

THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO

LEASE TO

PADRES L.P.

OF PROPERTY COMMONLY KNOWN AS

LOTS P-5, P-6, B-2 AND B-3, BOUNDED BY 12<sup>TH</sup> STREET,

14<sup>TH</sup> STREET, IMPERIAL AVENUE AND K STREET

SAN DIEGO, CALIFORNIA

FOR THIRTY (30) YEARS

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## LEASE

THIS LEASE, dated for reference purposes as of \_\_\_\_\_, 2006 (to be effective March 10, 2004), between The REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body, corporate and politic, hereinafter "Lessor" and PADRES L.P., a Delaware limited partnership, hereinafter "Lessee", WITNESSETH:

Lessor, for the consideration hereinafter set forth, hereby leases to Lessee for the term and upon the conditions hereinafter set forth, a portion of lands more particularly described on Exhibit "A" attached hereto, hereinafter "Leased Premises".

TO HAVE AND TO HOLD said Leased Premises for the term of the Lease and upon the conditions as follows:

1. **TERM:** The term of this Lease shall be for a period of thirty (30) years (the "Term"), commencing on the date that Lessee first conducts business with the general public on the Leased Premises, said date being March 10, 2004, hereinafter called the "Commencement Date," and ending thirty (30) years thereafter, hereinafter called the "Termination Date," unless sooner terminated as provided herein; provided, however, that this Lease shall, in all events, be coterminus with the JUMA (as defined in Paragraph 10 herein).

2. **USE:** Lessee agrees that the Leased Premises shall be used only for the following purposes:

2.1 **EVENT DAYS:** On Event Days (defined below), the Leased Premises shall be used only and exclusively for Public Parking and for parking for employees and invitees of Padres L.P. or any successor owner of the Major League Baseball San Diego franchise ("Padres Parking").

2.2 **NON-EVENT DAYS:** On days other than Event Days ("Non-Event Days"), the Leased Premises may be used for Public Parking, Padres Parking and Non-Public Parking Uses.

2.3 **DEFINITIONS:** The following definitions apply to Paragraph 2:

- (a) The term "Event Day" means (i) any day on which any Major League Baseball sponsored exhibition, regular season or post-season game or any Major League Baseball All-Star game is played in the San Diego Padres Ballpark in downtown San Diego, California ("Ballpark"), and (ii) up to ten (10) additional days during each calendar year, designated by Lessee ("Padres' Event").
- (b) The term "Non-Public Parking Uses" means any use, other than Public Parking and Padres Parking, that Lessee permits pursuant to licenses over a portion of the Leased Premises to third parties. Notwithstanding any other provision of this Lease, Non-Public Parking Uses of the Leased Premises during the Term shall be subject to the following limitations:

- (1) Non-Public Parking Uses shall not be permitted unless Lessee has obtained Lessor's prior written consent. Lessor shall not unreasonably withhold or delay such consent; provided that, however, in no event shall it be considered unreasonable for Lessor to withhold its consent if the proposed Non-Public Parking Use interferes with the use of the Leased Premises for Public Parking on Event Days; and
  - (2) Non-Public Parking Uses shall not materially alter or damage the Leased Premises.
- (c) The term "Public Parking" means the sale of vehicle parking to the general public and Padres employees and invitees. The rates for Public Parking and Padres Parking may be set at different rates during different periods as the Lessor and Lessee, or other operator, may agree; however, the rates for Padres Parking on a monthly basis shall be at commercially reasonable rates. There will be no parking validation agreements or other arrangements which result in reducing Rents described in Paragraph 4.

**2.4 ACCESSORY USES DURING EVENT DAYS:** Notwithstanding the foregoing, during Event Days, the following accessory uses are permitted on the Leased Premises, provided that they do not materially interfere with or reduce the availability of Public Parking or the circulation of vehicles through the Leased Premises: (i) the sale of souvenirs, food and beverages, and other items normally considered "concessions;" (ii) the sale of advertising; and (iii) promotional activities by the media or sponsors of the San Diego Padres Baseball Club (the "Team"), Major League Baseball, or a Padres' Event.

**3. SCHEDULING:** Throughout the Term, Lessee shall establish, maintain, update and deliver to Lessor a master calendar of Event Days. Lessee and Lessor's Executive Director or designee shall meet throughout the Term, with such frequency as they may mutually and reasonably agree, to discuss the master calendar and all Lessee requests for the scheduling of Non-Public Parking Uses of the Leased Premises. At any time and from time to time throughout the Term, Lessee may propose in writing to Lessor that Non-Public Parking Uses be scheduled and permitted on the Leased Premises. Lessor shall review such requests by Lessee in accordance with Paragraph 2 and 3 of this Lease. If Lessor agrees to the proposed Non-Public Parking Use of the Leased Premises, Lessee may grant a license to the third party for the purpose of using a portion of the Leased Premises. The terms and conditions of the license shall be determined by Lessee in its reasonable discretion. Lessee and Lessor shall reasonably agree as to the fee charged to a licensee granted a Non-Public Parking Use and such fees shall be paid to Lessee and shall constitute Gross Revenues described in Paragraph 4(e). Such licensees, as a condition to entry upon the Leased Premises, shall provide such indemnities and evidence of insurance coverage (including insurance coverage for Lessor, Lessee and their agents) as reasonably required by Lessor and Lessee.

**4. RENT:** Lessee agrees to pay to Lessor rent in accordance with the following:

- (a) From the Commencement Date to the day prior to the Ballpark Opening Date, the rent payable shall be fifty percent (50%) of Net Revenues derived from the

Leased Premises, calculated on a monthly basis. If Operating Expenses exceed Gross Revenues, then no payment of rent will be due for that month. The term "Ballpark Opening Date" shall mean the first day that a Major League Baseball game is played in the Ballpark, which date was April 8, 2004.

- (b) Commencing on the Ballpark Opening Date, the annual rent under this Lease shall be (i) the Minimum Annual Rent or (ii) the applicable percentage rent per year as provided in Paragraph 4(d) below, whichever is greater.
- (c) The "Minimum Annual Rent" shall be One Hundred Fifty Thousand Dollars (\$150,000) per year, commencing on the Ballpark Opening Date. The Minimum Annual Rent shall increase four percent (4%) on the first anniversary of the Ballpark Opening Date and shall increase four percent (4%) per year thereafter (effective on the anniversary of the Ballpark Opening Date) for the remainder of the Term of this Lease.
- (d) Percentage Rents on and after the Ballpark Opening Date shall be calculated on a monthly basis and shall be based on the following percentages of the operations and businesses conducted on or from the Leased Premises:
  - (1) Twenty-five percent (25%) of Gross Revenues, commencing on the Ballpark Opening Date and continuing for four (4) years.
  - (2) Thirty-five percent (35%) of Gross Revenues, commencing on the fourth (4<sup>th</sup>) anniversary of the Ballpark Opening Date and continuing for the remainder of the Term of this Lease.
- (e) The term "Gross Revenues" as defined herein shall mean all income resulting from occupancy or use of the Leased Premises in any manner, whether by Lessee or its licensees, from whatever source derived, and whether for cash or credit, including without limitation all revenues from signage and advertising as set forth in Paragraph 6. "Gross Revenues," however, shall not include (i) any sales or excise taxes payable by Lessee to any governmental authority as a direct result of operations under this Lease, provided that the amount of such taxes is shown on the books and records elsewhere herein required to be maintained, (ii) sales of furniture, fixtures, or equipment outside of the normal course of Lessee's business, or other similar sales or transfers commonly considered capital in nature; (iii) interest and dividend income; or (iv) proceeds of insurance, condemnation or indemnity for a loss or taking. Bad debt losses shall not be deducted from "Gross Revenues."
- (f) The term "Net Revenues" means Gross Revenues less Operating Expenses.
- (g) The term "Operating Expenses" means the cumulative total of all reasonable and necessary expenses incurred by Lessee, including, without limitation, all amounts paid by Lessee to its parking operator which are directly related to and actually incurred in the management and operation of the Leased Premises. During the

Term, "Operating Expenses" shall consist of and be limited to the categories of expenses itemized on Exhibit B to this Lease, unless otherwise agreed by the parties.

(h) On or before the 20<sup>th</sup> day of each month, Lessee shall deliver to Lessor, in a form prescribed by Lessor, a detailed report of Gross Revenues for that portion of the accounting year which ends with and includes the last day of the previous calendar month. The accounting year shall be twelve (12) full calendar months. The first accounting year shall begin on the first day of the first month during which the Commencement Date occurs. Subsequent accounting years shall begin upon each anniversary of that date during the Lease term. Each report shall be certified by Lessee or its responsible agent and shall include the following:

- (1) The total Gross Revenues for said portion of the accounting year, itemized for each separate percentage rent rate established, if necessary.
- (2) The total Operating Expenses for said portion of the accounting year (this figure shall only be required to be reported for rent calculated pursuant to Paragraph 4(a)).
- (3) The related itemized amounts of percentage rent computed, as herein provided, and the total thereof.
- (4) The total rent previously paid by Lessee for the accounting year within which the preceding month falls.

Concurrently with the rendering of each monthly statement, Lessee shall pay the greater of the following two amounts:

- (1) The total percentage rent computed for that portion of the accounting year ending with and including the last day of the preceding month, less total rent previously paid for the accounting year; or
- (2) One-twelfth (1/12<sup>th</sup>) of the Minimum Annual Rent, if any, due under this Lease, multiplied by the number of months from the beginning of the accounting year to and including the preceding month, less total rent previously paid for the accounting year.

(i) All payments shall be delivered to Lessor c/o Centre City Development Corporation, Attn: Vice President and Chief Financial Officer, 225 Broadway, Suite 1100, San Diego, CA 92101. Checks shall be made payable to The Redevelopment Agency of the City of San Diego. Lessor may change the designated place of payment and filing at any time upon ten (10) days' written notice to Lessee. Lessee assumes all risk of loss and responsibility for late charges, as herein described, if payments are made by mail.



- (j) Lessee hereby acknowledges that late payment by Lessee to Lessor of rent and other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease. Accordingly, in the event Lessee is delinquent in remitting the rent due in accordance with the rent provisions of this Lease, Lessee shall pay, in addition to the unpaid rent, five percent (5%) of the delinquent rent. If rent is still unpaid at the end of fifteen (15) days, Lessee shall pay an additional five percent (5%) [being a total of ten percent (10%)]. The parties hereby agree that said late charges are appropriate to compensate Lessor for loss resulting from rent delinquency including, without limitation, lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Acceptance of such late charges and any portion of the late payment by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of its other rights and remedies. The Executive Director of Lessor shall have the right to waive for good cause any late charges upon written application of Lessee for any such delinquency period.
- (k) All payments by Lessee to Lessor shall be by a good and sufficient check. No payment made by Lessee or receipt or acceptance by Lessor of a lesser amount than the correct amount of rent due under this Lease shall be deemed to be other than a payment on account of the earliest rent due hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance or pursue any other available remedy.
- (l) Lessee shall, at all times during the term of this Lease, keep or cause to be kept, accurate and complete records and books of account of all financial transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted herein. The records must be supported by source documents of original entry such as sales invoices, cash register tapes, bank depository documentation, purchase invoices, or other pertinent supporting documents. Financial statements (a balance sheet and income/expense statement), based upon the books of account, shall be prepared not less than annually.

All of Lessee's books of account, records, financial statements, and documentation related to this Lease or to business operations conducted within or from the Leased Premises, shall be kept either at the Leased Premises or at such other locations as are reasonably acceptable to Lessee and Lessor. Lessor shall have the right at any and all reasonable times to examine and audit said books, records, financial statements, and documentation, without restriction, for the purpose of determining the accuracy thereof, the accuracy of the monthly statements of Gross Revenues submitted, the accuracy of the rent paid to Lessor, and the accuracy of expenses referenced in Paragraph 24 herein. In the event that Lessee's business operations conducted within or from the Leased Premises are part of a larger business operation of Lessee, and any part of the books, records, financial statements, and documentation required herein is prepared only for the larger operation, and not solely for the business operations of the Leased

Premises, then Lessor shall also have the right to examine and audit that part of said books, records, financial statements, and documentation of the larger business operation which relate to this Lease or the business operations conducted within or from the Leased Premises.

Lessee's failure to keep such books of account, records, financial statements and documentation and make them available for inspection by Lessor is a breach of this Lease and cause for termination. The Executive Director of Lessor shall have the discretion to require the installation of any additional accounting methods or controls reasonably necessary, subject to prior written notice. In the event Lessee does not make available the original records and books of account at the Leased Premises or within the limits of San Diego County, Lessee agrees to pay all necessary travel expenses incurred by Lessor in conducting an audit at the location where said records and books of account are maintained.

- (m) Subject to the provisions of Paragraphs 21 and 24 hereof, it is the purpose and intent of Lessor and Lessee that the rent payable hereunder shall be absolutely net to Lessor, so that this Lease shall yield, net to Lessor, the rent as herein provided, free of any charges, assessments, taxes, or impositions of any kind charged, assessed, or imposed on or against the Leased Premises, and without abatement, deduction or set-off by Lessee, and Lessor shall not be expected or required to pay any such charge, assessment, tax or imposition, or be under any obligation or liability hereunder except as herein expressly set forth, and that all costs, expenses and obligations of any kind relating to the maintenance, preservation, care, repair and operation of the Leased Premises, which may arise or become due during the term of this Lease shall be paid by Lessee, and Lessor shall be indemnified and saved harmless by Lessee from and against any such costs, expenses and obligations.

**5. IMPROVEMENTS:**

- (a) In accordance with the procedures described herein, Lessee may, at its own expense, make alterations or changes, or cause to be made, built, installed, or removed any structures, machines, appliances, utilities, signs, or other improvements necessary or desirable for the authorized use of the Leased Premises. Provided, however, said work shall be in accordance with plans and specifications, including but not limited to working drawings, hereinafter "Plans," previously submitted to and approved in writing by Lessor.
- (b) No construction, installation, or removal of any improvement upon the Leased Premises shall commence without Lessor's prior written approval. All construction, installations, and removals shall be in accordance with Plans submitted to and approved in writing by Lessor prior to the commencement of any such work. All Plans are subject to changes as may be approved by Lessor, in Lessor's sole discretion. Further, all work shall be in accordance with all applicable laws, regulations, ordinances, and codes.

- (c) Notwithstanding the foregoing, within the interior of any enclosed building structure, and without Lessor's prior consent, Lessee shall have the right to install and/or remove machines, equipment, appliances, and trade fixtures that are necessary or desirable for the authorized use of the Leased Premises.
- (d) When required by Lessor, Lessee shall, at its sole cost and expense, pave or landscape the entire portion of the Leased Premises not covered by structures. All paving and/or landscaping shall be in accordance with Plans which must be submitted to and approved in writing by Lessor prior to the commencement of any such paving and/or landscaping.
- (e) Lessee shall notify Lessor prior to submitting application(s) to any governmental regulatory agency for any development or construction permit or license pertaining to the Leased Premises. Lessee shall also provide Lessor with a copy of all application(s) within five (5) days after making said application(s), along with copies of all Plans submitted as part of the application(s). Lessee shall also provide Lessor, within ten (10) days after Lessee's receipt, a copy of all permits, licenses, or other authorizations subsequently issued.

6. **SIGNAGE AND ADVERTISING:** Subject to the approval of Lessor's Executive Director, which shall not be unreasonably withheld, conditioned or delayed, Lessee shall be entitled to display signs on the Leased Premises. All signage shall be in compliance with applicable laws and shall appropriately reflect the availability of the Leased Premises for Public Parking. Lessee shall be solely responsible for the installation, maintenance, repair, replacement and removal of any signage. Lessee shall have the exclusive right to display signage and sell advertising on the Leased Premises. All Advertising sold or otherwise provided by Lessee for display on or within the Leased Premises shall be displayed at all times, unless Lessee and the relevant advertiser agree otherwise, and may not be covered or obstructed without Lessee's prior written consent.

7. **TITLE TO IMPROVEMENTS:** For the purpose of this Paragraph, "Improvements" shall include, but are not limited to subsurface improvements. All structures, buildings, installations, improvements, machines, appliances, equipment and fixtures placed on the Leased Premises by Lessor or its predecessors in interest are owned by and title thereto is vested in Lessor. All structures, buildings, installations, improvements, machines, appliances, equipment and fixtures placed on the Leased Premises by the City of San Diego or its predecessors in interest are owned by and title thereto is vested in the City of San Diego. All structures, buildings, installations, improvements, machines, appliances, equipment and trade fixtures of any kind placed on the Leased Premises by Lessee shall be owned by Lessee and shall, at the option of Lessor, be removed at Lessee's expense. Lessor may exercise said option as to any or all of the structures, buildings, installations, and improvements placed on the Leased Premises by Lessee at any time before the Termination Date or sooner termination of this Lease. If Lessor exercises such option, Lessee shall remove such structures, buildings, installations, and/or improvements within sixty (60) days after the Termination Date of this Lease or sooner termination thereof, whichever occurs earlier; provided, however, Lessee agrees to repair any and all damage occasioned by their removal. Title to any such structures, buildings, installations, improvements, machines, appliances, equipment and/or trade fixtures not so removed within said

sixty (60) days shall vest in Lessor, without cost to Lessor and without any payment to Lessee, except that Lessor shall have the right to have them removed and to repair any and all damage occasioned by their removal, all at the expense of Lessee.

During any period of time employed by Lessee under this Paragraph 7 to remove structures, buildings, installations, improvements, machines, appliances, equipment, and/or trade fixtures, Lessee shall continue to pay Lessor additional rent to compensate Lessor to the extent that Lessor cannot relet the Leased Premises (or a portion thereof) during such period of removal or if such actions interfere with the operations of any tenant that has subsequently leased the Leased Premises (or a portion thereof). During the first thirty (30) days of the period described in the preceding sentence, the additional rent will equal the Minimum Annual Rent, prorated daily and further prorated based on the portion of the Leased Premises which cannot be relet due to such actions; following the first thirty (30) days of such period, the additional rent will equal the Minimum Annual Rent, prorated daily.

8. **LIENS:** Lessee shall defend, indemnify, and hold harmless Lessor against all claims and liens for labor, services, or materials in connection with improvements, repairs, or alterations made by Lessee or Lessee's sublessees, contractors, and agents on the Leased Premises, and the costs of defending against such claims and liens, including reasonable attorney's fees.

In the event any such claim or lien, or any other claim(s), lien(s) or levy(ies) whatsoever of any nature caused by Lessee or Lessee's sublessees, contractors, and agents, is filed against the Leased Premises or the leasehold interest of Lessee therein, Lessee shall, upon written request of Lessor, deposit with Lessor a bond conditioned for the payment in full of all claims upon which said lien(s) or levy(ies) have been filed. Such bond shall be acknowledged by Lessee, as principal, and by an entity licensed by the Insurance Commissioner of the state of California to transact the business of a fidelity and surety insurance company, as surety. Lessor shall have the right to declare this Lease in default in the event the bond required by this Paragraph 8 has not been deposited with Lessor within ten (10) days after written request has been delivered to Lessee.

This provision shall not apply to a foreclosure of a trust deed or mortgage encumbering the leasehold estate if the encumbrance has previously received Lessor's consent in accordance with Paragraph 9 hereof.

9. **LEASE ENCUMBRANCE:** Lessee shall not encumber the Lease, leasehold estate, and/or improvements thereon by a deed of trust, mortgage or other security instrument to assure the payment of the promissory note of Lessee, without the prior written consent of Lessor in each instance, which consent shall not be unreasonably conditioned, withheld or delayed. If any deed of trust, mortgage, or other security instrument encumbering the Lease, leasehold estate, and/or improvements thereon is entered into by Lessee without Lessor's prior express written consent, Lessor shall have the right to declare this Lease in default.

In the event Lessee requests Lessor's consent to any Lease encumbrance, hereinafter referred to as a "transaction" in this Paragraph 9, Lessee shall reimburse Lessor for all Lessor's reasonable costs and expenses associated with said transaction. Said costs shall include reasonable legal fees and disbursements relating to or arising out of any such transaction, regardless of whether

such transaction is consummated.

If a consented-to deed of trust, mortgage, or other security instrument should at any time be in default, before Lessee's interest under this Lease may be sold as part of any foreclosure or trustee's sale, or be assigned in lieu of foreclosure, the prior express written consent of Lessor shall be obtained in each instance. However, the original beneficiary of the deed of trust, original mortgagee of the mortgage, and original holder of the security instrument which Lessor has consented to, may purchase Lessee's interest at a foreclosure or trustee's sale, or accept assignment of the Lease in lieu of foreclosure, without the requirement of any further consent on the part of Lessor, provided said party, as an express condition precedent, agrees in writing to assume each and every obligation under the Lease. Furthermore, before any said original beneficiary, mortgagee, or holder of a security instrument, or any other consented-to assignee or purchaser may subsequently assign or sublease any of the leasehold estate or Lessee's interest, it shall obtain Lessor's prior express written consent. The decision of Lessor as to such assignee, purchaser, or sublessee shall be final.

10. **ASSIGNMENT – SUBLEASE:** Except as set forth herein, Lessee shall not, without the prior written consent of Lessor, which shall not be unreasonably conditioned, withheld or delayed:

- (a) Assign or transfer the whole or any part of this Lease or any interest therein, except Lessee may enter into revocable licenses with third parties that grant limited use of a portion of the Leased Premises for a maximum term of one year. All activities pursuant to such licenses shall be conducted so as not to materially interfere with Public Parking, Non-Public Parking Uses, or the circulation of vehicles within the Leased Premises;
- (b) Sublease (which shall also include management and/or operating agreements covering the Leased Premises) the whole or any part of the Leased Premises;
- (c) Permit transfer of the Lease or possession of the Leased Premises by merger, consolidation, or dissolution of Lessee; provided, however, changes in constituent interests of Lessee may be made without the consent of Lessor provided no change of control of Lessee occurs; or
- (d) Except as set forth in the provisions contained in Paragraph 9 herein, permit hypothecation, pledge, encumbrance, transfer or sale, voluntary or involuntary, in whole or in part, of this Lease or any interest therein.

Furthermore, Lessor's consent shall not be required for any assignment, sublease or transfer by Lessee (or any approved sublessee) to (i) any entity that controls, is controlled by, or is in common control with Lessee or such sublessee, as the case may be, or (ii) to any entity that acquires all the rights of Lessee under that certain Joint Use and Management Agreement between the City of San Diego and Lessee for use of the Ballpark (the "JUMA").

In the event Lessee requests Lessor's consent to any Lease assignment, Lease transfer, Lease amendment, and/or sublease, hereinafter referred to as a "transaction," Lessee shall reimburse

Lessor for all Lessor's reasonable costs and expense associated with said transaction. Said costs shall include reasonable legal fees and disbursements relating to or arising out of any such transaction, regardless of whether such transaction is consummated.

In the event Lessor consents to any Lease assignment or transfer, said consent shall be conditioned upon the following: (i) assignee shall agree to and assume each and every obligation under the Lease; (ii) if deemed reasonably necessary by Lessor, solely as a result of the creditworthiness of the financial condition of such assignee, a Lease amendment shall be executed; and (iii) such assignee shall comply with other conditions and qualifications reasonably determined by Lessor as a result of the creditworthiness or the financial condition of such assignee; provided, however, no lease amendment or other conditions and qualifications shall increase the rent due hereunder or add other material terms except solely to reasonably compensate for the creditworthiness or the financial condition of such assignee.

In the event Lessor consents to any sublease, said consent shall be conditioned upon the following: (i) if, upon the effective date of any said consented-to sublease, the rent being paid to Lessee for the sublease area is greater than the rent being paid by Lessee to Lessor for the sublease area, Lessor shall thereafter be paid percentage rent on such proceeds (net of Operating Expenses) for the sublease area as long as said sublease is in effect; and (ii) Lessee shall comply with other conditions and qualifications reasonably determined by Lessor solely as a result of the creditworthiness or the financial condition of the sublessee (provided, however, Lessee shall not be required to sign a Lease amendment including new or revised lease provisions (nor shall the terms of this Lease otherwise be modified) unless all or substantially all of the Leased Premises are subleased to a single sublessee (or a group of affiliated sublessees) for a period equal to all or substantially all of the remaining term of this Lease and in such event, no such new lease or lease amendment shall increase the rent or add other material terms except solely to reasonably compensate for the creditworthiness or the financial condition of such sublessee(s).

#### 11. **DEFAULTS AND REMEDIES:**

- (a) Defaults. The occurrence of any one (1) or more of the following events shall constitute a default hereunder:
- (1) Cessation of Operation of the Leased Premises. Cessation of Operation is herein defined to mean any closure of business by Lessee on the Leased Premises for ten (10) consecutive days or longer, except in the event of a force majeure event when Lessee may close for business for such additional reasonable period.
  - (2) Failure by Lessee to pay, when due, any Lease-required rent, other payment, and/or charge herein, where such failure continues for a period of ten (10) days after written notice thereof; provided, however, any such notice provided in this Paragraph 11(a)(2) or in subsequent Paragraph 11(a)(3) shall be in lieu of, and not in addition to, any notice required under Section 1161 of the California Code of Civil Procedure, as amended.

- (3) Failure by Lessee (or Lessor) to perform any other covenants or conditions in this Lease, should such failure continue for thirty (30) days after written notice thereof; provided, however, if said breach cannot reasonably be cured within said thirty (30) day period, Lessee (or Lessor) shall not be in default hereunder if Lessee (or Lessor) commences such cure within said thirty (30) day period and thereafter diligently pursues the same to completion.
- (4) Subject to any restrictions or limitations placed on Lessor by applicable laws governing bankruptcy, Lessee's: (a) applying for, consenting to, or suffering the appointment of a receiver, trustee, or liquidator for all or a substantial portion of its assets; (b) making a general assignment for the benefit of creditors; (c) admitting in writing its inability to pay its debts or its willingness to be adjudged a bankrupt; (d) becoming unable to pay its debts as they mature; (e) being adjudged a bankrupt; (f) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization, or insolvency law (unless in the case of an involuntary petition, the same is dismissed within thirty (30) days after such filing); (g) convening a meeting of its creditors, or any class thereof, for purposes of effecting a moratorium, extension, or composition of its debts; or (h) suffering, or permitting to continue unstayed and in effect for ten (10) consecutive days, any attachment, levy, execution, or seizure of all or a substantial portion of Lessee's assets or of Lessee's interest in this Lease.

This Paragraph 11(a)(4) shall not be applicable or binding on the beneficiary of any deed of trust, mortgage, or other security instrument on the Leased Premises which is of record and has been consented to by Lessor, or to said beneficiary's successors in interest consented to by Lessor, as long as there remains any monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided that such beneficiary or its successors in interest, continuously and timely pays to Lessor all rent due or coming due under the provisions of this Lease and the Leased Premises are continuously and actively used in accordance with this Lease, and further provided that said beneficiary agrees in writing to assume and perform each and every obligation under the Lease.

- (5) Failure of Lessee (or Lessor) to comply with all time periods specified in this Lease.
  - (6) Notwithstanding Paragraph 11(a)(5), failure by Lessee (or Lessor) to timely comply with all other provisions of this Lease.
- (b) Remedies. In the event of any default by Lessee, Lessor may exercise the following remedies:
- (1) Termination: Terminate Lessee's right to possession of the Leased

Premises whereupon this Lease shall terminate and Lessee shall immediately surrender possession of the Leased Premises to Lessor. In such event, Lessor shall be entitled to recover from Lessee:

- (i) The "Worth at the Time of Award", as hereinafter defined, of the unpaid rent which had been earned at the time of termination;
- (ii) 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 loss that Lessee proves could have been reasonably avoided;
- (iii) The "Worth at the Time of Award" of the amount by which the unpaid rent for the balance of the term of this Lease after the time of award exceeds the amount of such loss that Lessee proves could have been reasonably avoided; and
- (iv) Any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease, or which would ordinarily be likely to result therefrom, including but not limited to the cost of recovering possession of the Leased Premises, expenses of reletting (including necessary repair, renovation and alteration of the Leased Premises), reasonable attorneys' fees, and any other reasonable costs.

The "Worth at the Time of Award" of the amounts referred to in Paragraphs 11(b)(1)(i) and 11(b)(1)(ii) shall be computed by charging interest at ten percent (10%) per annum from the dates such amounts accrued to Lessor. The "Worth at the Time of Award" of the amount referred to in Paragraph 11(b)(1)(iii) shall be computed by discounting such amount at one (1) percentage point above the Discount Rate of the Federal Reserve Bank of San Francisco at the time of the award.

- (2) Reletting: Without terminating or effecting a forfeiture of the Lease, or otherwise relieving Lessee of any obligation herein, Lessor may, but need not, relet the Leased Premises or any portion thereof, at any time or from time to time, for such terms and upon such conditions and rent as Lessor, in its sole discretion, deems proper. Regardless of whether the Leased Premises are relet, Lessee shall continue to pay to Lessor all Lease-required amounts up to the date that Lessor terminates Lessee's right to possession of the Leased Premises; provided, however, following a default, Lessor shall not unreasonably withhold its consent to any Lessee-requested assignment of this Lease or subletting of the Leased Premises, unless Lessor shall also elect to terminate this Lease and Lessee's right to possession of the Leased Premises, as provided in Paragraph 11(b)(1). Such payments shall be due at the times provided in this Lease and Lessor



need not wait until the termination of the Lease to recover said amounts. If Lessor relets the Leased Premises, or any portion thereof, such reletting shall not relieve Lessee of any obligations herein, except that Lessor shall apply the rent or other proceeds actually collected for such reletting against amounts due from Lessee herein, to the extent such proceeds compensate Lessor for Lessee's nonperformance of any obligation herein. Lessor may execute any lease made pursuant hereto in its own name. Further, Lessor shall be under no obligation to reveal to new lessee how these proceeds were applied, nor shall said new lessee have any right to collect any such proceeds. Lessor shall not, by any reentry or other act, be deemed to have accepted Lessee's surrender of the Leased Premises or Lessee's interest therein, nor be deemed to have terminated this Lease or to have relieved Lessee of any obligation herein, unless Lessor shall have furnished Lessee with express written notice of Lessor's election to do so, as set forth herein.

- (3) Other: Any and/or all other rights or remedies of Lessor specified elsewhere in this Lease or provided by law.

In the event Lessor has consented to an encumbrance of this Lease for security purposes in accordance with Paragraph 9 of this Lease, it is understood and agreed that Lessor shall furnish copies of all notice(s) of default(s) to the beneficiary or mortgagee under said encumbrance by certified mail (provided Lessee has delivered to Lessor written request therefor, together with the name and address of any such beneficiary or mortgagee) contemporaneously with the furnishing of such notices to Lessee. Furthermore, in the event Lessee fails to cure such default(s) within the time permitted herein, said beneficiary or mortgagee shall be permitted to cure such default(s) at any time within fifteen (15) days following the expiration of the period within which Lessee may cure said default(s); provided, however, Lessor shall not be required to furnish any further notice(s) of default(s) to said beneficiary or mortgagee.

In the event this Lease is terminated pursuant to the provisions of this Paragraph 11, Lessor shall continue to have all rights provided in Paragraph 43 of this Lease.

Notwithstanding the foregoing, should a default not be cured within the cure periods referred to above, said Lease shall not be terminated as to said beneficiary or mortgagee unless Lessor first legally offers to enter into a valid lease with said beneficiary or mortgagee, and said offer is not accepted in writing within thirty (30) days after said offer is made. Furthermore, such new lease must be entered into as a condition concurrent with such termination for the then-remaining term of this Lease. Furthermore, the new lease must contain the same terms, conditions, and priority as this Lease, provided the mortgagee or beneficiary promptly cures all then-existing defaults under this Lease when and to the extent it is able to cure them. Such new lease may be entered into even though possession of the Leased Premises has not been surrendered by the defaulting Lessee. In such event, unless legally restrained, Lessor shall promptly proceed to obtain possession of the Leased Premises and to deliver possession to said mortgagee or beneficiary as soon as the same is obtained. Should the mortgagee or beneficiary fail to accept said offer in writing within said thirty (30) day period, or, having so accepted said offer, should it fail promptly to cure all existing defaults under this Lease when and to the extent it is able to cure

them, then such termination shall also be effective as to said mortgagee or beneficiary.

12. **BANKRUPTCY:** Lessor shall have the right to declare this Lease in default if Lessee: (i) becomes insolvent; (ii) makes an assignment for the benefit of creditors; (iii) becomes the subject of a bankruptcy proceeding, reorganization arrangement, insolvency, receivership, liquidation, or dissolution proceeding; or in the event of any judicial sale of Lessee's leasehold interest.

The conditions of this Paragraph shall not be applicable or binding on: (1) Lessee; or (2) the beneficiary in any deed of trust, mortgage, or other security instrument encumbering the leasehold interest which Lessor has consented to in writing; or (3) the aforesaid beneficiary's successors in interest which Lessor has consented to in writing, as long as there remains any monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided Lessee, such beneficiary, or such beneficiary's successors in interest continuously pay to Lessor all rent due or coming due under the provisions of this Lease, and the Leased Premises are continuously and actively used in accordance with this Lease.

13. **EMINENT DOMAIN:**

- (a) If less than the whole or substantial part of the Leased Premises shall be taken by any public authority under the power of eminent domain, then the term of this Lease shall cease as to the part so taken, from the day that possession of that part shall be taken for any public purpose, and this Lease shall otherwise remain in full force and effect as to the remainder of the same under the terms herein provided, except that the Minimum Annual Rent shall be reduced in proportion to the value of the part of the Leased Premises taken. If the whole or a substantial part of the Leased Premises shall be taken by any public authority under the power of eminent domain, then Lessee may, at Lessee's option, terminate this Lease from the day that possession of that substantial part or whole shall be taken for any public purpose. A part taken shall be deemed "substantial" if it is of such a nature and to such an extent that the part remaining is determined by Lessee to be not reasonably and economically usable by Lessee for the purposes for which it was being used prior to such taking. If Lessor and Lessee cannot agree upon a fair and equitable reduction in Minimum Annual Rent reflecting the value of the part taken, then the same shall be determined in accordance with arbitration conducted in accordance with the rules of the American Arbitration Association or its successor.
- (b) All amounts payable to Lessee pursuant to this Paragraph 13 shall be paid to any consented-to lender under Paragraph 9 of this Lease, or any sublessee approved pursuant to Paragraph 10 hereof, to be applied by it in accordance with the arrangements between Lessee and said consented-to lender or sublessee, as the case may be; and any such lender or sublessee shall have the right to participate in any condemnation proceeding affecting the Leased Premises.
- (c) From the award for a taking pursuant to the power of eminent domain, Lessee

shall receive the then present worth of the use of the improvements and personal property constructed and installed by Lessee on, in, and to the Leased Premises that are taken over the remaining term of this Lease but in any event no less than the unpaid amount of the indebtedness of Lessee to a lender consented to pursuant to Paragraph 9 of this Lease; provided, that Lessee shall assert no claim for loss of bonus value in this Lease and Lessor shall receive the balance of the award.

- (d) Title to improvements and personal property constructed and installed by Lessee shall remain vested in Lessee for all purposes in connection with this Paragraph 13.
- (e) For purposes of this Paragraph 13, all amounts paid pursuant to any agreement with any condemning authority made in settlement of or under threat of condemnation affecting the Leased Premises shall be deemed an award for purposes of this Paragraph 13.
- (f) If the use or occupancy of the Leased Premises or any part thereof shall be temporarily requisitioned by any governmental authority, then this Lease shall continue in full force and effect, unless any such taking is for a period extending to or beyond the end of the term of this Lease, in which case the taking shall be treated under the foregoing provisions for total, substantial, or less-than-substantial takings. The award for such temporary requisition shall be apportioned between Lessor and Lessee so as to reflect as nearly and fairly as possible the respective returns from the operation and use of the Leased Premises as the parties enjoyed prior to the taking; provided, that in no event shall Lessee receive less than an amount necessary to service its remaining obligations with respect to the property requisitioned, including debt service to a lender consented to pursuant to Paragraph 9. If the parties are unable to agree, then the award shall be apportioned by arbitration conducted in accordance with the rules of the American Arbitration Association or its successor.
- (g) In the event of a partial taking or requisition not involving the total termination of this Lease, Lessee shall, at its expense, repair and restore any damage caused by any such taking or requisition to the extent of the compensation received by Lessee from any public authority for such purpose and in conformity with the requirements of this Lease so that after the completion of such restoration the Leased Premises shall be, as nearly as possible, in a condition as good as the condition thereof immediately prior to such taking or requisition. In the event of any such partial taking the award therefor, after deduction of costs, fees and expenses of the collection thereof, shall be made available to Lessee for payment and reimbursement of the costs of such repairs and restoration, and the balance, if any, shall be distributed to the parties as otherwise provided in this Paragraph 13.
- (h) In addition to any other amounts to which Lessee is entitled as set forth above, Lessee shall be entitled to pursue any rights and remedies it may have against

such condemning authority for any of Lessee's personal property, for compensation pursuant to the provisions of California Government Code Section 7262 *et seq.*, for compensation for loss of good will pursuant to California Code of Civil Procedure Section 1263.510 *et seq.*, and for any other personal rights and remedies to which the occupant and user of condemned premises may be entitled under law. Said amounts shall not be deemed a part of an "award" as provided above.

14. **TERMINATION OF PRIOR AGREEMENT(S):** Any and all existing permits, leases, or rental agreements between Lessor and Lessee with respect to the occupation and use of the Leased Premises which have not already expired or terminated, are hereby superseded as of the effective date of this Lease by the terms of this Lease, but solely as to the use and occupancy of the Leased Premises. Any rights, duties, and obligations of the parties, if any, pursuant to the terms, covenants, and conditions in any such hereby superseded agreements shall remain enforceable and subject to all defenses, including without limitation any applicable statute of limitations. Further, said statute shall not be waived or extended because of this Lease. Nothing herein is intended nor shall be construed as a waiver of any such rights, or as a release of any such duties or obligations, whether known or unknown at this time or upon the effective date of this Lease.

15. **USE OBLIGATION:** Lessee shall actively and continuously use and operate the Leased Premises for the limited particular exclusive use expressly provided for in Paragraph 2 herein, except for failure to so use caused by wars, strikes, riots, civil commotion, acts of public enemies, and acts of God. Lessee, however, shall not and is expressly prohibited from using the Leased Premises for any other purpose or use whatsoever, whether it is purported to be in addition to or in lieu of the particular exclusive use expressly provided in Paragraph 2, 2.1, 2.2, 2.3, and 2.4.

16. **MAINTENANCE AND REPAIR:** As part of the consideration for this Lease, Lessee shall assume full responsibility for operation and maintenance of the Leased Premises throughout the term and without expense to Lessor; subject, however, to the provisions of Paragraph 24 herein with respect to a Substitute Facility. Lessee shall perform all maintenance, which includes all painting, repairs, and replacements necessary to maintain and preserve the Leased Premises in a good, safe, healthy, and sanitary condition, satisfactory to Lessor and in compliance with all applicable laws; provided, however, prior to Lessee performing any extraordinary repairs, plans and specifications must first be submitted to Lessor and receive Lessor approval, pursuant to the procedures provided in Paragraph 5 herein. Further, Lessee shall provide approved containers for trash and garbage and keep the Leased Premises free and clear of rubbish, litter, and any other fire hazards. Prior to a Proposed Modification pursuant to Paragraph 24 herein, Lessee waives all rights to make repairs at the expense of Lessor, 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 Leased Premises in a good, safe, healthy, and sanitary condition, Lessor always shall have the right but not the duty to enter, view, inspect, determine the condition of, and protect its interests in the Leased Premises. Provided, however, Lessor or its representatives shall: (a) conduct such entry in a manner that causes the least inconvenience and

disruption to Lessee's operation as practicable; and (b) comply with all safety and security requirements of Lessee. It is not intended, however, that Lessee's safety and security requirements be used to bar Lessor's right of inspection. Further, Lessee shall provide Lessor reasonable access to the Leased Premises for such purpose.

If inspection discloses the Leased Premises are not in the condition required herein, Lessee immediately must commence the necessary maintenance work, and complete said work within ten (10) days after written notice from Lessor.

Notwithstanding, Lessor shall not be required to perform any maintenance, including painting, repairs, or replacements; or to make any improvements whatsoever on or for the benefit of the Leased Premises. However, if a Substitute Facility is constructed on the Leased Premises pursuant to Paragraph 24 herein, Lessor shall have the obligation during the remaining term of this Lease, at its sole cost and expense, to make all required capital repairs and replacements to such Substitute Facility.

The rights reserved in this Paragraph shall not create any obligations or increase any obligations for Lessor elsewhere in this Lease.

17. **TAXES AND UTILITIES:** This Lease may result in a taxable possessory interest and be subject to the payment of property taxes. Lessee shall pay before delinquency all taxes and assessments of any kind assessed or levied upon Lessee or the Leased Premises by reason of: (i) this Lease; (ii) any buildings, machines, or other improvements of any nature whatsoever erected, installed, or maintained by Lessee; or (iii) the business or other activities of Lessee upon or in connection with the Leased Premises. Lessee also shall pay any fees imposed by law for licenses or permits for any business or activities of Lessee upon the Leased Premises, or under this Lease, and shall pay before delinquency any and all charges for utilities at or on the Leased Premises.

18. **CONFORMANCE WITH LAWS AND REGULATIONS:** Lessee agrees that, in all activities on or in connection with the Leased Premises, and in all uses thereof, including the making of any alterations, changes, installations, or other improvements, it will abide by and conform to all laws and regulations. Said laws and regulations shall include, but are not limited to those prescribed by any ordinances of the City of San Diego, including the Building Code thereof; any mitigation, monitoring and reporting requirements pursuant to any certified environmental impact report, any ordinances and general rules of Lessor, including tariffs; and any applicable laws of the state of California and federal government, as any of the same now exist or may hereafter be adopted or amended. In particular and without limitation, Lessee shall have the sole and exclusive obligation and responsibility to comply with the requirements of the Americans With Disabilities Act of 1990, including but not limited to regulations promulgated thereunder, and Lessor (except with respect to construction and repair of a Substitute Facility pursuant to Paragraph 24 herein) shall have no such obligations or responsibilities as to the Leased Premises.

19. **NONDISCRIMINATION:**

(a) Lessee covenants and agrees for itself, its successors, its assigns and every

successor in interest to the Leased Premises or any part thereof, there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, sexual orientation, marital status, race, color, creed, religion, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Leased Premises nor shall Lessee itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, licensees, or vendees of the Leased Premises.

- (b) Lessee shall refrain from restricting the license, rental, sale or lease of the Leased Premises, or any part thereof, on the basis of sex, sexual orientation, marital status, race, color, creed, religion, ancestry or national origin of any person. All deeds, leases or contracts for the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Leased Premises, or any portion thereof, shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

In leases: "The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of sex, sexual orientation, marital status, race, color, creed, religion, national origin or ancestry in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall lessee itself, or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, licensees, sublessees, subtenants, or vendees in the land herein leased."

In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of sex, sexual orientation, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, licensees, sublessees, or vendees of the land."

20. **PARTIAL INVALIDITY:** If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder

of the provisions herein shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated thereby.

21. **HOLD HARMLESS:** Lessee shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless Lessor, the City of San Diego, the Centre City Development Corporation, their officers, employees, and agents for any and all liability, claims, judgments, or demands arising directly or indirectly out of the obligations undertaken in connection with this Lease, except to the extent of the sole active negligence or willful misconduct of Lessor or, as may be applicable, the City of San Diego or the Centre City Development Corporation. It is the intent of this Paragraph that Lessee indemnifies and holds harmless Lessor, the City of San Diego, and the Centre City Development Corporation for any actions of Lessee, Lessor, the City of San Diego or the Centre City Development Corporation, except for those arising out of the sole active negligence or willful misconduct of Lessor, the City of San Diego or the Centre City Development Corporation, including but not limited to claims based upon Lessor's, the City of San Diego's, or the Centre City Development Corporation's alleged breach of any statutory duty or obligation, or Lessee's duty under contracts with third parties. This indemnity obligation shall apply for the entire time that any third party can make a claim against or sue Lessor, the City of San Diego or the Centre City Development Corporation for liabilities arising out of Lessee's use, occupancy, or operation of the Leased Premises, or arising from any defect in any part of the Leased Premises.

22. **SUCCESSORS IN INTEREST:** Unless otherwise provided in this Lease, the terms, covenants, conditions, and agreements herein shall apply to and bind the successors and assigns of all the parties hereto, all of whom shall be jointly and severally liable hereunder.

23. **EASEMENTS:** This Lease and all rights granted hereunder are subject to all easements and rights-of-way previously granted or reserved by Lessor in, upon, over, and across the Leased Premises for any purpose whatsoever. Said Lease and granted rights shall be subject to future easements and rights-of-way for access, gas, electricity, water, sewer, drainage, telephone, telegraph, television transmission, and such other public facilities as Lessor may determine from time to time to be in the best interests of the development of the lands within Lessor's jurisdiction. Lessor agrees to make an effort to locate future easements and rights-of-way, and to install associated public facilities, so as to produce a minimum amount of interference with Lessee's business. Further, Lessee shall not be entitled to any monetary payment or other remuneration for any such future easements and rights-of-way.

24. **MODIFICATION OF LEASED PREMISES:** Lessee acknowledges that Lessor may in the future desire to cause all or a portion of the Leased Premises to be utilized at a higher and better use than as a surface parking lot. Lessor acknowledges that the San Diego Padres are entitled to receive revenue from parking spaces on the Leased Premises; that Lessee may desire to encumber its interest in the Lease and Leased Premises as more fully set forth in Paragraph 9 hereof; and that Lessor's ability to change the use of all or a portion of the Leased Premises may negatively impact the ability of Lessee to encumber its interest in the Lease and the Leased Premises. In order to accommodate the rights and obligations of the parties as set forth herein and to facilitate a future change in use, the Leased Premises and the description thereof set forth in Exhibit "A" may be modified at the request of Lessor subject to the terms of this paragraph.

- (a) Lessor shall give Lessee notice (“Notice”) of Lessor’s intent to modify the Leased Premises (the “Proposed Modification”). Such Notice shall be delivered to Lessee prior to the commencement of a Major League Baseball Season (as that term is defined in the JUMA) and the Proposed Modification shall take effect and construction on the Leased Premises may begin no earlier than the end of the Major League Baseball Season immediately following the date of the Notice; provided, however, that no such Proposed Modification shall be implemented prior to conclusion of the Major League Baseball Season for the calendar year 2010. The Notice shall be given as provided in Paragraph 36 herein, and shall include specific descriptions of the Proposed Modification, the Substitute Facility and, if applicable, the Alternate Spaces, as more fully described below.
- (b) If the Proposed Modification will cause, at any time during the term of this Lease, the total number of standard vehicle parking spaces on the Leased Premises as existed on the Commencement Date, said number of spaces being 1060 (the “Original Spaces”), to be reduced in size or number, Lessor shall use commercially reasonable efforts to construct, or cause to be constructed, on the Leased Premises a parking structure or structures (collectively, the “Substitute Facility”) designed to contain at least an aggregate of 1060 standard vehicle spaces. Notwithstanding the foregoing: (1) Lessor may elect to provide up to 260 parking spaces at an alternate location (the "Alternate Spaces") not on the Leased Premises but at a distance from a Ballpark entrance no greater than from an existing entrance to the Leased Premises to a Ballpark entrance, but subject to Lessee's approval (such approval not to be unreasonably withheld or delayed), in which event the Substitute Facility shall contain no less than the number of Original Spaces less the Alternate Spaces; and (2), the parties, by mutual consent, may elect to provide the Substitute Facility at an alternate location.
- (c) Lessor shall be solely responsible for the construction of the Substitute Facility, and the provision of the Alternate Spaces (if any) and all costs incurred in connection therewith, and shall cause the Substitute Facility and Alternate Spaces to be leased to Lessee upon terms similar and economically equivalent to those set forth herein (unless otherwise agreed to by Lessee) for the remaining Term. Lessor shall control the design and construction of the Substitute Facility; however, Lessee shall be entitled to meaningful participation in the design process for the Substitute Facility and the design of the Substitute Facility must be reasonably acceptable to Lessee taking into account, among other factors, ease of ingress and egress, aisle width, lighting, signage and exit time. Notwithstanding the previous sentence, the design of the Substitute Facility shall be deemed acceptable to Lessee if it is substantially similar to the portion of the P-1 parking structure used by the San Diego Padres. Unless otherwise agreed to by Lessee, the Substitute Facility shall be located and designed primarily to serve and benefit the Ballpark and its patrons, taking into account the physical and legal constraints of the Leased Premises.
- (d) Lessor shall pay or cause to be paid all costs of operating, insuring, maintaining and repairing the Substitute Facility and Alternate Spaces, if any, and



notwithstanding Paragraph 21, shall be responsible for all claims arising from the construction and repair thereof (other than claims arising from the negligence or willful misconduct of Lessee, its assignees, its subtenants or the agents, contractors, licensees or invitees of the such persons). In lieu of insuring and repairing the Leased Premises, Lessee shall pay to Lessor on an annual basis commencing as of the opening of the Substitute Facility or provision of the Alternate Spaces and (in either case) occupancy thereof by Lessee and continuing during each year of the Term thereafter as additional rent, an amount equal to the average annualized operating (including insurance costs) and maintenance expenses of the Leased Premises for the thirty-six (36) months immediately preceding the delivery of the Notice, which amount shall increase four percent (4%) per year commencing in the calendar year after the opening of the Substitute Facility and Alternate Spaces, if any, and occupancy thereof by Lessee and continuing during each year of the Term thereafter. If the substitute parking spaces are provided at different sites or completed at different times, then the additional rent provided in the previous sentence shall be prorated based on the number of spaces provided at the location in question as a percentage of 1060. Payment shall be made by Lessee to Lessor within sixty (60) days after the end of each accounting year. Lessor shall have the right to review and contest the reasonableness of the expenses for operating, maintaining and repairing the Substitute Facility and Additional Spaces, if any.

- (e) Lessor shall use commercially reasonable efforts to cause completion of the Substitute Facility and Alternate Spaces, if any, within a time period that encompasses only one Major League Baseball Season (it being understood that Lessee will not be required to occupy the Substitute Facility or Alternate Spaces if they are completed during a Major League Baseball Season until after that season). If the Substitute Facility is constructed on the Leased Premises, Lessor, at its sole cost and expense, shall provide (at locations in facilities controlled by Lessor or otherwise but in any event in the closest possible proximity to the Ballpark) temporary parking spaces subject to Lessee's approval (such approval not to be unreasonably withheld or delayed) in an amount equivalent to the number of spaces removed to provide for the construction of the Substitute Facility or which cannot be reasonably used as a result of such construction (the "Temporary Spaces"). The Temporary Spaces shall be made available to Lessee during the development/construction period for the Substitute Facility and through the end of the Major League Baseball Season in which the Substitute Facility is completed, on economic terms similar to those set forth herein, unless otherwise agreed to by Lessee. Notwithstanding the foregoing and subject to clause (f) below, if after diligent effort Lessor is unable to provide all of the required Temporary Spaces, Lessor may, in lieu of providing up to 275 Temporary Spaces, pay to Lessee for each Temporary Space not provided (up to 275 parking spaces) a *pro rata* amount of the per parking space net revenue generated from the Leased Premises for the previous year.
- (f) Lessor shall ensure that the Substitute Facility and Temporary Spaces are provided in such a manner as to comply with all environmental regulations and

other applicable laws.

- (g) It is Lessor's intent that any Proposed Modification shall not cause any economic loss to Lessee or the San Diego Padres. Accordingly, Lessor agrees that (in addition to the provisions of (d) above), all out-of-pocket costs and expenses of Lessor, Lessee and the Padres caused directly by any Proposed Modification shall be borne by Lessor and Lessor shall reimburse Lessee and the Padres upon presentation of adequate supporting documentation for any such costs and expenses. Lessee shall not be responsible for any costs and expenses associated with any construction or development as a result of a Proposed Modification, unless otherwise agreed to by Lessee. Notwithstanding the foregoing, each party shall bear its own costs with respect to a review of any Proposed Modification, or any necessary or appropriate discussions following the receipt of the Notice required by this Paragraph 24, except as set forth in Paragraph 42 herein.
- (h) The parties shall cooperate in good faith to implement the intent and purposes of this Paragraph 24 and shall negotiate in good faith any amendment to this Lease reasonably required by the implementation of this Paragraph 24 and the construction of a Substitute Facility.
- (i) Lessor acknowledges and agrees that if Lessor or the City of San Diego exercises its right of eminent domain with respect to the Leased Premises, Lessor shall remain obligated under Paragraph 24 herein as if Lessor delivered a Notice pursuant thereto.
- (j) Lessor shall have the right to phase construction on the Leased Premises, in which case this Paragraph 24 shall be applicable to each Proposed Modification; however, with respect to the entire Leased Premises, Lessor's rights under this Paragraph 24 may be exercised only once during the Term.

25. **INSURANCE:** Lessee shall maintain insurance acceptable to Lessor in full force and effect throughout the term of this Lease. The policies for said insurance shall, as a minimum, provide the following:

- (a) Forms of Coverage
  - (1) "OCCURRENCE" form Commercial General Liability covering the Leased Premises, operations, and contractual liability assumed by Lessee in this Lease in the amount of not less than Five Million Dollars (\$5,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage. These limits may be evidenced by any combination of primary and excess policies.

If alcoholic beverages are served or sold on the Leased Premises, Liquor Liability coverage shall be included in the Commercial General Liability coverage. If no alcoholic beverages are served or sold on the Leased Premises, the proof of insurance shall so state.

(2) Fire and Extended Coverage, including water damage and debris cleanup provisions, in an amount not less than ninety percent (90%) of full replacement value of all improvements located within the Leased Premises. The fire and extended coverage policies shall be endorsed with a Loss Payee endorsement in favor of Lessor. It is agreed that any insurance proceeds in excess of Twenty-Five Thousand Dollars (\$25,000) resulting from a loss under said policies shall be payable jointly to Lessor and Lessee to ensure that said proceeds will be reinvested in rebuilding and/or repairing the damaged portions of the Leased Premises and any damaged or destroyed improvements located thereon; provided, however, if there is a Lessor-consented to mortgage or deed of trust encumbering the leasehold, then all fire and extended coverage policies shall be made payable jointly to the mortgagee or beneficiary and Lessee, to ensure that any proceeds shall be held by said mortgagee or beneficiary for the following purposes:

- (i) As a trust fund to pay for the reconstruction, repair, or replacement of the damaged or destroyed improvements, in kind and scope, in progress payments as the work is performed. Any funds remaining after completion of said work shall be retained by said mortgagee or beneficiary and applied to reduce any debt secured by such mortgage or deed of trust. Furthermore, any funds remaining after full payment of said debt shall be paid to Lessee; or
- (ii) In the event that this Lease is terminated with the consent of both Lessor and said mortgagee or beneficiary, and the improvements are not reconstructed, repaired, or replaced, the insurance proceeds shall be retained, without liability, by said mortgagee or beneficiary to the extent necessary to fully discharge the debt secured by said mortgage or deed of trust. Furthermore, said mortgagee or beneficiary shall hold the balance thereof to restore the Leased Premises to a neat and clean condition. Any remaining funds shall lastly be paid to Lessor and Lessee, as their interests may appear.

(b) General Requirements

(1) All required insurance shall be in force the first day of the term of this Lease, and shall be maintained continuously in force throughout the term of this Lease. In addition, except with respect to a Substitute Facility constructed pursuant to Paragraph 24 herein, the cost of all required insurance shall be borne by Lessee. During the entire term of this Lease, Lessee shall provide Lessor with Certificates, in a form acceptable to Lessor, evidencing the existence of the necessary insurance policies and original endorsements effecting coverage required by this Paragraph. The

Certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind insurance on its behalf.

- (2) All liability insurance policies shall name, or be endorsed to name Lessor, the City of San Diego, the Centre City Development Corporation, and their officers, employees, and agents as additional insureds and protect Lessor, the City of San Diego, the Centre City Development Corporation, and their officers, employees, and agents against any legal costs in defending claims. All liability policies shall provide cross-liability coverage. All insurance policies shall be endorsed to state that coverage will not be suspended, voided, cancelled, or reduced in coverage or in limits, except after Lessee has furnished Lessor with thirty (30) days' prior written notice by certified mail. All insurance policies shall be endorsed to state that Lessee's insurance is primary and not excess or contributory to any insurance issued in the name of Lessor. Further, all insurance companies must be reasonably satisfactory to Lessor.
- (3) Any deductibles or self-insured retentions must be declared and reasonably acceptable to Lessor. If the deductibles or self-insured retentions are reasonably unacceptable to Lessor, then Lessee shall have the option to either: (i) reduce or eliminate such deductibles or self-insured retentions as respects Lessor and its officers, employees, and agents (which may be accomplished by use of a captive insurance deductible buy-back or similar policy); or, (ii) procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- (4) Lessor shall retain the right at any time to review the coverage, form, and amount of insurance required herein. If, in the reasonable opinion of the Lessor, the insurance provisions in this Lease do not provide adequate protection for Lessor and/or members of the public using the Leased Premises or using services connected with Lessee's use or occupancy of the Leased Premises, Lessor may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. Lessor's requirements shall be reasonable, but shall be designed to ensure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.
- (5) Lessor shall notify Lessee in writing of changes in the insurance requirements. With respect to changes in insurance requirements that are available from Lessee's then-existing insurance carrier, Lessee shall deposit Certificates evidencing acceptable insurance policies with Lessor incorporating such changes within sixty (60) days after receipt of such notice. With respect to changes in insurance requirements that are not available from Lessee's then-existing insurance carrier, Lessee shall deposit Certificates evidencing acceptable insurance policies with Lessor, incorporating such changes, within one hundred twenty (120) days after

receipt of such notice. In the event Lessee fails to deposit insurance Certificates as required herein, this Lease shall be in default without further notice to Lessee, and Lessor shall be entitled to exercise all legal remedies.

- (6) If Lessee fails or refuses to maintain insurance as required in this Lease, or fails to provide proof of insurance, Lessor has the right to declare this Lease in default, and Lessor shall be entitled to exercise all legal remedies.
- (7) The procuring of such required policies of insurance shall not be construed to limit Lessee's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding said policies of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Lease, or with the use or occupancy of the Leased Premises.
- (8) Lessee agrees not to use the Leased Premises in any manner, even if use is for purposes stated herein, that will result in the cancellation of any insurance Lessor may have on the Leased Premises or on adjacent premises, or that will cause cancellation of any other insurance coverage for the Leased Premises or adjoining premises. Lessee further agrees not to keep on the Leased Premises or permit to be kept, used, or sold thereon, anything prohibited by any fire or other insurance policy covering the Leased Premises. Lessee shall, at its sole expense, comply with all reasonable requirements for maintaining fire and other insurance coverage on the Leased Premises.

26. **PAYMENT OF WAGES:** Lessee shall comply with all applicable laws with respect to the payment of wages.

27. **WARRANTIES-GUARANTEES-COVENANTS:** Except as otherwise expressly provided herein, Lessor makes no warranty, guarantee, covenant, including but not limited to covenants of title and quiet enjoyment, or averment of any nature whatsoever concerning the condition of the Leased Premises, including the physical condition thereof, or any condition which may affect the Leased Premises. It is agreed that Lessor will not be responsible for any loss, damage, and/or costs, which may be incurred by Lessee by reason of any such condition or conditions.

28. **DAMAGE TO OR DESTRUCTION OF LEASED PREMISES:** Should Lessee-owned improvements be: (i) damaged or destroyed by fire, the elements, acts of God, or by any other cause; or (ii) declared unsafe or unfit for occupancy or use by a public entity with the appropriate authority, (i) and/or (ii) hereinafter "event," Lessee shall, within ninety (90) days after such event, commence and diligently pursue to completion the repair, replacement, or reconstruction of the improvements necessary to permit full occupancy and use of the Leased Premises for the uses required herein. Repair, replacement, or reconstruction of such improvements shall be accomplished in a manner according to Plans reasonably approved by Lessor; provided, however, Lessee shall not be obligated to repair, reconstruct, or replace the

improvements following their destruction in whole or substantial part, except to the extent the loss is covered by insurance required pursuant to Paragraph 25 herein (or would be covered regardless of whether such required insurance is actually in effect.)

If Lessee elects not to restore, repair, or reconstruct as herein required, then this Lease shall terminate. Further, Lessor shall have any rights to which it would be entitled under the provisions of Paragraph 25 herein.

No event described herein shall relieve Lessee of its obligations to pay all rent and other amounts otherwise due hereunder.

29. **QUITCLAIM OF LESSEE'S INTERESTS UPON TERMINATION:** Upon termination of this Lease for any reason, including but not limited to termination because of default by Lessee, Lessee shall execute, acknowledge, and deliver to Lessor within thirty (30) days after receipt of written demand therefor, a good and sufficient deed whereby all Lessee's right, title, and interest in the Leased Premises is quitclaimed to Lessor. Should Lessee fail or refuse to deliver the required deed to the Lessor, Lessor may prepare and record a notice reciting the failure of Lessee to execute, acknowledge, and deliver such deed. Said notice shall be conclusive evidence of the termination of this Lease and of all right of Lessee, and those claiming under Lessee, in and to the Leased Premises.

30. **PEACEABLE SURRENDER:** Upon expiration of this Lease or earlier termination or cancellation thereof, as herein provided, Lessee shall peaceably surrender the Leased Premises to Lessor in as good condition as the Leased Premises were at the Commencement Date of this Lease, except as the Leased Premises were repaired, rebuilt, restored, altered, or added to as permitted or required by the provisions of this Lease, ordinary wear and tear excepted, and subject to Paragraph 7 herein. If Lessee fails to surrender the Leased Premises at the expiration of this Lease or the earlier termination or cancellation thereof, Lessee shall defend and indemnify Lessor from all liability and expense resulting from the delay or failure to surrender, including without limitation any succeeding lessee claims based on Lessee's failure to surrender.

31. **WAIVER:** Should either Lessor or Lessee waive any breach by the other of any Lease covenant, condition, or agreement, such waiver shall not be, nor be construed to be, a waiver of any subsequent or other breach of the same or any other Lease covenant, condition, or agreement. Further, failure on the part of either party to require or exact the other's full and complete compliance with any of the Lease covenants, conditions, or agreements shall not be, nor be construed as in any manner changing the terms, or preventing the enforcement in full, of the provisions hereof. In addition, Lessor's subsequent acceptance of rent hereunder shall not be deemed to be a waiver of any preceding Lessee breach of any Lease term, covenant, or condition, other than Lessee's failure to pay the particular rent so accepted, regardless of Lessor's knowledge of Lessee's preceding breach at the time rent is accepted.

32. **HOLDOVER:** This Lease shall terminate without further notice at expiration of the term. Any holding over by Lessee after either expiration or termination shall not constitute a renewal or extension, or give Lessee any rights in or to the Leased Premises.

If Lessee, with Lessor's consent, remains in possession of the Leased Premises after Lease

expiration or termination, such possession shall be deemed a month-to-month tenancy terminable upon thirty (30) days' notice furnished at any time by either party to the other. In addition, all provisions of this Lease, except those pertaining to term, shall apply to the month-to-month tenancy, and Lessee shall continue to pay all rent required by this Lease. Provided, however, if Percentage Rent is required by this Lease, it shall be paid monthly on or before the tenth (10<sup>th</sup>) day of each month, including the tenth (10<sup>th</sup>) day of the month following the expiration of any such holdover period.

33. **PARAGRAPH HEADINGS:** The Table of Contents and Paragraph Headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

34. **ENTIRE UNDERSTANDING:** This Lease contains the entire understanding and agreement of the parties with respect to the Leased Premises. Lessee acknowledges there is no other written or oral understanding or agreement between the parties with respect to the Leased Premises, and that this Lease supersedes all prior negotiations, discussions, obligations, and rights of the parties hereto. No waiver, modification, amendment, or alteration of this Lease shall be valid unless it is expressly in writing and signed by authorized representatives of the parties hereto. Each of the parties to this Lease acknowledges that no other party, agent, or representative has made any promise, representation, waiver, or warranty whatsoever, expressed or implied, which is not expressly contained in writing in this Lease. Each party further acknowledges it has not executed this Lease in reliance upon any collateral promise, representation, waiver, or warranty, or in reliance upon any belief as to any fact not expressly recited in this Lease.

35. **TIME IS OF THE ESSENCE:** Time is of the essence of each and all of the terms and provisions of this Lease. This Lease shall inure to the benefit of and be binding upon the parties hereto and any successors of Lessee as fully and to the same extent as though specifically mentioned in each instance. All covenants, conditions, and agreements in this Lease shall extend to and bind any assigns and sublessees of Lessee.

36. **NOTICES:** All notices provided for by this Lease or by law to be given or served upon Lessor or Lessee shall be in writing and: (i) personally served upon Lessor or Lessee, or any person hereafter authorized by either party in writing to receive such notice, or (ii) served by certified letter addressed to the appropriate address hereinafter set forth, or to such other address designated in writing by the respective party.

To Lessor  
Executive Director  
Redevelopment Agency of the  
City of San Diego  
202 C Street  
San Diego, CA 92101

To Lessee  
President and Chief Executive Officer  
San Diego Padres  
100 Park Boulevard  
San Diego, CA 92101  
P.O. Box 122000  
San Diego, CA 92112

Copy to

President  
Centre City Development Corporation  
225 Broadway, Suite 1100  
San Diego, CA 92101

Should any consented-to assignee, consented-to purchaser, or consented-to-lender notify Lessor in writing of its desire to receive notices, such party shall also be personally served, or served by certified letter at such appropriate address designated in writing by the respective party.

Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the parties so served; provided, however, if served by certified mail, service will be considered completed and binding on the party served forty-eight (48) hours after deposit in the U.S. Mail.

37. **REMOVAL OF MATERIALS:** Lessee shall, upon expiration of this Lease or sooner termination as herein provided, remove within sixty (60) days all materials, debris and salvage items, hereinafter "Materials," from the Leased Premises and adjacent property, so as to leave the same in as good condition as when first occupied by Lessee, subject to reasonable wear and tear; provided, however, if Lessee fails to remove all Materials within sixty (60) days, Lessor may remove, sell, or destroy said Materials at the expense of the Lessee. Further, Lessee agrees to pay Lessor the reasonable cost of such removal, sale, or destruction; or at the option of the Lessor, said Materials not removed, sold, or destroyed by Lessee shall become the property of Lessor, without cost to Lessor, and without any payment to Lessee.

During any period of time employed by Lessee under this Paragraph to remove said Materials, or to test for and/or remediate Contaminants as required in Paragraph 43 herein, Lessee shall continue to pay Lessor additional rent to compensate Lessor to the extent that Lessor cannot relet the Leased Premises (or a portion thereof) during such period of removal, testing and/or remediating, or if such actions interfere with the operations of any tenant that has subsequently leased the Leased Premises (or a portion thereof). During the first thirty (30) days of the period described in the preceding sentence, the additional rent will equal the Minimum Annual Rent, prorated daily and further prorated based on the portion of the Leased Premises which cannot be relet due to such actions; following the first thirty (30) days of such a period, the additional rent will equal the Minimum Annual Rent, prorated daily.

38. **ACCEPTANCE OF LEASED PREMISES:** BY SIGNING THIS LEASE, LESSEE REPRESENTS AND WARRANTS THAT IT HAS INDEPENDENTLY INSPECTED THE LEASED PREMISES AND MADE ALL TESTS, INVESTIGATIONS, AND OBSERVATIONS NECESSARY TO SATISFY ITSELF OF THE CONDITION OF THE LEASED PREMISES. LESSEE AGREES IT IS RELYING SOLELY ON SUCH INDEPENDENT INSPECTION, TESTS, INVESTIGATIONS, AND OBSERVATIONS IN MAKING THIS LEASE. LESSEE ALSO ACKNOWLEDGES THAT THE LEASED PREMISES ARE IN THE CONDITION CALLED FOR BY THIS LEASE, THAT LESSOR HAS PERFORMED ALL WORK WITH RESPECT TO THE LEASED PREMISES, AND THAT LESSEE DOES NOT HOLD LESSOR RESPONSIBLE FOR ANY DEFECTS IN THE LEASED PREMISES. LESSEE FURTHERMORE ACCEPTS, AND SHALL BE RESPONSIBLE FOR, ANY RISK OF HARM TO ANY PERSON AND PROPERTY,



INCLUDING WITHOUT LIMITATION, EMPLOYEES OF LESSEE, FROM ANY LATENT DEFECTS IN THE LEASED PREMISES.

Initial JTW Scob  
Lessor Lessee

39. **WASTE/NUISANCE:** Lessee shall not use the Leased Premises in a manner that constitutes waste or nuisance.

40. **NUMBER AND GENDER:** Words of any gender used in this Lease shall include any other gender and each word in the singular number shall include the plural whenever the tense requires.

41. **EQUAL EMPLOYMENT OPPORTUNITY AND NONDISCRIMINATION:** Lessee agrees to comply with Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the California Constitution; the California Fair Employment and Housing Act; and any other applicable federal, state, or local laws and regulations now existing or hereinafter enacted, requiring equal employment opportunities or prohibiting discrimination. This shall include without limitation, laws and regulations prohibiting discrimination because of race, color, religion, sex, national origin, ancestry, physical or mental disability, veteran status, medical condition, marital status, age (40 years and older), sexual orientation, pregnancy, or other non-job related criteria.

Lessee shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Lessee shall provide equal opportunity in all employment practices. Lessee shall ensure that its licensees and sub-lessees (if any) comply with the City of San Diego's Equal Opportunity Program.

Lessee has received, read, understands and agrees to be bound by the City of San Diego Municipal Code Division 27 (Equal Opportunity Program) and the City Manager's Policies and Procedures implementing that Program, contained in the Equal Opportunity Packet provided by Lessor.

Lessee shall submit either a Work Force Report or an Equal Opportunity Plan, as required by Section 22.2705 of the City of San Diego Municipal Code and shall submit an initial Equal Opportunity Report. Lessee agrees periodically to provide updated reports as requested by the Lessor.

Lessee's compliance with this Paragraph is an express condition hereof, and any failure by Lessee to so comply and perform shall be a default as provided in this Lease, and Lessor may exercise any right as provided herein, and as otherwise provided by law.

42. **ATTORNEY FEES:** Should any suit be commenced to enforce, protect, or establish any right or remedy of any of the terms and conditions hereof, including without limitation a summary action commenced by Lessor under the laws of the state of California relating to the unlawful detention of property, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney fees and costs of suit.

43. **HAZARDOUS MATERIALS:** Lessee shall comply with all laws regarding hazardous substances, materials, wastes, or petroleum products or fraction thereof, collectively herein "Contaminants," relative to Lessee's occupancy or use of the Leased Premises. Lessee shall be liable and responsible for any Contaminants arising out of Lessee, its agents' or invitees' occupancy or use of the Leased Premises. Such liability and responsibility shall include, but is not limited to: (i) removal of any Contaminants from the Leased Premises and/or obtaining site closure by all appropriate regulatory agencies based on future land use; (ii) removal of any such Contaminants from any area outside the Leased Premises, including but not limited to surface and ground water, which Contaminants were generated as part of the occupancy or use of the Leased Premises; (iii) damages to persons, property, and the Leased Premises (iv) all claims resulting from those damages enumerated in (iii) above; (v) fines imposed by any governmental agency; and (vi) any other liability as provided by law.

If Lessee has in the past or continues to use, dispose, generate, or store Contaminants on the Leased Premises, Lessor or its designated representatives, at Lessor's sole discretion, may at any time during the term of this Lease, enter upon the Leased Premises and make any inspections, tests, or measurements Lessor reasonably deems necessary to determine if a release of Contaminants has occurred, except that Lessor shall have no right of access and testing as to releases of Contaminants that are permitted or allowed by federal, state or local law or regulation. Lessor shall furnish Lessee a minimum of twenty-four (24) hours' notice in writing prior to conducting any inspections or tests, unless, in Lessor's reasonable judgment, circumstances require otherwise. Such tests shall be conducted in a manner so as to attempt to minimize any inconvenience and disruption to Lessee's operation as is practicable. If such tests indicate a reportable release of Contaminants by Lessee that is not permitted or allowed under federal, state or local law or regulation, then Lessor, at Lessor's sole discretion, may require Lessee, at Lessee's sole expense and at any time during the term of this Lease, to have tests for such Contaminants conducted by a qualified party or parties on the Leased Premises. If Lessor has reason to believe any Contaminants originated from a release by Lessee (other than a release permitted or allowed by federal, state or local law or regulation) on the Leased Premises have contaminated any area outside the Leased Premises, then Lessor, at Lessor's sole discretion, may require Lessee, at Lessee's sole expense and at any time during the term of this Lease, to have tests for such Contaminants conducted by a qualified party or parties on said area outside the Leased Premises.

Tests conducted by Lessee's qualified party may include, but are not limited to soil, emission, and/or groundwater sampling tests, or other procedures to determine any actual or possible contamination. Lessee shall expeditiously, but no longer than sixty (60) days after Lessor's request for such tests, furnish to Lessor sampling plans, and results of said tests and analysis thereof, identifying any Contaminants which exceed then-applicable levels permitted or allowed by federal, state, or local laws. Lessee shall report such contamination to Lessor within seventy-two (72) hours, and shall diligently proceed to identify the extent of contamination, how it will be remediated, when it will be remediated, by whom, and the cost of such remediation. Notwithstanding any other provision of this Lease, Lessee's obligation to remove or remediate Contaminants from the Leased Premises or areas outside the Leased Premises shall not require removal or remediation of such Contaminants below levels determined by the regulatory agencies with jurisdiction over such Contaminants under federal, state or local law or regulation

to be protective of human health and/or the environment taking into account the use for which the Leased Premises or other areas are zoned.

If Lessee has, in Lessor's sole determination, used or stored Contaminants onsite during the term of this Lease, then on/or before Lease termination, Lessee shall allow Lessor access to the Leased Premises and disclose all requested environmental audit information to enable Lessor to complete an environmental investigation of the Leased Premises. Upon reviewing the investigation, if Lessor, in its sole discretion, determines a release of Contaminants has occurred at the Leased Premises, Lessor may require Lessee to obtain, at its sole expense, "site review and closure" from the County Department of Environmental Health, herein "DEH," under a voluntary site review agreement. Once DEH, the Regional Water Quality Board, herein "RWQCB," or any other designated state lead agency has determined the site is closed, Lessee will have satisfied its environmental obligations under said "site review and closure."

Lessee shall defend, indemnify, and hold harmless Lessor, the City of San Diego, and the Centre City Development Corporation, their officers, employees, and agents from any and all responsibilities, damages, liabilities, claims, judgments, costs, fines, expenses, and demands, including without limitation any costs, expenses, and attorney fees therefor related to environmental liabilities resulting from Lessee's occupancy or use of the Leased Premises. Said liabilities shall include, but are not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies. Lessor shall have a direct right of action against Lessee even if no third party has asserted a claim. Furthermore, Lessor shall have the right to assign said indemnity.

**44. JOINT AND SEVERAL LIABILITY:** If Lessee, as a party to this Lease, is a partnership, joint venture, limited liability company, or is comprised of more than one party or entity, or a combination thereof, the obligations imposed on Lessee under this Lease shall be joint and several, and each general partner, joint venturer, member, party or entity of Lessee shall be jointly and severally liable for said obligations. Furthermore, nothing herein shall be deemed or construed as creating a partnership or joint venture between Lessor and Lessee, or between Lessor and any other party, or cause Lessor to be responsible in any way for the debts or obligations of Lessee, or any other party or entity.

**45. ACKNOWLEDGEMENT OF LESSOR'S IMPROVEMENTS:** Lessee agrees that it has examined the Leased Premises and the condition thereof, that the improvements thereon in their present condition are satisfactory and usable for Lessee's purposes, and that no representations as to value or condition have been made by or on behalf of Lessor.

**46. LESSOR TO INCLUDE CITY OF SAN DIEGO:** If for any reason Lessor shall cease to exist during the term of this Lease, the term "Lessor" herein shall be deemed to include the City of San Diego.

**ABSTRACT OF LEASE**

47. **ABSTRACT OF LEASE:** This is the final Paragraph and Abstract of Lease, hereinafter "Abstract," dated as of June 7, 2006 (to be effective March 10, 2004), between THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body corporate and politic, Lessor, and PADRES L.P., a Delaware limited partnerhsip, Lessee, concerning the Leased Premises described in Exhibits "A" and "B," attached hereto and by this reference made a part hereof.

For good and adequate consideration, Lessor leases the Leased Premises to Lessee, and Lessee leases them from Lessor, for the term and on the provisions contained in the Lease dated as of June 7, 2006 including without limitation provisions prohibiting assignment, subleasing, and encumbering said leasehold without the express written consent of Lessor in each instance, all as more specifically set forth in said Lease, which said Lease is incorporated in this Abstract by this reference.

The term is thirty (30) years, beginning March 10, 2004, and ending thirty (30) years thereafter.

Any transfer by Lessor of its interest in the Leased Premises shall be subordinate and subject to this Lease.

This Abstract is not a complete summary of the Lease. Provisions in this Abstract shall not be used in interpreting the Lease provisions. In the event of conflict between this Abstract and other parts of the Lease, the other parts shall control. Execution hereof constitutes execution of the Lease itself.

Dated: June 7, 2006

APPROVED AS TO FORM AND LEGALITY  
MICHAEL J. AGUIRRE, CITY ATTORNEY

THE REDEVELOPMENT AGENCY OF  
THE CITY OF SAN DIEGO

By: Bruce Bartram  
Name: Bruce Bartram  
Title: Deputy City Attorney

By: James I. Waring  
Name: James I. Waring  
Title: DEPUTY CHIEF

PADRES L.P., a Delaware limited  
partnership  
By: PADRES, INC., a Delaware  
corporation

By: Bryant W. Burke  
Name: Bryant W. Burke  
Title: Vice President

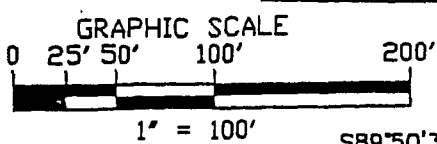
**EXHIBIT "A"**

**Description of the Leased Premises**

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F 130 G

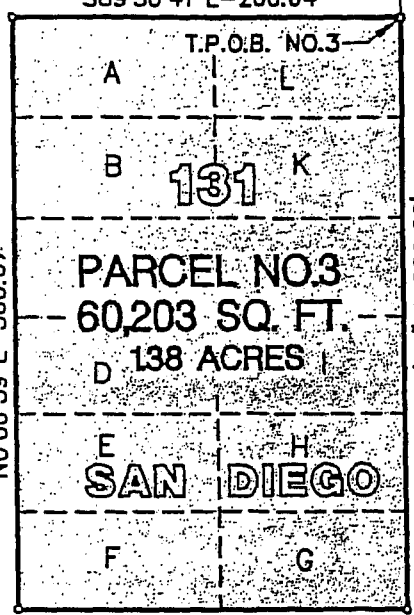
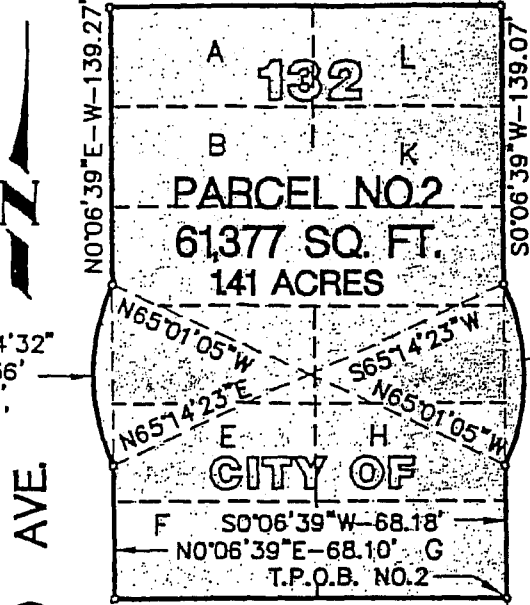
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CITY OF S.D. WELL MON.

STREET

S89°50'41"W-40.00'  
S89°50'41"E-200.64'

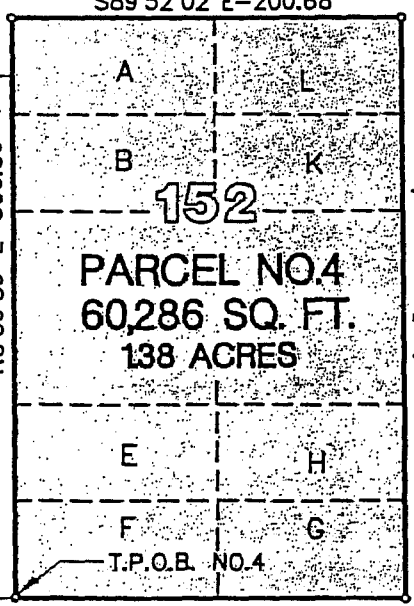
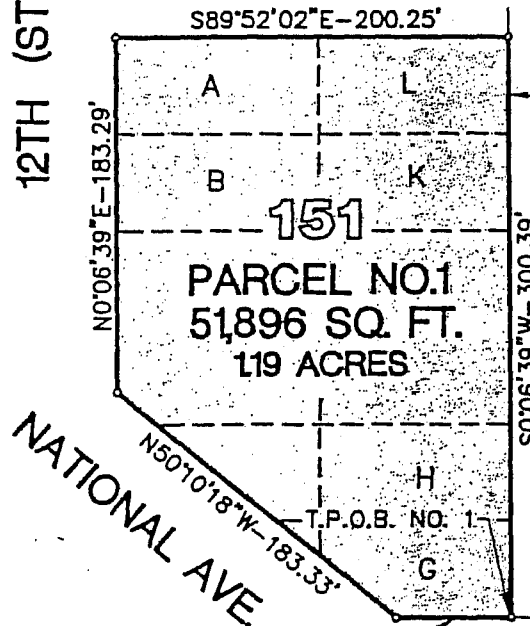


12TH (STREET) AVE

13TH STREET

L STREET

14TH STREET



NATIONAL AVE

IMPERIAL AVENUE

N1837959.64, E6283952.02  
CITY OF S.D. WELL MON.

NOTES:

COORDINATES, BEARINGS & DISTANCES ARE  
BASED ON THE CALIFORNIA COORDINATE SYSTEM  
ZONE 6 (N.A.D '83)

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80.0'

## PARCEL NO. 1

Commencing at a City of San Diego Well Monument at the intersection of 13<sup>th</sup> Street and Imperial Avenue in the City of San Diego having N.A.D. '83 coordinates Northing 1837959.64, Easting 6283952.02; thence north 0°6'39" east a distance of 40.00 feet to the northerly right-of-way line of Imperial Avenue; thence along said northerly right-of-way line north 89°52'02" west a distance of 40.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 1; thence continuing along said northerly right-of-way line north 89°52'02" west a distance of 59.23 feet; thence leaving said southerly right-of-way line of Imperial Avenue north 50°10'18" west a distance of 183.33 feet to the easterly right-of-way line of 12<sup>th</sup> Street; thence along said easterly right-of-way line north 0°06'39" west a distance of 183.29 feet to the southerly right-of-way line of "L" Street; thence along said southerly right-of-way line south 89°52'02" east a distance of 200.25 feet to the westerly right-of-way line of 13<sup>th</sup> Street; thence along said westerly right-of-way line of 13<sup>th</sup> Street south 0°06'39" west a distance of 300.39 feet to the TRUE POINT OF BEGINNING of Parcel No. 1, containing 51,896 square feet or 1.19 acres of uplands area.

## PARCEL NO. 2

Commencing at the True Point of Beginning of Parcel No. 1; thence along the westerly right-of-way line of 13<sup>th</sup> Street north 0°06'39" east a distance of 300.39 feet to the southerly right-of-way line of "L" Street; thence continuing north 0°06'39" east a distance of 80.00 feet to the northerly right-of-way line of "L" Street, said point also being the TRUE POINT OF BEGINNING of Parcel No. 2; thence continuing along said northerly right-of-way line north 89°52'02" west a distance of 200.25 feet to the easterly right-of-way line of 12<sup>th</sup> Street; thence leaving said northerly right-of-way line of "L" Street along said easterly right-of-way line of 12<sup>th</sup> Street north 0°6'39" east a distance of 68.10 feet to the beginning of a non-tangent curve concave to the east and having a radius of 110.36 feet the center of which bears north 65°14'23" east; thence along the arc of said curve through a central angle of 49°44'32" an arc distance of 95.81 feet to a point which bears north 65°01'05" west from the center of said curve; thence north 0°06'39" west a distance of 139.27 feet to the southerly right-of-way line of "K" Street; thence leaving said easterly right-of-way line of 12<sup>th</sup> Street along said southerly right-of-way line of "K" Street south 89°50'33" east a distance of 200.25 feet to the westerly right-of-way line of 13<sup>th</sup> Street; thence leaving said southerly right-of-way line "K" Street along said westerly right-of-way line of 13<sup>th</sup> Street

**PARCEL NO. 2 (Continued)**

south  $0^{\circ}06'39''$  west a distance of 139.07 feet to the beginning of a non-tangent curve concave to the west and having a radius of 110.36 feet the center of which bears south  $65^{\circ}14'23''$  west; thence along the arc of said curve through a central angle of  $49^{\circ}44'32''$  an arc distance of 95.81 feet to a point which bears north  $65^{\circ}01'05''$  west from the center of said curve; thence south  $0^{\circ}06'39''$  west a distance of 68.18 feet to the TRUE POINT OF BEGINNING of Parcel No. 2, containing 61,377 square feet or 1.41 acres of uplands area.

**PARCEL NO. 3**

Commencing at the City of San Diego Well Monument at the intersection of 14<sup>th</sup> Street and "K" Street in the City of San Diego, said monument having N.A.D. '83 coordinates Northing 1838719.35, Easting 6284234.13; thence south  $89^{\circ}50'41''$  west a distance of 40.00 feet; thence south  $0^{\circ}06'20''$  west a distance of 40.00 feet to the southerly right-of-way line of "K" Street and the westerly right-of-way line of 14<sup>th</sup> Street, said point also being the TRUE POINT OF BEGINNING of Parcel No. 3; thence along the westerly right-of-way line of 14<sup>th</sup> Street south  $0^{\circ}06'20''$  west a distance of 299.99 feet to the northerly right-of-way line of "L" Street; thence leaving said westerly line of 14<sup>th</sup> Street along said northerly right-of-way line of "L" Street north  $89^{\circ}52'02''$  west a distance of 200.67 feet to the easterly line of 13<sup>th</sup> Street; thence leaving said northerly line of "L" Street along said easterly line of 13<sup>th</sup> Street north  $0^{\circ}06'39''$  east a distance of 300.07 feet to the southerly line of "K" Street; thence leaving said westerly right-of-way line of 13<sup>th</sup> Street along said southerly right-of-way line of "K" Street south  $89^{\circ}50'41''$  east a distance of 200.64 feet to the TRUE POINT OF BEGINNING of Parcel No. 3, containing 60,203 square feet or 1.38 acres of uplands area.



PARCEL NO. 4

Commencing at the above described City of San Diego Well Monument at the Intersection of 13<sup>th</sup> Street and Imperial Avenue in the City of San Diego; thence north  $0^{\circ}6'39''$  east a distance of 40.00 feet to the northerly right-of way line of Imperial Avenue; thence along said northerly right-of-way line south  $89^{\circ}52'10''$  east a distance of 40.00 feet to the easterly right-of-way line of 13<sup>th</sup> Street, said point also being the TRUE POINT OF BEGINNING of Parcel No. 4; thence leaving said northerly right-of-way line of Imperial Avenue along said easterly right-of-way line of 13<sup>th</sup> Street north  $0^{\circ}06'39''$  east a distance of 300.39 feet to a point on the southerly right-of-way line of "L" Street; thence leaving said easterly right-of-way line of 13<sup>th</sup> Street along the southerly right-of-way line of "L" Street south  $89^{\circ}52'02''$  east a distance of 200.68 feet to the westerly right-of-way line of 14<sup>th</sup> Street; thence leaving the southerly right-of-way line of "L" Street along said westerly right-of-way line of 14<sup>th</sup> Street south  $0^{\circ}06'20''$  west a distance of 300.38 feet to a point on the northerly right-of-way line said of Imperial Avenue; thence leaving said westerly right-of-way line of 14<sup>th</sup> Street along said northerly right-of-way line of Imperial Avenue north  $89^{\circ}52'10''$  west a distance of 200.71 feet to the TRUE POINT OF BEGINNING of Parcel No. 4, containing 60,286 square feet or 1.38 acres of uplands area.

The above described areas are those delineated on Drawing No. 800-001, dated 9 June 2000, and made a part of this agreement.

Courses referred to in above legal description are based upon the California Coordinate System, Zone 6 (N.A.D. '83).

## EXHIBIT "B"

### Definition of Operating Expenses

For purposes of the Lease, and unless otherwise agreed in writing by the parties, "Operating Expenses" means the following expenses, if and to the extent they are actually incurred in accordance with the Lease, and are directly related to the operation of the Leased Premises:

1. **Personnel Costs**: The cost of all personnel needed to operate the Leased Premises as documented by timecards and computed separately from all of Lessee's other labor expenses, consisting of:

(a) All salaries and hourly wages (or a prorated allocation thereof if employed at the Leased Premises on a part-time basis) paid by Lessee to parking attendants, cashiers, traffic directors, clerical staff and/or other persons employed by Lessee who work at the Leased Premises on a full-time or part-time basis and for whom Lessee incurs payroll taxes (collectively, the "Parking Staff").

(b) Lessee's actual cost for employee benefits, if and to the extent that such benefits are actually provided to full-time Parking Staff and are customarily provided by Lessee to all of its full-time parking employees.

2. **Licenses and Permits**: Fees and costs for any licenses, permits or approvals which Lessee is required by law to obtain or maintain in order to perform its duties under this Lease;

3. **Supplies and Uniforms**: The cost of all supplies necessary for the daily operation of the Leased Premises, as well as the cost of providing uniforms worn by the Parking Staff and the laundering of such uniforms;

4. **Repair and Maintenance**: The cost of labor, supplies and materials needed to perform routine maintenance and periodic cleaning of the Leased Premises, as well as all repairs of the Leased Premises and/or its respective parking equipment, including, but not limited to, the cost of post-event cleaning and periodic re-striping and surface repairs, but excluding the cost of repairs necessitated by the negligence of Lessee or its employees (repairs which Lessee shall make promptly at its sole expense);

5. **Printing and Postage**: Printing costs for parking tickets, hangtags, forms, invoices, correspondence, advertising and marketing materials and any other items distributed by Lessee in connection with the sale of parking at the Leased Premises, and all postage costs incurred by Lessee in connection with the distribution of such items;

6. **Telephone Expenses:** The cost of telephone equipment, local and long distance telephone service, and cellular telephone service and usage, including the reasonable prorated portion of charges for cellular telephones and paging systems used by Lessee's field personnel;

7. **Third-Party Expenses:** Fees and expense reimbursements paid to any independent contractors who are engaged by Lessee or Lessor in accordance with this Lease to perform services necessary for the proper operation of the Leased Premises;

8. **Insurance Premiums:** The premiums paid by Lessee to obtain and maintain insurance coverage for the Leased Premises as required by the Lease;

9. **Utilities:** Utilities including water, sewer, gas and electricity used in the operation of the Leased Premises; and

10. **Other Expenses:** Any other reasonable and necessary costs or expenses incurred by Lessee which, although not specifically enumerated in this Exhibit B, are directly related to the performance of Lessee's duties under the Lease and have been authorized in advance and in writing by the Executive Director of Lessor.