
GROUND LEASE

BY AND BETWEEN

**THE REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND, LANDLORD**

AND

SEARS DEVELOPMENT CO., TENANT

PROPERTY:

**2000-2016 TELEGRAPH AVE. AND 490 THOMAS L. BERKELEY WAY
OAKLAND, CALIFORNIA**

DATE: [_____, 200_]

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[TO BE COMPLETED AT GROUND LEASE CLOSING]

GROUND LEASE

This **GROUND LEASE** (the "Lease") is made as of [_____, 200_] (the "Lease Effective Date"), by and between **THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND**, a public body, corporate and politic ("Landlord"), and **SEARS DEVELOPMENT CO.**, a Delaware corporation ("Tenant").

RECITALS

A. Landlord is an agency created pursuant to the provisions of the Community Redevelopment Law of the State of California (Health & Safety Code Section 33000 et seq.) for the purpose of encouraging and facilitating redevelopment, removal of blight, reuse of blighted and unproductive property, and economic growth in the City of Oakland.

B. On June 12, 1969, Landlord adopted and subsequently amended a Redevelopment Plan for the Central District Urban Renewal Area of Oakland (the "Redevelopment Plan") and, pursuant to said plan, established on February 18, 1997, the Retail Center and Rehabilitation Area (Uptown Activity Area (the "Uptown Area").

C. Landlord has executed a Lease Disposition and Development Agreement with FC Oakland, Inc., to develop in the Uptown Area a mixed use primarily housing and retail project (the "Uptown Project") to help eliminate blight and unproductive property uses in the Uptown Area.

D. The real property located at 2000-2016 Telegraph Avenue. and 490 Thomas L. Berkeley Way, Oakland, and more particularly described in Exhibit "A" attached hereto (the "Property"), is adjacent to the proposed Uptown Project, and is needed for the relocation of Tenant's existing Auto Center currently located where the Uptown Project will be built.

E. In order to meet the goals of the Redevelopment Plan of preserving housing and retail uses in the Uptown area, Landlord simultaneously: (1) purchased the existing Auto Center and adjacent surface parking from Tenant located at 1911 Telegraph Avenue, Oakland California ("Existing Auto Store Property"), and a public parking garage structure also located at 1911 Telegraph Avenue, Oakland, California, pursuant to a Purchase and Sale Agreement with Joint Escrow Instructions ("Sale Agreement"); (2) executed a Lease Disposition and Development Agreement with Tenant, as Developer ("LDDA"), providing for the ground lease of the Property to Tenant pursuant to this Lease, upon satisfaction of conditions set forth in the LDDA, to relocate its existing Auto Center; (3) executed a lease with Tenant to lease the Existing Auto Store Property for operation of the existing Auto Center until the earlier of: (a) twenty (20) months after Close of Escrow, as defined in the Sale Agreement, or (b) the opening of a new Sears Auto Center on the Property (the "Auto Center Lease"); and (4) executed the Parking License Agreement, as defined in the Sale Agreement.

F. Landlord determined it was and is in the public interest to acquire, lease and subsequently sell the Property to Tenant. The purposes of redevelopment will be furthered by the (1) relocation of the existing Auto Center to the Property so that the Uptown Project can proceed;

and (2) construction of a new Auto Center on the Property in order to preserve this component of Tenant's retail operations in the Uptown Area.

G. Landlord commenced a condemnation action against the owners of the Property to acquire the Property.

H. Landlord obtained the right to possess and use the Property pursuant to an Order for Immediate Possession issued on January 24, 2005, by the Superior Court of the State of California, County of Alameda - Northern Division ("Alameda County Superior Court") in connection with the Condemnation Litigation (as hereafter defined).

I. Tenant desires to purchase the Property for the purpose of relocating its existing Auto Center by building a new retail Sears Auto Center and building of other lawful uses, in addition to a new retail Sears Auto Center, including retail and residential uses on the Property (the "Project"), as more particularly described in the LDDA.

J. Given the pendency of the Condemnation Litigation, the parties have agreed that Landlord shall lease to Tenant Landlord's Interest (as hereinafter defined) in the Property pursuant to this Lease, which Lease will include an option to purchase such interest by Tenant at a later date.

K. An Environmental Impact Report was approved for the LDDA, this Lease and the Project by the City Planning Commission on February 18, 2005, and reviewed and approved by the City Council and Agency on June 21, 2005, pursuant to the California Environmental Quality Act ("CEQA").

L. The parties desire to enter into this Lease to set forth their rights and obligations relating to the lease of Landlord's Interest and the operation of the Project.

AGREEMENT

In consideration of the covenants and agreements of the parties contained in this Lease, and in consideration of the foregoing Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as set forth below.

1. **DEFINITIONS.** Capitalized terms used herein, unless otherwise defined herein, shall have the respective meanings specified in the Glossary of Defined Terms attached hereto as Exhibit B, or as defined in the LDDA. Unless otherwise indicated, references in this Lease to articles, sections, paragraphs, clauses, exhibits and schedules are to the same contained in or attached to this Lease.

2. **DEMISING OF PROPERTY.** Landlord, for and in consideration of the rents, covenants and agreements as provided in this Lease, hereby leases to Tenant and Tenant hereby leases from Landlord, Landlord's Interest in the Property. It is the intent of Landlord and Tenant that this Lease shall be non-cancelable by Landlord or Tenant, except as specifically and expressly set forth herein.

3. TERM.

3.1 Term. The term of this Lease shall commence on the Lease Effective Date and continue until 11:59 p.m. on the fiftieth (50th) anniversary of the Lease Effective Date, unless extended in accordance with Section 3.2 or terminated sooner pursuant to Section 3.3, as extended or until terminated (the "Term").

3.2 Option to Extend. Landlord hereby grants to Tenant an option to extend the Term of this Lease (the "Extension Option") for a period of up to forty-nine (49) years (the "Option Term"). Tenant may exercise the Extension Option at any time and from time to time, and for any part of the Option Term, but such exercise of the Extension Option shall be made no later than the date that is one hundred and eighty (180) days before the end of the then existing Term. Any exercise of the Extension Option for less than the full Option Term shall not preclude Tenant's further exercise(s) of the Extension Option for the remaining portion of the Option Term; provided that Tenant may not exercise the Extension Option on more than three occasions. In no event shall the Term of this Lease, as extended, be longer than ninety-nine (99) years. Tenant's exercise of the Extension Option shall be in writing and delivered to Landlord in accordance with the notice provisions of this Lease. Section 9.6 of this Lease shall apply to the proration of fees and costs associated with the exercise of the Extension Option, if any, including transfer taxes.

3.2.1 Parties Authorized to Exercise Option. The Extension Option may be exercised by the originally named Tenant or by any permitted assignee of Tenant's interest in this Lease.

3.2.2 Consideration for Option, Rent During Option Term. The parties agree that Tenant's expenditures in constructing the Project constitute adequate consideration for the granting of the Option Extension and for Fixed Rent during the Option Term. Accordingly, Tenant shall not be required to pay Fixed Rent during any Option Term.

3.3 Termination of Lease. This Lease shall terminate on the earliest of the following events to occur (the "Termination Date"):

- (a) the expiration date of the Term;
- (b) the Purchase Closing Date, if Tenant exercises the Purchase Option and the purchase transaction closes in accordance with Article 9 of this Lease;
- (c) upon the occurrence of any event specified in this Lease allowing Landlord or Tenant to terminate this Lease (subject to any notice and cure periods); or
- (d) a date mutually agreed upon by Landlord and Tenant.

4. DEMOLITION, REMEDIATION AND DEVELOPMENT.

4.1 Demolition Work. Tenant shall demolish any improvements on the Property and prepare the Property for the Project at Tenant's sole cost and expense in accordance with the terms of the LDDA.

4.2 Remediation of Hazardous Materials. Tenant shall be responsible for the Remediation of all Hazardous Materials existing on or at the Property as of the Lease Effective Date as required under the LDDA. Tenant's Remediation of such Hazardous Materials shall be at Tenant's sole cost and expense.

4.3 Tenant's Obligation To Construct Project. Tenant, at its sole cost and expense, shall develop and construct the Project on the Property in accordance with the terms of the LDDA. Tenant covenants that any financing required in connection with its development and operation of the Project shall be the sole responsibility and cost of Tenant. Landlord and Tenant agree that it is their mutual intention that the standards for development and construction imposed upon Tenant under the LDDA are not intended to confer any decision-making authority upon Landlord regarding the construction, design or operation of the Project, except as expressly set forth in the LDDA or this Lease.

5. TITLE.

5.1 State of Title. Fee simple title in the Property is currently vested in the name of Alex K. Hahn and Jae H. Hahn, as Trustees of the Hahn Family Trust dated April 10, 2002, and Sang E. Hahn and Haitan Hahn, Trustees of the Hahn 2002 Family Trust Under Agreement dated February 8, 2002 (collectively, the "Landowners"). On December 15, 2004, Landlord commenced the Condemnation Litigation against the Landowners and other third party defendants. An Order for Possession was issued to Landlord by the Alameda County Superior Court, which order became effective on April 25, 2005, and granted to Landlord the right of immediate possession and use of the Property, including the right to remove all improvements and structures situated thereon. A Judgment in Condemnation has not yet been entered.

5.2 Acquisition of Fee Title. Upon the finalization of the Condemnation Litigation (other than by abandonment by Landlord) in Landlord's favor, or delivery to Landlord of a deed in lieu thereof, Landlord shall receive fee title to the Property. It is the intent of the parties that Tenant receive the benefit of Landlord obtaining such fee title. Accordingly, Landlord covenants and agrees that in the event that Tenant has exercised the Purchase Option prior to Landlord's receipt of fee title, Landlord agrees that it shall (within thirty (30) Business Days) notify Tenant in writing of the issuance of the Final Order of Condemnation and Judgment and Landlord agrees to promptly record said Final Order of Condemnation and Judgment. Landlord shall thereafter promptly record a grant deed containing customary redevelopment covenants to Tenant. Landlord and Tenant agree to pay all escrow, recording and transfer fees associated with said conveyance according to the custom in Alameda County.

This Section 5.2 shall survive the termination of this Lease.

5.3 Title to Improvements and Personal Property. All improvements and personal property located in, on or at the Property or otherwise constituting part of the Property shall at all times during the Term of this Lease be owned by, and shall belong to, Tenant. Tenant shall have title to the foregoing throughout the Term and Landlord (or subsequent Property owner) shall have title to the foregoing after the Term, unless Tenant exercises the Purchase Option, in which case such improvements and personal property located in or at the Property shall continue to be owned and belong to Tenant. All the benefits and burdens of ownership of the foregoing shall be and remain in Tenant during the Term and shall be and remain in Landlord (or subsequent Property owner) after the Term.

6. RENT.

6.1 Fixed Rent. Tenant shall pay Landlord, in lawful money of the United States of America, annual rent for the Term of this Lease in the amount of One Dollar (\$1.00) (the "Fixed Rent"). Landlord acknowledges Tenant's payment in full of the Fixed Rent for the Term on the Ground Lease Closing Date.

6.2 Additional Rent. In addition to Fixed Rent, Tenant shall pay Landlord, as additional rent under this Lease, all Additional Rent.

7. ADDITIONAL PAYMENTS BY TENANT; IMPOSITIONS.

7.1 Triple Net Lease. The parties intend that this Lease shall constitute a "triple net lease," so that the Rent shall provide Landlord with "net" return for the Term, free of any expenses or charges with respect to the Property, except as specifically provided in this Lease. Accordingly, Tenant shall pay as Additional Rent, each and every item of expense, of every kind and nature whatsoever, including Impositions or other amounts customarily paid by a tenant under a "triple net lease" or otherwise payable by Tenant in accordance with the terms of this Lease. Tenant shall pay each such item of Additional Rent directly to the party to whom it is owed, and, if requested by Landlord, shall provide evidence of such payment to Landlord.

7.2 Impositions. Tenant shall pay all Impositions, before delinquency, (but subject to the terms of this Lease, including any applicable cure periods) to the applicable taxing authority. The possessory interest created by this Lease shall be subject to property taxation under the laws of the State of California and Tenant shall be subject to the payment of property taxes on the possessory interest. This notice is given pursuant to California Revenue and Taxation Code Section 107.7.

7.3 Assessments in Installments. To the extent permitted by Law, Tenant shall have the right to apply for conversion of any assessment to cause it to be payable in installments. After such conversion, Tenant shall pay only such installments of such assessment as shall become due and payable during the Term.

7.4 Utilities. Tenant shall pay all fuel, gas, light, power, water, sewage, garbage disposal, telephone, cable and other utility charges, and the expenses of installation, maintenance, use and service in connection with the foregoing, relating to Tenant's use of the Property during the Term.

8. USE.

8.1 Generally. Tenant may use the Property for the development and operation of the Project and accessory uses thereto.

8.2 Signage. Tenant, without Landlord's consent or approval, shall have the right to erect signage on the Property and/or affix signage to the exterior of the Project (which rights may be granted to one or more subtenants) provided that such signage shall comply with all applicable Laws and the provisions of the LDDA.

9. OPTION TO PURCHASE.

9.1 Option to Purchase. Landlord hereby grants to Tenant an option to Purchase Landlord's Interest ("Purchase Option"). The term of the Purchase Option shall begin on the Lease Effective Date and terminate on the date that is sixty (60) calendar days prior to the last day of the Term; provided however, the Purchase Option (if not previously exercised) shall terminate concurrent with the termination of this Lease.

9.2 Exercise of Purchase Option. The Purchase Option may be exercised by giving ~~written notice to Landlord in accordance with the notice provisions of this Lease and paying to~~ Landlord an exercise price of One Dollar (\$1.00) ("Option Price"). The date of said written exercise notice shall be deemed the "Exercise Date."

9.3 Purchase Terms.

9.3.1 Purchase Price. The purchase price ("Purchase Price") for Landlord's Interest shall be One Dollar (\$1.00).

9.3.2 "AS-IS" Condition of Property. Tenant acknowledges and agrees that (i) except as set forth in Section 17.1(b) of the LDDA, Landlord makes no representation or warranty whatsoever, express or implied, as to the physical condition of the Property or in connection with any matter relating to its value, use, zoning or other land use, fitness for a particular purpose, the presence or absence of Hazardous materials or the ability of Tenant to obtain Government Approvals, (ii) Tenant is relying upon its own inspection, investigations and review of available information to determine the same. Tenant further acknowledges that Tenant is accepting the Property in an "AS IS" condition and "WITH ALL FAULTS," and is not relying on any warranties, promises, understandings or representations, express or implied, of Landlord or any Agent of Landlord relating to the Property, except as otherwise provided in Section 17.1(b) of the LDDA. Landlord does not represent or warrant the accuracy, completeness, or adequacy of any matters disclosed by Landlord or its Agents. No inference may be drawn that all matters affecting the Property have been disclosed by the LDDA or in the materials delivered by Landlord or its Agents to Tenant. The disclosure of any matter by Landlord or its Agents shall not be deemed to be a representation or warranty that all issues regarding the Property have been discovered, included or properly quantified at all or to any degree. Developer acknowledges that the matters disclosed in or pursuant to the LDDA are not comprehensive disclosures.

9.4 Purchase Escrow. Within ten (10) calendar days following the Exercise Date, the Parties shall open an escrow with Escrow Agent ("Purchase Escrow"). This Article 9, together with such further instructions, if any, as the parties shall provide to Escrow Agent, shall constitute escrow instructions for the purchase transaction. The Parties agree to issue joint supplemental instructions as needed or as requested by the Escrow Agent.

9.5 Close of Escrow. Subject to the satisfaction or waiver of conditions set forth in Section 9.7 below, the Purchase Escrow shall close on a date not later than sixty (60) calendar days following the date the Purchase Escrow is established unless extended by written mutual agreement of the parties (the "Purchase Closing Date"); provided that the Purchase Closing Date shall not be extended beyond the Term of this Lease, except for a reasonable time, not to exceed one hundred and twenty (120) days after the Lease Term, solely to allow the parties to comply with the terms of this Section 9.5 to close escrow.

9.6 Closing Costs and Prorations. Closing costs and prorations shall be paid as follows:

(a) Landlord and Tenant shall pay the recording fees, escrow costs and fees and all transfer taxes in accordance with custom in Alameda County. Accordingly, Landlord shall pay the County of Alameda transfer tax and one-half (1/2) of the City of Oakland transfer tax. And Tenant shall pay one-half (1/2) of the City of Oakland transfer tax, and pay all title and escrow fees associated with the close of escrow.;

(b) Tenant shall pay the cost of title insurance (whether by reissue of the Leasehold Title Policy (as defined in the Sale Agreement) or issuance of a new title policy) including the costs of all endorsements, if any, as set forth in Section 9.7.1(a) below, except that Landlord and Tenant shall split the cost of a survey of the Property.

(c) Tenant shall be responsible for the payment of all real property taxes and installments of assessments.

9.7 Conditions to Close Purchase Escrow.

9.7.1 Conditions to Tenant's Obligation. Tenant's obligation to close the Purchase Escrow is conditioned upon and subject to the satisfaction, or written waiver by Tenant, of all the conditions set forth in this Section 9.7.1, which are exclusively for the benefit of Tenant. Should any such condition not be so satisfied or waived by Tenant, then Tenant may elect to terminate the Purchase Escrow in accordance with the terms of Section 9.8 below.

(a) Title Company shall be unconditionally committed, upon the sole condition of the payment of its regularly scheduled premiums, to issue an ALTA Extended Coverage Policy (the "Purchase Title Policy"). The Purchase Title Policy shall be in such amount as reasonably requested by Tenant and acceptable to Title Company, subject only to those exceptions contained in the Purchase Title Policy or otherwise approved in writing by Tenant ("Permitted Exceptions") and containing such additional or special endorsements as required by Tenant. Tenant shall pay the cost of the Purchase Title Policy including its fifty percent (50%) share of the cost of any survey, and all endorsements, if any.

(b) Landlord shall have deposited into Escrow:

(i) A grant deed in the form referred to in Section 5.2(b) conveying Landlord's Interest to the Tenant, free and clear of all claims, liens and encumbrances except for the Permitted Exceptions.

(ii) [INTENTIONALLY OMITTED].

(iii) All other documents and funds required to be deposited by Landlord pursuant to this Lease in order to close escrow.

(iv) In the event that Landlord's Interest includes fee title, Landlord has recorded the Final Order of Judgment and Condemnation and taken such other actions as required by Law to perfect fee title, as demonstrated to the sole, but good faith, satisfaction of Tenant.

(v) The information return and any other documents necessary to comply with Section 6045(e) of the Internal Revenue Code of 1986, as amended, and Treasury Regulation 1.6045-4.

(vi) An affidavit certifying that Landlord is not a "foreign person" within the meaning of Section 1445(f)(3) of the IRC (the "Certificate of Non-Foreign Status").

(vii) A statement executed by Landlord that the representations and warranties of Landlord contained in Section 21.1 are true and correct as of the Purchase Closing Date, provided, however, if any representation or warranty is not true, Tenant may waive the compliance by Landlord with said warranty or representation as a condition of closing.

(viii) Documents necessary to comply with any withholding requirements of California law.

(ix) Memorandum of Termination of Ground Lease.

(x) Any other documents, instruments or agreements as reasonably determined necessary by Title Company to effectuate the close of the Purchase Escrow.

9.7.2 Closing Instructions to Escrow Agent. On or before the Purchase Closing Date, upon satisfaction or waiver of all of Landlord's and Tenant's conditions precedent and receipt of all required Escrow deposits, Escrow Agent shall close Escrow as follows:

(a) Date all as yet undated documents as of the date of recording of the Grant Deed;

(b) Record the following documents in the order listed with the Office of the County Recorder for Alameda County

(1) The Grant Deed.

(2) The Memorandum of Termination of Ground Lease.

(c) Issue the Purchase Title Policy to Tenant;

(d) (a) Prorate taxes, assessments, rents, and other charges as provided for in this Agreement and (b) charge the Parties for their respective closing costs and escrow fees as provided for in this Agreement;

(e) Disburse any net funds remaining after the preceding disbursements to Landlord, if any;

(f) Deliver to Tenant the FIRPTA Affidavit, any withholding affidavit required by California Law, and a conformed copy of the Grant Deed showing recording information;

(g) Deliver to each of Tenant and Landlord a conformed copy of the Memorandum of Termination of Ground Lease showing recording information; and

(h) Prepare and deliver to both Tenant and Landlord a signed copy of Escrow Agent's closing statement showing all receipts and disbursements of the Escrow.

All documents shall be recorded at no charge pursuant to Section 27383 of the California Government Code. If the Recorder requires a recording fee, the Escrow Agent shall pay the fee and charge the party who customarily pays such fee in Alameda County.

If Escrow Agent is unable to simultaneously perform all of the instructions set forth above, Escrow Agent shall notify Tenant and Landlord and retain all funds and documents pending receipt of further instructions jointly issued by Tenant and Landlord.

9.7.3 Landlord's Obligations to Close. Landlord's obligation to close the Purchase Escrow is conditioned upon and subject to the satisfaction, or written waiver by Landlord, of all the conditions set forth in this Section 9.7.3, which are exclusively for the benefit of Landlord. Should any such condition not be so satisfied or waived by Landlord, then Landlord may elect to terminate the Purchase Escrow in accordance with the terms of Section 9.8 below.

(a) Tenant shall have deposited into Escrow all documents and funds required to be deposited by Tenant pursuant to this Lease in order to close escrow.

(b) Tenant shall have paid to Landlord the Option Price.

(c) Landlord shall have obtained the legal right to convey the Property to Tenant by a Grant Deed.

(d) The representations and warranties of Tenant contained in Section 21.2 shall be true and correct as of the Purchase Closing Date.

9.8 Termination of Purchase Escrow. In the event that the Purchase Escrow shall fail to close due to Landlord's default, Tenant shall have the right to either (i) seek injunctive relief to compel Landlord to transfer Landlord's Interest or (ii) terminate this Lease (and cease any remediation or construction activities on the Property) and recover its Development Costs (as that term is defined in the LDDA). In the event that the Purchase Escrow shall fail to close due to Tenant's default, Agency shall have the right in the event, but only in the event that it has obtained fee title to the Property, to seek injunctive relief to compel Tenant to purchase Landlord's Interest. In all other circumstances, the Purchase Escrow shall be terminated and Escrow Agent instructed to return to the respective party all documentation and fees deposited into the Purchase Escrow by such party, less escrow fees, if any, owed by such party.

9.9 Landlord's "Put Option". In the event that Tenant has not exercised its Purchase Option within one hundred eighty (180) days following written notification by Landlord of the issuance and recordation of the Final Order of Condemnation and Judgment in connection with the Condemnation Litigation pursuant to which Landlord has received fee title to the Property, Landlord shall have the right to require Tenant to purchase the Property (the "Put Option"), subject to the satisfaction (or waiver) of the closing conditions for Tenant's benefit set forth in Section 9.7.1 above. The "Put Option" shall terminate concurrent with the termination of this Lease.

10. LAWS. Tenant shall comply with all Laws affecting the Property during the Term of this Lease. Tenant shall obtain all permits and approvals required by Law in connection with Tenant's construction upon, operation, use and occupancy of the Property and shall comply with all such permits and approvals. Tenant shall be responsible, at its sole cost and expense, for all improvements or alterations required from time to time to comply with Laws. Notwithstanding the foregoing, Tenant shall have the right to contest any such Laws in accordance with this Lease.

11. MAINTENANCE AND ALTERATIONS. The provisions of this Article 11 shall apply after the Completion of Construction. Prior to the Completion of Construction, the terms of the LDDA shall apply to the rights and obligations of Tenant which are the subject matter of this Article 11.

11.1 Obligation To Maintain. Tenant, at its sole cost and expense, shall keep and maintain the Property in good order, condition and repair.

11.2 Tenant's Right to Perform Alterations. Tenant shall be entitled, at its sole cost and expense, to make improvements, repairs or alterations to the Project, and to alter, modify or reconstruct such improvements as are located on the Property, as Tenant shall consider necessary or appropriate, subject to the terms of this Lease and all applicable Laws, without the consent or approval of Landlord.

11.3 Hazardous Materials. At all times during the Term, Tenant shall comply with all Environmental Laws applicable to Tenant's use of the Property or Tenant's operation of the Project. Tenant may use any Hazardous Materials normally used in the operation of a Sears Auto Center, or contained in office, janitorial and landscaping supplies or otherwise normally used in the operation of facilities comparable to the Project; provided that Tenant complies with all Environmental Laws. Tenant shall not Release any Hazardous Materials in, on or under the Property, or permit the Release of any Hazardous Materials in, on or under the Property by any of its contractors, employees or agents. In the event of a Release by Tenant of any Hazardous Materials in, on or under the Property, Tenant shall Remediate such Release as required by a Government Agency having jurisdiction over such matters.

12. PROHIBITED LIENS AND STOP NOTICES.

12.1 Tenant's Covenant. If a lien which is prohibited by this Lease or the LDDA ("Prohibited Lien") or Stop Notice is filed, then Tenant shall, within sixty (60) days after receiving notice of such filing, cause such Prohibited Lien or Stop Notice to be paid, discharged or bonded. Nothing in this Lease shall be construed to restrict Tenant's right to contest the validity of any Prohibited Lien or Stop Notice and to pursue Tenant's position to a final judicial determination, provided Tenant complies with Article 14. The mere existence of a Prohibited Lien or Stop Notice shall not be construed as a Tenant Default under this Lease.

12.2 Protection of Landlord. Nothing in this Lease shall be deemed or construed in any way to constitute Landlord's consent or request, express or implied, to any contractor, subcontractor, laborer, equipment or material supplier for the performance of any labor or the furnishing of any materials or equipment for any improvement, alteration or repair of, or to, the Property, or any part of the Property, nor as giving Tenant any right, power or authority to contract for, or permit the rendering of, any services, or the furnishing of any materials that would give rise to the filing of any liens or stop notices against Landlord's interest in the Property. Landlord shall have the right to post notices of non-responsibility on the Property.

13. LIABILITY OF LANDLORD; INDEMNIFICATION.

13.1 Liability of Landlord; Indemnity by Tenant. Landlord shall not be liable for any injury or damage to any property or to any Person occurring on or about the Property nor for any injury or damage to any property of Tenant, or of any other Person, during the Term, except to the extent attributable to the negligence or misconduct of Landlord. Tenant hereby indemnifies Landlord from and against any and all Loss incurred or suffered by Landlord arising directly or indirectly with respect to (a) the Property or the construction or operation of the Project or (b) any breach of this Lease, except to the extent attributable to the negligence or misconduct of Landlord.

13.2 Indemnification Procedures. Wherever this Lease requires one party to Indemnify the other, the following procedures and requirements shall apply:

13.2.1 Notice; Selection of Counsel. Indemnatee shall provide Indemnitor with Notice of any claim. Indemnatee shall not be entitled to recover from Indemnitor the amount of

any Loss which would not have been incurred by Indemnitee or Indemnitor but for Indemnitee's failure to provide such Notice in a timely manner. If Indemnitee requests that Indemnitor provide Indemnitee's defense, Indemnitor shall be entitled to select counsel reasonably acceptable to Indemnitee. Notwithstanding any other provision of this Lease, if Indemnitee intends to retain its own counsel with respect to its defense, such counsel shall be reasonably acceptable to Indemnitor, and Indemnitee's reasonable attorneys' and experts fees (including in-house fees at prevailing in-house attorney rates) and costs shall be subject to Indemnitor's indemnity.

13.2.2 Settlement. Indemnitor may, with the consent of Indemnitee, not to be unreasonably withheld, settle any claim which is the subject of its indemnity, except that no consent by Indemnitee shall be required as to any settlement by which (a) Indemnitor procures (by payment, settlement, or otherwise) a release of Indemnitee pursuant to which Indemnitee is not required to make any payment whatsoever, (b) neither Indemnitee nor Indemnitor acting on behalf of Indemnitee makes any admission of liability, and (c) the continued effectiveness of this Lease is not jeopardized in any way.

13.2.3 Insurance Proceeds. Each of Indemnitor and Indemnitee waives its rights of recovery against the other to the extent that the waiving party has valid and collectible insurance covering the Loss sustained.

13.3 Survival. This Article 13 shall survive the expiration or termination of this Lease.

14. RIGHT OF CONTEST. Notwithstanding anything to the contrary in this Lease, Tenant shall have the right to contest, at its sole expense, (a) the amount or validity of any Imposition, Prohibited Lien or Stop Notice, (b) the valuation, assessment or reassessment (whether proposed or final) of the Property for purposes of real estate taxes or possessory interests, (c) the validity of any Law or the application of any Law to the Property, or (d) the validity or merit of any claim against which Tenant is required to Indemnify Landlord under this Lease. Tenant may defer payment of, compliance with or performance of any contested matter or obligation pending the outcome of such contest, provided that such deferral does not subject the Property to risk of forfeiture or subject Landlord to any liability. Landlord shall not be required to join in any such contest proceedings unless a Law shall require that such proceedings be brought in the name of Landlord, or such joinder is otherwise reasonably necessary. In such case, Landlord shall cooperate with Tenant, so as to permit such proceedings to be brought in Landlord's name. Tenant shall pay all of Tenant's costs and expenses (including attorneys' fees and costs) incident to such proceedings, and the reasonable costs and expenses of Landlord (including Landlord's reasonable attorneys' fees and costs) with respect thereto. Tenant shall Indemnify Landlord with respect to any contest pursuant to this Section. Tenant shall be entitled to any refund of any Imposition (and penalties and interest paid by Tenant) based upon Tenant's prior overpayment of such Imposition, whether such refund is made during or after the Term. Upon termination of Tenant's contest, Tenant shall pay the amount (if any) as has been finally determined in such proceedings to be due from Tenant, together with any costs, interest, penalties or other liabilities in connection therewith. Landlord shall not, in its Proprietary Capacity as Landlord under this Lease, enter any objection to any contest proceeding undertaken by Tenant pursuant to this Article 14. Tenant's right to contest any Imposition or the valuation, assessment or reassessment

of the Property for tax purposes shall be to the exclusion of Landlord, and Landlord shall have no right to contest the foregoing without Tenant's consent, not to be unreasonably withheld. Nothing in this Article 14 shall be construed to limit Landlord's rights to act with respect the matters addressed in this Article 14 in its Governmental Capacity or to apply to the Condemnation Litigation.

15. TENANT'S INSURANCE.

15.1 Tenant To Insure. Prior to the Completion of Construction, Tenant's insurance obligations shall be those set forth in the LDDA. Following Completion of Construction, Tenant shall, at Tenant's sole cost and expense, during the Term, maintain the following insurance coverage (or its then reasonably available equivalent):

(a) General Liability. Tenant shall carry Commercial General Liability insurance at least as broad as ISO Form CG0001 (Commercial General Liability) or its equivalent, with the extensions noted below, covering claims against property damage and bodily injury, to include death, occurring in or about the Property, in minimum limits of not less than Five Million Dollars (\$5,000,000) per occurrence.

(b) Worker's Compensation. Tenant shall maintain, and ensure that its contractors maintain, in accordance with California Labor Code Section 3700 et seq., workers' compensation insurance, (or provide proof of self-insurance in accordance with the provisions of that same Code) covering all Persons employed in connection with the Property or with development, construction, alteration, repair or operation of the Project, for injury, illness, or death, in statutory amounts for compensation, with not less than \$1,000,000 for employer's liability for bodily injury by accident and occupational disease.

(c) Property Damage. Tenant shall carry "All Risk" insurance coverage in an amount equal to 100% of the full replacement cost of the Project, providing coverage for all risks of direct physical loss; provided, however, that coverage for the peril of earthquake shall be obtained in Tenant's sole and absolute discretion.

(d) Comprehensive business automobile liability insurance and where applicable, garage liability insurance providing automobile liability insurance for liability arising out of the ownership, operation, maintenance or use of "any auto" including owned, hired and non-owned autos in the amount of not less than \$2,000,000.

(e) A Pollution Legal Liability policy in the amount of not less than \$5,000,000.00.

(f) Automobile Liability insurance, including all owned, leased, hired or borrowed by or on behalf of the Developer, it contractor or its agents in the performance of this Lease shall have the following minimum limits for Bodily Injury and Property Damage - \$1,000,000 Combined Single Limit.

(g) Other. All insurance required by any Leasehold Mortgage, and such other insurance as Tenant determines appropriate in the exercise of Tenant's reasonable business judgment.

(h) Notwithstanding the above provisions, Tenant may self-insure any of its insurance obligations under this Section. Any insurance required hereunder may be carried under a blanket policy or policies maintained by Tenant with respect to other premises or property owned or operated by it, its subsidiaries or affiliates, and with a deductible provision acceptable to Tenant (it being understood that Tenant shall contribute the amount of such deductible towards the costs of restoration in the event of an insured casualty.).

(i) Additional Insured: Contractor shall name the Redevelopment Agency of the City of Oakland, the City of Oakland, their Councilmembers, directors, officers, agents, employees and volunteers as additional insureds in its Comprehensive Commercial General Liability and Pollution Legal Liability policies and as Loss Payee on its All Risk Property Insurance policies. If Developer submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG20 10 form (or its equivalent). A STATEMENT OF ADDITIONAL INSURED ENDORSEMENT ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF THE ADDITIONAL INSURED REQUIREMENT.

15.2 Policy, Form, Content and Insurer. All insurance required to be carried by Tenant shall be in a form reasonably satisfactory to Landlord and written by one or more insurance companies reasonably approved by Landlord and which are licensed or approved to do business in the State of California. Insurance companies must be rated at least A in Best's Insurance Guide and a financial rating of 10, or equivalent rating. All such insurance may be carried under a blanket or umbrella policy covering the Property and other locations, provided that the coverage afforded the insuring party by such blanket policy shall not be reduced or diminished by reason of the use of such blanket policy of insurance, and provided further that the requirements of this Section 15.2 are otherwise satisfied. All such insurance shall contain endorsements that (a) such insurance shall not be canceled or amended except upon thirty (30) calendar days' prior notice to the other party by the insurance company, (b) the insuring party shall be solely responsible for payment of premiums, and (c) the insuring party's insurance is primary in the event of overlapping coverage which may be carried by the other party. Tenant shall deliver to Landlord at least thirty (30) calendar days prior to the time such insurance is first required to be carried, except that any insurance required to be as of the Lease Effective Date shall be provided to Landlord within twenty-one (21) calendar days following the Lease Effective Date, and thereafter at least thirty (30) calendar days prior to the expiration of such policy, either a duplicate original or a certificate clearly showing compliance by the Tenant with its obligations under this Lease, together with evidence satisfactory to Landlord of the payment of the premiums therefor.

15.3 [INTENTIONALLY DELETED]

15.4 Additional Insureds. All liability insurance policies shall name Landlord, as an additional insured as its interest may appear.

15.5 Tenant Default. Tenant's failure to procure and maintain the required insurance or self-insurance program during the entire term of this Lease shall constitute a Tenant Default for which Landlord may (but shall not be obligated to), in addition to any other remedies it may have pursuant to this Lease, and after prior written notice from Landlord to Tenant and the passage of such time to cure as may be required by this Lease, procure or renew such insurance to protect the interests of Landlord, pay any and all premiums in connection therewith, and recover all monies so paid from the Tenant together with interest thereon at eight percent (8%). The costs of insurance obtained by Landlord pursuant to this Section 15.5 shall constitute Additional Rent and shall be paid by Tenant in accordance with Section 25.2.

15.6 Waiver of Subrogation. The Parties release each other, and their respective representatives, from any claims for damage and/or injury to any part of the Property or Project, Tenant's trade fixtures, personal property, that are caused by or result from risks insured against under any insurance policies (but not workers' compensation) carried by such Party and in force at the time of any such damage to the extent of the available insurance proceeds. Each Party shall cause each casualty or property damage insurance (but not workers' compensation) policy carried by it to be written to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy.

15.7 Periodic Increase in Policy Limits. Landlord shall have the right from time to time to review with Tenant the policy limits set forth in this Lease and at that time shall cause such coverage and limits to be adjusted as reasonably agreed by Landlord and Tenant in order to bring such policy limits into conformity with the limits customarily maintained for similar commercial properties located in Alameda County, California.

16. DAMAGE OR DESTRUCTION.

16.1 Damage and Duty to Restore. In the event of Casualty to the Project, all of Tenant's obligations under this Lease, including without limitation the obligation to pay Rent, shall continue as provided for in this Lease. Tenant shall, at no cost or expense to Landlord, restore, repair, replace or rebuild the Project. In the event of Casualty to the Project, in whole or in part, whether insured against or not, such restorations, repairs replacements or rebuilding shall be commenced within a reasonable period of time (not to exceed 120 days, provided, such the 120 day period may be extended to the extent payment of proceeds of any insurance policy is delayed due to no fault of Tenant) following such Casualty and thereafter prosecuted to completion with reasonable diligence. There shall be no abatement or reimbursement of Rent on account of any Casualty.

16.2 Right to Terminate Lease. Notwithstanding the provisions of Section 16.1,:

(a) Tenant may terminate this Lease if during the last five (5) years of the Term, (or during the last five (5) years of the Term if the Extension Option has been exercised) more than thirty percent (30%) of the gross leasable area of Tenant's building is damaged or

destroyed from any cause so as to make Tenant's building unusable for Tenant's purposes. In the event of such termination, there shall be no obligation on the part of Tenant to repair or restore the building or improvements, nor any right on the part of Landlord to receive any proceeds collected under any insurance policies covering such building or any part thereof. On such termination, rent, taxes, assessments and any other sums payable by Tenant to Landlord hereunder, except for delinquent amounts, shall be prorated as of the termination date and, in the event any rent, taxes or assessments shall have been paid in advance, Landlord shall rebate the same for the unexpired period for which payment shall have been made.

(b) Tenants' right to terminate this Lease as provided under this Section 16.2 shall be exercised by Tenant by serving written notice of termination upon Landlord within one hundred and eighty (180) calendar days after such Casualty. Tenant shall continue to perform all obligations of the Tenant under this Lease until such termination is effected.

16.3 No Obligation of Landlord to Restore. Landlord shall in no event be under any duty or obligation to restore, replace or rebuild all or any portion of the Project at any time.

16.4 Standard For Restoration. In the event of any Casualty where Tenant is required to, or chooses to, repair, rebuild or restore the damaged improvements, Tenant shall commence promptly and shall restore the damaged improvements as nearly as may be practicable to their condition, quality, and class immediately prior to such casualty, with such changes or alterations as Tenant shall elect to make in conformity with this Lease. Tenant shall proceed with all due diligence, in an effort to obtain such insurance proceeds, or evidence from the insurer that such proceeds will be provided as and when needed in order to effect such repair, rebuilding or restoration.

16.5 Adjustment of Claims. Neither Landlord nor Tenant shall settle or compromise any insurance award affecting the interests of the other party without (a) the consent by such other party, such consent not to be unreasonably withheld, conditioned or delayed, and (b) in the case of an insurance award affecting the Leasehold Estate, without the consent of any Leasehold Mortgagee whose Leasehold Mortgage provides for such a right of consent. Each of Landlord and Tenant shall be entitled to appear in all proceedings affecting its respective interest and to participate in any settlement, arbitration or other proceeding involving same. Subject to the terms of its Leasehold Mortgage, any Leasehold Mortgagee shall also be entitled to appear in such proceedings and empowered to participate in any settlement, arbitration or other proceeding with respect to insurance proceeds.

16.6 Control of Funds When Lease Not Terminated. In the event of a Casualty where Tenant is required to, or chooses to, repair, rebuild or restore the damaged improvements, all property insurance proceeds shall be distributed to Tenant (subject to the provisions of any Leasehold Mortgage entered into by Tenant with a Leasehold Mortgagee), and shall be applied by Tenant to repair, rebuild or restore the improvements.

17. CONDEMNATION.

17.1 Total Taking. If a Total Taking shall occur, this Lease shall terminate as of the effective date of such Total Taking and Tenant shall be entitled to receive all proceeds, compensation and anything of value awarded, paid or received in settlement or otherwise (collectively, the "Award").

17.2 Partial Taking. If a Partial Taking shall occur, then any award or awards shall be applied first to repair, rebuilding or restoration of any remaining part of the improvements not so taken. In the event of a Partial Taking where Tenant is required to, or chooses to, repair rebuild or restore the damaged improvements, the Award shall be distributed to Tenant (subject to the provisions of any Leasehold Mortgage entered into by Tenant with a Leasehold Mortgagee), and shall be applied by Tenant to repair, rebuild or restore the improvements. The balance of any such award or awards remaining after the repair, rebuilding or restoration shall be retained by the Tenant. There shall be no abatement or reimbursement of Rent or any other sum payable hereunder as a result of any Partial Taking. Nothing in this Section 17.2 shall affect Tenant's right to make claim against the condemning or taking authority for the amount of any damage done to Tenant in the event of a partial taking of the Premises and this Lease is not terminated.

17.3 Temporary Taking. If a Temporary Taking shall occur with respect to use or occupancy of the Property for a period greater than ninety (90) days, then Tenant, at its option, shall be entitled to terminate this Lease effective as of the commencement date of the Temporary Taking.

17.4 Other Government Agency Action. In the event of any action by any Government Agency not resulting in a Taking but creating a right to compensation, this Lease shall continue in full force and effect without reduction or reimbursement of Rent, and the Award or payment made in connection with such action shall be paid to Tenant.

17.5 Settlement or Compromise. Neither Landlord, in its Proprietary Capacity as Landlord under this Lease, nor Tenant shall settle or compromise any Taking award affecting the interests of the other party without (a) the consent by such other party, such consent not to be unreasonably withheld, and (b) in the case of a Taking award affecting the interest of Tenant, without the consent of any Leasehold Mortgagee whose Leasehold Mortgage provides for such a right of consent. Each of Landlord and Tenant shall be entitled to appear in all Taking proceedings affecting its respective interest, to participate in any settlement, arbitration or other proceeding involving such a Taking and to claim its Taking award under this Lease. Subject to the terms of its Leasehold Mortgage, any Leasehold Mortgagee shall also be entitled to appear in such proceedings and empowered to participate in any settlement, arbitration or other proceeding involving any Taking.

17.6 Prompt Notice. If either party becomes aware of any Taking or threatened or contemplated Taking, then such party shall promptly give Notice thereof to the other party.

17.7 Waiver. The provisions of this Lease governing Takings are intended to supersede the application of Chapter 10, Article 2 of the California Code of Civil Procedure and

all similar Laws, to the extent inconsistent with this Lease. Nothing in this Article 17 shall be construed to limit Landlord's powers with respect to Takings in its Governmental Capacity. The foregoing provisions shall not apply to the Condemnation Litigation, but only to any subsequent Taking.

18. CONVEYANCE BY LANDLORD. Except as otherwise expressly provided in this Lease, Landlord shall not assign or convey any direct or indirect interest in all or any portion of Landlord's Interest without the prior written consent of Tenant; provided that the foregoing shall not apply to Landlord's right to abandon the Condemnation Litigation and surrender its possessory interest to the Landowners (in which case, Tenant retains any remedies it has against Landlord for abandonment of the Condemnation Litigation under the LDDA), and provided further that the preceding prohibition shall not apply to a transfer or assignment by Agency to the City or a successor agency. Any permitted assignee shall expressly assume in writing the rights and responsibilities so assigned.

19. TRANSFERS BY TENANT.

19.1 Assignment Before Completion of Project. Except as set forth in Section 19.3 or as provided for in the LDDA, before Completion of the Project, Tenant may not assign all or any portion of its interest in the Leasehold Estate or the Lease.

19.2 Assignment After Completion of Project. Subject to the provisions of Section 19.4, anytime after Completion of the Project, Tenant may assign all or any portion of its interest in the Leasehold Estate, this Lease or in the Project, without the consent of Landlord; provided however, such assignment shall not relieve Tenant of its obligations under this Lease unless Landlord approves the assignee (in writing), which approval may be withheld on the basis of assignee's financial capability, as determined in Landlord's sole but good faith discretion.

19.3 Permitted Transfers. Notwithstanding the foregoing, Tenant shall be permitted to make, without Landlord's consent, those transfers permitted under Section 11.4 the LDDA.

19.4 Assignment Documents. Within ten (10) Business Days following any assignment pursuant to Sections 19.2 or 19.3, Tenant shall provide Landlord: (a) notice of the assignment, (b) a copy of the assignment document pursuant to which the assignee shall assume the obligations of Tenant applicable to the interest assigned, and (c) if Tenant seeks Landlord's approval of the assignee in accordance with Section 19.2 above, evidence reasonably satisfactory to Landlord that assignee can meet the financial and management obligations of Tenant under this Lease. Each assignee of Tenant shall expressly assume in writing all obligations and liabilities of Tenant under this Lease applicable to the interest assigned.

19.5 Subletting. Tenant, in the normal course of business, may enter into any Sublease, extend, renew or modify any Sublease, consent to any subleasing or further levels of subleasing (all of which shall be within the defined term "Sublease," and the occupants thereunder shall all be deemed "Subtenants"), terminate any Sublease or evict any Subtenant, all without Landlord's consent. Notwithstanding the foregoing, any long-term ground sublease or other level of subleasing which in effect serves to transfer all or part of Tenant's interest in this

Lease shall be deemed to be an assignment and not a Sublease for purposes of this Article 19. The term of any Sublease (including renewal options) shall not extend beyond the Term of this Lease.

19.5.1 No Release of Tenant Upon Sublease. No Sublease shall affect or reduce any obligations of Tenant or rights of Landlord under this Lease. All rights of Landlord and obligations of Tenant under this Lease shall continue in full force and effect notwithstanding any Sublease.

19.6 Non-Disturbance and Attornment. Tenant may from time to time request that Landlord enter into a Non-Disturbance Agreement, in a form customarily used in similar commercial transactions (or if required by the Leasehold Mortgagee or a potential Leasehold Mortgagee, in form consistent with reasonable banking standards) (the "Non-Disturbance Agreement"), with respect to any Sublease. If Tenant makes such a request, Tenant shall provide Landlord with a copy of such Sublease for Landlord's review. Landlord shall not be required to enter into any Non-Disturbance and Attornment Agreement with respect to any Sublease which is not in compliance with this Lease. Landlord shall respond in writing to Tenant's request within twenty (20) calendar days after Landlord's receipt of the same.

20. MORTGAGES.

20.1 Tenant's Right to Encumber. Tenant may, at any time and from time to time during the Lease term, encumber the Property by a deed of trust or mortgage or other security instrument, which shall be in a first lien position, all of Tenant's interest under this Lease and the leasehold estate hereby created in Tenant (referred to in this Lease as a "Leasehold Mortgage") for any purpose or purposes without the consent of Landlord, but subject to the limitations contained in this Article 20. Tenant shall provide written notice of the name and address of such Leasehold Mortgagee promptly after consummating such loan. Loans from a lender other than an "institutional lender" must be approved by Landlord, which approval shall not be unreasonably withheld or delayed. Tenant's lender is referred to herein as the "Leasehold Mortgagee".

No Leasehold Mortgage incurred by Tenant pursuant to this Article 20 shall, and Tenant shall not have power to incur any encumbrance that shall, constitute in any way a lien or encumbrance on Landlord's Interest in the Property.

20.2 Use of Proceeds. The proceeds of any loan secured by a Leasehold Mortgage shall only be used for the acquisition, development, construction, repair, maintenance and replacement of the Project.

20.3 Protection of Leasehold Mortgagee.

20.3.1 Notice and Service to Leasehold Mortgagee. Landlord shall mail to Leasehold Mortgagee who has given Landlord written notice of its name and address, a duplicate copy of any and all notices Landlord may from time to time give to or serve on Tenant pursuant to or relating to this Lease, including but not limited to any notice of default, notice of termination, or notice regarding any matter on which Landlord may predicate or claim a default.

Any notices or other communications permitted by this or any other section of this Lease or by Law to be served on or given to Leasehold Mortgagee by Landlord shall be deemed duly served on or given to Leasehold Mortgagee when deposited in the United State mail, first-class postage prepaid, addressed to Leasehold Mortgagee at the last mailing address for Leasehold Mortgagee furnished in writing by the Leasehold Mortgagee to Landlord.

20.3.2 Effect of Failure to Give Notices. Landlord's failure to provide notice to Leasehold Mortgagee shall not invalidate the Notice provided to Tenant. Notwithstanding any other provision in this Lease to the contrary, however, as between Landlord and Leasehold Mortgagee, no time period applicable to such Leasehold Mortgagee shall start to run, and no termination as to which Notice from Landlord to such Leasehold Mortgagee is required under this Lease shall occur, unless and until Landlord shall have given the appropriate notice to such Leasehold Mortgagee and the applicable cure periods shall have run.

20.3.3 No Modification Without Leasehold Mortgagee's Consent. For as long as there is any Leasehold Mortgage in effect, Tenant and Landlord hereby expressly stipulate and agree that they will not materially modify this Lease in any way nor cancel this Lease by mutual agreement without the written consent of the Lender holding that Leasehold Mortgage.

20.3.4 Right of Lender to Realize on Security. Provided such rights are granted the Leasehold Mortgagee in any security interest evidencing the Leasehold Mortgage, the Leasehold Mortgagee shall have the right at any time during the Lease Term and the existence of the Leasehold Mortgage to:

(a) Do any act or thing required of Tenant under this Lease, and any such act or thing done and performed by Leasehold Mortgagee shall be as effective to prevent a forfeiture of Tenant's right's under this Lease as if done by Tenant; or

(b) Realize on the security afforded by the Leasehold Estate by foreclosure proceedings, accepting an assignment in lieu of foreclosure, or other remedy afforded in law or in equity or by the security instrument evidencing the Leasehold Mortgage, including without limitation, the appointment of a receiver, and to:

(i) Transfer, convey, or assign the title of Tenant to the Leasehold Estate to any purchaser at any foreclosure sale, whether the foreclosure sale is conducted pursuant to court order or pursuant to a power of sale contained in the security instrument evidencing the Leasehold Mortgage, or to an assignee pursuant to an assignment in lieu of foreclosure; and,

(ii) Acquire and succeed to the interest of Tenant under this Lease by virtue of any foreclosure sale, whether the foreclosure sale is conducted pursuant to a court order or pursuant to a power of sale contained in the security instrument evidencing such Leasehold Mortgage, or by virtue of any assignment in lieu of foreclosure.

The Leasehold Mortgagee or any person or entity acquiring the Leasehold Estate shall be liable to perform Tenant's obligations under this Lease only during the period, if any, in which the entity or person has ownership of the Leasehold Estate or possession of the Property.

20.3.5 Right of Leasehold Mortgagee to Cure Defaults. For as long as there is in effect any Leasehold Mortgage, before Landlord may terminate this Lease because of any default under or breach of this Lease by Tenant, Landlord must give written notice of the default or breach to Leasehold Mortgagee and afford Leasehold Mortgagee the opportunity after service of the notice to:

(a) Cure the breach or default within thirty (30) days after expiration of the time period granted to the Tenant under Section 26.1(a) of this Lease for curing a Monetary Default;

(b) Cure the breach or default within sixty (60) days after expiration of the time period granted to the Tenant under Section 26.1(b) of this Lease for curing a default, when the breach or default must be cured by something other than the payment of money and can be cured within that time, provided Leasehold Mortgagee shall have cured all Monetary Defaults under Section 26.1 and all Rent due hereunder is timely paid; or,

(c) Cure the breach or default in any reasonable time that may be required when something other than money is required to cure the breach or default and cannot be performed by Tenant within sixty (60) days as provided under Section 26.1(b), provided that acts to cure the breach or default are commenced within that time period after service of notice of default on Leasehold Mortgagee by Landlord and are thereafter diligently continued by Leasehold Mortgagee, and provided further that Leasehold Mortgagee shall have cured all Monetary Defaults under Section 26.1(a) and all Rent due hereunder is timely paid and Leasehold Mortgagee keeps and performs or otherwise causes to be kept and performed all non-monetary covenants and conditions to the extent the Leasehold Mortgagee is reasonably able to do so.

20.3.6 Additional Time to Cure, Non-Curable Defaults. Provided that all Rent and other monetary obligations of Tenant under this Lease shall be duly performed, the time periods set forth under Section 20.3.5 above shall be extended as provided below in the following circumstances:

(a) In those instances which reasonably require Leasehold Mortgagee to be in possession of the Premises to cure any Non-Monetary Default by Tenant, the time allowed a Leasehold Mortgagee to cure any Non-Monetary Default by Tenant shall be deemed extended to include the period of time required by Leasehold Mortgagee to obtain such possession with due diligence; and,

(b) In those instances in which Leasehold Mortgagee is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the time herein allowed a Leasehold Mortgagee to prosecute such foreclosure or other proceeding shall be extended to include the period of such prohibition. Provided, however, that the time allowed to prosecute such foreclosure shall not extend beyond the end of the Lease term (including any

extensions thereof resulting from timely exercise of any option of Tenant to extend the Lease term).

(c) No Leasehold Mortgagee shall be required to cure any Non-Curable Default.

20.3.7 Foreclosure in Lieu of Curing Default. Notwithstanding any other provision of this Lease, a Leasehold Mortgagee holding a Leasehold Mortgage may forestall termination of this Lease by Landlord upon a Re-Entry Default by Tenant under this Lease by commencing proceedings for foreclosing the Leasehold Mortgage. The proceedings so commenced may be for foreclosure of the Leasehold Mortgage by order of court or for foreclosure of the Leasehold Mortgage under a power of sale contained in the security instrument evidencing the Leasehold Mortgage. The proceedings shall not, however, forestall termination of this Lease by Landlord for the default or breach by Tenant unless:

(a) They are commenced within thirty (30) days after service on Leasehold Mortgagee of the notice described in Section 20.3.1 above;

(b) They are, after having been commenced, diligently pursued in the manner required by law to completion; and,

(c) Leasehold Mortgagee keeps and performs all of the terms, covenants, and conditions of this Lease requiring the payment or expenditure of money by Tenant until the foreclosure proceedings are complete or are discharged by redemption, satisfaction, payment, or conveyance of the leasehold estate to Leasehold Mortgagee.

20.3.8 Assignment on Foreclosure. The assignment of the leasehold estate of Tenant pursuant to a foreclosure sale or pursuant to an assignment in lieu of foreclosure, shall be deemed a "Permitted Transfer" and shall not require the prior written consent of Landlord:

Leasehold Mortgagee shall give Landlord written notice of the pending transfer, including the name and address of the assignee and the effective date of the assignment.

20.3.9 Assumption by Assignee. Any person acquiring the right, title and interest of Tenant's Leasehold Estate under this Lease from the Leasehold Mortgagee or any person, firm or corporation claiming or deriving its interest through or under Leasehold Mortgagee, shall, as a condition precedent to the enjoyment of the Leasehold Estate, assume in writing the liability for the performance of the obligations imposed upon Tenant by the terms of this Lease. Upon this assumption, the Leasehold Mortgagee shall be released from all obligations under this Lease arising after the effective date of the release. Leasehold Mortgagee shall furnish Landlord with an executed copy of the instrument of assignment or transfer and a copy of the undertaking made under the foregoing provisions.

20.3.10 New Lease to Leasehold Mortgagee. Notwithstanding any other provisions of this Lease, should this Lease terminate because of any Re-Entry Default by Tenant, or by reason of the bankruptcy of Tenant and rejection of the Lease by the trustee in bankruptcy or by Tenant as debtor in possession, or by operation of law, or for any other reason, Landlord

agrees to enter into a new lease for the Property (the "New Lease") with the Leasehold Mortgagee holding a Leasehold Mortgage, as Tenant, provided:

(a) A written request for the new lease is served on Landlord by Leasehold Mortgagee within thirty (30) calendar days after the later of service on Leasehold Mortgagee of the notice described in Section 20.3.1 above, or termination of this Lease;

(b) The New Lease is for a term ending on the same date the term of this Lease would have ended had this Lease not been terminated, provides for the payment of Rent at the same rate that would have been payable under this Lease during the remaining term of this Lease had this Lease not been terminated, and contains the same terms, covenants, conditions, and provisions as are contained in this Lease (except those that have already been fulfilled or are no longer applicable);

(c) Leasehold Mortgagee, on execution of the New Lease by Landlord, Leasehold Mortgagee shall pay any and all sums that would at the time of the execution of the New Lease be due under this Lease but for its termination and shall otherwise fully remedy, or agree in writing to remedy, any other material defaults under or breaches of this Lease committed by Tenant that can be remedied;

(d) Leasehold Mortgagee, on execution of the New Lease, shall pay all reasonable costs and expenses, including Attorneys' Fees and Costs incurred in terminating this Lease, recovering possession of the Premises from Tenant or the representative of Tenant, and preparing the New Lease;

(e) The New Lease shall be subject to all existing subleases between Tenant and subtenants, provided that for any sublease, the subtenant agrees in writing to attorn to Leasehold Mortgagee (or its assignee), and provided that if, and only if a New Lease is entered into pursuant to the terms hereof, Landlord shall not disturb the possession of any such subtenant solely by reason of Landlord entering into the New Lease with Leasehold Mortgagee (or its assignee); and

(f) The New Lease shall be assignable by Leasehold Mortgagee but not by any assignee of Leasehold Mortgagee without the prior written consent of Landlord which consent may be withheld on the basis of assignee's experience and financial capability as determined in the sole but good faith of Landlord.

20.3.11 Modifications Required by Leasehold Mortgagee. If any Leasehold Mortgagee or prospective Leasehold Mortgagee shall reasonably require any modification(s) of this Lease, then Landlord, at Tenant's request, shall promptly execute and deliver to Tenant such instruments in recordable form effecting such modification(s) as such Leasehold Mortgagee or prospective Leasehold Mortgagee shall reasonably require, provided that such modification(s): (a) are consistent with the customary requirements at the time of institutional lenders, or are required by banking, securities, insurance or similar laws and regulations setting forth provisions that must appear in a lease in order for such lease to be accepted as security by the Leasehold Mortgagee or prospective requesting the change and (b) do not materially adversely affect any of

Landlord's rights or materially increase any of Landlord's obligations under this Lease or the LDDA. Tenant agrees to reimburse Landlord for Landlord's reasonable out-of-pocket attorneys' fees and cost.

20.3.12 Landlord Subordination. Landlord hereby agrees to subordinate its right to terminate this Lease to a Construction Leasehold Mortgagee providing funds to finance the construction of the Project. Landlord shall deliver to Leasehold Mortgagee a written subordination agreement in recordable form reasonably acceptable to the Leasehold Mortgagee at such time as required by Leasehold Mortgagee to effectuate a concurrent recordation of the subordination agreement with Leasehold Mortgagee's deed of trust or mortgage.

20.4 No Merger of Leasehold and Fee Estates. For as long as any Leasehold Mortgage is in existence, there shall be no merger of the Leasehold Estate and the fee estate of Landlord in the Premises merely because both estates have been acquired or become vested in the same person or entity, unless the Leasehold Mortgagee otherwise consents in writing.

20.5 Leasehold Mortgagee as Assignee of Lease. No Leasehold Mortgagee holding any Leasehold Mortgage shall be liable to Landlord as an assignee of this Lease unless and until Leasehold Mortgagee acquires all rights of Tenant under this Lease through foreclosure, an assignment in lieu of foreclosure, or as a result of some other action or remedy provided by law or by the instrument creating the Leasehold Mortgage.

20.6 Leasehold Mortgagee as Including Subsequent Security Holders. The term "Leasehold Mortgagee" as used in this Lease shall mean not only the Leasehold Mortgagee that loaned money to Tenant and is named as beneficiary, leasehold mortgagee, secured party, or security holder in the security instrument evidencing any Leasehold Mortgage, but also all subsequent purchasers or assignees of the leasehold interest secured by the Leasehold Mortgage.

20.7 Condemnation Award and Insurance Proceeds. Landlord agrees that the Leasehold Mortgage may provide that any condemnation award and/or insurance proceeds to which Tenant is entitled to receive under this Lease shall be applied to the repair or restoration of all or part of the Project, with the Leasehold Mortgagee having the right to hold and disburse such award or proceeds, unless Tenant is permitted to, and elects to terminate the Lease under Section 16.2 above. In no event shall Leasehold Mortgagee be entitled to receive any portion of the condemnation award and/or insurance proceeds to which Landlord is entitled under this Lease.

20.7.1 No Subordination. The preceding provisions do not give any person whatsoever the right to mortgage, hypothecate or otherwise encumber or to cause any liens to be placed upon Landlord's Interest, nor shall the above provisions in any event be construed as resulting in a subordination in whole or in part of Landlord Interest to any indebtedness of Tenant, except as provided in Section 20.3.12 above.

21. REPRESENTATIONS AND WARRANTIES; COVENANT RE CONDEMNATION LITIGATION.

21.1 By Landlord. Landlord represents and warrants to Tenant that the following facts and conditions exist and are true:

(a) Organization. Landlord is a public body, corporate and public duly organized and validly existing under the laws of the State of California. Landlord has full power and authority to conduct its business as presently conducted and to execute, deliver, and perform its obligations under this Lease.

(b) Authorization. Landlord has taken all necessary action to authorize its execution, delivery and, subject to any conditions set forth in this Lease, performance of this Lease and the leasing of Landlord's Interest. Upon the Lease Effective Date, this Lease shall constitute a legal, valid and binding obligation of Landlord, enforceable against it in accordance with its terms.

(c) No Conflict. The execution, delivery and performance of this Lease by Landlord does not and will not conflict with, or constitute a violation or breach of, or constitute a default under (i) the charter documents of Landlord, (ii) any applicable law, rule or regulation binding upon or applicable to Landlord, or (iii) any material agreements to which Landlord is a party.

(d) No Litigation. Other than the Condemnation Litigation, there is no existing or, to Landlord's knowledge, pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting Landlord or the Property that would, if adversely determined, adversely affect Landlord or the Property or Tenant's ability to develop and operate the Project thereon.

(e) State of Title; Transfer of Leasehold Estate. Section 5.1 of this Lease accurately reflects the state of title of the Property. Landlord has full power and legal authority to lease Landlord's Interest in accordance with the terms of this Lease.

21.2 By Tenant. Tenant represents and warrants to Landlord that the following facts and conditions exist and are true:

(a) Organization. Tenant is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, with full power and authority to conduct its business as presently conducted and to execute, deliver and perform its obligations under this Lease.

(b) Authorization. Tenant has taken all necessary action to authorize its execution, delivery and, subject to any conditions set forth in this Lease, performance of this Lease. Upon the Lease Effective Date, this Lease shall constitute a legal, valid and binding obligation of Tenant, enforceable against it in accordance with its terms.

(c) No Conflict. The execution, delivery and performance of this Lease by Tenant does not and will not conflict with, or constitute a violation or breach of, or constitute a default under (i) the charter and incorporation documents of Tenant, (ii) any applicable law, rule or regulation binding upon or applicable to Tenant, or (iii) any material agreements to which Tenant is a party.

(d) Litigation. Except for the Condemnation Litigation there is no existing or, to Tenant's knowledge, pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting Tenant that would, if adversely determined, adversely affect Tenant, the Property or Tenant's ability to perform its obligations hereunder.

21.3 Condemnation Litigation. If, as of the date of this Lease, Landlord does not hold legal or equitable title to the Property, Landlord shall, at its sole cost and expense, diligently prosecute the Condemnation Litigation to completion. Notwithstanding anything to the contrary in this Lease, except as expressly provided for in Section 16.5(a)(i)(B) of the LDDA, Landlord shall not be responsible to Tenant for any damages or other remedies for failure to acquire fee simple title to the Property in the Condemnation Litigation.

22. FORCE MAJEURE. Each of Landlord and Tenant shall be excused from performance and shall not be considered to be in default with respect to any obligation hereunder, if and to the extent that its failure of, or delay in, performance is due to a Force Majeure Event; provided, that (a) as soon as is reasonably practicable, such party gives the other party written notice describing the particulars of the Force Majeure Event; (b) the suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event; (c) the party uses reasonable commercial efforts to overcome or mitigate the effects of such occurrence; and (d) when the party is able to resume performance of its obligations under this Lease, such party shall give the other party written notice to that effect and shall promptly resume performance hereunder.

23. ACCESS.

23.1 Construction Period. Landlord and its Agents shall have the reasonable right of access to the Property (accompanied by a Tenant representative if requested by Tenant) without charges or fees, at normal construction hours during the period of construction, with five (5) Business Days prior written notice to Tenant, and in accordance with Tenant's reasonable instructions, for the purposes inspecting the work being performed in constructing the Project.

23.2 Generally. Landlord and its Agents shall have the reasonable right to enter the Property with five (5) Business Days prior written notice, upon reasonable notice to Tenant, during regular business hours, (accompanied by a Tenant representative if requested by Tenant) and in accordance with Tenant's reasonable instructions, for the purpose of determining whether a Non-Monetary Default has occurred or is continuing, and for the purpose of curing any such Non-Monetary Default. Such right to enter shall be a temporary right to enter for the purposes set forth above, and shall not be a right of entry or of a taking or retaining possession of the Property in a peaceful or non-peaceful manner. In entering the Property pursuant to this Article 23, Landlord and its designees shall not interfere with the conduct of operations on the

Property by Tenant or anyone claiming through Tenant, and shall comply with Tenant's reasonable instructions. Except to the extent prohibited by Law, Landlord shall Indemnify Tenant against any Loss arising from Landlord's negligence or willful misconduct while entering upon the Property pursuant to this Section 23.2 or any other provision of this Lease permitting Landlord to enter the Property (except upon termination of this Lease) and not attributable to the negligence or willful misconduct of Tenant. Notwithstanding the foregoing, Landlord and its Agents shall have the right to enter the Property with such notice (if any) as is reasonably practicable under the circumstances in case of an emergency and, in such event, Landlord shall only Indemnify Tenant for reasonably avoidable claims.

24. LATE PAYMENT. If Tenant makes any payment required under this Lease more than thirty (30) days after such payment is first due and payable, then in addition to any other remedies Landlord may have under this Lease, and without reducing or adversely affecting any of Landlord's other rights and remedies, Tenant shall pay Landlord within 30 days after demand, interest on such late payment at an interest rate equal to eight percent (8%), beginning on the day after such payment was first due and payable and continuing until the date when Tenant actually makes such payment.

25. LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS.

25.1 Landlord's Option. If Tenant shall at any time fail to make any payment or perform any other act on its part to be made or performed, then Landlord, after thirty (30) Business Days' written notice to Tenant, and without waiving or releasing Tenant from any obligation of Tenant or from any Tenant Default and without waiving Landlord's right to take such action as may be permissible under this Lease as a result of such Tenant Default, may (but shall be under no obligation to) make such payment or perform such act on Tenant's part to be made or performed pursuant to this Lease.

25.2 Reimbursement by Tenant. All reasonable sums paid by Landlord and all costs and expenses reasonably incurred by Landlord, together with interest accruing thereon and Attorneys' Fees and Costs, in connection with the exercise of Landlord's cure rights under this Lease, after required Notice to Tenant, shall constitute Additional Rent. Tenant shall pay such Additional Rent within thirty (30) days after Landlord's demand accompanied by evidence reasonably establishing that Landlord properly and reasonably incurred such costs and expenses in accordance with this Lease.

26. DEFAULTS AND REMEDIES.

26.1 Definition of Tenant Default. The term "Tenant Default" shall mean and refer to the occurrence of any one or more of the following circumstances (subject to the rights of Leasehold Mortgagees under this Lease):

(a) If a Monetary Default shall occur and the Monetary Default shall continue for thirty (30) days after Landlord has given Tenant notice of such Monetary Default, specifying in reasonable detail the amount of money required to be paid by Tenant and the nature of such payment; or

(b) If a Non-Monetary Default shall occur and the Non-Monetary Default shall continue and not be remedied by Tenant within thirty (30) days after Landlord shall have delivered to Tenant a notice describing the same in reasonable detail, or, in the case of a Non-Monetary Default that cannot with due diligence be cured within thirty (30) days from such Notice, if Tenant shall not promptly commence the cure of such Non-Monetary Default within such period, and then diligently prosecute to completion the remedy of such Non-Monetary Default.

26.2 Re-Entry Default. If a Re-Entry Default shall occur and the Re-Entry Default shall continue and not be remedied by Tenant within one hundred eighty (180) days after Landlord shall deliver to Tenant a notice of Re-Entry Default with respect to same. A "Re-Entry Default" is any:

(a) default under any provision of the Sale Agreement, including without limitation, any default for failure to pay the Agency any amount accrued or due because of a reduction in sale price for the Property as defined in the Sale Agreement pursuant to Section 2.1 of the Sale Agreement;

(b) failure by Tenant to Complete Construction in accordance with the terms of the LDDA; or

(c) the abandonment of the Property or the Project by Tenant following Completion of Construction for a continuous period of one (1) year.

26.3 Remedies for Tenant Defaults Other Than Re-Entry Default. Upon the occurrence of a Tenant Default other than a Re-Entry Default, subject to the rights of Leasehold Mortgagees under this Lease, Landlord may exercise any or all of the following remedies: (a) to proceed by appropriate judicial proceedings at law or in equity to enforce performance or observance by Tenant of the applicable provisions of this Lease, and/or (b) to proceed by appropriate judicial proceedings to recover damages from Tenant for breach of this Lease. Upon the occurrence of a Tenant Default, neither Landlord nor Landlord's agents and employees shall have the right to re-enter the Property, or any part of the Property, either by summary dispossession proceedings or by any other action or proceeding at law, or by force or otherwise, or to repossess the same, or to remove any Person from the Property. Landlord expressly waives, releases and relinquishes any and all right to re-enter the Property and/or terminate this Lease on account of a Tenant Default other than a Re-Entry Default.

26.4 Remedies for Tenant Re-Entry Default. Upon the occurrence of a Re-Entry Default Landlord's sole remedy under this Lease shall be to terminate this Lease and re-enter the Property. The foregoing shall be subject to the rights of a Leasehold Mortgagee under this Lease. Landlord shall have no right to specific performance, damages or any other remedy available at law or in equity; provided however, should Tenant fail to surrender the Property on the date specified in Landlord's termination notice issued in connection with a Re-Entry Default, Landlord shall have the right to commence and prosecute summary dispossession proceedings or to take such self-help remedies as afforded a landlord under California law. Notwithstanding the foregoing, nothing contained in this Section 26.4 is intended to limit Tenant's and Landlord's

rights and remedies set forth in Section 16 of the LDDA upon the occurrence of a Re-Entry Default described in Section 26.2(b) of this Lease (Tenant's failure to Complete Construction). In the event of any conflict or inconsistency between the LDDA and this Lease with respect to the two aforementioned Re-Entry Defaults, the terms of the LDDA shall control.

26.5 Cumulative Remedies. Except as specifically set forth in Sections 26.3 above, the rights and remedies of the parties set forth in this Lease are cumulative, and shall not preclude the exercise by such party, at the same or different times, of any other rights or remedies that may exist at law or in equity.

26.6 Right to Injunction. In the event of a breach by either party of any of its obligations under this Lease, the other party shall have the right to obtain an injunction, in addition to any other rights and remedies provided for herein. Each party acknowledges and agrees that the other would suffer great and irreparable harm and damage should either party breach its obligations hereunder, and further acknowledges and agrees that monetary compensation would not afford adequate relief to injured party. Accordingly, in the event of a breach or threatened breach by either party of any of its agreements or obligations hereunder, the other party shall have the right to injunctive relief, and in the event such injunctive relief is sought relative to the actual or threatened breach by the other party, the breaching party specifically waives its right in any litigation on account thereof to assert a factual or legal defense that the injured party would not be irreparably harmed or damaged thereby and that monetary compensation would be adequate relief.

26.7 Intentionally Omitted.

26.8 Final Determination of Default. If the party charged with the default challenges the alleged default, the default shall not be deemed to have occurred until a final judgment has been rendered by a court of law or otherwise agreed to by the parties.

27. LANDLORD DEFAULT; TENANT REMEDIES. Landlord Default. Landlord's failure to perform any of its obligations under this Lease shall constitute a "Landlord Default" under this Lease if the failure continues for fifteen (15) days in the case of a Monetary Default or thirty (30) days in the case of a Non-Monetary Default after written notice from Tenant to Landlord specifying the nature of the Landlord Default in reasonable detail. If the Landlord Non-Monetary Default is such that it cannot with due diligence be cured within thirty (30) days from such notice, Landlord shall not be in default if Landlord promptly commences to cure such Non-Monetary Default within such period, and then diligently prosecutes same to completion. Upon the occurrence of a Landlord Default, subject to the rights of Leasehold Mortgagees under this Lease, Tenant may exercise any and all of the following remedies: (a) to proceed by appropriate judicial proceedings at law or in equity to enforce performance or observance by Landlord of the applicable provisions of this Lease, or (b) to proceed by appropriate judicial proceedings to recover damages from Landlord for breach of this Lease.

28. TERMINATION.

28.1 Generally. Upon the Termination Date (whether pursuant to expiration of this Lease or earlier termination in accordance with its terms): (a) the Leasehold Estate and the Term shall terminate and Landlord shall retake possession of the Property and all rights of Tenant shall come to an end with the same effect as if that day were the expiration date of the Lease; (b) Tenant shall surrender to Landlord the Property; (c) all improvements and personal property constituting part of the Property (other than signs bearing any trademark, service mark, or other mark owned by Tenant and any personal property of Tenant, all of which Tenant may remove) shall become Landlord's property, and (d) Landlord and Tenant shall have the additional rights and obligations set forth in this Article 28.

28.2 Possession. Upon the Termination Date, Tenant shall deliver to Landlord possession of the Property, in its then current condition and state of repair.

28.3 [Intentionally Omitted].

28.4 Documentation; Miscellaneous Assignments. Tenant shall deliver to Landlord copies or originals of all Subleases, Sublease files, maintenance and service records, plans, specifications, manuals and all other papers and documents that may be necessary or appropriate for the proper operation and management of the Property. Tenant shall assign to Landlord, without recourse, all assignable licenses and permits affecting the Property and all assignable contracts, warranties and guarantees then in effect relating to the Property.

28.5 Termination of Memorandum of Lease. If the parties shall have entered into and recorded a Memorandum of Lease, then they shall enter into a memorandum, in recordable form reasonably satisfactory to Landlord (including a provision terminating the Purchase Option and the Put Option), terminating the Memorandum of Lease.

28.6 Re-Entry. If Tenant does not surrender the Property as aforesaid, Landlord or Landlord's agents and employees may re-enter the Property, or any part of the Property by any suitable action or proceeding at law, and may repossess the same.

28.7 Survival. This Article 28 shall survive the expiration or termination of this Lease.

29. NO BROKER. Landlord and Tenant each represents and warrants that it did not engage any broker or finder in connection with this Lease and that no Person is entitled to any commission or finder's fee on account of any agreements or arrangements made by such party with any broker or finder. Each party hereby Indemnifies the other party against any breach of the foregoing representation by the Indemnitor.

30. NONRECOURSE TO RELATED PARTIES. No member, officer, director, agent or employee of Tenant or any affiliate of Tenant or any of its members, shall have any personal liability under this Lease. No officer, director, agent, employee or elected or appointed official of Landlord shall have any personal liability under this Lease.

31. WAIVERS.

31.1 No Waiver by Silence. Failure of either party to complain of any act or omission on the part of the other party shall not be deemed a waiver by the non-complaining party of any of its rights under this Lease. No waiver by either party at any time, express or implied, of any breach of any provisions of this Lease shall be a waiver of any breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. No acceptance by Landlord of any partial payment shall constitute an accord or satisfaction but shall only be deemed a partial payment on account.

31.2 No Landlord's Lien. Landlord confirms and acknowledges that Landlord has no lien or security interest in any personal property of Tenant located in, on or at the Property, and that such personal property shall not constitute security for payment of any Rent. If, at any time after the Lease Effective Date, any statute or principle of law would grant Landlord any such lien or security interest, then Landlord hereby waives the benefit of any such statute and lien. Landlord further agrees to execute such documentation, in recordable form, as Tenant shall reasonably require to confirm the foregoing waiver.

32. MEMORANDUM OF LEASE. The parties shall execute, and deliver to Escrow Agent, in connection with the Purchase Escrow duplicate originals of the Memorandum of Lease and Option to Purchase in form and content substantially similar to the document attached hereto as Exhibit C.

33. ESTOPPEL CERTIFICATES.

33.1 Rights of Each Party. At any time and from time to time, upon not less than 30 days' prior written request (an "Estoppel Certificate Request") by either party to this Lease (the "Requesting Party"), the other party to this Lease (the "Certifying Party") shall execute and deliver to the Requesting Party (or directly to a third party whose name and address are provided by the Requesting Party, referred to herein as a "Third Party") an estoppel certificate in commercially reasonable form (or if required by a Leasehold Mortgagee or potential Leasehold Mortgagee, in form consistent with reasonable banking standards). Any Estoppel Certificate may be relied upon by any Third Party to whom an Estoppel Certificate is required to be directed.

33.2 Time Period for Execution. The Certifying Party shall execute and deliver to the Requesting Party (or its attorneys or the Third Party(ies) designated by such Requesting Party) the Estoppel Certificate provided by the Requesting Party, setting forth with reasonable specificity any alleged exceptions to the statements required to be contained in such Estoppel Certificate, within thirty (30) days following its receipt of an Estoppel Certificate Request. If the Certifying Party fails to respond within ten (10) days after its receipt of an Estoppel Certificate Request, the Requesting Party shall have the right to resubmit its request. If the Certifying Party again fails to respond within ten (10) days following its receipt of a second Estoppel Certificate Request, then, in that event only, the Certifying Party shall be deemed to have confirmed the accuracy of the matters set forth in the Estoppel Certificate Request.

34. QUIET ENJOYMENT. Landlord covenants that, so long as this Lease has not expired or terminated in accordance with its terms, Tenant shall and may peaceably and quietly have, hold and enjoy the Property for the Term.

35. MISCELLANEOUS.

35.1 Proprietary and Governmental Roles; Standards Applicable to Parties. The capacity of Landlord in this Lease shall be as ground lessor only ("Proprietary Capacity"), and ~~any obligations or restrictions imposed by this Lease on Landlord shall be limited to that~~ capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect the governmental capacities of Landlord, including enacting laws, inspecting structures, reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions of each pursuant to federal, state or local law ("Governmental Capacity"). Whenever not expressly otherwise stated, (a) Landlord, when acting in its Proprietary Capacity, shall not unreasonably withhold its approvals to matters requiring its approval hereunder and (b) Tenant shall not unreasonably withhold its approval to matters requiring its approval hereunder.

35.2 Documents in Recordable Form. Wherever this Lease requires either party to deliver to the other a document in recordable form, both parties shall be deemed to have consented to the recording of such document, at the sole expense of the party that elects to record it.

35.3 Further Assurances. Each party agrees to execute and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the intent of the parties with respect to this Lease. Without limiting the generality of this Section 35.3, upon request at any time or from time to time either party shall execute and deliver to the other (a) additional counterparts of this Lease or any related documents, provided such additional counterparts are prepared at the expense of the party requesting them, and (b) such documentation as any title insurance company shall require to evidence such matters as due formation, authorization and execution of the Lease on the part of the party of whom the request is made, provided that the costs of providing such documentation are paid by the party on whose behalf the request is made.

35.4 No Third Party Beneficiaries. Nothing in this Lease shall be deemed to confer upon any Person (other than Landlord, Tenant or Leasehold Mortgagees) any right to insist upon, or to enforce against Landlord or Tenant; the performance or observance by either party of its obligations under this Lease.

35.5 Interpretation. No inference in favor of or against any party shall be drawn from the fact that such party has drafted any portion of this Lease. The parties have both participated substantially in the negotiation, drafting and revision of this Lease with representation by counsel and such other advisers as they have deemed appropriate. Wherever required by the context of this Lease, the singular shall include the plural and the masculine shall include the feminine and vice versa. The words "include" and "including" shall be construed to be followed by the words: "without limitation."

35.6 Captions. The captions of this Lease are for convenience and reference only and in no way affect this Lease.

35.7 Entire Agreement. This Lease, the Sale Agreement, the Auto Center Lease, the Parking License Agreement, and the LDDA constitute the entire agreement between Landlord and Tenant relating to the transactions described herein and therein.

35.8 Amendment. Any modification or amendment to this Lease must be in writing signed by Landlord and Tenant, and any material modification or amendment also must be consented to by any Leasehold Mortgagee(s) having the right to consent to amendments or modifications of this Lease pursuant to the terms of this Lease.

35.9 Partial Invalidity. If any term or provision of this Lease or the application of such term or provision to any party or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Lease, or the application of such term or provision to Persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected by such invalidity, and each remaining term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

35.10 Successors and Assigns. This Lease shall bind and benefit Landlord and Tenant and their permitted successors and assigns, but the foregoing shall not limit or supersede any transfer restrictions contained in this Lease.

35.11 Governing Law. This Lease and its interpretation and performance shall be governed, construed and regulated by the laws of the State, without regard to principles of conflict of laws, and the forum for all disputes arising hereunder shall be Alameda County, California.

35.12 Obligation to Perform. Wherever this Lease requires either party to perform any obligation, such party shall be entitled to discharge such obligation by causing it to be performed by some other Person, but the foregoing shall in no way limit, restrict or excuse Landlord's or Tenant's obligations under this Lease or the restrictions on assignment, conveyance or transfer contained in this Lease.

35.13 Counterparts. This Lease may be executed in one or more counterparts, each of which shall be deemed an original and when taken together shall constitute one and the same document.

35.14 Time Periods. Whenever this Lease requires either party to perform any action within a specified period, or requires that a particular event occur within a specified period, if the last day of such period is not a Business Day, then the period shall be deemed extended through the close of business on the first Business Day following such period as initially specified.

35.15 Attorneys' Fees. The prevailing party in any action or proceeding to enforce or interpret this Lease or otherwise arising out of or in connection with the subject matter hereof (including, but not limited to, any suit, arbitration, entry of judgment, post-judgment motion or enforcement, appeal, bankruptcy litigation, attachment or levy) shall be entitled to recover its

costs and expenses, including, but not limited to, experts' and consultants' fees and costs, and Attorneys' Fees and Costs as defined in Exhibit B.

35.16 Non-Discrimination. Tenant covenants for itself, its heirs, executors, administrators and assigns and all persons claiming under or through them and this Lease, that there shall be no discrimination against or segregation of any person or group of persons on account of age, race, color, religion, creed, sex, sexual orientation, marital status, ancestry, national origin, AIDS or AIDS-related complex, or disability in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Project nor shall Tenant or any person claiming under or through Tenant establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of Tenant, lessees, Subtenants, sublessees, or vendees in the Project. Tenant shall ensure that language substantially similar to the above is incorporated into any leases, subleases or assignments.

35.16.1 Provisions in Conveyance Documents. All deeds, leases or contracts made or entered into by Tenant, its successors or assigns, as to any portion of the Property shall contain therein the following language:

In Deeds: "Grantee herein covenants by and for itself, its heirs, personal representatives, successors and assigns and all persons claiming under or through grantee that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, AIDS or AIDS-related complex, or disability in the lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee 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 or vendees in the property herein conveyed. The foregoing covenant shall run with the land."

In Leases: "The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives, successors and assigns and all persons claiming under or through lessee that there shall be no discrimination against or segregation of a person or of a group of persons on account of age, race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, AIDS or AIDS-related complex, or disability in the lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee or any person claiming under or through the lessee 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 or vendees in the land herein leased."

35.17 Recitals; Exhibits. The Recitals set forth at the beginning of this Lease and the Exhibits attached to this Lease are incorporated in this Lease as though fully set forth in this Section 35.17.

36. NOTICES. All notices to be given under this Lease shall be in writing and sent by:

- (1) Certified mail, return receipt requested, in which case notice shall be deemed

delivered upon receipt or refusal of delivery, or

(2) A nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with such courier, provided delivery is confirmed by the delivery service, or

(3) Hand delivery, in which case notice shall be deemed delivered upon receipt or refusal of delivery, or

(4) Telecopy during normal business hours in which case notice shall be deemed delivered on transmittal by telecopier, provided that a transmission report is generated by reflecting the accurate transmission of the notices and such transmission report and a copy of such notice is sent to the noticed party by a means set forth in clauses (1), (2) or (3) above, as follows:

Notice to Landlord:

Redevelopment Agency of the City of Oakland
One Frank H. Ogawa Plaza, 5th Floor
Oakland, CA 94612
Attn.: Agency Administrator
Tel. No.: 510-238-3302
Fax. No.: 510-238-2223

and

Community and Economic Development Agency
City of Oakland
250 Frank H. Ogawa Plaza, 3rd Floor
Oakland, CA 94612
Attn: Director of Redevelopment
Tel. No.: 510-637-0241
Fax No.: 510-238-3691

and

Community and Economic Development Agency
City of Oakland
250 Frank H. Ogawa Plaza, 5th Floor
Oakland, CA 94612
Attn: Jens Hillmer
Tel. No.: 510- 238-3317
Fax No.: 510- 238-3317

and

Oakland City Attorney's Office
City of Oakland
One Frank H. Ogawa Plaza
Oakland, CA 94612
Attention: Dianne M. Millner
Tel. No.: 510-238-6839
Fax. No.: 510-238-6500

Notice to Tenant:

Sears Development Co.
c/o Sears, Roebuck and Company
3333 Beverly Road
Dept. 824RE/AC-363A
Hoffman Estates, IL 60179
Attn: James B. Terrell
Director - Asset Utilization
Tel. No.: 847-286-3918
Fax: 847-286-7976

With a copy to

Sears, Roebuck and Company
3333 Beverly Road
Hoffman Estates, IL 60179
Attn: Associate General Counsel- Real Estate
Dept 766X

The addresses set out above may be changed from time to time by written notice in compliance with this section.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have caused their duly authorized representatives to execute this Lease as of the Lease Effective Date.

LANDLORD:

REDEVELOPMENT AGENCY OF THE
CITY OF OAKLAND,
a public body, corporate and politic

By: _____

Name: _____

Agency Administrator

APPROVED AS TO FORM AND LEGALITY:

Agency Counsel

TENANT:

SEARS DEVELOPMENT CO.,
A Delaware corporation

By: _____

Name: _____

Title: _____

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

LEGAL DESCRIPTION

Real property in the City of Oakland, County of Alameda, State of California, described as follows:

PARCEL ONE:

BEGINNING AT A POINT ON THE NORTHEASTERN LINE OF 20TH STREET, DISTANT THEREON SOUTH 63° 45' EAST 100 FEET FROM THE POINT OF INTERSECTION THEREOF WITH THE EASTERN LINE OF TELEGRAPH AVENUE, AS SAID TELEGRAPH AVENUE EXISTED JUNE 28, 1907; RUNNING THENCE 63° 45' EAST ALONG SAID LINE OF 20TH STREET, 86.58 FEET TO A POINT DISTANT THEREON NORTH 63° 45' WEST, 165.50 FEET FROM THE POINT OF INTERSECTION THEREOF WITH NORTHWESTERN LINE OF BROADWAY; THENCE NORTH 26° 15' EAST 100 FEET; THENCE NORTH 63° 45' WEST 105.81 FEET TO A LINE DRAWN PARALLEL WITH SAID EASTERN LINE OF TELEGRAPH AVENUE AND DISTANT 104 FEET EASTERLY THEREFROM, MEASURED ALONG A LINE DRAWN PARALLEL WITH THE SOUTHERN LINE OF HOBART STREET; THENCE SOUTH 11° 13' WEST PARALLEL WITH SAID LINE OF TELEGRAPH AVENUE 74 FEET; MORE OR LESS, TO THE POINT OF INTERSECTION WITH A LINE DRAWN NORTH 26° 15' EAST FROM THE POINT OF BEGINNING; THENCE SOUTH 26° 15' WEST 28 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

PARCEL TWO:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHEASTERN LINE OF 20TH STREET, FORMERLY DELGER STREET, WITH THE EASTERN LINE OF TELEGRAPH AVENUE, AS SAID TELEGRAPH AVENUE EXISTED JUNE 28, 1907, RUNNING THENCE NORTH 11° 13' EAST ALONG SAID LINE TELEGRAPH AVENUE 90.91 FEET; THENCE SOUTH 78° 27' 20" EAST 104 FEET; THENCE SOUTH 11° 13' WEST 90 FEET, MORE OR LESS, TO THE POINT OF INTERSECTION WITH A LINE DRAWN NORTH 26° 15' EAST FROM A POINT ON SAID NORTHERN LINE OF 20TH STREET, DISTANT THEREON 100 FEET EASTERLY, FROM THE INTERSECTION THEREOF WITH SAID EASTERN LINE OF TELEGRAPH AVENUE; THENCE SOUTH 26° 15' WEST 28 FEET, MORE OR LESS, TO SAID NORTHEASTERN LINE OF 20TH STREET; AND THENCE NORTH 63° 45' WEST 100 FEET TO THE POINT OF BEGINNING.

APN: 008-0649-009 (Affects: Parcel One) and 008-0649-010 (Affects: Parcel Two)

EXHIBIT B

GLOSSARY OF DEFINED TERMS

Unless the context shall otherwise require, the following terms shall have the following respective meanings for all purposes. The following definitions are equally applicable both to the singular and plural forms and the feminine, masculine and neuter forms of the terms defined.

Additional Rent. The term "Additional Rent" means any and all sums and payments to be paid by Tenant to Landlord pursuant to this Lease, other than Fixed Rent.

Agents. The term "Agents" means, with respect to a party to this Lease, such party's officers, directors, members, partners, employees, agents, representatives, architects, engineers, consultants and contractors.

Attorneys' Fees and Costs. The term means the fees of legal counsel retained by the parties to this Lease and the other documents, and the costs and expenses they incur, which may include printing, photostating, duplicating, messengering, filing fees and fees incurred for legal support staff (persons not admitted to the bar but performing services under the supervision and direction of an attorney). Attorneys' Fees and Costs shall also include, without limitation, all such reasonable fees and expenses incurred with respect to appeals, arbitrations, bankruptcy proceedings, and any post-judgment proceedings to collect any judgment. The recovery of post-judgment fees, costs and expenses is separate. All such Attorneys' Fees and Costs shall be reasonable, and shall be charged for services which are appropriate to address the specific issue or problem.

Business Day. A "Business Day" means any weekday other than a day which is a Federal, State or City holiday.

Casualty. A "Casualty" means any damage or destruction affecting any or all improvements located on the Property.

Certifying Party. The term "Certifying Party" is defined in Section 33.1.

City The term "City" means the City of Oakland, California, a municipal corporation.

Complete Construction or Completion of Construction. The terms "Complete Construction" and "Completion of Construction" are defined in the LDDA.

Condemnation Litigation. The term means that certain lawsuit titled Redevelopment Agency of the City of Oakland v. Hahn, et al., Santa Clara County Superior Court, No. **1-05-CV-038886** (formerly Alameda County Superior Court No. RG04-189680) originally filed December 15, 2004.

Construction Leasehold Mortgage. The term "Construction Leasehold Mortgage" means any Leasehold Mortgage intended to grant security for the construction or reconstruction of any

portion of the Project and any Leasehold Mortgage which constitutes a "take out" or "permanent" loan for such construction or reconstruction loan.

Construction Leasehold Mortgagee. The term "Construction Leasehold Mortgagee" means the holder of a Construction Leasehold Mortgage.

County. The "County" means Alameda County, State of California.

Environmental Laws. In addition to the laws referred to in the definition of Hazardous Materials below, the term "Environmental Laws" shall be deemed to include, without limitation, 33 U.S.C. Section 1251 et seq., 42 U.S.C. Section 6901 et seq., 42 U.S.C. Section 7401 et seq., 42 U.S.C. Section 9601 et seq., and California Health and Safety Code Section 25100 et seq. and 25300 et seq., California Water Code Section 13020 et seq., or any successor(s) thereto, all local, state and federal laws, judgments, ordinances, orders, rules, regulations, codes and other governmental restrictions, guidelines and requirements, any amendments and successors thereto, replacements thereof and publications promulgated pursuant thereto, which deal with or otherwise in any manner relate to, air or water quality, air emissions, soil or ground conditions or other environmental matters of any kind.

Escrow Agent. The term "Escrow Agent" means First American Title Company, or such other title company mutually selected by Landlord and Tenant.

Estoppel Certificate. An "Estoppel Certificate" is defined in Section 33.1.

Extension Option. The term "Extension Option" is defined in Section 3.2.

Fixed Rent. The term "Fixed Rent" is defined in Section 6.1.

Force Majeure Event. The term "Force Majeure Event" means war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, unusually severe weather, inability to obtain energy or power to construct the Project, litigation, third party challenges (administrative or otherwise), initiatives or referenda that may preclude activities contemplated under this Lease.

Government Agency. The term "Government Agency" means any federal, state, county, municipal and local governmental and quasi-governmental bodies and authorities and any political subdivision, public corporation, district or other political or public entity or departments thereof having or exercising jurisdiction over the parties, the Property, or such portions thereof as the context indicates.

Governmental Capacity. The term "Governmental Capacity" is defined in Section 35.1.

Grant Deed. The term "Grant Deed" shall mean a deed under California law conveying marketable fee simple title to the Property to Tenant, subject to customary redevelopment covenants.

Ground Lease Closing Date. The term "Ground Lease Closing Date" is defined in the LDDA.

Hazardous Materials. The term "Hazardous Materials" means: (a) any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Laws as a "hazardous substance," "hazardous material," "hazardous waste," "extremely hazardous waste," "acutely hazardous waste," "radioactive waste," "infectious waste," "biohazardous waste," "toxic substance," "pollutant," "contaminant" as well as any formulation not mentioned herein intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "REP toxicity," or "GULP toxicity"; (b) petroleum, natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas) and ash produced by a resource recovery facility utilizing a municipal solid waste stream, and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources; (c) "hazardous substance" as defined in Section 25281(f) of the California Health and Safety Code; (d) "waste" as defined in Section 13050(d) of the California Water Code; (e) asbestos in any form; (f) urea formaldehyde foam insulation; (g) polychlorinated biphenyls (PCBs); (h) radon; and (i) any other insulation, chemical, material, or substance exposure to which is limited or regulated by any Governmental Agency because of its quantity, concentration, or physical or chemical characteristics, or which poses a significant present or potential hazard to environment. "Hazardous Substances" shall not include ordinary office supplies and repair, maintenance and cleaning supplies maintained in reasonable and necessary quantities and used in accordance with all Environmental Laws.

Impositions. The term "Impositions" means all taxes, special and general assessments, water rents, rates and charges, commercial rent taxes, sewer rents and other impositions and charges of every kind and nature whatsoever with respect to the Property, that may be assessed, levied, confirmed, imposed or become a lien on the Property by or for the benefit of any Government Agency with respect to any period during the Term together with any taxes and assessments that may be levied, assessed or imposed by the State or by any political or taxing subdivision of the State upon the gross income arising from any Rent or in lieu of or as a substitute, in whole or in part, for taxes and assessments imposed upon or related to the Property and commonly known as real estate taxes or possessory interest taxes.

Indemnatee. An "Indemnatee" is a party that is entitled to be Indemnified pursuant to this Lease.

Investigation. The term "Investigation" means any actions including, but not limited to, any observation, inquiry, examination, sampling, monitoring, analysis, exploration, research, inspection, canvassing, questioning, and/or surveying of the Property or any other affected properties, including the air, soil, surface water, and groundwater, and the surrounding population or properties, or any of them, to characterize or evaluate the nature, extent or impact of Hazardous Substances.

Indemnitor. An "Indemnitor" is a party that agrees to indemnify another party pursuant

to this Lease.

Landlord. The term "Landlord" means the Redevelopment Agency of the City of Oakland, a public body, corporate and politic, organized and existing under the Community Redevelopment Law of the State of California. Agency's principal office is One Frank H. Ogawa Plaza, 5th Floor, Oakland, California 94612.

Landlord's Interest. The term "Landlord's Interest" means all right, title and interest in the Property acquired by the Landlord including fee simple title obtained pursuant to a Final Order of Condemnation and Judgment issued in connection with the Condemnation Litigation or pursuant to a deed issued in lieu thereof.

Landowners. The term "Landowners" is defined in Section 5.1.

Law. The term "Law" or "Laws" means all applicable laws, ordinances, orders, judgments, rules, regulations, requirements, mandatory guidelines or directives of any applicable Government Agency affecting the development, improvement, alteration, use, maintenance, operation or occupancy of the Property.

Lease. The term "Lease" means this Ground Lease together with all exhibits, supplements, amendments, restatements, and modifications hereto.

LDDA. The "LDDA" means that certain "Lease Disposition and Development Agreement" dated as of [_____, 2005] by and between Landlord and Tenant, together with all exhibits, supplements, amendments, restatements and modifications thereto.

Lease Effective Date. The term "Lease Effective Date" is defined in the first paragraph of this Lease.

Leasehold Estate. The term "Leasehold Estate" means Tenant's leasehold estate arising under this Lease, upon and subject to all the terms and conditions of this Lease, or any part of such leasehold estate or any direct or indirect interest in such leasehold estate.

Leasehold Mortgage. The term "Leasehold Mortgage" means any mortgage, deed of trust, deed to secure debt, assignment, security interest, pledge, financing statement, bonds or any other instrument(s) or agreement(s) intended to grant security for any obligation (including a purchase-money or other promissory note) encumbering the Leasehold Estate, as entered into, renewed, modified, consolidated, amended, extended or assigned from time to time during the Term.

Leasehold Mortgagee. A "Leasehold Mortgagee" means the holder of a Leasehold Mortgage.

Loss. The term "Loss" or "Losses" means any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses (including, without limitation, reasonable Attorney's Fees and Costs, and

consultants' fees and costs, and consultants' fees and costs, and court costs) of whatever kind or nature, known or unknown, contingent or otherwise.

Memorandum of Lease. The term "Memorandum of Lease" is defined in Article 32.

Monetary Default. A "Monetary Default" means any failure by Tenant to pay any Rent or other sum(s) of money payable pursuant to this Lease, when and as required to be paid pursuant to this Lease, after the passage of any applicable cure period.

New Lease. The term "New Lease" is defined in Section 20.3.10.

Non-Curable Default. A "Non-Curable Default" means any Non-Monetary Default by Tenant that is not reasonably susceptible of cure by a Leasehold Mortgagee, such as bankruptcy or insolvency and any other Non-Monetary Default that by its nature relates only to Tenant or can reasonably be performed only by Tenant.

Non-Disturbance Agreement. The term "Non-Disturbance Agreement" is defined in Section 19.6.

~~*Non-Monetary Default.* A "Non-Monetary Default" means any failure by a party to perform as required by this Lease, other than a Non-Monetary Default, after the passage of any applicable cure period.~~

Notice of Default. A "Notice of Default" means any Notice from one party to the other claiming or giving Notice of a Default or alleged Default by the recipient.

Option Price. The term "Option Price" is defined in Section 9.2.

Order for Immediate Possession. The term "Order for Immediate Possession" means that certain judicial Order Fixing Security and for Immediate Possession issued by the Alameda Superior Court on January 24, 2005 in the Condemnation Litigation giving Landlord possession to the Property pursuant to Cal. Code Civ. Pro. 1255.410, et seq.

Partial Taking. An "Partial Taking" means any Taking other than a Total Taking.

Permitted Exceptions. The term "Permitted Exceptions" is defined in Section 9.7.1(a).

Person. A "Person" means any individual, corporation, partnership, joint venture, limited liability company, association, joint stock company, trust or unincorporated organization, other type of business entity, the Agency, Landlord, Tenant, Subtenants and occupants of the Project.

Project. The "Project" is defined in the LDDA.

Property. The term "Property" shall mean the "Site" as defined in the LDDA.

Proprietary Capacity. The term "Proprietary Capacity" is defined in Section 35.1.

Purchase Closing Date. The term "Purchase Closing Date" is defined in Section 9.5.

Termination Date. The term "Termination Date" is defined in Section 3.3.

Third Party. The term "Third Party" is defined in Section 33.1.

Total Taking. A "Total Taking" means any Taking of so material a portion of the Property, that the Property cannot reasonably be used, after restoration thereof to the extent reasonably possible with the proceeds of the Taking available for such purpose, without material impairment of Tenant's ability to operate the Project, as reasonably determined by Tenant.

EXHIBIT C

RECORDING REQUESTED BY
WHEN RECORDED RETURN TO:

(Space Above For Recorder's Use)

MEMORANDUM OF LEASE and OPTION TO PURCHASE

THIS MEMORANDUM OF LEASE AND OPTION TO PURCHASE is entered into as of _____, 2005 by and between **THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND**, a public body, corporate and politic ("Landlord") and **SEARS DEVELOPMENT CO.**, a Delaware corporation ("Tenant").

1. Landlord obtained the right to possess and use that certain property located in the City of Oakland, County of Alameda, State of California, as more particularly described in Exhibit A attached hereto (the "Property"), pursuant to an Order Fixing Security and for Immediate Possession issued by the Superior Court of the State of California, County of Alameda-Northern Division ("Order for Possession") in connection with that certain lawsuit titled Redevelopment Agency of the City of Oakland v. Hahn, et al., Santa Clara County Superior Court, No. 1-05-CV-038886 (formerly Alameda County Superior Court No. RG04-189680) originally filed December 15, 2004 (the "Condemnation Litigation").

2. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord "Landlord's Interest" in the Property in accordance with the terms of the unrecorded Ground Lease dated as of _____, 2005, between Landlord and Tenant (the "Lease"). "Landlord's Interest" is defined in the Lease to mean all of Landlord's right, title and interest in and to the Property pursuant to the Order for Possession and such other right, title, and interest in and to the Property subsequently acquired by Landlord including fee title obtained pursuant to a final order of condemnation and judgment in the Condemnation Litigation.

3. The term of the Lease shall commence on the Lease Effective Date set forth in the Lease and shall expire fifty (50) years thereafter, unless extended or sooner terminated pursuant to the terms of the Lease.

4. Tenant has an option to extend the term of the Lease from time to time for a maximum period of forty-nine (49) years on the terms and conditions set forth in the Lease. The Extension Option may be exercised at any time after Tenant has completed construction of the Project (as referred to in the Lease) located on the Property, but in any event no later than one hundred and eighty (180) days before the expiration of the then existing Term of the Lease.

5. ~~Tenant also has an option to purchase Landlord's Interest. The term of said Purchase Option shall commence on the Lease Effective Date and terminate on the date that is sixty (60) calendar days prior to the last day of the Lease Term. The Purchase Option may be exercised at anytime before expiration of the Lease Term.~~

6. Landlord has a "Put Option" to require Tenant to purchase Landlord's Interest. The Put Option may be exercised by Landlord one hundred and eighty (180) days after Landlord has notified Tenant of Landlord's acquisition of fee title to the Property, as more particularly set forth in the Lease.

7. This Memorandum of Lease is subject to all of the terms, conditions and understandings set forth in the Lease, which are incorporated herein by reference and made a part hereof, ~~as though copied verbatim herein. In the event of a conflict between the terms and~~ conditions of this Memorandum of Lease and the terms and conditions of the Lease, the terms and conditions of the Lease shall prevail.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Memorandum of Lease as of the date first above written.

LANDLORD:

REDEVELOPMENT AGENCY OF THE
CITY OF OAKLAND,
a public body, corporate and politic

By: _____
Name: Agency Administrator

APPROVED AS TO FORM AND LEGALITY:

JOHN A. RUSSO
CITY ATTORNEY

By: _____
Dianne M. Millner
Supervising Deputy City Attorney

TENANT:

SEARS DEVELOPMENT CO.
a Delaware corporation

By: _____

Name: _____

Title: _____
