 92054
Attention: City Manager

With a copy to: City of Oceanside
Office of City Attorney
300 North Coast Highway
Oceanside, CA 92054

Developer: Sudberry Development, Inc.
Attention: c/o Sudberry Properties, Inc.
5465 Morehouse Drive, Suite 260
San Diego, CA 92121
Attention: Colton T. Sudberry

And to: Charlie Abdi
c/o Finest City Realty Advisors
12651 High Bluff Drive, Suite 250
San Diego, CA 92130

With copies by email to: chuck@sudprop.com and gis@smcdslaw.com

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section 800.1. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

800.2 Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement. No member, official, employee or agent of the Developer shall be personally liable to the City, or any successor in interest, in the event of any default or breach by the Developer or for any amount which may become due to the City or successor or on any obligation under the terms of this Agreement.

800.3 Forced Delay. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due directly or indirectly to war; insurrection; strikes or other labor unrest; lock-outs; riots; floods; earthquakes; fires; casualties; acts of god; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; litigation (including suits filed by third parties concerning or arising out of this Agreement); acts or failure to act of any public or governmental City or entity; or any other causes (other than Developer's inability to obtain financing for the Development) beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the party claiming such extension is sent to the other within fifteen (15) days from the date the party seeking the extension first discovered the cause (and the delay resulting therefrom) and such extension of time is not validly rejected (due to such original request for an extension not meeting the requirements for an

extension provided above) in writing by the other party within ten (10) days of receipt of the notice. In no event shall the cumulative delays exceed one hundred eighty (180) days unless otherwise agreed to in writing by the Parties; however, delays caused by one Party affecting the other Party shall be excluded from such one hundred eighty (180) day maximum.

800.4 Inspection of Books and Records. Upon request, the Developer shall permit the City to inspect, at reasonable times, those books, records and other documents of the Developer necessary to determine Developer's compliance with the terms of this Agreement, provided, however, such right shall not extend to any documents which are otherwise protected by a privilege, such as attorney-client privilege. The Developer also has the right at all reasonable times to inspect the books, records and all other documentation of the City pertaining to its obligations under this Agreement, provided, however, such right shall not extend to any documents which are otherwise protected by a privilege, such as attorney-client privilege.

800.5 Title of Parts and Sections. Any titles of the articles, sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.

800.6 Indemnification. The Developer agrees to defend (by counsel reasonably satisfactory to the City), indemnify, protect, hold harmless the City, its Council members, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of the Developer's performance or non-performance under this Agreement or any action taken pursuant to this Agreement except as caused by the willful misconduct or negligence of the City (or any member, official, employee, contractor, or agent of the City). The provisions of this Section shall survive termination of this Agreement, and shall remain in full force and effect. The City agrees to defend (by counsel reasonably satisfactory to the Developer), indemnify, protect, hold harmless the Developer, its partners, members, officers, and employees, from all suits, actions, claims, demands, causes of action, costs, demands, judgments, and liens arising out of the City's performance or non-performance under this Agreement or any action taken pursuant to this Agreement except as caused by the willful misconduct or negligence of the Developer (or any member, official, employee, contractor, or agent of the Developer). The provisions of this section shall survive termination of this Agreement, and shall remain in full force and effect.

800.7 No Brokers. Each party represents to the other that it has not had any contact or dealings regarding the Premises, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, the party through whom the broker or finder makes this claim shall indemnify, defend with counsel of the indemnified party's choice, and hold the indemnified party harmless from all expense, loss, damage and claims, including the indemnified party's attorneys' fees, if necessary, arising out of the broker's or finder's claim. The provisions of this section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

800.8 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

800.10 Additional Representations.

800.10.1 Organization. The Developer is a corporation, duly organized, validly existing and in good standing under the laws of the State of California, with full power and authority to conduct its business as presently conducted and to execute, deliver and perform its obligations under this Agreement. The City is a charter city, duly organized, validly existing and in good standing under the laws of the State of California, with full power and authority to conduct its business as presently conducted and to execute, deliver and perform its obligations under this Agreement.

800.10.2 Authorization. The Developer and the City each represent and warrant to the other that: (i) it has taken all necessary action to authorize its execution, delivery and, subject to any conditions set forth in this Agreement, performance of this Agreement; and (ii) upon the date of this Agreement, this Agreement shall constitute a legal, valid and binding obligation of such party, enforceable against it in accordance with its terms subject to principles of equity and laws affecting creditors' rights generally. Prior to the execution of this Agreement, the Developer shall provide the City with certified copies of corporate resolutions authorizing this Agreement to be executed by the Developer.

800.10.3 No Conflict. The Developer and the City each represent and warrant to the other that execution, delivery and performance of this Agreement by it does not and will not conflict with, or constitute a violation or breach of, or constitute a default under (i) the charter or incorporation documents of such party, (ii) any applicable law, rule or regulation binding upon or applicable to such party, or (iii) any material agreements to which such party is a party.

800.10.5 No Material Adverse Change. There has been no material adverse change in the financial condition of the Developer since the date of this Agreement.

800.10.6 Default Under Other Agreements. The Developer and the City each represent and warrant to the other that, to the best of their respective knowledge, there is no event, act or omission which constitute, or but for the passage of time or the giving of notice, or both, would constitute a breach, violation or default under any agreement materially related to the Recreational Development or operation of the Recreational Development. Until the expiration or earlier termination of this Agreement, Developer and City shall each, upon learning of any fact or condition which would cause any of the warranties and representations in Article 2 or this Section 880.10 not to be true, immediately give written notice of such fact or condition to the other party. Upon the Developer's Transfer, as approved by the City in accordance with Article 4,

the Developer shall cause the Developer's assignee to update the representations and warranties set forth above to the extent applicable to such assignee.

800.11 Multiple Originals: Complete Understanding of the Parties. This Agreement may be executed in multiple counterparts, each of which is deemed to be an original. This Agreement and the attached exhibits constitute the entire understanding and agreement of the Parties with respect to the matters set forth in this Agreement.

800.12 Right of Entry to Perform Studies:

800.12.1 Temporary Right of Entry. The City hereby grants a right of entry to the Premises to the Developer for the sole purposes of performing a land survey, and conducting soils and other testing and due diligence activities which require access to the Premises (the "Temporary Right of Entry"). Such right of entry shall continue throughout the effective period of this Agreement and shall terminate concurrently with the termination of this Agreement.

The Developer agrees at all times to keep the Premises free and clear of all liens, encumbrances, and clouds upon title resulting from the exercise of the Temporary Right of Entry but excluding any matter arising from Developer's mere discovery of an existing condition. Any preliminary work by the Developer shall be undertaken only after securing the insurance required under the Lease and all necessary permits from the appropriate governmental agencies and such work shall be done without disturbing any existing third-party operating at the El Corazon property. In addition, in the event that the Developer causes any damage to any portion of the Premises, the Developer shall promptly restore the Premises as nearly as possible to the physical condition existing immediately prior to the Developer's entry onto the Premises. The Developer shall promptly provide the City a copy of all reports and test results of the Premises conducted on behalf of the Developer. The Developer shall approve or disapprove the physical, geotechnical, and environmental condition of the Premises no later than the time set forth in the Section 500.7. The Developer's failure to disapprove the condition of the Premises by the time set forth in Section 500.7 shall be deemed approval. Upon the Developer's approval of the physical, geotechnical and environmental condition of the Premises, the Developer shall have no right to terminate this Agreement on account of the physical, geotechnical, or environmental condition of the Property except as a result of a discovery pursuant to Section 600.5.12.

800.13.2 Indemnity. Without limiting the generality of the indemnification forth above, the Developer agrees to indemnify, defend (by counsel reasonably satisfactory to the City), and hold the City, its officials, employees and agents, harmless against all claims, including but not limited to mechanics liens and personal or property damage, arising from the entry of the Developer or its agents, employees, contractors or subcontractors onto the Premises, or created as a result of the exercise of this Temporary Right of Entry; excluding, however, any matter arising out of the mere discovery of an existing condition. The Developer further agrees that all survey and testing work performed pursuant to this Temporary Right of Entry shall be made at the Developer's sole cost. Notwithstanding any provision to the contrary in this Agreement, this obligation shall survive termination of this Agreement.

800.14 Amendments. Amendments to this Agreement shall be in writing and approved by the authorized representatives of the Parties. Any amendment to this Agreement shall be approved by the City Council at a public meeting; provided, however, that administrative and non-material amendments and modifications to this Agreement (including modifications to the attached forms of the Ground Lease Agreement and Purchase and Sale Agreement), such as non-material amendments requested by lenders, equity partners, and/or transferees, will not require City Council approval and may be approved on behalf of the City by the City Manager or appropriate City staff.

800.15 Recordation of Agreement. This Agreement shall be recorded in the Official Records of San Diego County, California following execution by the parties. However, upon the recordation of the Lease Memorandum, this Agreement shall be of no further force or effect and each Party shall, at the request of the other Party execute an instrument evidencing the termination hereof in recordable form and such instrument shall be recorded in the Official Records of San Diego County, California.

800.16 No Other Representations or Warranties. Except as expressly set forth in this Agreement, no Party makes any representation or warranty material to this Agreement to any other Party.

800.17 Tax Consequences. The Developer acknowledges and agrees that it shall bear any and all responsibility, liability, costs, and expenses connected in any way with any tax consequences experienced by the Developer related to this Agreement or the Lease.

800.18 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party.

800.19 No Waiver. Failure to insist on any one occasion upon strict compliance with any term, covenant, condition, restriction or agreement contained in this Agreement shall not be deemed a waiver of such term, covenant, condition, restriction or agreement, nor shall any waiver or relinquishment of any rights or powers under this Agreement, at any one time or more times, be deemed a waiver or relinquishment of such right or power at any other time or times.

800.20 Dispute Resolution. The following provisions shall be used for purposes of resolving disputes between the Parties.

800.20.1. Mediation. Any dispute or claim related to this Agreement that the Parties are unable to resolve by good faith negotiation shall first be submitted to mediation in accordance with the Real Estate Mediation Rules of the American Arbitration Association, or any other neutral organization agreed upon by the parties.

800.20.2. Litigation. If any dispute or claim is not resolved by mediation pursuant to Section 800.20.1, above, then such matter shall be litigated in a court of competent jurisdiction unless the Parties mutually agree to submit such dispute or claim to arbitration.

800.20.3. Attorneys' Fees. In the event any litigation ("Proceeding") is initiated by any Party against any other Party to enforce, interpret or otherwise obtain judicial relief in connection with this Agreement the party in such Proceeding that is determined to be the prevailing party by the trier of fact in any such Proceeding shall be entitled to recover from the unsuccessful party all costs, expenses, and reasonable attorney's fees and expert witness fees relating to or arising out of such Proceeding, and any post-judgment or post-award proceeding including, without limitation, one to enforce any judgment or award resulting from any such Proceeding. Any such judgment or award shall contain a specific provision for the recovery of all such subsequently incurred costs, expenses, and actual attorneys' fees and expert witness fees.

[SIGNATURE PAGE FOLLOWS]

City:

THE CITY OF OCEANSIDE
a municipal corporation

Date _____

By: _____
City Manager

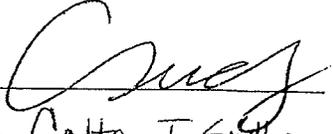
APPROVED AS TO FORM:

By: _____
City Attorney

Developer:

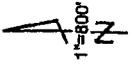
SUDBERRY DEVELOPMENT, INC.,
a California corporation

Date 12-20-12

By: 
Name: Colton T. Sudberry
Title: President

List of Exhibits

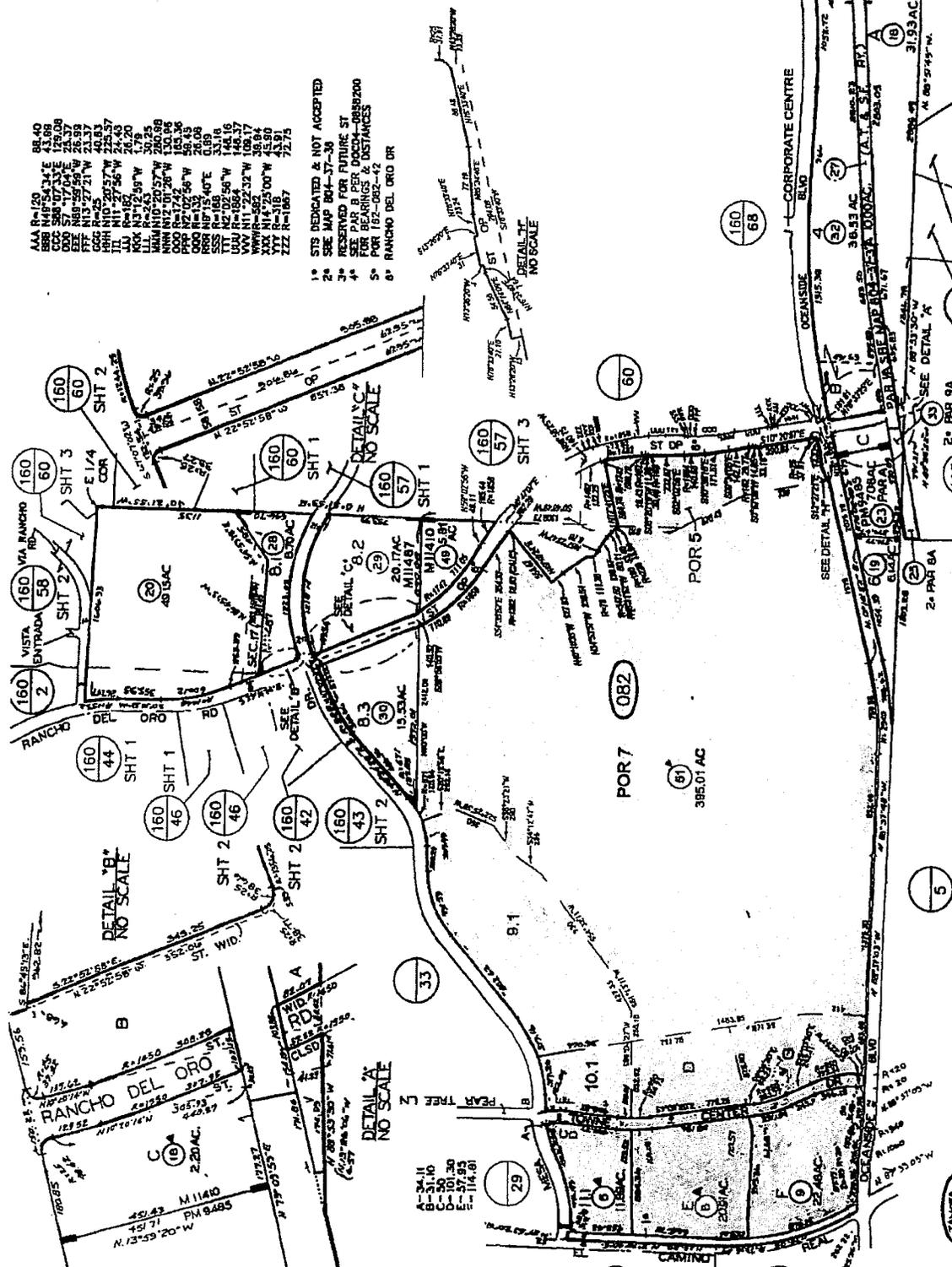
- Exhibit A Description of Entire El Corazon Site
- Exhibit B Description of Recreational Premises
- Exhibit C Allocation of Development Rights Between Developer and Stirling Development
- Exhibit D Form of Ground Lease Agreement
- Exhibit E Form of Lease Memorandum
- Exhibit F Form of Purchase and Sale Agreement



01/20/2012 JGD

CHANGES	BLK	OLD	NEW	YR	CUT
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	103	103	103	201	
	104	104	104	201	
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	160	160	160	201	

- 1* STS DELEGATED & NOT ACCEPTED
- 2* SEE MAP 804-37-38
- 3* SEE MAP 804-37-38
- 4* SEE PLAN FOR FUTURE ST
- 5* SEE PLAN FOR BEARINGS & DISTANCES
- 6* SEE PLAN FOR BEARINGS & DISTANCES
- 7* SEE PLAN FOR BEARINGS & DISTANCES
- 8* SEE PLAN FOR BEARINGS & DISTANCES
- 9* SEE PLAN FOR BEARINGS & DISTANCES
- 0* RANCHO DEL ORO DR



THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. ASSESSOR'S PARCELS MAY NOT COMPLY WITH LOCAL SUBDIVISION OR BUILDING ORDINANCES.

SAN DIEGO COUNTY ASSESSOR'S MAP BOOK 162 PAGE 08

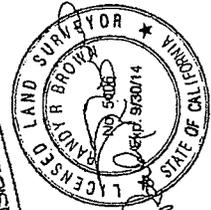
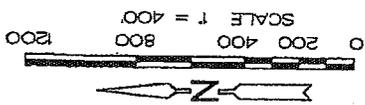
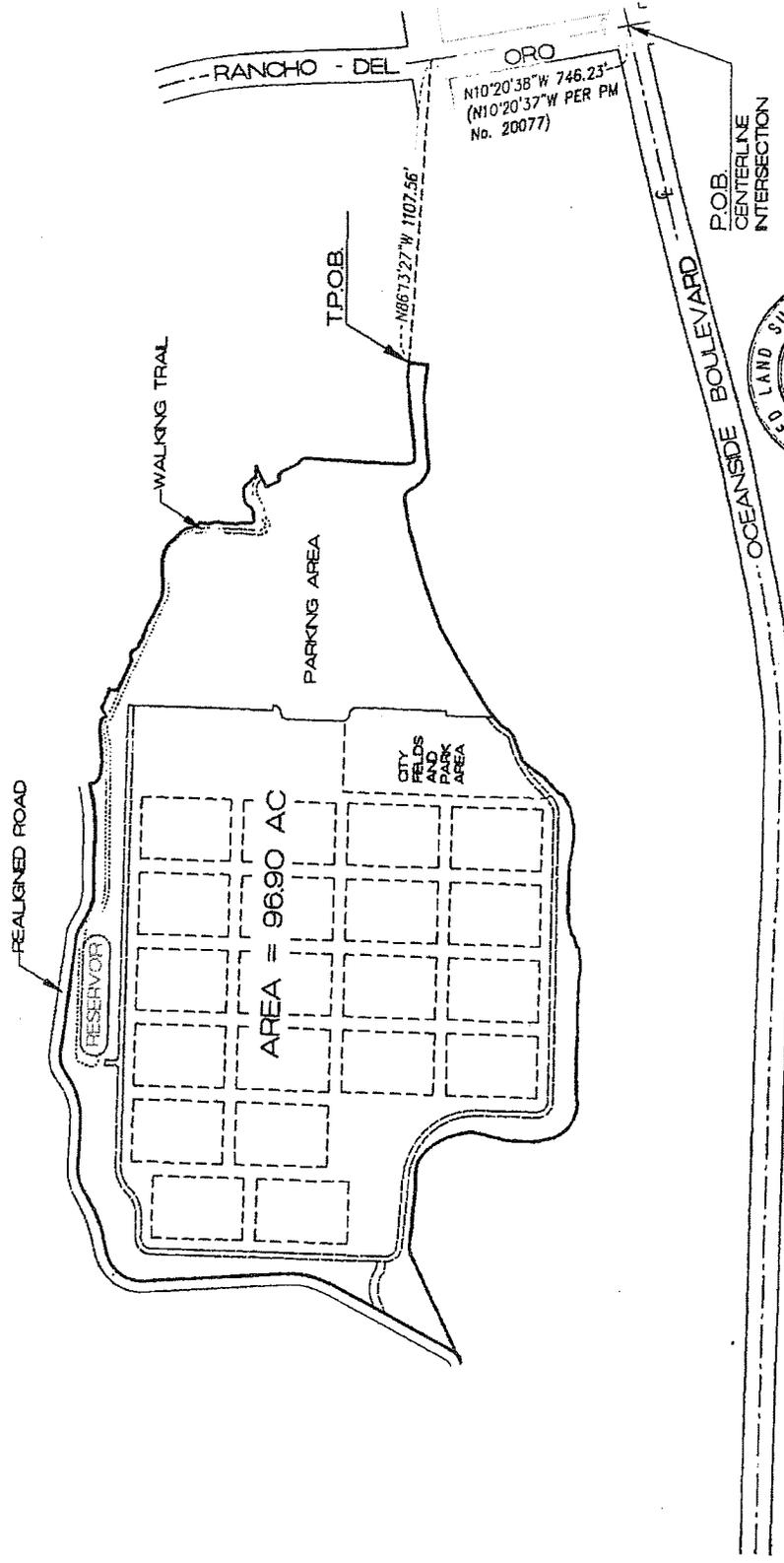
MAP 11410-RANCHO DEL ORO-MASTER SUB MAP WEST
 SEC 21-T11S-R4W-POR
 SEC 17-T11S-R4W-POR
 MAP 11487-RANCHO DEL ORO VILLAGE 8
 ROS 14124, 18364, 20532, 20800, 20833

EXHIBIT "A"

El Corazon Site

EXHIBIT "B"

Area of Recreational Fields



SOWARDS & BROWN ENGINEERING
CONSULTING ENGINEERS
10000 CENTERLINE, SUITE 100
CANTON, CA 94501
TEL: 707/430-8500 FAX: 707/430-8003

JOB No. B-001 12/12/12

EXHIBIT "C"

Allocation of Developable Commercial Uses

Developer	Gross Acres (owned/controlled)	Percentage
Sudberry Development, Inc.	72.98 ac.	10.6%
Ivey Ranch, Inc. (Stirling)	<u>8.69 ac.</u>	<u>89.4%</u>
Total (per Specific Plan)	81.67 ac.	100.0%

Commercial Areas	Gross Developable SF/Units	Sudberry	Stirling
Destination Hotel	150 rooms		
Regional Hotel	150 rooms		
Total Hotel	300 rooms	268 rooms	32 rooms
Village Commercial			
Commercial	168,000 sf	150,192 sf	17,808 sf
Office	80,000 sf	71,520 sf	8,480 sf
Oceanside Blvd Commercial			
Commercial	167,000 sf	149,298 sf	17,702 sf
Office	165,000 sf	147,510 sf	17,490 sf
Mixed Use Residential*	300 units	268 units	32 units

* can be in either Village or Oceanside Boulevard Commercial areas)

Exhibit "D"

GROUND LEASE AGREEMENT

BETWEEN

_____,
a _____,

AS LESSOR

AND

_____,
a _____,

AS LESSEE

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT ("Lease") is made and entered into this ____ day of _____, 201__, by and between _____, a _____ ("Lessor") and _____, a _____ ("Lessee").

1. **DEFINITIONS.** In addition to terms defined elsewhere in this Lease, the following definitions shall apply to the following capitalized words or terms:

Affiliate: With respect to a specified Person, any other Person that directly or indirectly or through one or more intermediaries, controls, is controlled by, or is under common control with the specified Person. For the purpose of this definition, "control" means the ability to directly or indirectly, by voting securities, partnership or member interests, contract or otherwise, direct or cause the direction of the policies or management of the specified Person.

Applicable Interest Rate: The lower of one percent (1%) per annum above the then existing prime or reference rate charged by the Bank of America, National Trust & Savings Association, Los Angeles, California, or its successor, or the maximum rate allowed by applicable usury laws. If the Bank of America, National Trust & Savings Association, Los Angeles, California or any successor thereto does not exist at such time then such rate as published in the Wall Street Journal shall be substituted therefor.

Applicable Law: Any law, ordinance, regulation, requirement or order of any federal, state, or local agency, court, or other governmental body, applicable from time to time to the Project, including but not limited to design, construction, equipping, financing, ownership, and/or operation of the Project and/or Personal Property and/or operation of business and obligations under any Sublease or other agreement related to the Project and including all orders, rules, regulations and requirements of the applicable board of fire underwriters, if any, or of any other board exercising similar functions, and the requirements of all policies of insurance required to be carried by Lessee under this Lease.

Business Day(s): A day other than a Saturday, Sunday, or national holiday.

City: _____, California.

Commencement Date: The date Lessor delivers exclusive possession of the Leased Premises to Lessee free of all tenancies and other occupancy rights of third parties.

Disposition: A transaction through which all or any part of Lessee's interest in this Lease, or effective and substantive material benefit of this Lease, is transferred to another Person by assignment, conveyance or other hypothecation, but excluding: (i) Subleases and subleasehold mortgages placed by Subtenants on their subleasehold interest, (ii) Leasehold Mortgages, and (iii) the transfer or pledge of any Person's ownership interest in Lessee.

Encumbrances: Those matters of record as of the Commencement Date.

Hazardous Substance: (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sections 6901 *et seq.*), as amended from time to time, and regulations promulgated thereunder; and (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sections 9601 *et seq.*), as

amended from time to time, and regulations promulgated thereunder ("Act") or any discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or chemical liquids or solids, liquid or gaseous products or hazardous waste or hazardous substance under the Act; and (c) any substance the presence of which is prohibited, regulated, or restricted by any law or regulation similar to those set forth in this definition; and (d) any petroleum product, medical waste or other substance or chemical that is regulated by State or Federal Law concerning the environment, health or human safety; and (e) asbestos; and (f) any other substance which by law or regulation requires special handling in its use, collection, generation, storage, transportation, treatment or disposal because of its material adverse effect or potential material adverse effect on the environment.

Impositions: All general and special real property taxes, assessments (special or otherwise), liens, bond obligations, license fees or taxes and any similar impositions in-lieu of other impositions now or previously within the definition of real property taxes or assessments which may be levied or assessed by any lawful authority against the Project applicable to the period from the Commencement Date until the expiration or sooner termination of this Lease.

Improvements: All buildings and other improvements constructed on the Leased Premises at any time.

Land Records: The official records of the County Clerk of _____ County, California.

Lease Year: Each consecutive twelve (12) month period during the Term; provided, however, that if the Commencement Date occurs on any day other than the first day of the month, the first Lease Year shall commence on the Commencement Date and end on the last day of the twelfth month thereafter, and further provided that the last Lease Year shall end on the last day of the Term.

Leased Premises: The approximately _____ acres of land and any improvements thereon, which real property is located at _____ in the _____, California, and is legally described on **Exhibit A** attached hereto and incorporated herein by this reference and which is depicted in approximate location and configuration on the site plan attached as **Exhibit B** attached hereto and incorporated herein by this reference.

Leasehold Mortgage: A mortgage, deed of trust or other instrument that encumbers Lessee's interest in this Lease or the Leased Premises, or portion thereof, but excluding any encumbrance placed by a Subtenant on the leasehold interest of such Subtenant in its Sublease.

Leasehold Mortgagee: The holder of a Leasehold Mortgage.

Mortgage: A mortgage, deed of trust or other instrument that encumbers Lessor's interest in this Lease or the Leased Premises, or portion thereof.

Mortgagee: The holder of a Mortgage.

Person: Any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, estate, trust, unincorporated organization or other entity or any government or any agency or political subdivision thereof.

Personal Property: The trade fixtures, furnishings, equipment, inventory or other personal property of Lessee or any Subtenant.

Project: The Leased Premises and the Improvements.

Rent Commencement Date: The Commencement Date.

State: The State of California.

Sublease: A lease or other occupancy agreement between Lessee and a Subtenant for the operation of a business in a portion of the Project.

Subtenant: Any Person that is a sublessee or subtenant under any Sublease.

2. LEASE; TERM; EASEMENTS; QUIET ENJOYMENT; RECORDATION.

2.1 Lease. Lessor, in consideration of the rents, covenants, agreements and conditions herein set forth, does hereby lease to Lessee, and Lessee does hereby lease from Lessor, the Leased Premises, together with all easements, appurtenances and other rights and privileges now or hereafter belonging or appertaining to the Leased Premises, subject to the Encumbrances and non-delinquent Impositions.

2.2 Term. The base term of this Lease ("**Base Term**") shall be for a period that commences on the Commencement Date and expires at midnight on the _____ (th) anniversary of the Commencement Date. The Base Term shall be extended for an additional period pursuant to the terms of the Development and Disposition Agreement ("**DDA**") entered into between Lessor and Lessee as of _____, 201____, ("**Extended Term**"). The Base Term and Extended Term are referred to collectively as the "**Term**".

2.3 Easements and Dedications. Promptly after the request by Lessee, Lessor shall grant any commercially reasonable utility easements necessary for the construction, alteration, operation, or maintenance of all or any part of the Project. Promptly after the request by Lessee, Lessor shall also grant any other commercially reasonable easements necessary and typically required in connection with the construction, alteration, use, operation or maintenance of commercial projects similar to the Project such as, but not limited to, easements for drainage, parking, signage, ingress and egress of pedestrians and vehicles and maintenance. To the extent required by Lessee, Lessor shall consent to, and join in, the recordation in the Land Records of any construction, operation and reciprocal easement agreement (or similar document) required to govern the use and operation of the Project. All other required easements shall be subject to the prior written approval of Lessor, not to be unreasonably withheld or delayed. Lessor also acknowledges that certain dedications may be required in connection with the development and/or redevelopment of the Project in compliance with this Lease. Lessor hereby agrees to execute any commercially reasonable documents required in connection with such dedications so long as such dedications are consistent with the Improvements contemplated with respect to the Project.

2.4 Quiet Enjoyment. Lessor covenants and agrees that Lessee, while paying the Rent and other sums payable under this Lease and performing its other covenants and agreements herein set forth, shall peaceably and quietly have, hold and enjoy the Leased Premises for the full Term without hindrance or molestation from Lessor or any Person claiming by, through or under Lessor, subject to the terms, conditions and provisions of this Lease and to the Encumbrances.

2.5 Recordation. Lessee and Lessor shall execute and record a Memorandum of this Lease, in form reasonably approved by the parties, in the Land Records, at the sole cost and expense of Lessor.

3. RENT; LATE PAYMENTS

3.1 Base Rent. Commencing on the Rent Commencement Date and continuing thereafter throughout the remainder of the Term, Lessee shall pay to Lessor the Base Rent pursuant to the terms of the DDA, to be paid in monthly installments, on the first day of each month without notice, deduction or offset (except as otherwise provided herein):

3.2 Additional Rent; Rent. All other amounts due from Lessee to Lessor under this Lease shall be "**Additional Rent**". Recurring monthly charges shall be due on the first day of each month. Any other Additional Rent shall be due as specified in this Lease, provided that, if not specified, all charges shall be due and payable thirty (30) days after billing by Lessor. The Base Rent and Additional Rent are collectively referred to as the "**Rent**".

3.3 Late Payments. If Lessor has not received any installment of Rent within five (5) Business Days after due, Lessor shall provide written notice to Lessee of the unpaid installment of Rent, and if Lessee shall fail to pay the unpaid installment within five (5) Business Days after receipt of the notice, Lessee shall pay to Lessor a late charge of one percent (1%) of the amount due plus interest at the Applicable Interest Rate until such amount is paid.

4. IMPOSITIONS.

4.1 Lessee Responsible for Payment of All Impositions. From and after the Delivery Date, Lessee shall be solely responsible for, and shall timely pay, prior to delinquency, all Impositions that are due and payable for any part of the period that commences on the Rent Commencement Date and ends on the expiration or earlier termination of this Lease. Lessee shall, upon reasonable request from Lessor, provide Lessor with reasonable evidence of each such payment. However, if, by law, any Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Lessee may exercise the option to pay the same in such installments and shall be responsible for the payment of such installments only, together with applicable interest, if any. Notwithstanding anything to the contrary contained herein, Impositions, as used herein, shall not include any increase in Impositions attributable to any reassessment of the Project or any portion thereof which occurs during the Lease Term to the extent that such reassessment arises or results from a "Change in Ownership" triggered by actions of Lessor. For purposes hereof, "**Change of Ownership**" shall be deemed to have the same meaning as in California Revenue and Taxation Code Section 60 *et. seq.* or any amendments or successor statutes thereto. The foregoing limitation is not in any way intended to limit the pass through to Lessee of (i) the statutory two percent (2%) annual increase in Impositions (as such statutory increase may be modified by subsequent legislation), (ii) the initial assessment of the Leased Premises, (iii) the initial assessment of the Improvements upon the Leased Premises, or (iv) any increase in Impositions resulting from any alterations or reconstruction of the Project, Leased Premises, or any actions of Lessee.

4.2 Contests & Indemnification. Lessee, at its sole expense, may contest any Impositions in accordance with the provisions of Section 4. Lessee shall give Lessor notice of any such action prior to the commencement thereof. Lessee shall indemnify, defend and hold Lessor harmless from all costs, expenses, claims, losses or damages (including reasonable attorneys' fees) by reason of, in connection with, on account of, related to or arising out of any such contest or Lessee's failure to comply with Section 4.1 above. The payment of any interest or penalties in connection therewith, and all charges related to such proceedings, shall be at the cost and expense of Lessee. Upon request by Lessee, Lessor shall reasonably cooperate in such proceedings, provided that Lessor shall not be obligated to prosecute any tax appeals or similar proceedings in its name, unless the provisions of any applicable law, rule or regulation at the time in effect shall require that such proceedings be brought by or in the name of Lessor, in which event, Lessor shall join and reasonably cooperate in such proceedings or permit the same to be brought in its name but shall not be liable for the payment of any costs or expenses in connection with any such proceedings and Lessee shall reimburse Lessor for any and all costs or expenses which Lessor may reasonably sustain or incur in connection with any such proceedings, including reasonable attorneys' fees and disbursements. Upon request of Lessee, Lessor shall execute in its capacity, as fee owner, and promptly deliver to Lessee, any documents or pleadings associated with such contest, in form reasonably approved by Lessor. The indemnity, defense and hold harmless provisions set forth above shall expressly survive the expiration or earlier termination of this Lease.

4.3 Intentionally omitted.

4.4 Refund. If there is any refund, rebate or credit on account of any Imposition payable by Lessee, such refund, rebate or credit shall belong to Lessee and such refund, rebate or credit which is allocable to the Term received by Lessor shall be promptly paid to Lessee or shall be deemed to be applied toward the next payment of Rental payable by Lessee to Lessor under this Lease. The provisions of this Section 4.4 shall survive the expiration or termination of this Lease.

4.5 Reductions in Assessed Value. Lessee shall have the right to seek reductions in the valuation of the Leased Premises assessed for Impositions and to prosecute any action or proceeding in connection therewith, provided that no such action or proceeding shall postpone Lessee's obligation to pay any Impositions, except in accordance with the provisions of Section 4.2 above. Lessor shall reasonably cooperate with Lessee in the seeking of the reduction in valuation and shall sign all documents reasonably requested by Lessee. All costs and expenses associated with any reduction in valuation sought by Lessee shall be paid by Lessee.

5. IMPROVEMENTS.

5.1 Improvements. Lessee shall have the right, from time to time and at any time, at its sole cost and expense, to construct Improvements and renovate, alter, modify, expand, reduce and demolish Improvements, and to permit Subtenants to construct, renovate, alter, modify, expand, reduce and demolish Improvements, provided that same is performed in compliance with land use entitlements, the provisions of this Lease set forth below, the insurance and indemnity provisions of this Lease, and all Applicable Laws. Notwithstanding the foregoing, Lessee shall obtain Lessor's prior approval of plans and all necessary permits before constructing the initial Improvements to be constructed in the Project. Lessor's failure to reasonably approve such plans in writing to Lessee within fifteen (15) Business Days after Lessor's receipt of same shall constitute Lessor's approval of such plans. Lessor shall not unreasonably withhold or delay approval or consent. Lessor shall reasonably cooperate with Lessee, without cost or liability to Lessor, and execute such other instruments, documents and other undertakings as shall be reasonably required in its capacity as the owner of the Leased Premises to enable Lessee to obtain and satisfy all land use approvals necessary to construct, reconstruct, replace, renovate, alter or add to the Leased Premises or any portion thereof, provided that the cost thereof shall be borne by Lessee.

5.2 General Requirements. All Improvements shall be constructed by licensed contractors and subcontractors who meet the insurance requirements of this Lease. Upon Lessor's request, Lessee shall provide Lessor with evidence of the required insurance, copies of all required permits and a reproducible copy of the final plans as so permitted. Upon Lessor's request made at any time within one year after completion of any Improvements, Lessee shall provide Lessor with one reproducible set of as-built drawings of such Improvements or drawings redlined to show changes from the permitted drawings (to the extent Lessee receives same or, if Lessee does not receive same then whatever final plans, drawings or specifications which Lessee receives), and a copy of all signed off building permits and certificates of occupancy (or their equivalent) relating thereto issued by any governing authority.

5.3 Liens. Lessee shall keep the Leased Premises free from any liens arising out of any work performed or materials furnished for, for the benefit of, or at the request of, Lessee or any Sublessee. In the event that Lessee shall not, within sixty (60) days following receipt of notice of the imposition of any such lien, cause the same to be released of record by payment, bond, deposit, order of court of a competent jurisdiction or otherwise, then in addition to all other remedies provided herein and by law or equity for Lessee default, Lessor shall have the right but not the obligation to cause the same to be released by such means as Lessor shall deem proper, including payment of the claim giving rise to such lien. All sums paid by Lessor for such purpose, and all expenses incurred by Lessor in connection therewith, including but not limited to reasonable attorneys' fees, shall be payable by Lessee to Lessor within thirty (30) days of demand as Additional Rent hereunder. Notwithstanding the foregoing provisions of this Section 5.3, Lessee shall not be required to discharge any such lien if Lessee is in good faith contesting the same in accordance with all Applicable Laws and has furnished a cash deposit or a security bond or other such security in accordance with all Applicable Laws in an amount sufficient to pay such lien with interest and penalties if Lessee does not prevail on such contest. Lessor shall have the right at any time and from time to time to post and maintain on the Leased Premises or require Lessee to post and maintain on the Leased Premises such notices as Lessor reasonably deems necessary to protect Lessor from mechanics' liens, materialmen's liens or any other liens including notices of non-responsibility disclaiming Lessor's liability with respect to construction work on the Leased Premises. In any event, Lessee shall pay, when due, all claims for labor or materials furnished to or for use in the Leased Premises or portion thereof. Neither Lessee nor any Subtenant, nor any agent, employee, representative, contractor, or subcontractor of either Lessee or any such Subtenant, shall have any power or authority to do any act or thing to make any contract or agreement which will bind Lessor or which may create or be the foundation for any mechanic's lien or other lien or claim upon or against Lessor's

interest in the Leased Premises or any portion thereof, and Lessor shall have no responsibility to any Subtenant, contractor, subcontractor, supplier, materialman, workman or other person who shall engage in or participate in any construction of any Alterations or other work on the Project. Lessor shall not be required to take action to remove or satisfy any such lien of any Subtenant, contractor, subcontractor, supplier, materialman, workman or other person.

5.4 Termination or Expiration of Lease. Upon the termination or expiration of this Lease, Lessee shall vacate and surrender the Leased Premises together with any Improvements, (other than Personal Property) then existing on the Leased Premises. Such Improvements shall be in good condition, ordinary wear and tear excepted and subject to the damage and condemnation provisions of this Lease. Notwithstanding the foregoing, it is agreed that Lessee, and/or its Subtenants may, for any cause, go upon the Leased Premises for a period of thirty (30) days following the termination or expiration of this Lease and remove all Personal Property placed on the Leased Premises by Lessee and/or any Subtenant and all other property placed on the Leased Premises which by its removal does not damage the structural integrity of the Improvements. Further, Lessee and its Subtenants may make alterations to the then existing Improvements (including, but not limited to, removal of signs and architectural features) at the expiration of the Term hereof (or term of the particular Sublease) to de-identify or otherwise prevent identification of such Improvements with Lessee or such Subtenant, and the Subtenants may remove their Improvements to the extent they have the right to do so under the Subleases provided they restore the applicable portions of the Leased Premises to a slightly condition following such removal.

5.5 No Lessor's Lien. Lessor hereby waives and disavows any statutory, contractual or common law lien or right of distraint attaching or relating to Lessee's and/or Subtenants' Personal Property. In connection therewith, Lessor hereby agrees to execute and return to Lessee, within twenty (20) days after Lessee or any Subtenant's request therefor, any commercially reasonable lien waiver consistent with the foregoing.

5.6 Ownership During Term. All Improvements shall be owned by and remain the exclusive property of Lessee or its successors and assigns (or the Subtenants, to the extent so provided in the Subleases) during the Term of this Lease. During the Term hereof, all depreciation, investment tax credits, amortization and similar benefits associated with ownership of the Improvements shall belong to Lessee (or the Subtenants, to the extent so provided in the Subleases).

6. ACCEPTANCE, USE, MAINTENANCE AND ENVIRONMENTAL MATTERS.

6.1 Acceptance. Subject to the covenants, conditions, representations and warranties contained herein, Lessee acknowledges and agrees that Lessee is leasing the Leased Premises on an _____ basis.

6.2 Use. Lessee may use the Leased Premises for any allowed use permitted under the El Corazon Specific Plan.

6.3 Environmental Matters.

(a) Lessee represents and covenants that Lessee will use Lessee's commercially reasonable efforts not to hereafter cause, allow or suffer to occur, a discharge, spillage, uncontrolled loss, seepage or filtration of any Hazardous Substance in levels violative of Applicable Laws at, upon, under or within the Leased Premises or any contiguous real property.

(b) Lessee shall comply in all material respects with the requirements of the Act and related regulations and with all other applicable environmental laws and regulations and shall

notify Lessor promptly in the event of a spill, discharge or release of a Hazardous Substance upon the Leased Premises of which Lessee becomes aware, and shall promptly forward to Lessor copies of all orders, notices, permits, applications or other communications and reports received by Lessee in connection with any such spill, discharge or release, or any other matters relating to the Act or related regulations or any similar Applicable Laws, as they may affect the Leased Premises.

(c) Lessee shall indemnify, defend and hold harmless Lessor, Lessor's officers, directors, managers, members, shareholders, affiliates, lenders, employees, agents, Lessor's successors, assigns and successors-in-title and all entities claiming by, through or under Lessor (collectively, the "**Lessor Indemnified Parties**") from and against all loss, liability, damage and expense, including reasonable attorneys', consultants' and expert witness fees, suffered or incurred by the Lessor Indemnified Parties, or any of them, (i) under or on account of the Act, or related regulations, or any other applicable environmental laws or regulations, including the assertion of any lien hereunder; (ii) with respect to any Hazardous Substance affecting the Leased Premises whether or not the same originates or emanates from the Leased Premises, or any other contiguous real property, including any loss of value of the Leased Premises or Project as a result of Hazardous Substances; and (iii) with respect to any other matter affecting the Leased Premises within the jurisdiction of the Environmental Protection Agency or any similar state, federal or local agency or any successor to any thereof, including with respect to any spill or Hazardous Substance affecting the Leased Premises; provided, however, there shall be excluded from the within and foregoing indemnification, defend and hold harmless agreement any loss, liability, damage or expense, including reasonable attorneys', consultants' and expert witness fees, suffered or incurred by the Indemnified Parties, or any of them, with respect to any spill or Hazardous Substance affecting the Leased Premises which is (i) caused by the Indemnified Parties, or any of them, or their respective agents, employees, officers or contractors, (ii) existing under the Leased Premises prior to the date of this Lease, except to the extent actually caused or contributed to by Lessee or its contractors, agents or employees and/or (iii) introduced onto or under the Leased Premises following the expiration or earlier termination of this Lease, except to the extent actually caused or contributed to by Lessee or its contractors, agents or employees. The foregoing indemnification, defend and hold harmless agreement shall expressly survive the expiration or termination of this Lease.

6.4 Maintenance. Lessee, at no cost to Lessor, shall keep and maintain, or cause to be kept and maintained, the Leased Premises (including the Improvements), and every part thereof, in good condition and order and shall, subject to Section 8.1 below, repair and replace same as necessary (including replacement of parts and equipment, as necessary), whether repairs or replacements are necessitated by ordinary, extraordinary, foreseen or unforeseen conditions. All such maintenance, repairs and replacements, shall be made in compliance with all governmental requirements and Applicable Law. At the time of the expiration or sooner termination of the tenancy created herein, Lessee shall surrender the Leased Premises and Improvements in good order, condition and repair, reasonable wear and tear excluded, subject to Lessee's and the Subtenant's rights under Section 5.4 above. Lessee shall keep and maintain the Leased Premises, Improvements and Project in a clean and sanitary condition, and in compliance with all Applicable Laws.

6.5 Change of Zoning or Other Governmental Conditions. Lessee acknowledges that the uses of the Leased Premises may require, from time to time, variances, conditional use permits or similar governmental approvals or permits. Lessor, at no cost to Lessor, agrees to properly execute and deliver any documentation reasonably required in connection with obtaining any such variances, conditional use permits and similar approvals or permits so long as the same are for uses permitted hereby and otherwise consistent with the requirements of this Lease; and provided further that the obligations of this Section 6.5 shall apply only to Lessor as the lessor under this Lease and shall have no application to Lessor acting in the capacity of the City of Oceanside as a regulatory agency.

6.6 Lessor's Fee Interest. Except as specifically set forth in this Lease, Lessee shall have no right, power or permission to do any act or make any agreement which may create, give rise to, or be the foundation for, any lien, charge or other encumbrance upon Lessor's title to or interest in the Leased Property or any portion thereof. In amplification and not in limitation of the foregoing, Lessee shall not permit or suffer any portion of Leased Premises to be used by any person or persons or by the public, as such, at any time or times during the Term of this Lease, in such manner as might reasonably tend to impair Lessor's title to or interest in the Leased Premises or any portion thereof or as might reasonably make possible a claim or claims of adverse use, adverse possession, prescriptive rights, dedication, or other similar claims and Lessee shall take such reasonable actions as are required to avoid and prevent claims by adverse use or possession, prescription or dedication, or other similar claims.

6.7 Lessor Representations. Lessor represents that, as of the date hereof, (a) Lessor owns fee simple title to the Leased Premises and that the Leased Premises is free of all monetary liens (other than non-delinquent Impositions); (b) Lessor shall deliver exclusive possession of the Leased Premises to Lessee; (c) Lessor is a Charter City, duly established, validly existing and in good standing under the laws of the State of California; (d) this Lease has been duly authorized, executed and delivered by Lessor, does not violate any provision of any agreement or judicial order to which Lessor is a party or to which Lessor is subject and does not, to the best of Lessor's knowledge, (i) conflict with or violate any provision of any agreement, law, rule, judgment, regulation, order, writ, injunction or decree of any court or governmental authority to which Lessor or the Leased Premises is subject, or (ii) violate or constitute a default under any of Lessor's formation or governing documents; (e) the execution and delivery of this Lease and all other documents to be executed by Lessor hereunder do not require any governmental or other consent that has not been obtained by Lessor; (f) this Lease is the legal, valid and binding obligation of Lessor; (g) Lessor has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by Lessor's creditors, suffered the appointment of a receiver to take possession of all, or substantially all, of Lessor's assets, suffered the attachment or other judicial seizure of all, or substantially all, of Lessor's assets, admitted in writing its inability to pay its debts as they come due or made an offer of settlement, extension or composition to its creditors generally; (h) there are no other leases, licenses or other occupancy agreements affecting the Leased Premises, (i) to Lessor's actual knowledge, no person or entity has any right of occupancy to all or any portion of the Leased Premises; (j) there is no pending or, to Lessor's actual knowledge, threatened litigation or proceeding which, if adversely determined, could materially adversely affect the ownership or development of the Leased Premises; and (k) to the best of Lessor's actual knowledge, the Leased Premises are not currently in violation of any Applicable Laws, including, but not limited to, those relating to Hazardous Substances, and neither Lessor, Lessor's agents, employees nor, to Lessor's actual knowledge, any person or predecessor-in-interest has used, generated, manufactured, stored or disposed of, on or about the Leased Premises or transported to or from the Leased Premises any Hazardous Substances except _____ [NEED TO REFERENCE EXISTING REPORTS].

7. INSURANCE.

7.1 Lessee's Required Property Insurance. Commencing as of the date Lessee first enters the Leased Premises and thereafter throughout the Term, Lessee shall, at Lessee's sole cost and expense, provide and maintain or cause to be provided and maintained for the Leased Premises, Improvements and Project ("**Insured Property**"), Commercial Property Insurance causes of loss special form (formerly known as "all risk") at replacement cost on an agreed value basis and with endorsements for debris removal, ordinance or law, soft costs and boiler and machinery. The foregoing property coverage shall be provided in amounts sufficient to provide one hundred percent (100%) of the full replacement cost of the Insured Property (exclusive of foundations and footings). If for any reason the Commercial Property Insurance causes of loss special form is not customarily used in the insurance

industry at any time during the Term, then the property insurance shall be covered by a form of policy then customarily carried for similar properties. All insurance proceeds received on account of any damage or destruction shall be paid to Lessee, subject to the any rights of Leasehold Mortgagees.

7.2 Lessee's Required Liability Insurance. Commencing as of the date Lessee first enters the Leased Premises and thereafter throughout the Term, Lessee shall, at Lessee's sole cost and expense, provide and maintain or cause to be provided and maintained for the Insured Property a commercial general liability policy (including liquor liability [if liquor is served from any Improvements], contractual liability (insuring Lessee's obligations set forth in this Lease) and products and completed operations liability coverage (including, without limitation, coverage for acts arising out of the serving and/or consumption of food and beverages), naming Lessor as an additional insured as its interests may appear, protecting Lessee and Lessor and the businesses operated by Lessee against claims for bodily injury (including death), personal injury (including slander, libel, false arrest, wrongful eviction and advertising injury) and property damage occurring upon, in or about the Insured Property and including coverage for Products and Completed Operations. Such insurance shall have an each occurrence limit of One Million Dollars (\$1,000,000.00) and general aggregate limit of Two Million Dollars (\$2,000,000.00) and additional coverage under umbrella policies of at least Five Million Dollars (\$5,000,000.00) and with commercially reasonable deductibles. All liability policies shall be written on an occurrence form; provided, however, that if (i) a basis other than such "occurrence" basis shall be generally adopted throughout the insurance industry and (ii) such other basis shall be accepted by most prudent owners of like buildings and improvements, then Lessee may provide and keep in force liability insurance written on such other basis. Notwithstanding anything to the contrary contained in this Section 7.2 above, Lessor can request, no more frequently than once every five (5) years during the Term, reasonable increases to the insurance limits as may be standard in the industry at that time.

7.3 Lessee's Other Required Insurance. Commencing as of the date Lessee first enters the Leased Premises and thereafter throughout the Term, Lessee shall, at Lessee's sole cost and expense, provide and maintain the following:

(a) Workers' compensation insurance (meeting the requirements of the state workers' compensation laws) and employer liability insurance covering all of Lessee's employees at the Leased Premises.

(b) Lessee and its contractors shall obtain contingent liability and builders risk insurance, including building ordinance coverage and soft costs coverage (using an AAIS form, company specific Inland Marine form or other then commercially reasonable form).

7.4 General Requirements.

(a) All insurance companies shall be qualified to write insurance and conduct business in the State and have a minimum a rating of A-:VII in Bests Rating Guide (or successor or replacement) or equivalent rating as to any successor or replacement.

(b) Lessee shall deliver to Lessor, certifications executed by Lessee's insurer(s) representing to Lessor that the insurance required to be maintained under this Lease is so maintained. To the extent available, each such certification shall also state that the insurance evidenced thereby shall not be reduced, canceled or materially changed unless prior written notice shall have been given by the insurer to Lessor.

(c) Notwithstanding anything to the contrary contained herein, Lessor agrees that Lessee shall have the right to cause its Subtenant(s) to carry any of the insurance required hereunder in lieu of Lessee.

(d) Lessee shall have the right (subject to the conditions set forth below) to self insure or cause any Subtenant to self insure the insurance required under this Section 7 so long as the net worth of Lessee and/or any Subtenant, as reflected in financial statements provided to Lessor pursuant to Lessor's request, exceeds \$____,000,000.00. Should Lessee or any Subtenant self insure pursuant to the terms herein provided, (i) Lessee shall be solely responsible for payment of one hundred percent (100%) of any and all claims made for losses or damages for which Lessee's (or such Subtenant's) third party insurance would provide coverage Lessee is required to obtain absent the self insurance right set forth herein and notwithstanding the waiver of subrogation provision set forth in Section 7.4(e) below; and (ii) all such insurance funds committed by Lessee and available for the purposes described above shall be subject to all provisions contained in this Lease with respect to the use, application, distribution or other disposition of insurance proceeds.

(e) Any policy or policies of insurance which are obtained by Lessee or Lessor in connection with the Leased Premises and/or improvements thereon shall include a clause or endorsement denying the insurer any rights of subrogation against the other party to the extent rights have been waived by the insured prior to the occurrence of injury or loss. Lessor and Lessee hereby waive any rights of recovery against the other for injury or loss due to hazards with respect to which insurance is in force containing such a waiver of subrogation clause or endorsement, to the extent of insurance coverage.

(f) Neither Lessor nor any fee mortgagee shall have any rights to consent to, or participate in, any settlement, and each of Lessor and any fee mortgagee shall waive any rights to receive any casualty insurance proceeds and shall immediately upon receipt endorse to Lessee any checks or proceeds with respect to casualty insurance proceeds paid in the name of either such party.

(g) Notwithstanding anything to the contrary herein set forth, the insurance required by this Lease, at the option of Lessee, may be effected by blanket or umbrella policies issued to Lessee covering the Leased Premises and other properties owned or leased by Lessee and/or its Affiliates, provided that the policies otherwise comply with the provisions of this Lease and specifically allocate to the Leased Premises the coverages required hereby, without possibility of reduction or coinsurance by reason of, or damage to, any other premises named therein, and if the insurance required by this Lease shall be effected by any such blanket or umbrella policies, Lessee shall furnish to Lessor certificates of insurance with respect to such policies, with schedules thereto attached showing the amount of insurance afforded by such policies applicable to the Leased Premises, but not to other properties.

(h) Lessee shall, from time to time, evaluate Lessee's insurance coverage and limits contained herein and shall modify such coverage and limits to reflect then customary coverage and limits carried by similarly situated ground lessees in comparable projects in the City of _____, but only to the extent such coverage and limits are then available at commercially reasonable rates.

7.5 Security. Lessee shall be responsible for providing or causing to be provided all security for the Leased Premises and the Improvements thereon (including, without limitation, adequate lighting and security patrols if required by any Applicable Law), and Lessee shall indemnify, defend and hold harmless Lessor from and against any and all claims, costs, losses, liabilities, damages or expenses (including reasonable attorneys fees and court costs) arising out of or related to the provision of security or failure to provide adequate security for the Leased Premises and the Improvements thereon.

8. DAMAGE OR DESTRUCTION

8.1 Obligation to Reconstruct or Restore. In the event of fire or other casualty to any portion of the Improvements, Lessee may elect to either restore or replace the affected Improvements or to not replace such Improvements and in lieu thereof raze the damaged Improvements and restore the applicable portion(s) of the Leased Premises to a slightly condition.

8.2 Waiver. Lessee waives all of its rights to terminate this Lease pursuant to rights presently or hereafter accorded by law to tenants, including but not limited to the provisions of Section 1932, Subdivision 2, and Section 1933, Subdivision 4, of the California Civil Code and any successor statutes or similar statutes, it being the intent of the parties that this Lease shall control as to damage and destruction.

9. CONDEMNATION

9.1 General. If, at any time during the Term, the Leased Premises, the Improvements, or any part thereof, shall be condemned or taken in lieu thereof by any governmental entity or Person having the power of eminent domain ("**Taken**" or "**Taking**"), then the provisions of this Section 9 shall apply to such condemnation proceedings and the distribution of any awards pertaining thereto.

9.2 Entire Leased Premises Taken. If the fee simple title in or permanent possession of, all of the Leased Premises is Taken, then this Lease shall terminate as of the Taking date, and any Rent shall be prorated and paid by Lessee to the date of such Taking.

9.3 Partial Taking. In the event that less than all of the Leased Premises is Taken and if reconstruction is not feasible, if the Improvements remaining after such Taking are no longer economically viable, access to the Leased Premises is materially impaired, parking areas remaining are not adequate, or visibility of the Improvements or signage is materially impaired, in each case, as determined by Lessee in its reasonable discretion within one year after the date of the Taking, then this Lease, at the election of Lessee, may be terminated as to the Leased Premises not so Taken as of the later of (i) the date of such Taking, or (ii) thirty (30) days after Lessee's notice of termination. If this Lease is not so terminated then this Lease shall remain in full force and effect as to all of the Leased Premises not so taken or conveyed, and Lessee shall remodel, repair, and restore the Improvements to the extent and in such manner as Lessee determines in its reasonable discretion to be appropriate and in accordance with the terms of this Lease.

9.4 Temporary Taking. If the whole or any part of the Leased Premises, or the Improvements shall be Taken for a temporary use or occupancy, the Term shall not be reduced or affected in any way and Lessee shall continue to pay in full the Rent without reduction or abatement in the manner and at the times herein specified but Lessor shall assign to Lessee any and all proceeds Lessor is entitled to receive in connection with such Temporary Taking. Except to the extent that Lessee is prevented from so doing pursuant to the terms of any order of the condemning authority, Lessee shall, to the extent reasonable possible, continue to perform and observe all of the other covenants, agreements, terms and provisions of this Lease as though such Taking had not occurred.

9.5 Condemnation Award. In the event of either a full condemnation or a partial condemnation, each party shall be entitled to claim and receive an award of damages for its losses suffered by it by reason of such Taking as set forth below; provided, however, that if Lessee does not terminate this Lease on account of such Taking, the first dollars awarded or paid shall be made available to pay the Site Restoration Costs. As used herein, "**Site Restoration Costs**" shall mean the expense of

restoring the Leased Premises, exclusive of the expense of restoring any building type Improvements. The parties agree to cooperate in applying for and in prosecuting any claim for such Taking, and to cooperate in determining and presenting any values of the items Taken. In the event the parties cannot agree on any such values, the mechanism set forth in Section 9.6 below shall be used to determine the same, and each party waives its rights to present conflicting evidence in the Taking proceeding. Any compensation and anything of value awarded, paid or received in settlement or otherwise, shall be allocated as follows:

(i) Lessor shall be entitled to:

(A) Any amount attributable to the fair market value of the real property taken, as if vacant and unimproved, giving effect to the existence of this Lease; and

(B) The reasonable reversionary value of the Improvements on the Leased Premises which Lessee does not have the right to remove and that are Taken, based on an assumed Lease Term of _____ () years (unless Lessee has provided Lessor written notice that Lessee will not be renewing the Term hereunder, in which event the actual Lease Term shall be used).

(ii) Lessee shall be entitled to:

(A) Any amount attributable to any excess of the market rental value of the portion of the Leased Premises so Taken for the remainder of the Term over the present value as of the date of the Taking of the rent payable attributable to the portion of the Leased Premises so Taken for the remainder of the Term (*i.e.*, the "bonus value" of the Lease);

(B) The fair market value of the Improvements on the Leased Premises which Lessee does not have the right to remove, and that are Taken, less the amount which Lessor is entitled to receive under Section 9.5(i) above;

(C) The fair market value of the Improvements on the Leased Premises which Lessee does have the right to remove, and that are Taken,

(D) Loss of business goodwill, provided the same does not reduce the award allocable to the matters set forth for Lessor and Lessee above (however, Lessee may pursue a claim therefor by separate action); and

(E) Reasonable removal and relocation costs pursuant to California Government Code 7260 *et seq.*, including, without limitation, relocation costs for any leasehold improvements that Lessee has the right to remove (the claim for which Lessee may pursue by separate action).

9.6 Determination of Values. The parties agree that the findings of values as finally determined in the condemnation proceeding shall be conclusive on the parties if such a determination is made. In the event of a settlement in lieu of such Taking proceeding or in the event the parties otherwise disagree on the value to be presented in the condemnation proceeding, the parties shall first attempt to allocate said settlement or agree on such value between themselves. If the parties are unable to agree within thirty (30) days after such Taking occurs, then either party may, by providing written notice to the other, require that the following mechanism be employed to determine such value. Within thirty (30) days of either party providing said notice, each party shall obtain an appraisal of (i) the fair market value of the Leased Premises (as if vacant but giving effect to the existence of this Lease), (ii) the bonus value

of this Lease, (iii) the fair market value of Lessee's Improvements on the Leased Premises which Lessee does not have the right to remove and that are Taken, and the value attributable to Lessor's reversionary interest therein, and (iv) the fair market value of Lessee's Improvements on the Leased Premises which Lessee does have the right to remove and that are Taken (each such item being referred to as a "**Dispute Item**"). As to each Dispute Item, if the lower appraisal is equal to or less than ten percent (10%) of the higher of the two appraisals, then the average of the two appraisals for that Dispute Item shall be conclusive on both parties. If the lower appraisal is more than ten percent (10%) less than the higher of the two, then the two appraisers shall select a third appraiser within five (5) business days with respect to such Dispute Item. The third appraiser shall provide his/her appraisal of the Dispute Item(s) in controversy within thirty (30) days of being selected. In such an event, the average of the third appraiser's appraisal and the appraisal closest in value to the third appraisal for the applicable Dispute Item shall be conclusive on both parties. All appraisals required hereunder shall be from M.A.I. certified appraisers with no less than five (5) years experience in appraising ground leased real property for similar commercial projects in the Southern California area. The costs of each appraiser selected by each party shall be borne by each party, with the costs of the third appraiser shared equally between the two parties.

9.7. Waiver. Lessee waives all of its rights to terminate this Lease pursuant to rights presently or hereafter accorded by law to tenants, Sections 1265.120 and 1265.130 of the California Code of Civil Procedure and any successor statutes or similar statutes, it being the intent of the parties that this Lease shall control as to condemnation rights.

9.8 Notice of Condemnation. In the event Lessor or Lessee shall receive notification of any proposed or pending condemnation proceeding affecting the Leased Premises or the Improvements, the party receiving such notification shall promptly notify the other party.

10. DISPOSITIONS, SUBLEASES, SALE OF LEASED PREMISES AND RIGHT OF FIRST REFUSAL

10.1 Dispositions. Lessee may make or create, or suffer to be made or created, any Disposition, subject to the following conditions:

- (a) The Disposition encompasses all of the Leased Premises and Lessee's interest in this Lease;
- (b) Lessee provides Lessor written notice thereof;
- (c) The transferee(s) thereof deliver to Lessor a written instrument, benefiting Lessor and executed by Lessee and the transferee(s), whereby Lessee's rights and obligations under this Lease accruing from and after the date of such assignment are assigned to and assumed by such transferee(s); and
- (d) Notwithstanding the foregoing, until the initial Improvements are substantially completed, lien free, Lessee shall not make any Disposition except to an Affiliate or in connection with an Encumbrance permitted hereunder.

10.2 Subleases. Lessee may enter into Subleases or other contractual agreements with Subtenants for all or any part of the Project, at any time and from time to time (to be effective only after the Commencement Date) and during the Term, with such Subtenants and upon such terms and conditions as Lessee shall, in its sole discretion, deem fit and proper, consistent with the other provisions of this Lease.

10.3 Liability. In the event of a Disposition in compliance with the provisions hereof, the transferring Lessee shall be relieved of all liability hereunder arising from and after the date of transfer and the successor lessee shall be liable for all obligations of Lessee under this Lease arising after the date of the transfer.

10.4 Obligations of Subtenants of Lessor. All Subleases are subject and subordinate to this Lease and the provisions of this Lease. However, Subtenants are not obligated to perform Lessee's obligations to Lessor under this Lease, unless so obligated under the Sublease.

10.5 Sale of Leased Premises. Subject to the rights of Lessee under Section 10.6 below, Lessor shall have the right to sell or otherwise transfer its fee interest in the entire Leased Premises (but not less than the entire Leased Premises) at any time or from time to time.

10.6 Right of First Refusal. If Lessor enters into a letter of intent, purchase agreement or other agreement ("**Sale Agreement**") with a bona fide, non-Affiliated third-party ("**Buyer**") to sell or otherwise transfer its interest in the Leased Premises, Lessor shall promptly notify Lessee of the same, together with the price and other material terms and conditions of same (a "**Trigger Notice**"). Lessee shall have the right, by giving Lessor written notice of same within thirty (30) days following Lessee's receipt of the Trigger Notice, to elect to purchase the Leased Premises at the price and on the other material terms and conditions set forth in the Trigger Notice, in which case Lessor and Lessee shall promptly execute a commercially-reasonable purchase agreement and open an escrow with respect to same. If Lessee does not exercise such right within said 30 day election period (or waives such right in writing prior to the expiration of the election period) Lessor shall thereafter be free to sell the Leased Premises to Buyer at the price and on the other material terms and conditions set forth in the Trigger Notice, provided that Lessor and Buyer enter into a binding purchase agreement with respect to such sale (to the extent Lessor and Buyer have not already done so) within 30 days following the expiration of the election period (or the date of Lessee's earlier written waiver of its election right) and such sale closes under such purchase agreement. If any of the conditions in the immediately preceding sentence is not satisfied, Lessee shall have a new 30 day election right with respect to that Sale Agreement and/or any subsequent or new Sale Agreement with that or any other Buyer.

11. NON-DISTURBANCE AND ATTORNMENT; AGREEMENTS

11.1 Subtenant Non-Disturbance and Attornment. Lessor covenants and agrees with Lessee for the benefit of each and every Subtenant, that in the event of an early termination of this Lease, each such Subtenant may continue to occupy its premises under its Sublease, provided such Subtenant shall attorn to Lessor and such Subtenant, promptly after the early termination of this Lease, shall provide Lessor with a written statement on Lessee's form, agreeing to such attornment.

11.2 Agreements. Lessor shall, at the request of Lessee made from time to time, enter into a non-disturbance and attornment agreement with any Subtenant identified by Lessee, which non-disturbance and attornment agreement shall incorporate the provisions set forth in this Article 11 and shall be on a commercially reasonable form. Lessor shall deliver to Lessee such non-disturbance and attornment agreement within fifteen (15) days after receipt of request of Lessee. Lessor and such Subtenant shall negotiate such agreement in good faith and execute such agreement as negotiated.

11.3 Lessor's Obligations. Notwithstanding anything to the contrary contained in this Lease, (i) in the event that this Lease is terminated as a result of the Improvements being damaged by a casualty or as a result of all or part of the Leased Premises being Taken, Lessor shall not be obligated to restore or rebuild the Improvements; and (ii) Lessor shall not be liable for or obligated with respect to

(A) any security deposits that it does not receive from Lessee, (B) any defaults and actions of Lessee, or (C) Sublease rents paid more than one (1) month in advance.

12. LEASEHOLD MORTGAGES; FINANCING OF PERSONAL PROPERTY; SUBLEASE FINANCING; LESSOR MORTGAGES

12.1 Leasehold Mortgage. Lessee may encumber, pledge, grant, or convey its rights, title and interest under this Lease by way of a Leasehold Mortgage. If requested by Lessee, Lessor, Lessee and such Leasehold Mortgagee shall enter into a commercially reasonable agreement regarding the rights and obligations of such Leasehold Mortgagee, consistent with the provisions of this Lease, including but not limited to Section 12.4 below. Lessor agrees to act diligently and in a timely manner in entering into such agreement. Nothing contained herein shall be deemed to allow a subordination of the fee or Lessor's reversionary estate in the Leased Premises.

12.2 Personal Property Financing. Lessee, and any Subtenant (to the extent permitted by Lessee), may grant security interests in or place liens upon any Personal Property without such interest or liens constituting a Disposition. At the request of Lessee, Lessor shall enter into any agreement with Lessee, Subtenant and such secured party, in a timely manner, to facilitate such security interests and liens upon such Personal Property, which agreement shall be in a form and substance reasonably satisfactory to Lessee and/or the Subtenant.

12.3 Sublease Financing. Each Subtenant (to the extent permitted by Lessee), shall have the right, at any time, to encumber its sub-leasehold estate by a mortgage or other encumbrance or lien. If requested by Lessee, Lessor, Lessee, the Subtenant and such Subtenant's mortgagee shall enter into a commercially reasonable agreement as to the rights and obligations of the Subtenant's mortgagee, consistent with the provisions of this Lease. Nothing contained herein shall be deemed to allow a subordination of the fee or Lessor's reversionary estate in the Leased Premises. Each Subtenant may mortgage only its sub-leasehold interest in the Leased Premises.

12.4 Rights and Obligations of Leasehold Mortgagees.

(a) If Lessee shall furnish Lessor with a written notice setting forth the name and address of any Leasehold Mortgagee, Lessor shall thereafter copy such Leasehold Mortgagee on any default notice given to Lessee under this Lease. Each Leasehold Mortgagee (i) shall thereupon have a period of fifteen (15) days more than is given to Lessee in each instance in the case of an Event of Default in the payment of Rent and forty-five (45) days more (subject to Force Majeure) than given to Lessee in each instance in the case of any other Event of Default, for remedying the Event of Default, or causing the same to be remedied, and (ii) shall, within such periods and otherwise as herein provided, have the right to remedy such Event of Default or cause the same to be remedied. Lessor shall accept performance by any such Leasehold Mortgagee of any covenant, condition or agreement on Lessee's part to be performed hereunder with the same force and effect as though performed by Lessee.

(b) No Event of Default by Lessee shall be deemed to exist as long as a Leasehold Mortgagee, within five (5) Business Days after the delivery of a second notice to any such Leasehold Mortgagee stating that the Lessee period to cure has expired, shall have delivered to Lessor its written agreement to take the action described in clause (i) or (ii) herein and thereafter, in good faith, shall have commenced promptly (subject to Force Majeure) either (i) to cure the Event of Default and to prosecute the same to completion, or (ii) if possession of the Premises is required in order to cure the Event of Default, to institute foreclosure proceedings and obtain possession directly or through a receiver, and to prosecute such proceedings with diligence and continuity and, upon obtaining such possession, commence promptly to cure the Event of Default and to prosecute the same to completion with diligence

and continuity, provided that during the period in which such action is being taken (and any foreclosure proceedings are pending), all obligations of Lessee to pay Rent, and all other obligations of Lessee under this Lease, to the extent they are reasonably susceptible to being performed by any such Leasehold Mortgagee, are being performed. However, at any time after the delivery of the aforementioned agreement, any such Leasehold Mortgagee may notify Lessor, in writing, that it has relinquished possession of the Premises or that it will not institute foreclosure proceedings or, if such proceedings have been commenced, that it has discontinued them, or any such Leasehold Mortgagee otherwise elects not to cure the Event of Default, and in such event, any such Leasehold Mortgagee shall have no further liability under such agreement from and after the date it delivers such notice to Lessor. Thereupon or upon any such Leasehold Mortgagee not otherwise satisfying the foregoing pre-requisites to Lessor's abeyance of its rights and remedies with respect to Lessee's Event of Default, Lessor shall have the unrestricted right to terminate this Lease and to take any other action it deems appropriate by reason of any Event of Default, and upon any such termination the provisions of Section 12.5 shall apply. Notwithstanding anything herein contained to the contrary, provided any such Leasehold Mortgagee shall have otherwise complied with the provisions of this Section 12.4, any such Leasehold Mortgagee shall have no obligation to cure any Event of Defaults which are not reasonably susceptible to being cured by such Leasehold Mortgagee. At the request of any such Leasehold Mortgagee, Lessor agrees to stipulate as to Events of Default which Lessor agrees are not reasonably susceptible of cure. With respect to Events of Default not reasonably susceptible to cure by any such Leasehold Mortgagee, the completion of any foreclosure proceeding shall be deemed to remedy such Events of Default. Lessor shall not be entitled to exercise any remedies hereunder that would impair any such Leasehold Mortgagee's rights under this Section 12.4 during the continuance of any of the cure periods described in this Section 12.4.

(c) Except as expressly provided in Section 12.4(b), no Leasehold Mortgagee shall become liable under the provisions of this Lease unless and until such time as it becomes, and then only for as long as it remains, the owner of the leasehold estate created hereby. In the event that a Leasehold Mortgagee shall become the owner of such leasehold estate, such Leasehold Mortgagee shall not be bound by any modification or amendment of this Lease made subsequent to the date of the Leasehold Mortgage and delivery to Lessor of the notice provided in Section 12.4(a) and prior to its acquisition of such interest unless the Leasehold Mortgagee shall have consented in writing to such modification or amendment at the time it was made or at the time of such acquisition.

(d) A copy of any notice of termination given by Lessor to Lessee (other than a termination by reason of an Event of Default) shall be given by Lessor at the same time and in the same manner to any Leasehold Mortgagee then entitled to receive copies of notices of Events of Default under Section 12.4(a).

(e) The holder of any Leasehold Mortgage, security agreement or other lien now or hereafter made by or on behalf of Lessee and affecting the Premises, or any part thereof, shall not name or join Lessor, the Premises, or anyone claiming through or under Lessor (other than Lessee or anyone claiming through or under Lessee) as a party defendant in any action or proceeding that may be instituted or taken by said holder for foreclosure or other enforcement of the Leasehold Mortgage, security agreement or other lien. In the event that Lessor or anyone claiming through or under Lessor (other than Lessee or anyone claiming through or under Lessee) is named as a party defendant in such action or proceeding, then Lessee shall reimburse Lessor, within thirty (30) days of Lessor's demand, for the reasonable actual out-of-pocket costs and expenses, including reasonable attorneys' fees and disbursements, incurred by Lessor in connection therewith.

(f) Nothing contained in this Lease, shall be deemed to allow a subordination of Lessor's reversionary estate in any part or portion of the Leased Premises. In no event

will such subordination be made. Lessee may mortgage only its leasehold interest in the Leased Premises.

12.5 New Lease.

(a) In the case of termination of this Lease by reason of any Event of Default or otherwise (including as a result of a rejection of this Lease by Lessee or Lessee's trustee in bankruptcy), Lessor shall give prompt notice thereof to each Leasehold Mortgagee whose name and address Lessor has received pursuant to notice made in compliance with the provisions of Section 12.4(a), at the address of such Leasehold Mortgagee set forth in such notice, and otherwise in the manner provided in the Lease. Subject to the provisions of Section 12.7, Lessor, on written request of a Leasehold Mortgagee made any time within thirty (30) days after the giving of such notice by Lessor, shall promptly execute and deliver a new lease of the Premises to the Leasehold Mortgagee, or its designee or nominee, for the remainder of the Term upon all the covenants, conditions, limitations and agreements herein contained, provided that such Leasehold Mortgagee or designee (i) shall pay to Lessor, simultaneously with the delivery of such new lease, all unpaid Rent due under this Lease (less any sums collected by Lessor from Subtenants) up to and including the date of the commencement of the term of such new lease and all expenses, including, without limitation, reasonable attorneys' fees and disbursements and court costs, incurred by Lessor in connection with the Event of Default by Lessee, the termination of this Lease and the preparation of the new lease, and (ii) shall cure all Events of Default existing under this Lease which are reasonably susceptible to being cured by such Leasehold Mortgagee or designee. At the request of such Leasehold Mortgagee, Lessor agrees to stipulate as to Events of Default which Lessor agrees are not reasonably susceptible of cure. Notwithstanding anything to the contrary, if after the Leasehold Mortgagee requests a new lease, the Leasehold Mortgagee is given notice of an Event of Default which existed before the request for a new lease and was not disclosed to the Leasehold Mortgagee in a notice delivered by Lessor prior to the date such request was made, then at any time within ten (10) days after notice is given to the Leasehold Mortgagee, or its assignee, the Leasehold Mortgagee or its assignee, as applicable, may relinquish possession of the Premises and cancel this Lease and any such new lease by notice to Lessor.

(b) Any such new lease and the leasehold estate thereby created shall, subject to the same conditions as are contained in this Lease, continue to maintain the same priority as this Lease with regard to any mortgage, including any fee mortgage, on the Premises or any part thereof or any other lien, charge or encumbrance thereon. Concurrently with the execution and delivery of such new lease, Lessor shall assign to the tenant named therein all of its right, title and interest in and to (i) monies (including insurance and condemnation proceeds), if any, then held by or payable to Lessor which Lessee would have been entitled to receive but for termination of this Lease and (ii) any Sublease which Lessor shall have become the lessor thereunder in accordance with a Non-Disturbance and Attornment Agreement as a result of the termination of this Lease by reason of any Event of Default which occurred prior to such new lease.

(c) Upon the execution and delivery of a new lease under this Section 12.5, all Subleases which theretofore have been assigned to, or made by, Lessor shall be assigned and transferred, without recourse, by Lessor to the tenant named in such new lease. Between the date of termination of this Lease and the date of execution of the new lease, if a Leasehold Mortgagee shall have requested such new lease as provided in Section 12.5(a), Lessor shall not cancel any Subleases or accept any cancellation, termination or surrender thereof (unless such termination shall be effected as a matter of law on the termination of this Lease) without the consent of the Leasehold Mortgagee.

12.6 Continuation of Lease in Lieu of New Lease.

(a) Notwithstanding anything to the contrary contained herein, Lessor shall deliver to each Leasehold Mortgagee a copy of any termination notice delivered by Lessor to Lessee concurrently with the delivery of such notice to Lessee, and the effectiveness of any such termination notice shall, for the benefit of any Leasehold Mortgagee only, be subject to the provisions of this Section 12.6. A copy of any termination notice delivered to a Leasehold Mortgagee shall set forth in reasonable detail a description of all Event of Defaults, to the actual knowledge of Lessor, in existence at the time such termination notice was sent by Lessor. A Leasehold Mortgagee shall have the right, within thirty (30) days after the delivery of the termination notice to such Leasehold Mortgagee, to elect to continue this Lease in lieu of requesting a new lease by notice to Lessor and Lessee, subject to the further conditions of this Section 12.6. Such right may be exercised, in accordance with the terms and conditions of this Section 12.6, by a Leasehold Mortgagee or any designee or nominee of a Leasehold Mortgagee.

(b) If a Leasehold Mortgagee elects to continue this Lease by notice given to Lessor and Lessee within such thirty (30) day period (the "**Continuation Notice**"), then effective upon the delivery of such notice, Lessee shall be deemed to have assigned to such Leasehold Mortgagee, or any such designee or nominee thereof, as the case may be, all of Lessee's right, title and interest in and to this Lease and the leasehold estate in the Leased Premises and Improvements created hereunder, including the Subleases and security deposits thereunder, and Lessee shall, at Lessor's request, execute and deliver to Lessor and such Leasehold Mortgagee such instruments of assignment and related transfer tax documents as Lessor and such Leasehold Mortgagee may request (in form reasonably satisfactory to Lessor and such Leasehold Mortgagee) to evidence such assignment. If Lessee fails to execute and deliver any such instrument of assignment or related transfer tax documents, such Leasehold Mortgagee shall be entitled to do so on Lessee's behalf, and Lessee hereby appoints such Leasehold Mortgagee as its attorney-in-fact, which appointment shall be deemed to be coupled with an interest and is irrevocable, for the sole purpose of executing and delivering such assignment and any transfer tax documents. The execution and delivery of such instruments, however, shall not be required to effect the assignment of this Lease to such Leasehold Mortgagee or such nominee or designee. In no event shall Lessor be obligated to pay any transfer taxes in connection with such assignment.

(c) The provisions of Section 12.6(a) and (b) hereof notwithstanding, a Leasehold Mortgagee shall have no right to continue this Lease (i) unless the Leasehold Mortgagee shall cure all Events of Default existing under this Lease which are reasonably susceptible of being cured by such Leasehold Mortgagee or its designee and pays to Lessor, concurrently with the delivery of the Continuation Notice, all Rent due under this Lease up to and including the date of the Continuation Notice and all expenses, including reasonable attorneys' fees and disbursements and court costs, incurred by Lessor in connection with (A) the enforcement of Lessor's rights and remedies with respect to all Event of Defaults or events of Event of Default in existence at the time of the termination notice (to the extent set forth in the notice to be delivered pursuant to Section 12.6(a) hereof), and (B) the review of any assignments and other instruments or documents prepared in connection with the Leasehold Mortgagee's election, or (ii) if by order of a court of competent jurisdiction the parties are not entitled to continue this Lease and effect the assignment thereof to the Leasehold Mortgagee. To the extent not set forth in the notice given to the Leasehold Mortgagee pursuant to Section 12.6(a) hereof, Lessor agrees to notify the Leasehold Mortgagee, concurrently with the delivery of such new lease, of any unperformed obligations of, and/or Event of Defaults by, Lessee (whether monetary or otherwise), which, to the best of Lessor's knowledge, then exist.

(d) Notwithstanding anything to the contrary, if after the Leasehold Mortgagee delivers a Continuation Notice pursuant to Section 12.6(a) the Leasehold Mortgagee is given notice of a Event of Default existing before the Continuation Notice and which was not previously

disclosed to Leasehold Mortgagee by a notice from Lessor, then at any time within ten (10) days after such notice is given the assignee may relinquish possession of the Demised Land and cancel this Lease by notice to Lessor. Thereupon, Lessor shall have the right to terminate this Lease, subject to Section 12.7, without offering the Leasehold Mortgagee a new lease pursuant to Section 12.5, and the Leasehold Mortgagee shall have no further rights to a new lease thereunder.

(e) Concurrently with the assignment of this Lease pursuant to the provisions of Section 12.6(b) hereof, Lessor shall assign to the assignee of this Lease all of its right, title and interest in and to monies (including insurance proceeds and condemnation awards), if any, then held by, or payable to, Lessor that Lessee would have been entitled to receive but for the occurrence of an event of Default and the expiration of any cure periods, other than any such amounts theretofore applied under this Lease to the discharge of Lessee's obligations to Lessor hereunder, subject to the rights, if any, of the prior Lessee therein.

(f) Nothing contained herein shall be deemed to obligate Lessor to remove any liens, encumbrances or other defects in title to the Land or to deliver possession of the Land to the assignee under any such assignment, except for the delivery of possession free and clear of the claims of persons or entities claiming through or under Lessor, other than Lessee and those claiming by, through or under Lessee.

(g) Upon the assignment of this Lease pursuant to the provisions of Section 12.6(b), all Subleases assigned to Lessor shall concurrently therewith be assigned and transferred to the assignee of the Lease, together with any security or other deposits held by Lessee and transferred to Lessor and not applied under such subleases, without recourse, to the assignee of the Lease. Similarly, upon assignment of this Lease pursuant to the provisions of Section 12.6(b), all leased equipment that may have been assigned to Lessor shall concurrently therewith be assigned and transferred, without recourse, to the assignee of this Lease.

(h) Notwithstanding anything to the contrary contained in this Section 12.6, if a Leasehold Mortgagee fails to elect to continue this Lease within the thirty (30) day period referred to in Section 12.6(a), then, subject to Section 12.7, this Lease shall terminate effective upon the expiration of such 30-day period. Notwithstanding anything to the contrary contained in Section 12.5, such Leasehold Mortgagee shall have thirty (30) days after the delivery of the termination notice referred to in Section 12.5(a) to request a new lease, and if such Leasehold Mortgagee fails to request a new lease within such thirty (30) day period, then such Leasehold Mortgagee's rights to enter into a new lease shall terminate.

12.7 Multiple Leasehold Mortgagees. If there is more than one Leasehold Mortgagee, and more than one Leasehold Mortgagee has exercised any of the rights afforded by Sections 12.4, 12.5, 12.6, 12.7 and 12.8 within the time periods set forth therein, then unless otherwise provided in the Leasehold Mortgage most senior in lien (or otherwise acknowledged in writing by the holder thereof), only that Leasehold Mortgagee, to the exclusion of all other Leasehold Mortgagees, whose Leasehold Mortgage is most senior in lien shall be recognized by Lessor as having exercised such rights, for so long as such Leasehold Mortgagee shall be exercising its rights under this Lease with respect thereto, and thereafter, successively, the Leasehold Mortgagees whose Leasehold Mortgages are next most senior in lien shall be recognized by Lessor, in order of seniority. If the parties do not agree on which Leasehold Mortgagee is prior in lien, such dispute shall be determined by a then current certificate of title obtained by Lessor or Lessee, at Lessee's sole expense, issued by a title insurance company licensed to do business in the State of California chosen by Lessor, and such determination shall bind the parties.

12.8 Miscellaneous Leasehold Mortgage Provisions.

(a) A Leasehold Mortgagee shall have the right to assign any Leasehold Mortgage held by it to a nominee, prior to and in anticipation of the foreclosure of such Leasehold Mortgage, and the Leasehold Mortgagee shall not thereby lose its status as a Leasehold Mortgagee unless and until such time as such nominee becomes the owner of the leasehold estate created hereby.

(b) Lessee may delegate irrevocably to a Leasehold Mortgagee the authority to exercise any or all of Lessee's rights hereunder, but no such delegation shall be binding upon Lessor unless and until either Lessee or such Leasehold Mortgagee shall give to Lessor an executed counterpart of the written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Leasehold Mortgage itself, in which case, the service upon Lessor of an executed counterpart or certified copy of such Leasehold Mortgage in accordance with this Section 12.8, together with a written notice specifying the provisions thereof which delegate such authority to such Leasehold Mortgagee, shall be sufficient to give Lessor notice of such delegation. In such event, Lessor shall be entitled to rely upon such delegation of authority until Lessor shall have received written notice from such Leasehold Mortgagee indicating that such delegation of authority shall have been revoked or terminated.

(c) The provisions of Sections 12.4 through 12.9 shall survive the termination of this Lease.

(d) If Lessor (as debtor in possession) or a trustee in bankruptcy for Lessor rejects this Lease in connection with any bankruptcy proceeding involving Lessor, then, notwithstanding any rejection of this Lease: (i) Lessee shall not have the right to treat the Lease as terminated without the consent of Leasehold Mortgagee; (ii) Lessee's possessory and other rights in and to the Leased Premises under applicable bankruptcy law shall continue in full force and effect; (iii) the lien of Leasehold Mortgagee in effect before such rejection shall extend to Lessee's continued possessory and other rights under 11 U.S.C. Section 365(h); (iv) all of the Leasehold Mortgagee protections shall survive any bankruptcy proceeding in which either Lessee or Lessor is a debtor, (v) no foreclosure or assignment of lease in lieu of foreclosure shall be deemed an assignment of the Lease requiring Lessor's consent, (vi) if Lessee purports, without Leasehold Mortgagee's consent, to elect to treat this Lease as terminated, then such election and purported termination shall be null, void, and of no force or effect, (vii) if Lessee does not with Leasehold Mortgagee's consent treat this Lease as terminated, then this Lease shall continue in effect without change upon all the terms and conditions set forth in this Lease, including provisions relating to Rent, subordination, attornment and new leases, and (viii) the lien of any Leasehold Mortgage that was in effect before the rejection of this Lease shall extend to Lessee's continuing possessory and other rights under 11 U.S.C. § 365(h) with respect to the Leased Premises and this Lease following such rejection, with the same priority as such lien would have enjoyed with respect to the leasehold estate had such rejection not taken place.

12.9 Lessor Mortgage. Lessor may place any Mortgage against the Leased Premises and/or Lessor's interest in this Lease. Lessee agrees that within twenty (20) days after the receipt of any demand by such Mortgagee, Lessee shall, execute whatever instruments may be required to carry out the intent of this Section in form reasonably approved by the parties. If Lessee is given notice of the name and address of a Mortgagee, Lessee shall give written notice of any default of Lessor to such Mortgagee. Lessee shall afford such Mortgagee the right to cure such default as allowed by this Lease and such Mortgagee shall be provided an additional ten (10) days beyond Lessor's cure period to commence to cure such default and if such Mortgagee diligently pursues the cure of such default to completion on behalf of Lessor in accordance with this Lease, such default shall be deemed cured. In the event Lessor's interest in the Leased Premises and/or this Lease passes to a Successor ("**Successor**") by sale, lease, foreclosure or in any other manner, Lessee shall be bound to the Successor under all of the terms of this

Lease for the balance of the Term and such Successor shall be bound to Lessee under all of the terms of this Lease for the balance of the Term, with the same force and effect as if the Successor were the Lessor under this Lease, and Lessee hereby agrees to attorn to such Successor as its Lessor, such attornment to be effective upon written notice thereof given by Lessor or such Successor to Lessee. Within twenty (20) days after the receipt of any demand by such Mortgagee, Lessee shall execute whatever commercially reasonable instruments may be required to carry out the intent of these provisions in form reasonably approved by the parties. In the event that Lessor's interest in the Leased Premises passes to a Successor and such Successor is bound unto Lessee as set forth above, Lessor shall be released from all future obligations to Lessee hereunder arising after the date Lessor's interest so passes. Notwithstanding the above, at its option, such Mortgagee may require that this Lease be subject and subordinate to such Mortgage and to all advances made thereunder, and to all renewals, modifications, replacements, substitutions, consolidations, spreaders and extensions thereof; provided, however, that Lessee shall not be obligated to comply with any provision contained in said Mortgage which conflicts with the provisions of this Lease, it being understood that such subordination is for the limited purpose of establishing priority of record, and as a prerequisite to such subordination, the parties shall enter into a subordination, non-disturbance and attornment agreement in form reasonably approved by the parties.

13. DEFAULT.

13.1 Events of Default by Lessee. Each of the following shall constitute an Event of Default by Lessee:

(a) The failure of Lessee to pay Rent or any other charges as required under this Lease, within ten (10) Business Days of receipt of written notice.

(b) The failure of Lessee to perform or to observe any other covenant, obligation or requirement of Lessee arising under this Lease and/or under Section 500.10.2 of the DDA and the continuation of such failure for thirty (30) days after receipt of written notice from Lessor specifying the nature and extent of such failure; or if such failure cannot reasonably be cured within such thirty (30) day period, the failure of Lessee to commence to cure such failure within thirty (30) days after receipt of written notice from Lessor specifying the nature and extent of such failure and to diligently pursue same to completion.

(c) The filing by Lessee of a voluntary proceeding or the consent by Lessee to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights.

(d) The entering of an order for relief against Lessee or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Lessee in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of ninety (90) consecutive days.

13.2 Remedies; Waiver.

(a) Upon an Event of Default by Lessee, in addition to or in lieu of other rights or remedies it may have under this Lease or by law or equity, Lessor shall have the right to (i) terminate this Lease and Lessee's right to possession of the Leased Premises by giving Lessee written notice that this Lease is terminated, if the Event of Default arises from Section 500.10.2 of the DDA, provided further that if the Event of Default arises from this Lease, in which event, upon such termination, Lessor shall have the right to recover from Lessee the sum of (1) the worth at the time of award of the unpaid Rent which had been earned at the time of termination; (2) the worth at the time of

award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Lessee affirmatively proves could have been reasonably avoided (3) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Lessee affirmatively proves could have been reasonably avoided; (4) any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform Lessee's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom; and (5) all such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under Applicable Law; or (ii) have this Lease continue in effect for so long as Lessor does not terminate this Lease and Lessee's right to possession of the Premises, in which event Lessor shall have the right to enforce all of Lessor's rights and remedies under this Lease including the right to recover the Rent and other charges payable by Lessee under this Lease as they become due under this Lease, and Lessee shall have the right to sublet the Leased Premises or assign Lessee's interest in this Lease in accordance with this Lease; or (iii) without terminating this Lease, Lessor may pay or discharge any breach or violation hereof which amount so expended shall be added to the next monthly incremental payment of Rent due and treated in the same manner as rental hereunder; or (iv) without terminating this Lease, make such alterations and repairs as may be necessary in order to relet the Leased Premises, and relet the Leased Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term of this Lease) at such rental or rentals and upon such other terms and conditions as are commercially reasonable.

(b) Upon such reletting all rental and other sums received by Lessor from such reletting shall be applied, first, to the payment of any indebtedness other than rental due hereunder from Lessee to Lessor; second, to the payment of any costs and expenses of such reletting, including reasonable brokerage fees and attorney fees and of costs of such alterations and repairs; third, to the payment of Rent due and unpaid hereunder; and the residue, if any, shall be held by Lessor and applied in payment of future Rent payable by Lessee hereunder, as the same may become due and payable hereunder. If such rentals and other sums received from such reletting during any month are less than the Rent to be paid during that month by Lessee hereunder, Lessee shall pay such deficiency to Lessor; if such rentals and sums shall be more, such excess shall be applied against future amounts due from Lessee. Such deficiency shall be calculated and paid monthly. No re-entry or taking possession of the Leased Premises by Lessor shall be construed as an election on its part to terminate this Lease unless a written notice of such intention is given to Lessee or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Lessor may at any time thereafter elect to terminate this Lease for such previous breach. Should Lessor at any time terminate this Lease for any breach, in addition to any other remedies it may have, it may recover from Lessee all damages it may incur by reason of such breach, including the cost of recovering the Leased Premises, all of which amount shall be immediately due and payable from Lessee to Lessor. Lessor shall use its commercially reasonable efforts to mitigate its damages hereunder and relet the Leased Premises; however, the failure of Lessor to relet the Leased Premises shall not affect Lessee's liability. The terms "entry" and "re-entry" are not limited to their technical meanings. In the event of re-entry by Lessor, Lessor may through process of law remove all persons and property from the Leased Premises and such property may be stored in a public warehouse or elsewhere at the cost of, and for the account of Lessee without Lessor being deemed guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby. In the event Lessee shall not remove its property from the Leased Premises within ten (10) days after Lessee has vacated the Leased Premises, then such property shall be deemed abandoned by Lessee and Lessor may dispose of the same without liability to Lessee.

(c) For purposes of subsection (a) (1) and (2) above, "worth at the time of award" shall be computed by allowing interest at the Interest Rate or the maximum rate permitted by law, whichever is less; for purposes of subsection (a) (3) above "worth at the time of award" shall be computed

by discounting such amount at the discount rate of the Federal Reserve Bank whose jurisdiction includes the Project Site at the time of award, plus one percent (1%).

13.3 Cumulative. Each right and remedy of Lessor provided for herein or now or hereafter existing at law, in equity, by statute or otherwise shall be cumulative and shall not preclude Lessor from exercising any other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity, by statute or otherwise.

13.4 Lessor Default. Any breach of this Lease by Lessor shall be deemed to be an “**Event of Default by Lessor**” if Lessor fails to cure such breach within thirty (30) days after written notice by Lessee to Lessor (and to the holder of any mortgage or deed of trust covering the Leased Premises whose name and address shall have theretofore been furnished to Lessee in writing) specifying the breach; provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days are required for cure, then there shall not be deemed to be an Event of Default by Lessor if Lessor commences the cure within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

13.5 Attorneys' Fees. If at any time after the Commencement Date, either Lessor or Lessee institutes any action or proceeding against the other relating to the provisions of this Lease or any default hereunder, the non-prevailing party in such action or proceeding shall reimburse the prevailing party for the reasonable expenses of attorney fees and all costs and disbursements incurred therein by the prevailing party, including, without limitation, any such fees, costs or disbursements incurred on any appeal from such action or proceeding. Subject to the provisions of local law, the prevailing party shall recover all such fees, costs or disbursements as costs taxable by the court or arbiter in the action or proceeding itself without the necessity for a cross-action by the prevailing party.

14. MISCELLANEOUS PROVISIONS.

14.1 Force Majeure. The performance of the obligations of this Lease (other than the payment of Rent) shall be subject to delay due to acts of God (including storms, floods, earthquakes or other casualty), inability to obtain labor or materials due to governmental restrictions (other than any governmental restrictions which Lessee is bound to observe pursuant to the terms of this Lease), civil commotion, war, invasion, terrorist acts and any other event or circumstance beyond the reasonable control of the performing party (“**Force Majeure**”), provided that financial inability or the unavailability of funds shall not be deemed Force Majeure in any event. In the event of the occurrence of any such events, the time or times for the performance of the covenants, provisions, and agreements of this Agreement shall be extended for the period of the delay (including any time reasonably required to recommence performance due to such delay). The affected party shall notify the other party of the Force Majeure event within thirty (30) days of knowledge of its occurrence and shall use diligent efforts to carry out its agreements as soon as reasonably possible. Notwithstanding the above, neither party may rely on its own acts or omissions or the acts or omissions of its employees or agents as grounds for delay in its performance.

14.2 Estoppel Certificates. Lessor and Lessee, at any time and from time to time, upon not less than fifteen (15) days prior written notice from the other, shall execute, acknowledge, and deliver to the requesting party, a statement in form reasonably approved by the parties, certifying, to the requesting party and/or a Person designated by such party, such as a mortgagee or lender: (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (b) whether or not, to the best of knowledge of the signer of such certificate, Lessor or Lessee is in breach and/or default in performance of any covenant, agreement, or condition contained in this Lease, and (c) any other factual matters reasonably requested in such estoppel certificate.

14.3 Lessor's Rights of Access. Subject to the rights of each Sublessee under its applicable Sublease, Lessee agrees that Lessor and Lessor's employees and agents, shall have the right, at all reasonable times during business hours and following at least two (2) Business Days' prior written notice to Lessee, to enter upon the Leased Premises and the Improvements and to examine and inspect same for the purpose of determining whether or not Lessee is in compliance with its obligations hereunder.

14.4 Notices. Any notice, communication or request under this Lease ("notice" or "Notice") shall be sufficiently given or delivered if sent by either (a) certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight delivery service (next Business Day service), or (c) hand delivery (if receipt is evidenced by a signature of the addressee or authorized agent), and addressed to the applicable parties as follows:

(a) Each Notice to Lessor shall be addressed as follows:

Attention: _____

With a copy to:

(b) Each Notice to Lessee shall be addressed as follows:

c/o Sudberry Development, Inc.
5465 Morehouse Drive, Suite 260
San Diego, California 92121
Attention: Colton T. Sudberry

With a copy to:

Attention: _____

Any Notice shall be deemed to have been given, delivered or sent: (a) as of the date of delivery if sent by nationally recognized express mail service, (b) as of the fifth Business Day after being sent, if sent by Registered or Certified U.S. Mail, or (c) upon receipt, if sent by hand delivery. Either party may change its address for notice purposes by giving notice thereof to the other parties, except that such change of address notice shall not be deemed to have been given until actually received by the addressee thereof.

14.5 Broker Fees. Lessor and Lessee each represent and warrant respectively that it has not dealt with any broker or agent in connection with this Lease other than _____ (representing _____) to whom _____ shall pay any commissions or fees due and payable in accordance with _____'s separate agreement with such broker; and each Party covenants and agrees to

indemnify and hold the other harmless the other Party from and against any claim, cost, liability, or expense (including reasonable attorneys' fees) arising or resulting from a breach of this representation and warranty.

14.6 No Waiver. No failure on the part of Lessor or Lessee to enforce any covenant or provision contained in this Lease, nor any waiver of any right under this Lease, shall discharge or invalidate such covenant or provision or affect the right of the other Party to enforce the same in the event of any subsequent default.

14.7 Severability. If any provision of this Lease or the application thereof, to any Person or circumstance shall be found by a court of competent jurisdiction (after all appeal periods have run) to be invalid or unenforceable, the remainder of this Lease to the extent possible shall not be affected thereby and shall be enforced to the greatest commercially reasonable extent permitted by law.

14.8 Amendment. Neither this Lease nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the Parties.

14.9 Terminology. All personal pronouns used in this Lease, whether used in the masculine, feminine or neutral gender, shall include all other genders; the singular shall include the plural; and the plural shall include the singular. Unless otherwise expressly state, titles of Sections, Subsections and Paragraphs of this Lease are for convenience only, and neither limit nor amplify the provisions of this Lease; and all references in the Lease of Sections, Subsections or Paragraphs shall refer to the corresponding Section, Subsection or Paragraph of this Lease unless specific reference is made to the articles, sections or subdivisions of another document or instrument.

14.10 Counterparts. This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single instrument.

14.11 Binding Agreement. Subject to the restrictions on Dispositions and subleases set forth herein, this Lease shall inure to the benefit of, and be binding upon, Lessor and Lessee, and their respective heirs, executors, legal representatives, successors and assigns. Whenever in this Lease a reference to Lessor, Lessee or any Person is made, such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of Lessor, Lessee or such Person.

14.12 Interpretation. No provision of this Lease shall be construed against or interpreted to the disadvantage of either Lessor or Lessee by any court or governmental or judicial authority by reason of such Party having or being deemed to have structured or dictated such provision.

14.13 Governing Law/Venue. This Lease and the obligations of Lessor and Lessee hereunder shall be interpreted, construed and enforced in accordance with the Applicable Laws of the State, including conflicts of laws. Any lawsuit, action, or proceeding arising under this Lease shall be brought exclusively in a federal or state court, in San Diego County, California, having jurisdiction.

14.14 Relationship of Parties. No express or implied term, provision or condition of this Lease shall or shall be deemed to constitute Lessor and Lessee as partners or joint venturers.

14.15 Indemnity. Subject to the last sentence of this Section 14.15, Lessee shall indemnify, defend and hold harmless Lessor, and the Lessor Indemnified Parties as defined in Section 6.3 from all costs, expenses, claims, lawsuits, actions and proceedings whatsoever (including, without limitation injuries to persons or property, reasonable attorney's fees and costs of defending against such

claims, lawsuits, actions and proceedings) which arise out of, or result from, the use, maintenance, occupation or operation of the Leased Premises, Improvements or Project or any portion thereof by Lessee, its Affiliates or assigns or the Subtenants, their Affiliates or assigns, or the employees, managers, agents, contractors, subcontractors licensees, invitees, or concessionaires of Lessee or the Subtenants or their Affiliates or assigns (collectively, "Lessee Entities"). Notwithstanding anything in this Section 14.15 to the contrary, Lessor shall indemnify Lessee for all costs and losses to the extent same are found by a court of competent jurisdiction to have been caused by the negligence or willful acts of Lessor, its agents, employees or contractors.

14.16 Exemption of Lessor from Liability. Except as otherwise expressly provided herein, Lessor shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, tenants, sub-tenants, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from any cause whatsoever, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Premises, or from other sources or places. Lessor shall not be liable for any damages arising from any act or neglect of any tenant on the Premises nor from the failure of Lessor to enforce the provisions of any other lease or agreement. Notwithstanding Lessor's negligence or breach of this agreement, but subject to Section 14.17 below, Lessor shall under no circumstances be liable for injury to Lessee's business or for any loss of income or profit therefrom.

14.17 Lessor Liability. If Lessor shall fail to perform any covenant, term or condition of this Lease upon Lessor's part to be performed, and if as a consequence of such default Lessee shall recover a money judgment against Lessor, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levied thereon against the right, title and interest of Lessor in the Leased Premises or out of rents or other income from the Leased Premises, or out of the consideration received by Lessor from the sale or other disposition of all or any part of Lessor's right, title and interest in the Leased Premises or assignment of this Lease. From and after the date that Lessor sells or transfers its interest in the Leased Premises or assigns its interest under this Lease, Lessor shall be automatically released from any liability under this Lease arising from and after the date of such transfer or assignment provided the transferee or assignee of Lessor's interest assumes in writing all liabilities and obligations of Lessor hereunder from and after such date.

14.18 Amendments to Lease Required by Leasehold Mortgagees. Prior to the execution of any Leasehold Mortgage which is a first lien on Lessee's leasehold estate, Lessor agrees to make such commercially reasonable changes as may be requested by a prospective Leasehold Mortgagee with respect to such Leasehold Mortgagee's rights under this Lease—subject to any such prospective Leasehold Mortgagee's compliance with the provisions of this Lease—to, among other things, (a) perform Lessee's obligations and/or exercise Lessee's rights under this Lease, (b) receive notice of and cure Events of Defaults under this Lease, (c) obtain a new lease of the Leased Premises in the event this Lease is terminated by Lessor prior to expiration of the lease term, or (d) participate in any arbitration, insurance adjustment and condemnation proceeding.

14.19 Entire Agreement. This Lease incorporates all prior negotiations and discussions between the Parties regarding the Leased Premises and the Project.

14.20 Third Party Beneficiary. Nothing contained in this Lease shall be construed to confer upon any other party the rights of a third party beneficiary.

14.21 Payment or Performance on Saturday, Sunday or Holiday. Whenever the provisions of this Lease call for any payment or the performance of any act on or by a date that is not a

Business Day, including the expiration date of any cure periods herein, then such payment or such performance shall be required on or by the immediately succeeding Business Day.

14.22 Incorporate into Agreement. All exhibits, schedules, and recitals form a part of this Lease.

14.23 Consents and Approvals. Except in provisions (if any) where a consent or approval is specified in this Lease to be within the sole discretion of either party, any consent or approval of a party under this Lease shall not be unreasonably withheld, conditioned or delayed. Unless a shorter or longer time period is specified in this Lease, a party shall give or withhold such approval or consent within fifteen (15) Business Days, and the failure to respond within such time shall constitute approval by the Party from whom the consent is sought.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Lessor and Lessee executed this Lease the day and year first written above.

LESSOR:

a _____

By: _____
Name: _____
Title: _____

LESSEE:

a _____

By: _____
Name: _____
Title: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE LEASED PREMISES

EXHIBIT "B"

DEPICTION OF THE LEASED PREMISES

EXHIBIT "E"

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of _____, 200_ ("Effective Date"), by and between the City of Oceanside, a California municipal corporation, ("Seller") and _____, ("Buyer"). The Effective Date shall be the date this Agreement is approved by the Oceanside City Council and signed by Seller.

WHEREAS, Seller as owner of that certain real property described as the property more particularly described in Exhibit "A" and as shown on a sketch thereof marked Exhibit "B", attached hereto and incorporated herein by reference, (the "Property") has determined that selling the property for purposes set forth herein would be a benefit to the public;

WHEREAS, Buyer desires to purchase the Property for the purpose of developing a residential community compatible with and in compliance with the standards set forth by the Oceanside City Code and Planning Commission;

WHEREAS,

NOW THEREFORE, in consideration of the mutual covenants hereinafter contained and for other valuable consideration, the parties hereto agree as follows:

ARTICLE I

RECITALS

101. Description of Property. Seller is the owner of a fee interest in that certain real property situated in the City of Oceanside, County of San Diego, State of California, which is more particularly described in Exhibit "A" and as illustrated and delineated on a sketch thereof marked Exhibit "B", respectively incorporated herein and made a part hereof. For the purposes of this Agreement said real property and the improvements thereon are collectively referred to as the ("Property").

102. Status and Powers of Seller. Seller is a California municipal corporation organized and existing pursuant to the Constitution and statutes of the State of California and is authorized to enter into this Agreement.

103. Status and Powers of Buyer. Buyer is a _____ and is authorized by the laws of the State of California to purchase the Property from Seller and perform the actions and duties of the Buyer more particularly described in this Agreement.

104. Purpose of Agreement. Buyer desires to purchase the Property from Seller and Seller desires to sell the Property to Buyer on the terms and conditions in this Agreement.

105. Public Benefit. This Agreement is for the benefit of the public and is in the furtherance of the public purposes of Seller.

ARTICLE II

DEFINITIONS AND GENERAL PROVISIONS

201. Agreement. For good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as set forth herein.

202. Definitions in General. The terms defined in Exhibit "C" attached hereto and by this reference incorporated herein, as used and capitalized herein, shall, for all purposes of this Agreement, have the meanings ascribed to them in said Exhibit "C", unless the context clearly requires some other meaning. In addition, the term "Agreement" as used herein means this Purchase and Sale Agreement.

203. Rules of Construction. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons. The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement.

ARTICLE III

PURCHASE AND SALE OF PROPERTY

301. Sale of Property. Seller agrees to sell and Buyer agrees to purchase the Property on the terms and conditions in this Agreement.

302. Purchase Price. The purchase price of the Property is _____ Dollars (\$ _____) the ("Purchase Price").

ARTICLE IV

CONDITIONS PRECEDENT

401. Conditions Precedent to Closing. Buyer's obligation to purchase the Property from Seller is subject to the following conditions precedent set forth in Sections 402 through 409 inclusive ("Conditions Precedent"). Subject to Buyer's rights under Article VII "ESCROW", if any of the Conditions Precedent have not been fulfilled within the applicable time periods or if Buyer disapproves, pursuant to this Article IV, matter for which Buyer's approval is required, Buyer may:

(a) Waive the condition or disapproval and close escrow with respect to the Property in accordance with this Agreement, without adjustment or rebate in the Purchase Price;

(b) Cure the failure of the condition or representation and reduce the Purchase Price by the amount equal to the cost to cure; or

(c) Terminate this Agreement by written notice to Seller.

402. Title. Unless otherwise specified in this Agreement, Seller shall convey title to the Property to Buyer by grant deed, free and clear of all liens and encumbrances, subject to the following: Seller will provide Buyer with access to all documents in its possession regarding the Property but makes no representations or warranties as to the accuracy or reliability thereof. Seller makes no representations or warranties, expressed or otherwise, regarding the condition of title to the Property or the condition of the Property. Buyer is obligated to investigate, inspect and analyze the condition of the Property and the condition of title to the Property to its own satisfaction and expressly agrees that in entering into the Agreement, it is relying on its own investigation as to the condition of the Property and condition of title to the Property, except as expressly provided herein.

403. Preliminary Title Report. Upon ordering the Escrow, Seller shall request a preliminary title report for the Property ("Preliminary Report") issued by Chicago Title Insurance Company or another title insurance company mutually approved by Seller and Buyer ("Title Company") containing such exceptions as the Title Company would specify in a California Land Title Association ("CLTA") standard policy of title insurance (or, provided Buyer so requests in writing, as the Title Company would specify in an American Land Title Association ("ALTA") extended owner's policy of title insurance), together with copies of all exceptions and plotted easements and the documents supporting the exceptions (hereinafter collectively called "supporting documents").

Within fifteen days after receipt of legible copies of the Preliminary Report and supporting documents, Buyer shall give written notice to Seller of its disapproval of the Preliminary Report, any part thereof, or of any exceptions, or of the condition of title reflected in the Preliminary Report or the supporting documents. If Buyer gives written notice of disapproval as provided in this paragraph, Seller shall remove or otherwise cure, in a manner reasonably satisfactory to Buyer, the disapproved item or items at or before the close of escrow. The right of Buyer to disapprove the condition of title shall apply only to exceptions which materially and adversely limit or effect the use of the Property. Seller may elect not to remove or cure any disapproved item or items by delivering written notice thereof to Buyer within ten (10) days following the date of written notification of the disapproval. If Seller elects not to remove or cure any disapproved item or items, Buyer may terminate this Agreement by delivering a written notice of termination to Seller within ten (10) days after the date that Buyer actually receives notice of Seller's election not to remove or cure any disapproved item.

This Agreement provides that Buyer will receive title free and clear of liens and encumbrances, subject to the provisions of Section 402. Although it is recognized that Seller is a tax-exempt governmental agency, Seller shall be obligated to pay any property taxes and assessments to the date of the close of Escrow. The parties recognize that certain encumbrances such as existing deeds of trust, tax liens, assessment liens, and the like will be discharged through Escrow as provided in this Agreement. Notwithstanding the giving of any notice or any failure to give any notice with respect to these items, they shall be discharged through Escrow as provided in this Agreement.

From and after the effective date of the Preliminary Report, Seller shall not alter the condition of title without the express written consent of Buyer.

404. Title Policies. On or before the close of Escrow, Buyer shall have received evidence that Title Company is ready, willing, and able to issue, upon payment of the Title Company's regularly scheduled premium a California Land Title Association (CLTA) standard policy of title insurance, or, if requested by Seller, an American Land Title Association (ALTA) extended owner's policy of title insurance in the face amount of the Purchase Price, showing title to the Property vested in the Buyer subject only to:

(a) Non-delinquent general, special, and supplemental property taxes or assessments constituting a lien at close of Escrow, except as set forth pursuant to Section 503 herein; and

(b) The matters described in the printed form portion of the Policy of Title Insurance to the extent that such matters do not conflict with the provisions of this Agreement; and

(c) Covenants, conditions, reservations, restrictions, easements or other matters appearing as exceptions in the Preliminary Report as approved by Buyer pursuant to this Agreement; and

(d) Any lien voluntarily imposed by Buyer as of the close of Escrow.

405. Physical Condition of the Property. Within forty-five (45) calendar days after the date of this Agreement, Buyer shall, pursuant to Section 802 herein, review and approve or disapprove of the physical condition of the Property. Seller shall not cause the physical condition of the Property to deteriorate or change after the date of the inspection, normal wear and tear excepted, without the prior written consent of Buyer. Buyer agrees that the Property is being sold in its "As-Is" and "Where-Is" condition, except as expressly provided for elsewhere herein.

406. Property Documents. Within ten (10) calendar days after the date of this Agreement, Seller shall deliver to Buyer current copies of all permits, soils tests, hazardous or toxic waste reports, geological studies, environmental impact studies, topographical maps, licenses, maintenance contracts, utility contracts, operating contracts, leases, maintenance contracts, service contracts, and other documents pertaining to the Property ("Property Documents"). Prior to the close of Feasibility Period pursuant to Section 802 herein, Buyer shall review and approve or disapprove each Property Document. On or before the close of Escrow, Seller shall assign to Buyer all of Seller's rights and remedies under the Property Documents, to the extent assignable, pursuant to an assignment of contracts, warranties, guarantees, and other intangible property in form and substance satisfactory to Buyer. At the request of Buyer, the assignment of contracts shall exclude Seller's rights under any Property Documents designated by Buyer. At the request of Buyer, Seller shall use its best good faith efforts to obtain the consent to assignment of any other parties to the Property Documents as specified by Buyer. At the request of Buyer, Seller shall terminate any Property Document designated by Buyer as authorized by the Property Document, by delivering notices to the other party under the Property Document in sufficient time to terminate the Property Document prior to the close of Escrow.

407. Non-foreign Affidavit. If applicable, on or before the close of Escrow, Seller shall deliver to Buyer a non-foreign affidavit as required by the Foreign Investment In Real Property Tax Act (FIRPTA) [42 USC § 1445] executed by Seller.

408. Seller's Obligations. The performance by Seller of every material covenant, agreement, and promise to be performed by Seller pursuant to this Agreement and the related documents executed or to be executed by Seller.

409. Seller's Representations. The truth and accuracy of all Seller's representations and warranties as set forth in this Agreement or in documents provided by Seller under this Agreement, subject to the provisions of Section 402.

410. Entitlements.

ARTICLE V

SELLER'S REPRESENTATIONS AND WARRANTIES

501. Time. The representations and warranties by Seller in this Article are made as of the date of this Agreement and as of the close of Escrow and will survive the close of Escrow and the recording of the Grant Deed.

502. Title. As of the date of this Agreement, Seller is or will be the legal and equitable owner of the Property, with full right to convey, subject to the provisions of Section 402. Unless this Agreement is terminated pursuant to the second paragraph of Section 402, as of the close of Escrow, Seller is the legal and equitable owner of a fee interest in the Property, with full right to convey said interest. Seller has not previously conveyed title to the Property to any other person. Seller has not granted any options or rights of first refusal or rights of first offer to third parties to purchase or otherwise acquire an interest in the Property, subject to the provisions of Section 402. The Property is free and clear of all liens, encumbrances, claims, demands, easements, leases, agreements, covenants, conditions, or restrictions of any kind, except for the exceptions set forth in the Preliminary Report. Seller has obtained (or will obtain as of close of Escrow) all required consents, permissions or releases to convey good and marketable title to Buyer.

503. Intentionally Omitted.

504. Hazardous Substances. To the best of Seller's knowledge the Property is free and has always been free from Hazardous Substances and is not and has never been in violation of any Environmental Laws. Seller has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Property is or has been in violation of any Environmental Law, or informing Seller that the Property is subject to investigation or inquiry regarding Hazardous Substances on the Property or the potential violation of any Environmental Law.

505. Violation of Law. To the best of Seller's knowledge, no condition on the Property violates any health, safety, fire, environments, building, zoning or other federal, state, or local law, code, ordinance, or regulation.

506. Litigation. There is no pending or threatened litigation, administrative proceeding, or other legal or governmental action or condemnation with respect to the Property or which may adversely affect Seller's ability to fulfill the obligations of this Agreement other than the potential litigation as per Section 402 herein.

507. Bankruptcy. No filing or petition under the United States Bankruptcy Law or any insolvency laws, or any laws for composition of indebtedness or for the reorganization of debtors has been filed with regard to Seller.

508. No Defaults. Seller is not in default of Seller's obligations or liabilities pertaining to the Property. There are no facts, circumstances, conditions or events, which after notice or lapse of time would constitute default. Seller has not received any notice of any default and has no reason to believe that there is likely to be any breach or default of any of Seller's obligations or liabilities pertaining to the Property.

509. Special Studies Zone. The Property is not within a special studies zone under the Alquist-Priolo Geologic Hazard Act [Pub. Res. Code §§ 2621.9 et seq.] (which generally requires sellers to inform purchasers if property is within a special studies zone, which zones are generally near potentially or recently active earthquake faults).

510. Foreign Investment Real Property Tax Act. Seller is not a "foreign person" within the meaning of 42 USC § 1445(f)(3). Seller understands and agrees that the certification made in this section may be disclosed to the Internal Revenue Service by CITY and that any false statement contained herein could be punished by fine, imprisonment or both. This certification is made under penalty of perjury under the laws of the State of California.

511. Disclosure. Any information that Seller has delivered to Buyer either directly or through Seller's agents or employees, is complete and accurate. Seller has disclosed to Buyer all material facts with respect to the Property to which Seller has access.

ARTICLE VI

COVENANTS

601. Power to Enter into Agreements.

(a) Buyer is duly authorized to enter into this Agreement. The provisions of this Agreement are and will be the valid and legally enforceable obligations of Buyer in accordance with their terms and the terms of this Agreement.

(b) Seller is duly authorized to enter into this Agreement and to enter into the transactions contemplated by this Agreement. Seller has duly authorized and executed this Agreement.

602. No Violation of Other Agreements.

(a) Buyer hereby represents that neither the execution and delivery of this Agreement, nor the fulfillment of and compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of terms or violation of any other agreement to which Buyer is a party or by which Buyer is bound, or constitutes a default under any of the foregoing.

(b) Seller hereby represents that neither the execution and delivery of this Agreement, nor the fulfillment of and compliance with the terms and conditions hereof, nor

the consummation of the transactions contemplated hereby, conflicts with or results in a breach of terms or violation of any other agreement to which Seller is a party or by which Seller is bound, or constitutes a default under any of the foregoing.

603. Payment of Seller's Obligations. To the extent Seller is authorized by the Property Documents, Seller shall discharge all obligations and liabilities under the Property Documents before the close of escrow with respect to the Property.

604. Brokers. Seller and Buyer agree that there are no brokers or real estate agents involved in this transaction that would be entitled to a fee or commission. Buyer shall hold Seller harmless from any claims for such fees or commissions claimed by another broker, real estate agent or other third party claiming through Buyer.

605. Litigation. Seller shall immediately notify Buyer of any lawsuits, condemnation proceedings, rezoning, or other governmental order or action, or any threat thereof, of which Seller has actual knowledge, which might affect the Property or any interest of Buyer with respect to the Property.

606. Indemnification. Seller shall indemnify, defend and hold Buyer harmless from all liability, loss, or claim for damages, and any costs and reasonable attorney's fees associated therewith, arising from breach of Seller's covenants under this Agreement and any other related documents, or from Seller's false representations under this Agreement or in any other related documents, except for any liability, loss, or claims for damages resulting from the sole negligence or willful misconduct of Buyer or Buyer's officers or employees.

Buyer shall indemnify, defend and hold Seller harmless from all liability, loss, or claim for damages, and any costs and reasonable attorney's fees associated therewith, arising from breach of Buyer's covenants under this Agreement and any other related documents, or from Buyer's false representations under this Agreement or in any other related documents, except for any liability, loss, or claims for damages resulting from the sole negligence or willful misconduct of Seller or Seller's officers or employees. Notwithstanding the foregoing, Buyer's indemnification of Seller shall be limited to the Liquidated Damages pursuant to Section 903 herein.

The provisions of this Section 606 shall survive the Close of Escrow with respect to the Property.

ARTICLE VII

ESCROW

701. Establishment of Escrow. Within seven (7) days after the date this Agreement is approved by the Oceanside City Council, Buyer and Seller shall establish an Escrow for the close of the sale of the Property with the escrow department of the Title Company ("Escrow Agent"). If the Escrow Agent is unwilling or unable to perform, Seller shall designate another escrow agent. Escrow Agent shall notify both parties in writing of the specific date on which the Escrow has opened. This Agreement shall constitute Escrow Instructions, provided however, that Escrow Agent shall prepare general instructions as may be deemed necessary by the Escrow Agent for the fulfillment of this Agreement and deliver those general instructions to Seller and Buyer. Buyer and Seller shall each execute

the general instructions, or propose changes thereto, within five (5) days after receipt of the instructions. If there is any conflict between the terms of the general instructions and this Agreement, the provisions of this Agreement shall prevail unless the conflicting provision is specifically identified as an amendment to this Agreement.

702. Opening Deposits. Concurrent with the execution of this Agreement, but no later than the establishment of Escrow pursuant to Section 701 herein Buyer shall deposit with the Escrow Agent, for the immediate release to Seller, the sum of _____ Dollars (\$_____). Said sum shall represent Buyer's good faith deposit for the transaction contemplated under this Agreement. Furthermore, upon Buyer's completion of its inspection of the Property, but no later than the time provided for in Section 802 herein, Buyer shall deposit with the Escrow Agent the additional sum of _____ Dollars (\$_____) which sum shall be for the immediate release to Seller. Said deposits shall be applied towards the Purchase Price for the Property and non-refundable to Buyer, except in the event of Seller's default or failure of a Condition Precedent under this Agreement. In the event that Buyer otherwise fails to consummate the transaction contemplated under this Agreement or defaults hereunder said deposits shall be considered as Liquidated Damages due Seller pursuant to Section 903 herein and in either event Escrow Agent is hereby instructed to release the total of Buyer's opening deposits to Seller.

703. Closing. Subject to the provisions of Section 402 herein and no later than sixty (60) days ("Closing Deadline") after the approval of the Entitlements for the development of the property, which Entitlements shall include but not be limited to, _____, Environmental Impact Report, Fish and Game and/or Fish and Wildlife sign-off, if necessary, including expiration of all applicable appeal periods and conclusion of all appeals, if any, pursuant to Section 901 herein, the grant deed shall be recorded and the Property transferred from Seller to Buyer ("close of Escrow") after Buyer has either approved or waived each Condition Precedent.

Buyer shall have the right to purchase two thirty (30) day extensions ("Extension Period") by releasing to Seller through the Escrow Agent the non-refundable amount of _____ Dollars (\$_____) ("Extension Payment") for each Extension Period. The Extension Payment, if made, shall be applicable to the Purchase Price and non-refundable to Buyer and shall be considered as Liquidated Damages pursuant to Section 903 herein, except in the event of Seller's default. Unless the close of Escrow is extended by written agreement of the parties, Escrow shall close no later than the Closing Deadline.

704. Closing Deposits. On or before the close of Escrow, Seller and Buyer shall deposit with Escrow Agency the following documents and shall close Escrow as follows:

(a) Seller shall deposit with Escrow Agent the following:

(i) The original executed and acknowledged Grant Deed conveying the Property from Seller to Buyer;

(ii) The original Non-Foreign Affidavit executed by Seller;

(iii) The originals of all Property Documents, except for those documents, which by law, Seller must keep in its custody;

(iv) A certificate acknowledging that all conditions to the close of Escrow that Buyer was to satisfy or perform have been satisfied and performed, and that Seller's representations, covenants, and warranties made in or pursuant to this Agreement are correct as of the close of Escrow;

(v) Any other documents or funds required of Seller to close Escrow in accordance with this Agreement;

(b) Buyer shall deposit with Escrow Agent the following:

(i) The balance of the Purchase Price for the Property in cash;

(ii) Additional cash in the amount necessary to pay Buyer's share of closing costs as set forth in this Agreement or the escrow instructions and that portion of the Title Policy in excess of the premium for a CLTA Standard Policy of Title Insurance;

(iii) A certificate executed by Buyer providing that all conditions to close of Escrow that Seller was to satisfy or perform have been satisfied and performed and Buyer's representations, covenants, and warranties made in and pursuant to this Agreement are correct as of the close of Escrow;

(iv) Any other document or funds required of Buyer to close Escrow in accordance with this Agreement.

705. Closing Costs. Seller shall pay the premium for a CLTA Standard Policy of Title Insurance premium, all of the real property transfer taxes and documentary transfer taxes (if any) payable upon recordation of the Grant Deed for the Property, and any sales, use or ad valorem taxes connected with the Close of Escrow for the Property. If Buyer request an ALTA extended owner's policy Buyer shall pay the that portion of the premium for the title policy in excess of the premium for a CLTA Standard Policy. Buyer and Seller shall each pay one-half of the Escrow Agent's fee.

706. Property Taxes and Prorations. Seller shall be solely responsible for bringing the Property's real property taxes current as of the Close of Escrow and Buyer shall have no liability for payment of taxes. It is recognized that Seller is a tax-exempt governmental agency. Current rent shall be prorated as of the Close of Escrow when and as collected. Seller may elect to retain the right to recover rent arrears or may assign rent arrears to Buyer whereupon Buyer shall pay rent arrears to Seller when and as collected, less Buyer's costs of collection. To the extent that Seller is obligated to pay for gas, electricity, water or other utility charges Seller will cause all utility meters to be read as of Close of Escrow and will be responsible for the cost of all utilities used before Close of Escrow.

707. Possession. Right to possession of the Property, or the applicable parcel, shall transfer at Close of Escrow free of all tenancies.

ARTICLE VIII

MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

801. Intentionally Omitted.

802. Inspection and Feasibility Period. Seller hereby consents to entry upon the Property by Buyer or its officers, employees, contractors and agents for the purpose of conducting physical inspections and tests from the Effective Date of this Agreement to the close of Escrow. Buyer shall have forty-five (45) calendar days from the Effective Date of this Agreement ("Feasibility Period") in which to complete its inspections, testing and feasibility studies of the Property, including but not limited to, inspection and examination of soils, environmental factor, Hazardous Substances, if any, and archeological information relating to the Property; and a review and investigation of the effect of any zoning, map, permits, reports, engineering data, regulations, ordinances, and laws effecting the Property. Within ten (10) working days following the full execution of this Agreement, Seller shall deliver to Buyer copies of all architectural plans, surveys, specifications, and other documents pertaining to the Property that are owned by or in the possession of Seller. If Buyer disapproves of the results of the inspection and review, Buyer may elect, prior to the last day of the Feasibility Period, to terminate this Agreement by giving Seller written notification prior to the last day of the Feasibility Period and the Opening Deposits, together with all interest, if any, shall be returned to Purchaser, less Escrow cancellation charges. If Buyer fails to properly notify Seller of the intent to terminate this Agreement, Buyer shall be deemed to be satisfied with the results of the inspection and shall be deemed to have waived the right to terminate this Agreement pursuant to this provision.

Buyer agrees to defend, indemnify and hold Seller harmless from all liabilities, costs and expenses resulting directly from Buyer's or its officers', employees', contractors' or agents' inspections and tests. Buyer agrees that its independent inspection of the Property is its sole basis to determine the suitability of the Property for its purposes and Buyer acknowledges that it is not relying on any representations by Seller regarding suitability of the Property and by executing this Agreement, Buyer acknowledges that it has made or will make its own independent inspection of the Property. If Buyer alters the physical conditions of the Property and Escrow does not close, Buyer shall restore the Property to the condition existing before Buyer's inspections or tests.

803. Further Assurances. Whenever requested by the other party, each party shall execute, acknowledge, and deliver any further conveyances, assignments, confirmations, satisfactions, releases, instruments of further assurance, approvals, consents and any other instrument or document as may be necessary, expedient or proper to complete the transaction contemplated by this Agreement, and to do any other acts and to execute, acknowledge, and deliver any requested document to carry out the intent and purpose of this Agreement.

804. Assignment. Seller shall have no right, power, or authority to assign or mortgage this Agreement or any portion of this Agreement, or to delegate any duties or obligations arising under this Agreement, voluntarily, involuntarily, or by operation of law, without the prior written consent of Buyer. Buyer shall have no right, power, or authority to assign this Agreement or any portion of this Agreement or to delegate any duties or obligations arising under this Agreement, voluntarily, involuntarily or by operation of law without Seller's prior written approval. Neither party shall unreasonably withhold approval to any assignment.

805. Preservation and Inspection of Documents. Documents received by Seller or Buyer under the provisions of this Agreement shall be retained in their respective possessions and shall be subject at all reasonable times to the inspection of the other party hereto and its assigns, agents and representatives, any of whom may make copies thereof.

806. Parties of Interest. Nothing in this Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or party other than Seller and Buyer any rights, remedies or claims under or by reason of this Agreement or any covenants, condition or stipulation hereof; and all covenants, stipulations, promises and agreements in this Agreement made by or on behalf of Seller or Buyer shall be for the sole and exclusive benefit of Seller and Buyer.

807. No Recourse under Agreement. All covenants, stipulations, promises, agreements and obligations of the parties hereto contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the parties hereto, respectively, and not of any member, officer, employee or agent of the parties hereto in an individual capacity, and no recourse shall be had for any claim based on or under this Agreement against any member, officer, employee or agent of the parties hereto.

808. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in registered form with postage fully prepaid:

If to Seller:

CITY OF OCEANSIDE
Property Management Division
ATTN: William F. Marquis
300 North Coast Highway
Oceanside, CA 92054

Copy to:

City Attorney
CITY OF OCEANSIDE
ATTN: Anita C. Willis
300 North Coast Highway
Oceanside, CA 92054

If to Buyer:

Copy to:

The parties hereto, by notice given hereunder, may, respectively designate different addresses to which subsequent notices, certificates or other communications will be sent.

809. Binding Effect. Without waiver of section 804, this Agreement shall inure to the benefit of and shall be binding upon Seller, Buyer, and their respective successors and assigns.

810. Severability. If any one or more of the covenants, stipulations, promises, agreements or obligations provided in this Agreement on the part of Seller or Buyer to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant, stipulation, promise, agreement or obligation shall be deemed and construed to be severable from the remaining covenants, stipulations, promises, agreements and obligations herein contained and shall in no way affect the validity of the other provisions of this Agreement.

811. Headings. Any headings preceding the text of the several Articles and Sections hereof, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience or reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

812. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

813. Seller and Buyer Representatives. Whenever under the provisions of this Agreement the approval of Seller or Buyer is required, or Seller or Buyer are required to take some action at the request of the other, such approval of such request may be given for Seller by an Authorized Officer/Representative of Seller and for Buyer by an Authorized Officer of Buyer, and any party hereto shall be authorized to rely upon any such approval or request.

814. Form of Certificate of Officers. Every certificate with respect to compliance with a condition or covenant provided for in this Agreement and which is precedent to the taking of any action under this Agreement shall include:

(a) A statement that the person making or giving such certificate has read such covenant or condition and the definitions herein relating thereto;

(b) A brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate are based;

(c) A statement that, in the opinion of the signer, he has made or caused to be made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) A statement as to whether, in the opinion of the signer, such condition or covenant has been complied with.

A certificate may be based, insofar as its relates to legal matters, upon a certificate or opinion of or representations by counsel, unless the persons provided the certificate know that the certificate or representations with respect to the matters upon which the certificate may be based are erroneous, or in the exercise of reasonable care should have known that the same were erroneous.

815. Amendment. This Agreement may be amended, modified, or changed only in writing as mutually agreed to and duly executed by the parties hereto.

816. Counterpart. This Agreement may be executed in counterpart.

817. Time of the Essence. Time is of the essence in this Agreement and every provision contained in this Agreement.

818. Integration. This Agreement, and all attachments and exhibits hereto constitute the entire agreement of the parties. There are no oral or parol agreements,

which are not expressly set forth in the Agreement or the related documents being executed in connection with this Agreement.

819. Waivers. No waiver or breach of any provision shall be deemed a waiver of any other provision, and no waiver shall be valid unless it is in writing and executed by the waiving party. No extension of time for performance of any obligation or act shall be deemed an extension of time for any other obligation or act.

820. Attorney Fees, Litigation Costs and Related Matters. If any legal action or other proceeding, including arbitration or an action for declaratory relief, is brought to enforce this Agreement or because of a dispute, breach, default, or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs in addition to any other relief. Venue for enforcement of this Agreement shall be in the Superior Court of San Diego County, North County Branch. The parties agree that before either party commences any legal or equitable action, action for declaratory relief, suit, proceeding, or arbitration that the parties shall first submit the dispute to mediation through a mutually acceptable professional mediator in San Diego County, or if a mediator cannot be agreed upon by a mediator appointed by the Judicial Arbitration and Mediation Service in San Diego County. The cost of mediation shall be shared equally by the parties.

821. Exhibits. All exhibits referred to in this agreement and attached hereto are made a part hereof and are incorporated herein by this reference.

822. Survival. Seller's representations and warranties, Buyer's representations and warranties, all covenants and obligations to be performed at a time or times after close of Escrow, and indemnities shall survive the close of Escrow and delivery and recordation of the Grant Deed.

823. Merger. All of the terms, provisions, representations, warranties, and covenants of the parties under this Agreement shall survive the close of Escrow and shall not be merged in the Deed or other documents.

ARTICLE IX

SPECIAL PROVISIONS

901. Tentative Map. Seller hereby consents to the filing of a Tentative Subdivision Map ("Tentative Map") and any other development approvals required by the City of Oceanside and the Planning Commission of Buyer. Seller agrees to cooperate with Buyer in processing its application for the Entitlements for the development of the Property in an expeditious manner. The Tentative Map will conform to the existing zoning of the Property. The costs for the application fees and for the preparation of the Tentative Map and/or other required documents, including but not limited to, reports, drawings, plans and maps shall be at the sole expense of Buyer. Seller, by giving said consent, is not obligating itself or any of its boards, commissions, officers, employees or agents with regard to any other discretionary action related to development or operation of the Property. Discretionary action includes, but is not limited to, rezoning, variances, conditional use permits, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the Property. Buyer shall diligently pursue and prosecute the filing of the necessary applications for the development of the Property

so that Escrow will be in a position to close by the Closing Deadline pursuant to Section 703 herein.

902. Intentionally Omitted.

903. Liquidated Damages. IF BUYER FAILS TO COMPLETE THE PURCHASE PROVIDED FOR IN THIS AGREEMENT BY REASON OF ANY DEFAULT OF BUYER, SELLER SHALL BE RELEASED FROM SELLER'S OBLIGATION TO SELL THE PROPERTY TO BUYER AND MAY PROCEED AGAINST BUYER UPON ANY CLAIM OR REMEDY THAT SELLER MAY HAVE IN LAW OR EQUITY; PROVIDED, HOWEVER, THAT, BY INITIALING THIS SECTION 903 BUYER AND SELLER AGREE THAT IN THE EVENT OF DEFAULT BY BUYER, (A) IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES; (B) AN AMOUNT EQUAL TO THE OPENING DEPOSITS MADE BY BUYER AND EXTENSION PERIOD PAYMENTS, IF ANY ARE MADE, SHALL CONSTITUTE LIQUIDATED DAMAGES PAYABLE TO SELLER; (C) THE PAYMENT OF THE LIQUIDATED DAMAGES TO SELLER SHALL CONSTITUTE THE EXCLUSIVE REMEDY OF SELLER; (D) SELLER MAY RETAIN THAT PAYMENT ON ACCOUNT OF PURCHASE PRICE FOR THE PROPERTY AS LIQUIDATED DAMAGES; AND (E) PAYMENT OF THOSE SUMS TO SELLER AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT INSTEAD, IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE.

_____/_____[Initials of Buyer and Seller]

Buyer and Seller acknowledge that, pursuant to the terms of this Agreement, Seller is obligated to perform, and in the event Escrow fails to close by reason of default by Seller, Buyer shall be entitled to specific performance of Seller. Notwithstanding Seller's obligation herein, in the event Seller is prevented from closing the Escrow pursuant to the happening of an event, requirement or other impediment beyond the control of Seller, Buyer shall be entitled to the return of the Opening Deposits and Extension Period Payments, if any are made, and all accrued interest, if any. Additionally, Seller shall be entitled to the actual damages, not to exceed 200% of the total amount of Opening Deposits and Extension Period Payments made pursuant to Sections 702 and 703 herein.

IN WITNESS WHEREOF, this Agreement constitutes an offer to purchase the Property on the terms and conditions contained in this Agreement and the parties hereto have caused this Agreement to be executed in their respective names by their duly authorized officers as of the date first above written.

Seller
City of Oceanside, a
California municipal corporation

Buyer

By: _____
Mayor

By: _____

APPROVED AS TO FORM:
CITY ATTORNEYS OFFICE

By: _____
City Attorney

Date: _____

By: _____

Date: _____

BUYER'S SIGNATURE(S) MUST BE NOTARIZED. NOTARY USE APPROPRIATE ACKNOWLEDGEMENT

EXHIBIT "C"

DEFINITIONS

Seller. The term "Seller" means the City of Oceanside, California.

Buyer. The term "Buyer" means _____, a _____ organized and existing under California law with its principal place of business in Orange County.

Authorized Officer. The term "Authorized Officer", when used with respect to Seller, means the Mayor, City Manager or any employee designated by the City Manager of Seller as an Authorized Officer. The term "Authorized Officer", when used with respect to Buyer, means the President of Seller or any other officer of Seller which is designated by its President as an Authorized Officer.

Environmental Laws. The term Environmental Laws means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, or pertaining to occupational health or industrial hygiene, to the extent that such relate to matters on, under, or about the Property, occupational or environmental conditions on, under, or about the Property, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 USC § 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (RCRA) [42 USC § 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution control Act (FWPCA) [33 USC § 1251 et seq.]; the Hazardous Materials Transportation Act (HMTA) [49 USC § 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USC § 136 et seq.]; the Superfund Amendments and Reauthorization Act [42 USC § 6901 et seq.]; the Clean Air Act [42 USC § 7401 et seq.]; the Safe Drinking Water Act [42 USC § 300f et seq.]; the Surface Mining Control and Reclamation Act [30 USC § 1201 et seq.]; the Emergency Planning and Community Right to Know Act [42 USC § 11001 et seq.]; the Occupational Safety and Health Act [29 USC § 655 and 657]; the California Underground Storage of Hazardous Substances Act [Health and Safety Code § 25280 et seq.]; the California Hazardous Substances Account Act [Health and Safety Code § 25300 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [Health and Safety Code § 24249.5 et seq.]; the Porter-Cologne Water Quality Act [Water Code § 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to the protection of the environment as such apply to matters on, under, or about the Property.

Hazardous Substances. The term "Hazardous Substances" includes without limitation:

(a) Those substances included within the definitions of "hazardous substance," "hazardous waste," "hazardous material," "toxic substance," "solid waste," or "pollutant or contaminant" in any Environmental Law;

(b) Those substances listed in the United States Department of Transportation Table [49 CFR 172.101], or by the Environmental Protection Agency, or any successor agency, as hazardous substances [40 CFR Part 302];

(c) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and

(d) Any material, waste, or substance that is a petroleum or refined petroleum product, asbestos, polychlorinated biphenyl, designated as a hazardous substance pursuant to 33 USC § 1321 or listed pursuant to 33 USC § 1317, a hazardous substance or toxic material designated pursuant to any State Statute, a flammable explosive or a radioactive material.

Property. The term "Property" means that certain real property within the City of Oceanside, California (sometimes referred to herein as the "Land"), together with the improvements located thereon (sometimes referred to herein as the "Improvements") all as more fully described in Exhibit "A" attached hereto.

State. The term "State" means the State of California.

EXHIBIT "F"

Pre-Approved Qualified Experts List

Set forth below are the agreed upon experts in the field of national commercial real estate sales and leasing and/or in the field of national commercial real estate financing, qualified for the purposes of determining whether a long-term ground lease is Economically Disadvantageous.

1. Keyser Marston Associates – San Diego CA
2. HFF, Inc. – Dallas, TX
3. CB/Richard Ellis – Los Angeles, CA
4. Grandbridge Real Estate Capital, LLC – Charlotte, NC
(formerly Dwyer-Curlett & Co.)
5. Cushman Wakefield – New York, NY