



REPORT

DATE ISSUED: December 13, 2006

**REPORT NO: HCR06-89
ITEM 107**

ATTENTION: Chair and Members of the Housing Commission
For the Agenda of December 15, 2006

SUBJECT: Smart Corner Leasing Arrangements

REQUESTED ACTION:

Approval by the Housing Commission and the Housing Authority of the proposed lease between the San Diego Housing Commission and 7-Eleven, Inc., for 7-Eleven, Inc., to lease space at the Smart Corner building.

STAFF RECOMMENDATION:

(1) That the President & Chief Executive Officer (CEO) be authorized to execute lease documents between the Housing Commission and 7-Eleven, Inc. (Tenant), for retail space at the Smart Corner building located at 1122 Broadway, as approved by General Counsel to the Commission; (2) That the Housing Authority delegate authority to the Housing Commission for future building lease arrangements at the Smart Corner building located at 1122 Broadway.

SUMMARY:

On July 23, 2003 and July 29, 2003 the Housing Commission and the Housing Authority, respectively, approved a Purchase and Sale Agreement (PSA) between the Housing Commission and Lankford & Associates, Inc., for the Housing Commission's new office facility to be located at 1122 Broadway in San Diego. Further, the Housing Authority delegated responsibility for all cardinal issues related to the acquisition of the office facility to the Housing Commission.

On November 1, 2006, the Housing Commission took title to the parking garage and office building on time and on budget. Move in is scheduled over the December holidays and the Housing Commission will open for business on January 3, 2007. The Housing Commission will occupy three of the five floors in the Smart Corner building. The ground floor is available for lease to retail businesses and the second floor is available for lease to other organizations. The Housing Commission retained the leasing services of CB Richard Ellis to negotiate leasing arrangements with potential tenants.

DISCUSSION:

Attachment 1 is a proposed lease between the San Diego Housing Commission ("Landlord") and 7-Eleven, Inc. ("Tenant"), a corporation based in Dallas, Texas. The Tenant will lease approximately 2,927 square feet of space on the first floor of the Smart Corner building located at 1122 Broadway in San Diego. The initial term of the lease will be for ten (10) years; the lease includes three successive options at the Housing Commission's discretion to extend the term of the lease for five (5) years for each option for a total potential lease term of twenty-five (25) years.

The monthly rent for the first five years of the lease term will be \$7,317.50 (\$87,810.00 annually) that reflects an offset for tenant improvements that the tenant is paying for. Beginning in year six of the initial lease term the rent will increase to \$10,995.75 per month (\$131,949.00 annually) and subsequently up to \$16,722.92 per month (\$200,675.00 annually) for years 21 through 25. Space is

being rented on a “triple net” basis, meaning that, in addition to rent, Tenant will also pay a share of the ongoing operating costs of the building (janitorial service, utilities, taxes).

The lease allows the Tenant to remain open twenty-four hours each day to sell merchandise and services typically provided by the Tenant at other locations or at supermarkets including items such as groceries, produce, meats, dairy, delicatessen, made-to-order and take-out food products, beer, wine, alcoholic beverages, financial and ticketing services (including ATMs), automotive products, cigarettes, magazines, lottery, pay phones, sundries.

The Tenant is required to provide commercial general public liability and property damage insurance of not less than \$2,000,000 per single occurrence and the Housing Commission and the Housing Authority of the City of San Diego will be named as additional insureds (with cross liability endorsements).

While the lease details that there are no reserved parking spaces for use by the Tenant, the Tenant may decide to lease up to seven parking spaces within the Smart Corner parking garage at market rates, the payments for parking will be in addition to rent for the for the retail space.

The proposed lease terms have been negotiated by CB Richard Ellis and Housing Commission staff and the form of lease has been approved by General Counsel to the Housing Commission.

The second staff recommendation is that the Housing Authority delegate authority for approval of additional lease arrangements at 1122 Broadway to the Housing Commission Board. In addition to the space proposed for rental by 7-Eleven, Inc., there is approximately 15,884 square feet of additional rentable retail space on the first floor and approximately 20,982 of rentable square feet of office space on the second floor of the Smart Corner building that the Housing Commission, through CB Richard Ellis, is seeking to lease.

On July 29, 2003, the Housing Authority delegated resolution of all cardinal issues related to the acquisition of the Smart Corner to the Board of the Housing Commission. Additional lease arrangements are currently being negotiated and timely approval of proposed leases becomes critical to ensure receipt of rental revenue as described in the Budget Analysis section of Report HCR03-053 (Attachment 2). General Counsel for the Housing Commission will be involved in the lease negotiation process as will CB Richard Ellis, the commercial broker for the Commission. Care will be taken to make sure that documents comply with all financing and operational requirements.

ENVIRONMENTAL REVIEW: This action is categorically exempt from the provisions of CEQU pursuant to State CEQA Article 19 Guidelines, Section 15301 (existing facilities).

Respectfully submitted,

Steven Snyder
Director, Facilities

**Signature on File
With Original Document**

Approved by,

Elizabeth C. Morris
President & Chief Executive Officer

Attachment 1: Proposed Lease Agreement with 7-Eleven, Inc.
Attachment 2: HCR03-053



Property # _____
The Smart Corner
1122 Broadway
San Diego, CA

BUILDING LEASE

1. **PARTIES.** This Building Lease (this “Lease”) is between San Diego Housing Commission, a public agency (“Landlord”), and 7-Eleven, Inc., a Texas corporation (“Tenant”).

2. **PREMISES.** Landlord leases to Tenant and Tenant leases from Landlord the premises (the “Premises”) described in the attached Exhibit A and shown on the floor plan attached as Exhibit B (the “Floor Plan”), both of which have been initialed by the parties and are a part of this Lease. Tenant hereby agrees and acknowledges that Tenant is leasing the Premises “As-Is” from Landlord, except as otherwise set forth herein, without relying on any communications not set forth herein that may have been made by Landlord, or any of Landlord’s agents or employees, with respect to the Premises or Tenant’s intended use thereof. Without limiting the generality of the foregoing, Tenant shall be solely responsible for determining the condition of the Premises. The Tenant Improvements shall be constructed by Tenant, at Tenant’s sole cost and expense, as shown on the Floor Plan in accordance with the Construction Addendum, attached hereto and made a part hereof. Except as otherwise set forth herein, Landlord shall have no obligation to improve the Premises. The Premises are a portion of the building (the “Building”) shown on the site plan attached as Exhibit C (the “Building Site Plan”). Landlord grants to Tenant and its employees, suppliers, contractors, authorized representatives, invitees, permitted assigns and sublessees, the non-exclusive right (i) to use any means of ingress and egress to and from the Premises, insofar as Landlord has the right to grant such use, (ii) to use the parking spaces in the subterranean parking garage (the “Garage”), and (iii) to use the ground floor areas of the Building made available for common use. The location of the trash receptacle for Tenant’s shared use shall be where located on Exhibit C.

3. **TERM.** Unless sooner terminated or extended as herein provided, the term of this Lease shall be for ten (10) years (the “Term”). The Term shall commence on the first day of the first calendar month following the earlier of: (i) the later to occur of (a) one hundred twenty (120) days after Landlord’s delivery of the Premises to Tenant in the condition required hereunder or (b) ninety (90) days after Tenant receives a building permit for the construction of Tenant Improvements (as defined in the Construction Addendum) or (ii) the date Tenant opens for business. Landlord and Tenant each agree that upon the other’s written request, they will execute and deliver an acceptance letter acknowledging the actual commencement date of the Term and Tenant’s obligation to commence payment of monthly rental and the expiration date of the Term (excluding any options to extend the Term referenced below).

Landlord grants to Tenant three (3) successive options to extend the Term upon the same terms, covenants and conditions of this Lease, for five (5) years for each option (the “Extended Term”). If Tenant elects to exercise one or more options, Tenant shall notify Landlord at least one

hundred eighty (180) days prior to the expiration of the Term or the Extended Term in effect at the time of the notice.

4. RENT.

(a) Monthly Rent. Tenant agrees to pay Landlord rent, per month for each and every month during the Term and any Extended Term, in the amounts set forth in the table below (the “Rent”), plus applicable taxes, if any, in advance on or before the fifth (5th) day of each month unless abated or diminished as provided herein. Should the conditions to Term commencement be satisfied on a day other than the first day of a calendar month, Rent shall be apportioned for that month only. Rent may be paid by check and sent by ordinary first class mail to Landlord at the address set forth in Article 29 below.

RENT	MONTHLY RENT	ANNUAL RENT
Years 1-5	\$7,317.50*	\$87,810.00*
Years 6-10	\$10,995.75	\$131,949.00
First Extended Term Years 11-15	\$12,644.92	\$151,739.00
Second Extended Term Years 16-20	\$14,541.67	\$174,500.00
Third Extended Term Years 21-25	\$16,722.92	\$200,675.00

*Rent reflects an offset by the Improvement Credit (as defined in the Construction Addendum).

(b) Delinquent Rent. In the event all or any part of the Rent or the Additional Rent (as defined in Section 38(a), below) was not paid when due and has not been paid within ten (10) days after Tenant’s receipt of written notice from Landlord of such delinquency, Tenant shall pay Landlord, in addition to the delinquent Rent and/or Additional Rent, a sum of money equal to two percent (2%) of the delinquent Rent and Additional Rent. It is the intent of the parties hereto that such late charges are not interest, but are to compensate Landlord for loss resulting from the rental delinquency including costs to the Landlord of servicing the delinquent account.

(c) Inspection of Premises. Landlord shall have the right to enter upon the Premises at reasonable times after forty-eight (48) hours advance notice to Tenant for the purpose of inspecting the condition of the Premises. Any such inspections shall be performed with as little disturbance and inconvenience to Tenant as reasonably possible.

(d) Security Deposit. Immediately following Landlord’s delivery of possession of the Premises in the condition required hereunder and Tenant’s satisfaction or waiver of the conditions precedent set forth in Article 20 and the Construction Addendum, in accordance with Landlord’s requirements, Tenant shall pay to Landlord the sum of Seven Thousand Three

Hundred Seventeen and 50/100 Dollars (\$7,317.50) as a security deposit to insure the faithful performance of the terms of this Lease, which security deposit shall be applied to the last installment of Rent due from Tenant hereunder.

5. USE.

(a) Allowable Uses. The Premises may be used up to twenty-four (24) hours per day for the retail sale, rental or provision of merchandise and services customarily sold, rented or provided from time to time, at stores operated or franchised by Tenant or at supermarkets or grocery markets of any type and character operated within the supermarket or grocery industry as of the date of this Lease or in the future and including product lines, services and special features or departments included in such grocery markets or supermarkets, including but not limited to groceries, produce, meats, dairy, delicatessen, ready-to-eat, made to order and take-out food products for on or off-premise consumption, beer, wine and alcoholic beverages, financial and ticketing services (including automatic teller machines), amusement games, greeting cards, automotive products, donuts and other types of pastry products, cigarettes, magazines, lottery, pay telephones and related equipment, and sundries. Deliveries to the Premises will occur at designated loading areas, if any, or at the Premises, at such times and from time to time as Tenant shall require, provided, however, that all such deliveries shall be made in accordance with the Building Rules and Regulations, described in Section 5(c), below, and in accordance with all applicable laws and regulations. Tenant may not use the Premises or permit the Premises to be used for any other purposes without Landlord's prior written consent which shall not be unreasonably delayed or withheld. Except as otherwise provided in Section 23(a) below, Landlord does not represent or warrant that Tenant's use is presently permitted by applicable laws and regulations or that Tenant's will be permitted in the future by then applicable laws and regulations.

(b) Prohibited Uses. Tenant shall not commit any acts on the Premises or the Building, nor use the Premises or the Building in any way that: (i) materially increases the existing rates for, or causes cancellation of, any fire, casualty, liability, or other insurance policy insuring the Building or its contents; (ii) violates any law, statute, ordinance, or governmental rule or regulation, whether now in force or hereinafter enacted, governing the Premises or the Building; (iii) unreasonably obstructs or interferes with the rights of other tenants or occupants of the Building or injures or unreasonably annoys them; or (iv) constitutes the commission of waste on the Premises or the commission or maintenance of a nuisance as defined by the laws of the State of California.

(c) Building Rules and Regulations. Tenant shall, and Tenant agrees to cause its agents, servants, employees and contractors to, observe and comply with any Building rules and regulations ("Building Rules and Regulations") which may hereafter be reasonably adopted by Landlord for the care, protection, cleanliness, and operation of the Premises, the Building and the Common Areas, and any modifications or additions to such rules and regulations reasonably adopted by Landlord; provided that Landlord shall give written notice thereof to Tenant. Notwithstanding the foregoing, Landlord and Tenant agree that the terms and conditions of this Lease shall control the rights and responsibilities of the parties and shall supersede any and all provisions of the Building Rules and Regulations which may now or in the future conflict with the terms and conditions of this Lease. Landlord shall not be responsible to Tenant for failure of any other tenant or occupant of the Building to observe or comply with any of the Building Rules and Regulations.

6. SERVICES AND UTILITIES.

(a) Utilities Paid by Tenant. Tenant agrees to pay all charges for gas, electricity, telephone, sewer, water and any other utilities used by Tenant at the Premises. Landlord shall provide, at Landlord's sole cost and expense, 400 AMP, 3-phase electrical service to the Building, which Tenant shall extend to the Premises as necessary for Tenant's intended uses thereof. At its sole cost and expense, Tenant shall endeavor to obtain separate utility company meters at the Premises to monitor Tenant's use of all such utilities (excluding telephone and sewer). Tenant will be responsible for ensuring that all billing statements for all separately metered utilities will be mailed directly to Tenant for payment.

(b) Payment to Landlord. In the event it is not feasible for Tenant to provide separate utility company meters at the Premises to monitor Tenant's use of utilities, Landlord agrees to sub-meter, at Tenant's sole cost and expense, the Premises such that Tenant's utility use is separately accounted for. Landlord agrees to forward to Tenant a monthly bill for all such utilities (excluding telephone and sewer) for the prior month as evidenced by the sub-meter. Landlord agrees that Tenant will not be liable for, and Landlord will forfeit and waive all rights to recover utility payments from Tenant if presentation of the statement therefore is not made to Tenant within eighteen (18) months after the end of the month to which the utility charges relate. In no event will Tenant be responsible for any utility related penalty or interest except where resulting from Tenant's failure to pay a utility invoice submitted on a timely basis by Landlord as required by this Article 6.

(c) No Obligation to Provide Security. Tenant shall have no claim against Landlord for any damage to its business or damage to, loss of and/or theft of any of Tenant's property nor for any death or personal injury to any individual, all as may arise as a result of Landlord's provision of or failure to provide any security to the Building and/or the Premises. This paragraph regarding security is not intended to allow any individual to make any claim of any kind against Landlord or Tenant as a result of Landlord's failure to provide security and the parties specifically agree that there shall be no third party beneficiaries of this Article 6(c).

(d) Energy Provider. Tenant acknowledges and agrees that the decision whether to change the provider of electricity to the Building and the selection of the provider of electricity to the Building shall be made by Landlord's President/CEO in her sole and absolute discretion. Tenant shall cooperate with Landlord, at no cost or expense to Tenant, to facilitate Landlord's decision making process. Tenant shall cooperate with Landlord in any present or future government-mandated conservation requirements. Landlord shall not be liable for and Tenant shall not be entitled to any abatement or reduction of rent by reason of any interruption, stoppage or failure in such service arising from any change in the provider of electricity to the Building, provided that Landlord shall minimize any such interruption, stoppage or failure in service.

(e) Breaks In Utility Services. Landlord shall not be liable for and Tenant shall not be entitled to any abatement or reduction of Rent by reason of Landlord's failure to furnish any utilities and services, including, without limitation, electricity, water and HVAC, when such failure is caused by (i) accidents, breakage or repairs, (ii) strikes, brownouts, blackouts, riots, civil disturbances, lockouts or other labor disturbances or labor disputes of any character, (iii) governmental regulation, moratorium or other governmental action, (iv) limitation, rationing, curtailment or restriction on the use of water, electricity, gas heating, cooling or other forms of service or utility provided to the Premises, or (v) by any other cause, similar or dissimilar, beyond the reasonable control of Landlord, nor shall such failure under such circumstances be

construed as a constructive or actual eviction of Tenant. Landlord shall not be liable under any circumstances for loss or injury to property or business, however occurring, through or in connection with or incidental to Landlord's failure to furnish any of said service or utilities, except to the extent caused by Landlord's gross negligence or willful misconduct.

7. TAXES. Tenant shall be liable for and agrees to pay all taxes levied upon its personal property, leasehold improvements, additions, alterations and fixtures, including trade fixtures and inventory, located on the Premises. Tenant shall pay directly to the respective taxing authorities and/or reimburse Landlord for all real estate taxes and assessments levied against the Premises during the Term and the Extended Term after presentation to Tenant by Landlord of tax statements and receipts evidencing payment thereof from the taxing jurisdiction(s) in which the Premises are located. If an assessment that is payable in periodic installments is levied on the Premises, Tenant shall pay only those installments that are attributable to the Term, and Extended Term, if applicable. Tenant shall not be responsible for any assessments that are pending, levied, assessed, imposed or due on the Premises or the Building prior to the commencement of the Term. Taxes for the first and final year of the Term or the final year of the Extended Term, if applicable, shall be prorated between Landlord and Tenant based upon the commencement and expiration of the Term or Extended Term. Tenant will not be required to pay any penalty, interest or cost resulting from Landlord's failure to pay such taxes and/or the delinquent payment of such taxes by Landlord. Landlord will not be required to pay any penalty, interest or cost resulting from Tenant's failure to pay such taxes and/or the delinquent payment of such taxes by Tenant. If a separate tax statement is not available for the Premises, the amount of taxes for which Tenant shall be liable under this Lease shall be a percentage of the total amount of such taxes levied against the Building, which percentage shall be determined by dividing the amount of square feet in the Premises by the total amount of square feet in the Building subject to such taxes, whether or not leased or occupied ("Pro Rata Share").

All tax statements submitted by Landlord hereunder shall be sent to Tenant's office at the address provided in Article 29 below to the attention of Tenant's Ad Valorem Tax Department.

Tenant will not be liable for, and Landlord will forever forfeit and waive all right to recover, such taxes and assessments if presentation of statements and corresponding receipts are not made by Landlord to Tenant in the manner set forth above within eighteen (18) months after the applicable date of delinquency.

Tenant shall pay and be liable for any tax or fee (now or hereafter imposed by any governmental entity) applicable to or measured by or on the Rents or any other charges payable by Tenant under this Lease, including, without limitation, any gross income tax, gross receipts tax or excise tax with respect to the receipt of such Rent or other charges on the possession, leasing, operation, use or occupancy of the Premises, and specifically including any commercial rental tax of the City of San Diego, if any, that may now or hereafter be imposed.

8. MAINTENANCE.

(a) Landlord's Maintenance of the Building. At all times during the Term and the Extended Term, Landlord agrees (i) to maintain the foundation and structural soundness of the Premises and the Building, including without limitation the roof surface, roof structure and exterior walls, and further, without limitation (ii) to keep in good repair plumbing and electrical wiring servicing to the Premises and the exterior of the Premises and of the Building. During the

Term and any Extended Term, Landlord shall maintain the property upon which the Building is located in a first class manner, including without limitation, all landscaping and parking areas.

(b) Tenant's Maintenance of the Premises. Tenant shall keep the Premises, including without limitation the exterior image or signage of the Premises, in a neat, clean, orderly and habitable condition at all times during occupancy, and shall not permit rubbish, waste, garbage, etc., to accumulate at any time; shall not commit or permit any waste of the Premises or any acts to be done in violation of any laws or ordinances; shall not use or permit the use of the Premises for any illegal purposes; and shall comply with all applicable laws and local ordinances concerning the Premises and the use thereof.

(c) Repair of the Premises. During the Term, Tenant shall make all repairs and replacements as and when necessary to preserve in a first class order, condition and repair the Premises and every part thereof, including, without limitation, all fixtures, interior walls, interior surfaces of exterior walls, ceilings, windows, doors, cabinets, draperies, window coverings, carpeting and other floor coverings and plate glass located within the Premises, and all non-standard utility systems and facilities (i.e., plumbing, electrical, lighting, heating, ventilating and air conditioning systems) which have been specifically designed and installed for the exclusive use of the Premises.

(d) Landlord's Right to Make Repairs. In the event that Tenant fails to maintain the Premises in a first-class order, condition and repair as required by this Lease or fails to comply with any applicable laws, regulations or requirements, then, Landlord shall promptly notify Tenant thereof in writing. If Tenant fails to cure such default within thirty (30) days after receipt of such notice, or if the default is not capable of being cured within such thirty (30) day period to cure and Tenant fails to commence to cure within thirty (30) days after receipt of such notice and thereafter to proceed diligently to cure such default, then in either such event Landlord shall have the right, but not the obligation, to enter the Premises and to do such acts and expend such funds at the expense of Tenant as are required to place the Premises in good and sanitary first-class order, condition and repair and to comply with applicable laws, regulations or requirements in such a manner as to minimize interference with Tenant's business operations at the Premises, provided, however, Landlord shall have no liability to Tenant for any loss or damage that may accrue to Tenant's merchandise, fixtures, equipment, furniture or other property or for any inconvenience or interference with the use of the Premises by Tenant resulting from Landlord's performance of such maintenance or repair work except to the extent caused by Landlord's gross negligence or willful misconduct. Any amount so expended by Landlord shall be paid by Tenant within ten (10) days after demand.

9. ALTERATIONS. Tenant shall not make any alterations involving the exterior of the Premises or Building, or structural or weight bearing changes without securing the written consent of Landlord's President/CEO. Tenant may make non-weight bearing alterations to the interior of the Premises as Tenant may desire, including alterations to non-weight bearing partitions. Such alterations or additions will be made in a first class, good, workmanlike and defect-free manner by licensed contractors without cost to Landlord, and shall be free and clear of mechanics' and materialmen's liens; provided that if any such lien is filed, Tenant shall either promptly bond or discharge the same or it may contest the same in good faith. Tenant shall obtain all necessary permits required for any such alterations and shall comply with all applicable laws, regulations, ordinances, and codes. All work on any alterations shall be performed at reasonable times and to minimize interference with Landlord's operations, other tenants, Landlord's operation of the Building, or other construction work being done by

Landlord. Tenant shall be responsible for and shall repair, at its sole cost and expense, any damage to the Building caused by Tenant's work on any alterations or additions. Tenant shall give Landlord fifteen (15) days advance notice before beginning any work on alterations to permit Landlord to file a Notice of Nonresponsibility or take any other actions in advance of commencement of any alterations. Upon completion of the alterations, Tenant shall provide Landlord with a complete set of any "as-built" plans in Tenant's possession.

Except as set forth in Section 8(d), above, Landlord shall have no right to make any changes to the exterior image or signage of the Premises, without Tenant's prior written consent, unless otherwise required by any applicable law, regulation or governmental authority (including without limitation the Centre City Development Corporation). Landlord approves the exterior signage designs hereto as Exhibit F and made a part hereof. Landlord may make alterations or other changes to the exterior of the Building which do not adversely affect access to or the visibility of the Premises or any of Tenant's signage. Tenant shall cooperate with Landlord if Landlord is required by a governmental authority (including without limitation the Centre City Development Corporation) to make alterations to the Premises which are not the responsibility of Tenant hereunder. Landlord agrees that all signs on the Building will be constructed and located in such a manner which will not materially detract from the visibility of Tenant's fascia signs.

10. TRADE AND OTHER FIXTURES. Subject to the approval of local governing authorities and the acquisition of any required permits, Tenant may install or cause to be installed at its expense such equipment and trade and other fixtures on or in the Premises, as are reasonably necessary for the operation of its business (the "Fixtures"). The Fixtures may include, without limitation, the HVAC equipment, walk-in vault(s), remote condensing units, public pay telephones, and Tenant's imaging, signs, banners and other advertising displays, including Tenant's fascia signs, as set forth Article 21, below. The remote condensing unit shall be located as noted on Exhibit G or at a location mutually acceptable to Landlord and Tenant. Subject to Landlord's reasonable approval as to location, Tenant may also install a satellite dish or similar communications equipment to service Tenant's business operations at the Premises as noted on Exhibit H or at a location mutually acceptable to Landlord and Tenant.

All Fixtures, whenever installed shall remain personal property, and title thereto shall continue in the owner thereof, regardless of the manner in which they may be attached or affixed. Tenant, at Tenant's expense, may at any time during the Term or Extended Term and shall at the expiration of the Term or Extended Term, remove the Fixtures and shall repair any damage caused by such removal.

In the event the Fixtures are subject to a lien or title retention instrument, the holder of any such lien or title retention instrument shall have the right and be able to enforce the same as stated therein and Landlord waives any rights to the contrary.

11. PERMITS/LICENSES. Tenant shall apply for and obtain, any and all permits or licenses required by applicable governmental authorities (including without limitation the Centre City Development Corporation) necessary or desirable for Tenant to perform maintenance, remodeling, alterations and repairs of the Premises, or to otherwise use the Premises in accordance with the terms and conditions of this Lease and Landlord agrees to execute any documents reasonably requested by Tenant in connection therewith.

12. CASUALTY DAMAGE AND CASUALTY INSURANCE.

(a) Insured Casualty. If the Premises are rendered substantially unfit for the occupancy or use herein contemplated as the result of any casualty covered by Landlord's standard fire and extended coverage property insurance policy (such a casualty being hereinafter referred to as an "Insured Casualty") and the then current Term shall have at least two years to run, Landlord, at Landlord's expense, shall promptly and diligently restore the Premises as nearly as possible to the condition existing immediately prior to the occurrence of the Insured Casualty. All Rent shall abate from the date of the occurrence of the Insured Casualty until the Premises are so restored, provided that if Tenant is not able to operate any of its business during such period of time. If Tenant is able to operate a portion of its business during such period of time, Tenant shall be obligated to pay Rent to Landlord, provided however that the Rent shall be reduced proportionately by the percentage of the Premises that cannot reasonably be occupied by Tenant.

(b) Non-insured Casualties. If the Premises are rendered substantially unfit for the occupancy or use herein contemplated as the result of any casualty other than an Insured Casualty or by any casualty whatsoever and the then current Term shall have less than two years to run, then Landlord, in the sole discretion of Landlord's President/CEO, may elect to either (i) promptly and diligently restore the Premises at Landlord's expense as above provided, in which event all Rent shall abate from the date of such occurrence until the Premises are so restored; or (ii) Landlord may terminate this Lease effective as of the date of the occurrence of the casualty. If Landlord elects to restore the Premises as set forth in Section 9(b)(i), all Rent shall abate from the date of the occurrence of the casualty until the Premises are so restored, provided that Tenant is not able to operate any of its business during such period of time. If Tenant is able to operate a portion of its business during such period of time, then Tenant shall be obligated to pay Rent to Landlord, provided however that the Rent shall be reduced proportionately by the percentage of the Premises that cannot reasonably be occupied by Tenant. Notwithstanding the foregoing, Landlord shall not have the right to terminate this Lease as set forth in Section 9(b)(ii), if: (A) the casualty or peril is an Insured Casualty and within twenty (20) days after the occurrence of the casualty, Tenant exercises, or agrees to exercise, any option to extend the Term for a period of at least two (2) years beyond the date of the casualty; or (B) if the casualty is other than an Insured Casualty and Tenant within twenty (20) days after the occurrence of the casualty agrees in writing to restore the Premises as nearly as possible to the condition existing immediately prior to the occurrence of the casualty at Tenant's sole cost and expense.

(c) Minor Non-Insured Casualty. If the Premises are not rendered substantially unfit for the occupancy or use herein contemplated as the result of any Insured Casualty, Landlord shall promptly and diligently restore the Premises at Landlord's expense to the condition existing prior to the occurrence of the casualty and the Rent shall not abate during such restoration period, provided the Landlord is prompt and diligent in connection with the restoration.

(d) Casualty Insurance. Landlord agrees to maintain a standard fire and extended coverage property insurance policy on the Building of which the Premises are a part, including the Tenant Improvements which comprise part of the Premises (excluding any Fixtures). The policy shall insure the Building to one hundred percent (100%) of the Building's replacement cost throughout the Term of this Lease and any Extended Term. The premium for such insurance policy shall be a Common Expense, as set forth in Article 24, below. Each year during the Term, Landlord shall furnish to Tenant a certificate of insurance naming Tenant as loss payee, as its interest may appear, evidencing that such insurance is in effect and a copy of the invoice reflecting that the premium has been paid. Such certificate shall state on its face that

such insurance shall not be subject to cancellation except after twenty (20) days prior written notice to Tenant of such cancellation.

13. WAIVER OF SUBROGATION. If either party to this Lease sustains loss or damage to the Premises or the Fixtures, goods, wares, merchandise or any other property located thereon, from which it is protected by an insurance policy, then, to the extent that such party is so protected, it waives any right of recovery from the other party. Each party agrees immediately to give to each insurance company which has issued to it a policy of fire and extended coverage property insurance written notice of the terms of such mutual waivers, and to cause such insurance policy to be properly endorsed, if necessary, to prevent the invalidation of such insurance coverage by reason of such waivers.

14. INSURANCE.

(a) Tenant Insurance Requirements. Tenant agrees, at Tenant's sole cost and expense, to maintain in force continuously throughout the Term, and any Extended Term and prior to beginning construction of any Tenant Improvements:

(1) Commercial general public liability and property damage insurance covering the Premises with limits of not less than \$1,000,000.00 for injury to or death of one or more persons and/or property damage arising out of a single accident or occurrence and \$2,000,000.00 in the aggregate. All such insurance shall name the Metropolitan Transit Development Board, Landlord and the Housing Authority of the City of San Diego as additional insureds (with cross liability endorsements and an endorsement providing contractual liability for work performed near a railroad), but only as respects the Premises and only to the extent of liability resulting from occurrences arising out of the negligence of Tenant, its subsidiaries, divisions, sublessees, assignees, contractors, employees, customers, invitees or agents. Upon receipt of written request therefor, Tenant shall furnish Landlord a certificate from the insurer evidencing such coverage as required by this subsection.

(2) Worker's compensation insurance, with coverage as required by the State of California.

(b) Additional Insurance Requirements. Each insurance policy obtained by Tenant pursuant to this Lease shall contain a clause that the insurer will provide Landlord with at least thirty (30) days' prior written notice of any material change, non-renewal or cancellation of the policy and shall be taken out with an insurance company authorized to do business in the State of California and rated not less than Financial Class XIII and Policy Holder Rating "A-" in the current issue of Best's Insurance Code. Each property insurance certificate shall indicate that the insurer waives its rights of subrogation against Landlord. In addition, all insurance policies obtained by Tenant shall be written as primary policies, non-contributing with or in excess of any coverage which Landlord may carry. The liability limits of the above-described insurance policies shall in no way limit the liability of Tenant under the terms of this Lease. After the first ten (10) years of the Term and then not more frequently than every five (5) years thereafter, if, in the reasonable opinion of Landlord, the amount of liability insurance specified in Section 14(a)(1) is not adequate, Landlord may request such limits of coverage be increased, by written notice to Tenant, provided that such requested increase is reasonable and the amount requested is customarily obtained from national credit convenience store tenants in comparable properties in the metropolitan area in which the Premises are located, and provided further that the amount of coverage required hereunder for such liability insurance shall not exceed Ten Million Dollars

(\$10,000,000). If Tenant fails to maintain and secure the insurance coverage required under this Article 14 within twenty (20) days of receipt of Landlord's written request therefor, Landlord shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to procure and maintain such insurance, the cost of which shall be due and payable to Landlord by Tenant on demand.

(c) Landlord Insurance Requirements. Landlord agrees, at Landlord's expense, to maintain in force continuously throughout the Term, and Extended Term, if applicable, commercial general public liability insurance covering the Building (including the Premises) with combined single limit coverage of \$2,000,000 or its equivalent, and shall upon Tenant's written request, furnish Tenant a certificate from the insurer evidencing such coverage.

15. INDEMNITY. Subject to Article 13, during the Term, and any Extended Term, Tenant shall indemnify, defend and hold Landlord harmless from any claim, liability, loss, cost or obligation, including (without limitation) attorneys' fees and costs incurred in the defense thereof, owed to or asserted by any third party, arising from any damage or injury caused by the use of the Premises, Common Areas, Garage and/or the Building by Tenant, its agents, employees or contractors, excepting in each case any such damages, injuries, claims, liabilities, losses, costs or obligations as shall result from conditions existing on the Premises prior to the commencement of the Term, acts or omissions of Landlord or the failure of Landlord to perform its obligations under this Lease. Landlord agrees to indemnify and hold Tenant harmless from any liability, loss, cost or obligation arising from conditions existing on the Premises prior to Landlord's delivery of the Premises to Tenant, reckless or intentional acts or omissions of Landlord, its agents, employees or contractors, or the failure of Landlord to perform its obligations under this Lease.

16. ASSIGNMENT OR SUBLEASE. Tenant shall not directly or indirectly, voluntarily or by operation of law, sublease, sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of the Premises or this Lease, without the written consent of Landlord's President/CEO and General Counsel. Any assignment or sublease shall be subject to all of the terms, covenants and conditions of this Lease. Provided, however, that in no event shall any sublease, sale, assignment, encumbrances, pledge, transfer or hypothecation, relieve Tenant of its obligations hereunder. Tenant shall remain primarily liable for the terms, covenants and conditions to be complied with by Tenant hereunder whether this Lease is assigned, sublet and/or otherwise transferred, including without limitation the payment of rent and the performance of the terms, covenants and conditions of this Lease. No withholding of consent by Landlord for any reason deemed sufficient by Landlord shall give rise to any claim by Tenant or any proposed assignee or subtenant or entitle Tenant to terminate this Lease, to recover contract damages or to any abatement of rent. In connection with any assignment or sublease of the Premises, as a condition to Landlord's consent, Tenant shall pay to Landlord as additional rent as and when received by Tenant an amount equal to fifty percent (50%) of all "Profit" (as hereinafter defined) derived from such assignment or sublease. "Profit" shall mean the difference between (i) the sum of any and all amounts payable by the proposed assignee or sublessee under the terms of the proposed assignment or sublease, less the cost of alterations to the Premises in connection therewith and brokers' fees, and (ii) the sum of the Rent and other payment obligations payable to Landlord by Tenant under the terms of this Lease. For all purposes under this paragraph, a sub-sublease, assignment of sublease or any similar arrangement shall be considered a sublease. Tenant understands and acknowledges that the intent of the parties in negotiating this Lease was not to create any bonus value or allow Tenant to profit as a result of any favorable terms

contained herein or any future changes in the market for the Premises. Tenant further acknowledges that any such value shall be shared with Landlord as set forth in this paragraph.

Notwithstanding the foregoing, a demise by Tenant to its franchisees or licensees, or to any parent, subsidiary or division, or by merger or consolidation of Tenant with another corporation or to an affiliate of Tenant shall not constitute an assignment or subletting for purposes of this Lease.

17. EMINENT DOMAIN. If pursuant to the exercise of the right of condemnation or eminent domain (i) the Premises or Building are taken or conveyed under threat of the exercising of such right, or (ii) only a portion of the Premises or a portion of the Building is so taken or conveyed and Tenant reasonably determines that the remainder of the Premises or Building is inadequate or unsatisfactory for its purposes, which determination shall not be arbitrarily or capriciously made, or (iii) Tenant's access to the Premises or the Building is materially reduced by such taking or conveyance, and Tenant reasonably determines that its access to the Premises or the Building is inadequate or unsatisfactory for its purposes, which determination shall not be arbitrarily or capriciously made, Tenant shall have the right to terminate this Lease, exercisable by giving notice to Landlord within sixty (60) days after receiving written notice of such taking, subject to Tenant's rights as set forth below. In such case neither party shall have any further rights or obligations hereunder, except that any Rent shall be allocated between the Landlord and Tenant on a pro rata basis to the date of termination of this Lease. The termination of this Lease as provided above shall not operate to deprive Tenant of the right, and Landlord expressly grants to Tenant the right to make a claim for an award in condemnation, or participate in an award, for loss of business goodwill, relocation expenses, or loss or damage to Fixtures and improvements made by Tenant to the Premises or the Building, or to receive notices and participate in the condemnation proceedings, including any settlement negotiations, whether conducted prior to or after the filing of a condemnation proceeding. Landlord further agrees to provide to Tenant information regarding any settlement offers made to or by Landlord, any appraisal reports made on behalf of Landlord in connection with the condemnation proceeding, and all other data relevant to calculating the compensation or damages to which Tenant may be entitled in such a condemnation proceeding.

If this Lease is not terminated as provided herein, Landlord and Tenant shall agree upon an equitable reduction in the Rent. If the parties fail to agree upon such reduction within sixty (60) days from the date Tenant is required to give up such occupancy, use or access, whichever is earlier, Landlord and Tenant shall each choose one arbitrator and the two arbitrators so chosen shall choose a third arbitrator. The decision of any two of the arbitrators concerning the Rent reduction, if any, shall be binding on the Landlord and Tenant and any expense of the arbitrators only shall be divided equally between Landlord and Tenant (each party shall be liable for any and all costs incurred by such party, including without limitation attorneys' fees and expert fees). Any such reduction in Rent shall not constitute an election of remedies by Tenant nor deprive Tenant of the rights set forth in the immediately preceding paragraph.

18. ATTORNEYS' FEES. If suit is brought to enforce any terms, covenants or conditions of this Lease, the parties agree that the losing party shall pay the prevailing party's reasonable expert witness fees and attorneys' fees, including reasonable attorneys' fees incurred in enforcing a judgment, which shall be fixed by the court and court costs. As used herein, the term "prevailing party" shall mean the party, which has succeeded upon a significant issue in the litigation and achieved a material benefit with respect to the claim at issue, taken as a whole.

19. DEFAULT. If Tenant defaults in the payment of the monthly Rent and/or Tenant's share of Common Expenses, Landlord shall promptly notify Tenant in writing. Should Tenant fail to cure such default within twenty (20) days after receipt of such notice, or should Tenant commit a "Material Operational Default" (as hereinafter defined), Landlord shall have the right to exercise one of the following options (in addition to being owed the late charges set forth in Section 4(b), above, and/or Section 25(d), below):

(a) Landlord may declare the Lease ended by sending Tenant written notice thereof. Upon Tenant's receipt of such notice, this Lease shall expire and terminate as fully and completely and with the same effect as if that date were fixed for the expiration of the Term or the Extended Term and all rights of Tenant, including occupancy of the Premises, shall expire and Tenant shall be relieved of all liability for any future rent or any other sums otherwise due from the date of such termination and Tenant shall have no further claim thereon (nothing contained herein shall release Tenant from liability for, or prohibit Landlord from taking any and all necessary actions to, collect any delinquent Rent, Tenant's share of Common Expenses or late charges); or

(b) Landlord may reenter and repossess the Premises, removing all persons, including without limitation Tenant, therefrom without prejudice to any remedies for arrears of monthly rent or any other sums otherwise due, or breach of any other covenants hereunder. Landlord shall have a lien as security for such deficiency on the Fixtures belonging to Tenant which remain on the Premises. Within a reasonable period of time following such reentry and repossession, Landlord shall relet the Premises for the account of Tenant on such terms and conditions and for such uses as Landlord may reasonably determine in an effort to mitigate Landlord's damages as a result of Tenant's default hereunder. Landlord shall collect and receive any rent or any other sums otherwise due which may be payable by reason of such reletting. Tenant shall be liable for and pay to Landlord all monthly Rent, Tenant's share of Common Expenses and any other sums otherwise due up to and including the date of such reentry and repossession; and, thereafter, Tenant shall, until the end of what would otherwise have been the then current Term, be liable to Landlord for and shall pay to Landlord, all monthly Rent, Tenant's share of Common Expenses and any other sums otherwise due less the net proceeds of any reletting as set forth herein, after deducting from such proceeds all of Landlord's reasonable expenses incurred in conjunction with such reletting. Tenant shall pay such monthly Rent, Tenant's share of Common Expenses and any other sums otherwise due on the days on which they would be payable hereunder in the absence of Tenant's default.

If Tenant defaults in the performance of any of the terms, covenants and conditions of this Lease other than the payment of monthly Rent or Tenant's share of Common Expenses and other than a Material Operational Default, Landlord shall promptly notify Tenant in writing. If Tenant fails to cure such default within thirty (30) days after receipt of such notice, or if the default is not capable of being cured within such thirty (30) day period to cure and Tenant fails to commence to cure within thirty (30) days after receipt of such notice and thereafter to proceed diligently to cure such default, then in either such event Landlord may cure the default and Tenant shall promptly reimburse Landlord for any and all expenses incurred by Landlord, but any such default shall not cause the forfeiture of this Lease or of Tenant's right of possession.

For purposes of this Article 19, "Material Operational Default" shall mean that (i) Tenant committed a default hereunder (other than the payment of monthly Rent or Tenant's share of Common Expenses) which was not cured within thirty (30) days after receipt of Landlord's notice of such default (or Tenant did not commence to cure such default within thirty (30) days

of such notice if such default was not susceptible to cure within thirty (30) days and thereafter diligently pursue such cure to completion), (ii) Landlord provided written notice to Tenant of its failure to cure or to diligently pursue such cure and of Landlord's intention to exercise its intention to terminate this Lease unless Tenant cures such default within fifteen (15) days after Landlord's notice (or commences to cure if default is not susceptible to cure within fifteen (15) days and thereafter diligently pursues such cure to completion), and (iii) Tenant failed to cure (or commence to cure and thereafter diligently pursue such cure to completion, if applicable) such default within fifteen (15) days following receipt of Landlord's notice described in (ii) above.

If Landlord defaults in the performance of any of the terms, covenants and conditions of this Lease, Tenant shall promptly notify Landlord in writing. If Landlord fails to cure such default within thirty (30) days after receipt of such notice, or if the default is of such character as to require more than thirty (30) days to cure and Landlord fails to commence to cure within thirty (30) days after receipt of such notice and thereafter diligently proceed to cure such default then, in either such event, Tenant, to the extent permitted by the law of the jurisdiction in which the Premises is located, may either: (i) cure such default and Landlord shall promptly reimburse Tenant for any and all expenses incurred by Tenant, provided that such election of Tenant to cure any such default shall not cause the forfeiture of this Lease, or (ii) bring an action against Landlord in law or in equity, arising out of such breach. Failure by Landlord to reimburse any overpayments by Tenant of Rent or other charges, within twenty (20) days after receipt by Landlord of notice of such overpayment and documentation conclusively evidencing same, shall constitute a default by Landlord hereunder.

20. CONDITIONS PRECEDENT. Landlord shall endeavor to have this Lease approved by the Board of Commissioners of San Diego Housing Commission and the Housing Authority of the City of San Diego and their respective counsel, within ninety (90) days of Tenant's delivery of the original of this Lease executed by Tenant (collectively "Landlord's Approval Conditions"). In the event Landlord's Approval Conditions are not satisfied, this Lease shall be void and of no further force or effect. Concurrently therewith, Tenant shall promptly proceed to satisfy each of the following conditions precedent. In the event the following have not been satisfied as noted below or waived by Tenant within such 90-day period, this Lease may be terminated by either party upon written notice to the other:

(a) all permits and approvals required for the installation of the Tenant Improvements as provided in the Construction Addendum and Tenant's sign as provided in Article 21 below, having been obtained by and at the sole cost and expense of Tenant;

(b) all permits, licenses and approvals (except for a liquor license), with conditions acceptable to Tenant [including, without limitation, from the Centre City Development Corporation ("CCDC")], required for the sale or rental (as appropriate) of groceries, produce, meat, dairy, delicatessen, ready-to-eat and made to order food products for on or off-premise consumption, auto parts, financial and ticketing services, and sundries, having been obtained by and at the sole cost and expense of Tenant;

(c) all permits, licenses and approvals (except for a liquor license), with conditions acceptable to Tenant required for a twenty-four hour convenience store operation, having been obtained by and at the sole cost and expense of Tenant;

(d) tests (including but not limited to, testing for lead paint, asbestos, hazardous substances, toxic pollutants and other contaminants) and information pertaining to the

environmental conditions of the Premises and the Building, therein collectively (“Hazardous Materials”), being obtained by Tenant, as agent for, and at the expense of Landlord showing environmental conditions satisfactory to Tenant and the appropriate governmental authorities. Landlord shall report any condition revealed by such tests to the extent required by applicable law and Tenant shall have no responsibility or liability therefor;

(e) review of Building Rules and Regulations and Parking Rules and Regulations, if available, with the provisions thereof being reasonably acceptable to Tenant; and

(f) a subordination, non-disturbance and attornment agreement (the “SNDA”) with Landlord’s lender in the form attached hereto as Exhibit D or otherwise upon terms and conditions reasonably acceptable to Tenant.

Each party shall fully cooperate with the other in seeking such permits, approvals and licenses.

21. SIGNAGE. Landlord agrees that Tenant, subject to any required local governmental approvals, may install and maintain, at its sole expense, its standard fascia sign on the Building in the area(s) designated on Exhibit C or at such other location(s) mutually acceptable to Landlord and Tenant. All of Tenant’s signs shall display Tenant’s federally registered service marks. Tenant shall obtain, at its sole cost and expense, any necessary permits prior to the installation of such signs.

22. EXCLUSIVE. Landlord represents and warrants that only the ground floor of the Building shall be used for retail purposes and Landlord agrees that, during the Term and any Extended Term, no occupant of the ground floor of the Building, other than Tenant, shall operate a business which (i) operates, as its primary use, a convenience store (defined for the purposes of this Article 22 as an operation of not more than 5,000 square feet which offers for sale retail food and grocery items for off-premises consumption, and other items commonly sold in 7-Eleven convenience stores), or (ii) offers for sale, in connection with all or any part of its business operations, cigarettes and tobacco products, unless vended by machine and beer and wine for off premise consumption.

Landlord agrees to protect Tenant’s exclusive right to operate a convenience store or to sell or rent the above listed items in any future sale or lease of all or any portion of the ground floor of the Building only. Landlord shall not enter into any lease for occupancy of the ground floor of the Building that permits the operation of a convenience store or the sale or rental of the above listed items, and shall promptly, at its expense, take all appropriate legal action to stop any operation, sales or rentals in violation of Tenant’s exclusive rights. If any portion the Landlord’s above agreement are found by court of competent jurisdiction to be unreasonable or unenforceable, then such agreement shall be limited only to the extent that such court determines are reasonable and enforceable. Landlord hereby grants Tenant the right to institute an action, including an action for damages or injunctive relief, against any tenant of the Building which is operating in violation of the exclusives contained in this Article; provided, however, that Tenant does not, by virtue of obtaining such right, waive any right it may have against Landlord as a result of such violation.

Notwithstanding the foregoing or anything to the contrary set forth herein, Tenant acknowledges and agrees that Landlord may allow (without violating any of the terms hereof) one or more occupants of the Building, to operate and sell food, beer or wine at any coffee house, coffee shop, bakery, donut shop, diner, cafeteria, restaurant, fast-food establishment, pharmacy, drug

store, eatery, bistro, café, juice bar, bar, tavern, delicatessen, pizzeria, dining hall or pub or similar establishment, provided that no beer or wine shall be sold for off-premises consumption by any such establishments.

23. COVENANTS.

(a) Landlord's Covenants. Landlord covenants that (i) it has good and marketable fee simple title to the Building and the Premises are free of all leases, tenancies, agreements, encumbrances, liens, restrictions and defects in title adversely affecting the rights granted Tenant in this Lease, (ii) to the best of Landlord's knowledge there are no restrictive covenants, zoning or other ordinances or regulations applicable to the Premises which will prevent the Premises from being used as permitted in Article 5 above. Landlord's "knowledge" shall be deemed to include the knowledge of Elizabeth C. Morris, Carrol Vaughan and Steve Snyder as of the date this Lease is executed on behalf of the Landlord.

(b) Parties Acknowledgement Regarding Hazardous Materials. Tenant acknowledges receipt of: (i) that certain Phase II report prepared by Gradient Engineers dated October 24, 2002 ("Phase II Report"); (ii) that certain Mitigation Plan and Closure Report filed with the County Department of Environmental Health by the Centre City Development Corporation.

(c) Tenant's Covenants. Except as may be found in commercially packaged products used and stored by Tenant at the Premises or offered for sale by Tenant at the Premises in the normal course of business including, without limitation, common cleaning fluids and office supplies, Tenant shall not use, treat, store or dispose of, or knowingly permit anyone else, to use, treat, store or dispose of, whether temporarily or permanently, any Hazardous Materials at, on or beneath the Premises. "Hazardous Materials" means any substances defined as "extremely hazardous substances," "hazardous substances," "hazardous materials," "hazardous waste," or "toxic substances," in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601, et seq., as amended; the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§11001-11050, as amended; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq., as amended; the Toxic Substances Control Act, 15 U.S.C. §2601, et seq., as amended; the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq.; and those substances defined as "hazardous waste" in Section 25117 of the California Health & Safety Code, as "infectious waste" in Section 25117.5 of the California Health & Safety Code, or as "hazardous substances" in Section 25316 of the California Health & Safety Code or "hazardous materials" as defined in Section 353 of the California Vehicle Code; and in the regulations adopted and publications promulgated pursuant to said laws.

24. COMMON AREA.

(a) Common Areas. "Common Areas" means all areas, space, equipment and special services provided by Landlord within the ground floor of the Building for the common or joint use and benefit of the ground floor tenants, their employees, agents, servants, suppliers, customers and other invitees, including, by way of illustration, but not limitation, retaining walls, fences, landscaped areas, parks, curbs, sidewalks, private roads, restrooms, stairways, elevators, lobbies, hallways, patios, service quarters, the subterranean parking garage and all other areas within the exterior of the Building. At all times during the Term and any Extended Term, Landlord shall be responsible for maintaining and cleaning the Common Areas.

(b) Common Expenses. Common Expenses means, collectively, the maintenance, cleaning, repair or replacement of the Common Areas (and/or the roof of the Building,) which maintenance and cleaning expense shall not exceed the reasonable and customary expense for such services in the area in which the Premises are located. Common Expenses shall also include the reasonable cost of insurance required to be obtained by Landlord pursuant to this Lease and the aggregate of all costs and expenses payable by Landlord in connection with the ownership, operation, management and maintenance of the Garage, the Premises, the Building, and the Common Areas collectively, the "Project", including, but not limited to, the cost of (a) landscaping, repaving, resurfacing, repairing, replacing, painting, lighting, cleaning, removing trash and similar items with respect to the Common Areas; (b) all taxes; (c) trash disposal service; (d) operating, repairing and maintaining life safety systems, including, without limitation, sprinkler systems; (e) operating, repairing, and maintaining the HVAC system and elevator services; (f) painting, window washing and general cleaning, and janitorial services for the Building; (g) monitoring services, if provided by Landlord, including, without limitation, any monitoring or control device used by Landlord in regulating the parking areas; (h) legal, accounting and consulting fees and expenses incurred in connection with the management and operation of the Building and Common Areas; (i) compensation (including employment taxes and fringe benefits) of all persons who perform duties connected with the operation, maintenance and repair of the Building or Common Areas; (j) energy allocation, energy use surcharges, or environmental charges; (k) municipal inspection fees or charges; (l) the cost of compliance with all applicable laws and regulations, including, without limitation, current amortization of capital improvements which are either (i) required by law (including, but not limited to, improvements required to comply with The Americans With Disabilities Act of 1990, 42 U.S.C. Section 12101 et. seq. and the regulations promulgated thereunder (hereinafter "ADA") and Title 24 of the California Code of Regulation (hereinafter "Title 24"), or (ii) are installed for the purpose of reducing Common Operating Costs over the period of such amortization; (m) any other costs or expenses incurred by Landlord in connection with the Common Areas which are not otherwise reimbursed directly by tenants; (n) management fees; (o) that part of office rent or rental value of space used or furnished by Landlord to enhance, manage, operate and maintain the Project; (q) accounting and legal fees incurred in connection with the operation and maintenance of the Project or any other costs related thereto; and (p) any additional services which Landlord reasonably deems necessary or desirable in connection with the management or operation of the Project. The computation of Common Expenses shall be made in accordance with generally accepted accounting principles. Charges for any services, goods or materials furnished by Landlord at Tenant's request and charges for services, goods and materials furnished by Landlord as a result of uses or demands by Tenant in excess of those charges which are normally furnished to other tenants in the Building and all other sums payable by Tenant under this Lease shall not be included in Common Expenses, but shall be payable by Tenant within ten (10) days after Landlord delivers a statement for such services, goods or materials to Tenant. In no event shall any brokerage fees or costs with respect to the Building, or costs of acquisition of new land or construction of new buildings, any expenditures for which Landlord is reimbursed from any source (other reimbursements from tenants for common expenses), including, without limitation, insurance and condemnation proceeds and expenses in connection with services or other benefits of a type that are not provided to another tenant or occupant of the Building, be a part of the Common Expenses.

Notwithstanding the foregoing, in no event shall any of the following items be included as part of the Common Expenses:

- a. Costs incurred in connection with the original construction of the Project or in connection with any major change in the Project, such as adding or deleting floors;
- b. Interest, principal, late charges, default fees, prepayment penalties or premiums on any debt owed by Landlord, including any mortgage debt, and depreciation;
- c. Costs of correcting defects in or inadequacy of the initial design or construction of the Project;
- d. Expenses directly resulting from the negligence of the Landlord, its agents, servants or employees;
- e. Legal fees, space planners' fees, real estate brokers' leasing commissions and advertising expenses incurred in connection with the original development or original leasing of the Project or future leasing of the Project;
- f. Costs for which Landlord is reimbursed by insurance by its carrier or Tenant's carrier or by anyone else;
- g. Any bad debt loss, rent loss, or reserves for bad debts or rent loss;
- h. Costs associated with the operation of the public agency which constitutes Landlord, as the same is distinguished from the costs of operation of the Project, including accounting and legal matters affecting Landlord's operations as a whole, costs of defending any lawsuits with any mortgagee (except as the actions of Tenant may be the issue), costs of selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interest in the Project, costs (including attorney fees and costs of settlement judgments and payments in lieu thereof) arising from claims, disputes or potential disputes in connection with potential or actual claims, litigation or arbitrations respecting Landlord and/or the Project;
- i. The wages and benefits of any employee who does not devote substantially all of his or her time to the Project unless such wages and benefits are prorated to reflect time spent on operating and managing the Project vis-a-vis time spent on matters unrelated to operating and managing the Project;
- j. Fines, penalties and interest;
- k. Amounts paid as ground rental by Landlord;
- l. Wages, fees and any other costs or expenses incurred in connection with the ownership, management and operation of any parking areas;
- m. Costs of compliance with any handicap or other subsequent governmental code regulations, including ADA;
- n. Costs of environmental testing and costs of compliance with applicable laws arising from the presence of hazardous materials or substances in or about the Project, or the site upon which the Project is situated, including without

limitation, hazardous substances in the ground water or soil and the removal of asbestos-containing materials;

- o. Costs of a capital nature, including without limitation, capital improvements, capital repairs, capital equipment and capital tools, all as determined in accordance with generally accepted accounting principles, consistently applied;
- p. Costs paid to Landlord or to affiliates of Landlord for services in the Project including management fees to the extent the same exceed or would exceed the costs for such services if rendered by unaffiliated third parties on a competitive basis;
- q. Any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord or in any parking areas;
- r. Rentals and other related expenses incurred in leasing air conditioning systems, elevators or other equipment ordinarily considered to be of a capital nature if purchased, except equipment not affixed to the Project which is used in providing janitorial or similar services;
- s. All items and services for which Tenant or anyone else reimburses Landlord;
- t. Costs arising from Landlord's political or charitable contributions;
- u. Costs arising from latent defects in the Project or improvements installed by Landlord;
- v. Costs incurred by Landlord due to the violation by Landlord of the terms and conditions of any lease of space in the Project;
- x. Attorneys' fees, costs, disbursements and other expenses incurred in connection with negotiations or disputes with tenant's, other occupants, or prospective tenants or occupants of the Projects;
- y. Construction, renovations or other improvements undertaken by Landlord for tenants or other occupants of the Projects, whether or not Landlord is entitled to be reimbursed for such work;
- z. Advertising and promotional expenditures;
- aa. Costs of correcting any violations of applicable laws;
- bb. Costs of repairs due to total or partial destruction of the Project or condemnation of portion of the Project;
- cc. Replacement reserve accounts; and
- dd. Management fees in excess of ten percent (10%) of Common Expenses (excluding taxes and insurance premiums).

(c) Tenant's Pro Rata Share of Common Expenses. Tenant shall bear its Pro Rata Share of such Common Expenses. "Tenant's Pro Rata Share" means 15.08%, which amount was obtained by dividing the square footage of the Premises by the gross floor area of the Building.

(d) Payment of Tenant's Proportionate Share. Landlord shall invoice Tenant for Tenant's share of such Common Expenses on a monthly or calendar quarter basis, at Landlord's option. Such invoice shall show in reasonable detail the Common Expenses and shall include Landlord's representation that the Common Expenses referred to therein have been paid by Landlord and shall be forwarded to Tenant's office at the address provided in Article 29 below, to the attention of Tenant's Corporate Accounting. Tenant's share of Common Expenses shall be paid by Tenant to Landlord within twenty (20) days after Landlord's delivery of each invoice to Tenant. In the event all or any part of the Tenant's share of Common Expenses was not paid when due and has not been paid within ten (10) days following receipt of written notice of such delinquency from Landlord for the second time during any period of twelve (12) consecutive months, Tenant shall pay Landlord in addition to the Tenant's share of Common Expenses, a sum of money equal to two percent (2%) of the delinquent amount. It is the intent of the parties hereto that such late charges are not interest, but are to compensate Landlord for loss resulting from the delinquency of payment including costs to the Landlord of servicing the delinquent account.

(e) Verification of Common Expenses. If requested by Tenant, Landlord shall provide Tenant with such information or data as may be reasonably requested, including books and records maintained by Landlord in connection with the Common Expenses, to verify the amount of the Common Expenses, or, if requested by Tenant, Landlord shall provide Tenant with such information or data as may be reasonably requested to verify the amount of the Common Expenses, or, if requested by Tenant, Landlord shall permit Tenant to audit Landlord's books and records maintained by Landlord in connection with the Common Expenses. Tenant shall give Landlord reasonable notice of its intention to conduct such an audit which shall be conducted at Landlord's offices. The cost of such audit shall be borne by Tenant; provided, however, that in the event the audit reveals that the actual Common Expenses are more than ten percent (10%) less than the Common Expenses reflected in the statement(s) presented by Landlord which are the subject of the audit, Tenant's reasonable cost of conducting the audit shall be borne by Landlord.

If Landlord fails to invoice Tenant for Common Expenses within eighteen (18) months of the end of the calendar year of the incurrence of the Common Expenses to which such invoice relates, then Landlord's right to reimbursement of same shall be forever forfeited and waived.

(f) Landlord Exclusive Control. Landlord shall have the sole and exclusive control of the Common Areas, as well as the right to make changes to the Common Areas. Landlord has the right, but not the obligation, to (i) restrain the use of the Common Areas by unauthorized persons, (ii) utilize from time to time any portion of the Common Areas for promotional and related matters, (iii) temporarily close any portion of the Common Areas for repairs, improvements or alterations, or (iv) change the shape and size of the Common Areas or change the location of improvements within the Common Areas, including, without limitation, parking structures and other parking facilities, roadways and curb cuts. Landlord may determine the nature, size and extent of the Common Areas as well as make changes to the Common Areas from time to time which, in Landlord's opinion, are deemed desirable, provided, however, that

Landlord shall not interfere with Tenant's rights of operation or access to the Premises or visibility of the Premises or of Tenant's signage.

(g) Permitted Uses of Common Areas. Notwithstanding anything to the contrary contained herein, Tenant and its successors, assigns, employees, agents and invitees shall use the Common Areas only for the purposes permitted hereby and by the Building Rules and Regulations described in Section 5(c), above. All uses permitted within the Common Areas shall be undertaken with reason and judgment so as not to interfere with the primary use of the Common Areas which is to provide access throughout the Common Areas within the Project and to adjacent public streets for the Landlord, Landlord's agents, tenants, subtenants and all persons, firms and entities conducting business within the Project and their respective customers, guests and licensees. In no event shall Tenant erect, install, or place, or cause to be erected, installed, or placed any structure, building, trailer, fence, wall, signs, or other obstructions on the Common Areas except as otherwise permitted herein and in the Building Rules and Regulations, and Tenant shall not store or sell any merchandise, equipment or materials on the Common Areas. No part of the Common Areas may be used by Tenant for the storage of any items, including without limitation, vehicles, materials, inventory or equipment. All trash and other refuse shall be placed in the designated receptacles. No work by Tenant of any kind, including, but not limited to, painting, drying, cleaning, repairing, manufacturing, assembling, cutting, merchandising or displaying shall be permitted upon the Common Areas.

(h) Revocable License and Condemnation of Common Areas. All Common Areas and improvements located thereon which Tenant is permitted to use and occupy pursuant to the provisions of this Lease are to be used and occupied under a revocable license and right, and if any such license be revoked, or if the amount of such areas be diminished, Landlord shall not be subject to any liability nor shall Tenant be entitled to compensation or diminution or abatement of Rent, and such revocation or diminution of such areas shall not be deemed constructive or actual eviction provided access to the Premises remains undisturbed and Tenant's access to its trash container and remote condensers remains available and Tenant's access to and rights to the Garage provided herein remain unaffected thereby. It is understood and agreed that the condemnation or other taking or appropriation by any public or quasi-public authority, or sale in lieu of condemnation, of all or any portion of the Common Areas shall not constitute a violation of Landlord's agreements hereunder, and Tenant shall not be entitled to participate in or make any claim for any award or other condemnation proceeds arising from any such taking or appropriation of the Common Areas, provided access to the Premises remains undisturbed and Tenant's access to its trash container and remote condensers remains available and Tenant's access to and rights to the Garage provided herein remain unaffected thereby and except as provided in Article 17 above.

(i) Landlord's Rights. Landlord reserves the right to install, use, maintain, repair, relocate and replace pipes, ducts, conduits, wires and appurtenant meters and equipment included in the Premises pursuant to Article 8(a) or outside the Premises, change the boundary lines of the Project and install, use, maintain, repair, alter or relocate, expand and replace any Common Areas; provided, however, Landlord shall not unreasonably interfere with Tenant's use of the Premises. Such rights of Landlord shall include, but are not limited to, designating from time to time certain portions of the Common Areas as exclusively for the benefit of certain tenants in the Project.

25. QUIET ENJOYMENT. Upon paying the rent and performing the terms, covenants and conditions of this Lease, Tenant shall quietly have, hold and enjoy exclusive possession of the Premises and all rights granted Tenant by this Lease, subject to the terms and conditions of this Lease.

26. SUBORDINATION. Tenant agrees that its leasehold interest hereunder is subordinate to any mortgages now on, or hereafter to be placed on, the Premises, provided that each of Landlord's mortgagees shall either enter into a subordination, non-disturbance and attornment agreement (the "SNDA") in the form attached hereto as Exhibit D or otherwise, upon terms and conditions reasonably acceptable to Tenant, with Tenant or cause each such mortgage to provide that so long as Tenant is not in default under this Lease, Tenant's quiet possession of the Premises shall remain undisturbed, on the terms, covenants and conditions stated herein, whether or not the mortgage is in default and notwithstanding any foreclosure or other action brought by the mortgagee. Landlord represents and warrants that there are no mortgages or similar encumbrances affecting the Premises except as shown on Exhibit E and Landlord agrees to take whatever action is reasonably required to assist Tenant in obtaining either a SNDA or a provision in each such mortgage which protects Tenant's interest as provided in this Article. Provided that Landlord complies with the requirements of this Article, Tenant agrees to comply with reasonable requests of Landlord's lender(s), for execution of documentation to effect this subordination of its leasehold interest, including without limitation, subordination agreements, nondisturbance agreements and attornment agreements. Tenant shall have no right to mortgage or pledge as collateral the leasehold interest created by this Lease, without the written consent of Landlord's President/CEO and General Counsel, which consent shall not be unreasonably withheld or delayed.

27. BANKRUPTCY. Should Tenant make an assignment for the benefit of its creditors, or seek an order for relief under the United States Bankruptcy Code, Landlord, at its option, may terminate all rights of Tenant under this Lease, if permitted by applicable law.

28. CHANGE OF OWNERSHIP AND ESTOPPEL CERTIFICATES. Landlord shall provide Tenant written notice in the event Landlord conveys title to the Building, or assigns Landlord's interest in this Lease to another party. Such notice shall include such party's tax identification number and shall be accompanied by documents (including a W-9 Form or similar tax documents) which evidence the transfer of title or assignment of interest and the effective date thereof. After receipt of such notice, rent and other payments due and future notices to Landlord shall be given to the party designated therein and Tenant shall attorn to the new owner as substitute Landlord. Should Landlord fail to provide the required notice or documentation, or should Tenant be reasonably uncertain concerning the proper party to whom rent is due, Tenant may withhold rent thereafter accruing until Tenant is furnished the required notice, documentation and/or satisfactory proof as to the party entitled thereto. Tenant shall, within fifteen (15) days of receipt of request, execute, acknowledge and deliver to Landlord and/or Landlord's lender(s) an estoppel certificate certifying that this Lease is unmodified and in full force and effect (or if there have been modifications that the Lease is in full force and effect as modified and stating the modifications) and stating whether or not to the best knowledge of the signer of such statement, Landlord is then in default or may be in default with notice or the passage of time, or both, in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in this Lease, and, if in default, specifying each such default, it being intended that any such statement delivered pursuant to this Section may be relied

upon by Landlord or any prospective purchaser of the Premises, but reliance on such statement may not extend to any default as to which the signer shall have had no actual knowledge.

29. NOTICES. Except as otherwise provided in Articles 7 and 24, any notices required or permitted hereunder shall be in writing and delivered in person to the other party or by a nationally recognized overnight courier such as FedEx, or United States Certified Mail, Return Receipt Requested, postage fully prepaid, to the addresses set forth below or to such other address as either party may designate in writing and deliver as provided in this Article.

LANDLORD: SAN DIEGO HOUSING COMMISSION
1122 Broadway
San Diego, CA 92101
Tax Identification No. 95-3390896

Copy to: Christensen Schwerdtfeger & Spath LLP
550 West C Street, Suite 1660
San Diego, CA 92101

TENANT: 7-ELEVEN, INC. with a copy to:
Attn: Corporate Real Estate 7-Eleven, Inc.
P.O. Box 711 Southwest Division
Dallas, Texas 75221-0711 Attn: Real Estate Department
330 Lambert Rd., Suite 150
Brea, CA 92821

All tax statements submitted by Landlord to Tenant shall be sent to 7-Eleven, Inc., Attn. Ad Valorem Tax Department, P.O. Box 711, Dallas, Texas 75221-0711.

Invoices for Tenant's share of Common Expenses shall be sent to 7-Eleven, Inc., Attn. Corporate Accounting, P.O. Box 711, Dallas, Texas 75221-0711.

30. RECORDATION. This Lease shall not be recorded in the Office of the County Recorder for San Diego County. However, Landlord and Tenant shall, if desired, execute and acknowledge a memorandum or short form lease (which will include, without limitation, a description of any exclusive use provisions contained in this Lease and a sufficient legal description of the Building and Tenant's rights under Article 11) which may be recorded in the Office of the County Recorder for San Diego County by either party at any time after the execution of this Lease, setting forth the parties, description of the Premises, Term, Extended Term, and any other provisions mutually agreed upon.

31. BROKER. Landlord and Tenant covenant, warrant and represent that no broker has been involved in the negotiation or consummation of this Lease other than CB/Richard Ellis representing Landlord, who shall be compensated by Landlord pursuant to a separate agreement. Tenant and Landlord each agree to indemnify, defend (with an attorney of the indemnitee's choice) and hold the other harmless from and against all claims, demands, causes of action and liabilities, including (without limitation) attorneys' fees and costs, arising out of a claim for a commission by any other broker purporting to have acted on behalf of the indemnifying party.

32. FORCE MAJEURE. Neither party shall be required to perform any term, covenant or condition of this Lease so long as such performance is delayed or prevented by force majeure,

which shall mean any acts of God, material restriction by any governmental authority, civil riot, and any other cause not reasonably within the control of such party and which by the exercise of due diligence such party is unable, wholly or in part, to prevent or overcome.

33. HOLDOVER. In no event shall the Tenant continue to occupy the Premises after the expiration of the Term or Extended Term, without the written consent of the President/CEO and General Counsel of Landlord. Should Tenant hold-over and remain in possession of the Premises after the expiration of the Term or Extended Term in violation of this Section 33, Tenant shall continue to pay a monthly rent equal to 115% of the Rent payable during the last month of the Term or the Extended Term and Tenant shall indemnify, defend and hold Landlord harmless from any and all loss, damage, claim, cost, expense or liability (including, without limitation, attorneys' fees and costs) resulting from such holdover, excepting specifically, however, any consequential damages resulting therefrom.

34. APPLICABLE LAW. The laws of the state in which the Premises are located shall govern the validity, performance and enforcement of this Lease. The invalidity or unenforceability of any provision of this Lease shall not affect or impair any other provision.

35. COMPLETE AGREEMENT. This Lease merges all prior negotiations and understandings between the parties and constitutes their complete agreement.

36. BINDING EFFECT.

(a) On Landlord. Regardless of any written or verbal representation of any agent, manager or other employee of Landlord to the contrary, this Lease shall not be binding upon Landlord, its successor and assigns, until this Lease the last to occur of: (i) execution by Landlord and Landlord's General Counsel; (ii) approval of this Lease by the Board of Commissioners of the San Diego Housing Commission; and (iii) approval of this Lease by resolution of the Housing Authority of the City of San Diego. Tenant hereby acknowledges that Landlord is prohibited by San Diego Municipal Code Section 98.0301(d)(8)(A) from leasing property for a term in excess of five (5) years, including without limitation entering into this Lease, without the approval of the Housing Authority of the City of San Diego.

(b) On Tenant. This Lease shall be binding upon Tenant, its successors and assigns, only if executed by a Vice President or Attorney-In-Fact of Tenant, regardless of any written or verbal representation of any agent, manager or other employee of Tenant to the contrary.

37. AMENDMENT. This Lease may only be amended by written agreement signed by Landlord and by Tenant. As used in this Lease, the consent or approval of the Landlord shall mean the approval of the President/ CEO of Landlord and its General Counsel.

38. PARKING.

(a) Option to Request Parking Spaces. Landlord and Tenant agree that no reserved parking exists within the Building for Tenant's use, but that Tenant may lease from Landlord, at prevailing market rent ("PMR"), up to seven (7) unidentified parking spaces ("Parking Spaces") within the Garage at the Project. If Tenant elects to exercise such right, Tenant shall so notify Landlord in writing within the time period set forth in Article 20. And, in the event the then current PMR is acceptable to Tenant, Landlord and Tenant shall enter into a written agreement regarding such Parking Spaces (the "Parking Space Agreement"), which shall include, without

limitation, the monthly sum to be paid therefor by Tenant to Landlord (“Additional Rent”). Such Additional Rent shall be added to the Rent due and payable by Tenant to Landlord in accordance with Article 4 hereof without regard to whether any or all of the Parking Spaces are actually used by Tenant; provided, however, that Tenant may, at its sole discretion, on thirty (30) days written notice to Landlord terminate Tenant’s rights under the Parking Space Agreement and cease paying Additional Rent to Landlord as of the effective date of such termination, independent of and without affecting any or all rights of Tenant under this Lease.

(b) Use of Parking Spaces. In the event Landlord and Tenant enter into a Parking Space Agreement, Tenant shall have the right on an in-common, non-exclusive, unreserved basis to use Tenant’s allotted number of Parking Spaces in the Garage for Tenant’ employees parking only. Such parking shall be on the terms and conditions set forth in any parking rules and regulations (the “Parking Rules and Regulations”) established by Landlord. Landlord shall also have the right to establish such additional reasonable rules and regulations as may be deemed desirable, at Landlord’s sole discretion, for the proper and efficient operation and maintenance of the Garage. Tenant shall reasonably cooperate with Landlord to ensure that Tenant and its employees observe all parking regulations and do not use more than Tenant’s allotted number of Parking Spaces in the Garage. Nothing contained in this Lease shall be deemed to impose liability upon Landlord for personal injury or theft, for damage to any motor vehicle, or for loss of property from within any motor vehicle, which is suffered by Tenant or any of its employees, customers, service suppliers or other invitees in connection with their use of the Parking Spaces or the Garage or elsewhere.

(c) Landlord shall at all times have the sole and exclusive control of the Garage, and may at any time exclude and restrain any person from use or occupancy thereof; excepting, however, Tenant and employees, customers, service suppliers and other invitees of Tenant, provided such persons use the Garage in accordance with all applicable laws and regulations, the terms of this Lease, the Parking Rules and Regulations, if any, and any other rules and regulations established by Landlord from time to time with respect to the Garage and/or the Building. The rights of Tenant and its employees, customers, service suppliers and invitees shall at all times be subject to (i) the rights of Landlord and other tenants in the Building to use the same in common with Tenant and its employees, customers, service suppliers and invitees, (ii) the availability of parking spaces in the Garage, and (iii) Landlord’s right to change the location of any assigned reserved parking spaces in the sole discretion of the President/CEO of Landlord.

39. GENERAL CONDITIONS.

(a) Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(b) Captions. The captions in this Lease are inserted for convenience of reference and in no way define, describe or limit the scope or intent of this Lease or any of the provisions of this Lease.

(c) Partial Invalidity. Any provision of this Lease which is unenforceable, invalid, or the inclusion of which would adversely affect the validity, legality, or enforcement of this Lease shall have no effect, but all the remaining provisions of this Lease shall remain in full effect.

(d) No Third-Party Rights. Nothing in this Lease, express or implied, is intended to confer upon any person, other than the parties to this Lease and their respective successors and assigns, any rights or remedies.

(e) Time Of Essence. Time is of the essence in this Lease.

(f) Relationship. Nothing contained in this Lease shall be deemed or construed by the parties or by any third person to create a relationship of principal and agent or partnership or a joint venture between Landlord and Tenant or between either or both of them and any third party.

(g) Landlord Approval. Where this Lease refers to an action or approval of the Landlord, it shall mean the approval of the President/CEO of the San Diego Housing Commission, or designee, unless otherwise provided.

(h) Exhibits Incorporated. All exhibits referred to in this Lease are hereby incorporated in this Lease by this reference, regardless of whether or not the exhibits are actually attached to this Lease.

(i) Further Assurances. Landlord and Tenant agree to execute all such instruments and documents and to take all actions which are reasonably necessary to carry out this Lease or accomplish its intent.

(j) Signature Authority. All individuals signing this Lease for a party which is a corporation, limited liability company, partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to the each other party hereto that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

EXECUTED BY TENANT this ____ day of _____, 20__.

7-ELEVEN, INC.

Attest:

By: _____
Assistant Secretary

By: _____
Vice President or
Attorney-in-Fact

(Seal)

EXECUTED BY LANDLORD this ____ day of _____, 20__.

LANDLORD:
SAN DIEGO HOUSING COMMISSION

By: _____
Its: President/CEO

APPROVED AS TO FORM:

Christensen Schwerdtfeger & Spath LLP

By: _____
Walter F. Spath III
General Counsel, San Diego Housing Commission

- () Exhibit A: Description of the Premises
- () Exhibit B: Floor Plan
- () Exhibit C: Building Site Plan
- () Exhibit D: Subordination, Non-Disturbance and Attornment Agreement
- () Exhibit E: Mortgages
- () Exhibit F: Exterior Signage
- () Construction Addendum

Exhibit A

Description of the Premises

The Premises consist of approximately 2,927 rentable square feet of space as outlined in red on the Floor Plan (Exhibit B) being located on the first floor of a multi-level Building as shown on the Site Plan (Exhibit C) with a street address of 1122 Broadway, San Diego, CA 92101. The Building is part of a mixed use project legally described as follows:

Lots 1 and 3 of Smart Corner, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 15217 filed in the Office of the County Recorder of San Diego County December 22, 2005.

Location _____

EXHIBIT B

Floor Plan

Location _____

EXHIBIT C

Building Site Plan

Location _____

EXHIBIT D

Subordination, Non-Disturbance and Attornment Agreement

Location _____

MAIL RECORDED ORIGINAL TO:

Legal Department (Loc. _____)

7-Eleven, Inc.

2711 North Haskell Avenue

Dallas, Texas 75204-2906

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement ("Agreement"), made and entered into as of this ____ day of _____, 200__, by and among **7-ELEVEN, INC.**, a Texas corporation ("7-Eleven"), with principal offices at 2711 North Haskell Avenue, Dallas, Texas 75204-2906, _____, a/an _____ ("Lender"), whose address is _____, and _____ ("Borrower"), whose address is _____.

W I T N E S S E T H:

WHEREAS, Lender has made a loan to Borrower in the principal amount of _____ and No/100 Dollars (\$_____), as evidenced by a promissory note (the "Promissory Note") to Lender dated _____.

WHEREAS, Borrower, as security for the Promissory Note, has executed and delivered to Lender a Mortgage/Deed of Trust dated _____ and filed of record by the County Clerk of _____ County, State of _____, on _____, as Document No. _____ [in Official Record Book _____, at Page _____] (the "Mortgage"), which Mortgage constitutes a first and prior lien against certain real property including the property more particularly described in Exhibit A, attached hereto and made a part hereof (the "Premises");

WHEREAS, pursuant to that certain _____ Lease dated _____, _____ ("Lease"), evidenced by that certain Memorandum of Lease recorded or to be recorded in the Official Records of _____ County, _____, Borrower has leased [approximately _____ square feet of a building located on the Premises] (the "Leased Premises") to 7-Eleven;

Location _____

WHEREAS, 7-Eleven desires to subordinate its leasehold interest to the Mortgage and to be assured of continued occupancy of the Leased Premises subject to the terms of the Mortgage; and

WHEREAS, in return, Lender agrees to assure 7-Eleven of its ongoing and undisturbed peaceful possession of the Premises covered by the Lease (the "Leased Premises"), regardless of any action taken by Lender under the Mortgage.

NOW THEREFORE, the parties hereby agree as follows:

1. Subordination. The Lease and the rights of 7-Eleven in, to and under the Lease and the Leased Premises, are hereby subjected and subordinated to the lien of the Mortgage and to any and all renewals, modifications and extensions thereof.

2. Non-Disturbance. So long as 7-Eleven is not in default under the Lease (beyond any period given 7-Eleven by the terms of the Lease to cure such default) in the payment of rent or other amounts owed pursuant to the Lease or in the performance of any of the terms, covenants or conditions of the Lease on 7-Eleven's part to be performed, (a) 7-Eleven's possession of the Leased Premises, or any extension or renewal rights therefor in the Lease, shall not be diminished or interfered with by Lender, and (b) Lender will not join 7-Eleven as a party defendant in any action or proceeding foreclosing the Mortgage unless such joinder is necessary to foreclose the Mortgage and then only for such purpose and not for the purpose of terminating the Lease.

3. Attornment. If (i) Lender shall become the owner of the Premises, (ii) the Premises shall be sold by reason of foreclosure or other proceedings brought to enforce the Mortgage, or (iii) the Premises shall be transferred by deed in lieu of foreclosure, the Lease shall continue in full force and effect as a direct lease between the then owner of the Premises and 7-Eleven, and 7-Eleven hereby attorns to Lender or any other such owner as its lessor, said attornment to be effective and self operative without the execution of any further instruments. 7-Eleven shall be under no obligation to pay rent to Lender or any such other owner until 7-Eleven receives written notice from Lender or any such other owner that it has succeeded to Borrower's interest under the Lease, upon which notice 7-Eleven shall be entitled to rely.

4. Leasehold Improvements and Business Fixtures. Lender agrees that it will not claim any right, title or interest in and to any leasehold improvements and/or business fixtures installed upon the Leased Premises by 7-Eleven pursuant to the terms of the Lease.

5. Rental Payments. Until such time as 7-Eleven is otherwise notified in writing by Lender, it shall make all rental payments under the Lease to Borrower as provided therein.

Location _____

6. Joinder of Borrower. Borrower hereby agrees to the subordination and attornment effected hereunder upon the terms herein stated.

7. Successors and Assigns. This Agreement and each and every covenant, agreement and other provision hereof shall be binding upon and shall inure to the benefit of the parties hereto and their representatives, successors and assigns, as applicable.

8. Counterparts. This Agreement may be executed in any number of Counterparts, all of which taken together shall constitute one and the same instrument, and any person intended to be a signatory hereto may execute this Agreement by signing any such Counterpart.

[Signatures Next Page]

Location _____

_____, _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

“LENDER”

“7-ELEVEN”

7-ELEVEN, INC., a Texas corporation

Attest:

Assistant Secretary

By: _____

Name: _____

Title: _____

“BORROWER”

By: _____

Name: _____

Title: _____

Location _____

ALL-PURPOSE ACKNOWLEDGMENT

STATE OF TEXAS }
 }
COUNTY OF DALLAS }

On _____, 200__, before me,
_____, personally
appeared _____
_____ and _____
personally known to me or, proved to me on
the basis of satisfactory evidence to be the
persons whose names are subscribed to the within
instrument, and acknowledged to me that they
executed the same in their authorized capacity,
and that by their signatures on the instrument, the
persons or the entity upon behalf of which the
persons acted, executed the instrument.
Witness my hand and official seal.

Signature of Notary

Capacity Claimed by Signer:

- Individual _____
- Corporate Officers (Titles):
_____ and Assistant
Secretary, respectively
- Partner(s) Limited
 General
- Attorney in Fact
- Trustee(s)
- Guardian/Conservator
- Other: _____

Signers are representing (name of person(s) or
entities):
7-Eleven, Inc., a Texas corporation

Location _____

ALL-PURPOSE ACKNOWLEDGMENT

STATE OF _____ }
 }
COUNTY OF _____ }

On _____, 200__, before
me, _____,
personally appeared

personally known to me or, proved to me
on the basis of satisfactory evidence to be the
person whose name is subscribed to the within
instrument, and acknowledged to me that he or
she executed the same in his or her authorized
capacity, and that by his or her signature on the
instrument, the person or the entity upon behalf
of which the person acted, executed the
instrument.

Witness my hand and official seal.

Signature of Notary

Capacity Claimed by Signer:

- Individual _____
- Corp. Officers _____

(Titles)
- Partner(s) Limited
 General
- Attorney in Fact
- Trustee(s)
- Guardian/Conservator
- Other: _____

Signer represents:

Location _____

EXHIBIT A

Legal Description of the Premises

[INSERT LEGAL]

EXHIBIT E

Mortgages

U.S. Bank

EXHIBIT F

Exterior Signage Design

EXHIBIT G

Remote Condensing Unit Location

EXHIBIT H

Satellite Dish Location

CONSTRUCTION ADDENDUM

This Construction Addendum is attached to and made a part of that certain Building Lease by and between San Diego Housing Commission (“Landlord”) and 7-Eleven, Inc. (“Tenant”) dated _____, 2006. Unless expressly defined in this Construction Addendum, defined terms shall have the meaning described thereto in the Lease.

1. Tenant Improvements

(a) Tenant Obligation. Tenant shall make arrangements, consistent with industry practice, at Tenant’s sole cost and expense, to: (i) make non-structural alterations to the Premises; (ii) construct new improvements on the Premises and/or at or on the Building; and/or (iii) undertake such alterations and other improvements to the Premises as necessary for Tenant’s intended uses thereof, all as shown on the Plans and Specifications and Floor Plan in accordance with this Construction Addendum (all such activity being collectively defined as “Tenant Improvements”). Tenant agrees at its sole cost and expense to promptly make application for all permits necessary for the construction of Tenant Improvements, in conformity with the Floor Plan and the Plans and Specifications for same, which shall include the construction of the demising wall(s) noted on said Floor Plan. Tenant shall comply with all applicable laws, regulations, ordinances, and codes and shall not begin construction of the Tenant Improvements without first obtaining all necessary governmental permits. Tenant Improvements shall be performed at Tenant’s sole cost and expense and in a good, workmanlike and defect-free manner, free and clear of mechanics’ and materialmen’s liens. Tenant further agrees to comply with any and all State and/or Federal prevailing wage requirements (as may be necessary) with regard to the construction of Tenant Improvements. In the event Tenant is unable to obtain all permits and approvals required for Tenant Improvements within the time period provided for in Article 20 of this Lease, Tenant shall have the option to terminate this Lease. Landlord agrees to cooperate with Tenant in meeting the requirements to obtain such permits and approvals; provided, however, that Landlord shall have no obligation to obtain any permits or approvals. Tenant will submit to the President/CEO of Landlord for review and approval, the plans and specifications (“Plans and Specifications”) for Tenant Improvements, which approval shall not be unreasonably denied or delayed. Landlord agrees that as an additional condition precedent for Tenant’s benefit to the commencement of this Lease, Landlord’s President/CEO shall review and approve or reject the same within the (10) business days after the date of submission thereof to Landlord. In the event Landlord’s President/CEO does not approve the plans and specifications for Tenant Improvements or notify Tenant of Landlord’s disapproval within said ten (10) business day period, then the plans and specifications thus submitted shall be deemed approved. All Tenant Improvements, unless otherwise designated as Fixtures under Article 10 of the Lease, shall become the property of Landlord on the termination or expiration of this Lease. All work on any Tenant Improvements shall be performed at reasonable times and to minimize interference with Landlord’s operations, other tenants and with Landlord’s operation of the Building, or other construction work being done by Landlord. All work shall be done in compliance with all applicable laws, regulations and rules of any government agency with jurisdiction. Tenant shall be responsible for and shall repair, at its sole cost and expense, any damage, including without limitation damage to the Building, caused by Tenant’s work on the Tenant Improvements. Tenant shall give Landlord fifteen (15) business days advance notice before beginning any work on the Improvements to permit Landlord to file a Notice of Nonresponsibility or take any other actions in advance of commencement of any Tenant Improvements. Upon completion of the

Tenant Improvements, Tenant shall provide Landlord with a complete set of any “as-built” plans in Tenant’s possession. The term “business days” as used herein shall mean weekdays that Landlord is open for business and shall not include any day that the Landlord’s offices are closed.

(b) Construction of Tenant Improvements. The Tenant Improvements shall be constructed in a first-class, workmanlike and defect-free manner. Tenant and Landlord shall each receive the benefit of any construction warranties made by the General Contractor and/or any manufacturer’s warranties.

(c) Mechanic’s Liens. Tenant shall keep the Premises, Building, Project and Tenant’s leasehold free of any liens or claims of lien, and shall discharge any such liens within twenty (20) days after receipt of written notice of their filing. In the event of the recording of a mechanic’s lien against all or any portion of the Premises, the Building or Tenant’s leasehold, Tenant shall take any and all steps reasonably necessary to cause the same to be removed within twenty (20) days of their filing. Upon expiration of such twenty (20) day period, Landlord immediately and without notice or any liability whatsoever to Tenant or any other person, may, but shall not be obligated to, take any and all steps necessary to cause the release and/or removal of the mechanic’s lien, including without limitation making a claim under the performance and payment bond and/or satisfying the mechanic’s lien. In the event Landlord satisfies any mechanic’s lien, Tenant shall immediately reimburse Landlord for any and all expenses, fees and costs incurred by Landlord with respect to the same.

(d) Changes to Plans and Specifications. Tenant may request reasonable changes to the Plans and Specification and/or Tenant Improvements for Landlord’s review and approval which approval shall not be unreasonably delayed or withheld, provided however, that no such changes shall require or cause a structural change in the Premises or the Building or affect the Building’s hearing, ventilation, plumbing or mechanical systems or appearance, render the Premises or the Building in violation of any applicable laws or regulations or change the size or configuration of the Premises. Tenant shall pay any and all costs required to implement any such changes, including, without limitation, architectural fees, permit fees and construction cost increases (including costs of delay), unless such delay is caused by Landlord..

2. Improvement Credit

All costs and expenses for the Tenant Improvements shall be a liability of and paid by Tenant. Provided, however, Landlord shall provide Tenant with a credit against Rent due during the first five (5) years of the Term of this Lease in the amount of One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) for Tenant Improvements, as reflected in Article 4 of the Lease.

3. Preliminary Title Report

Within the time period provided for in Article 20 of this Lease, Tenant may, at Tenant’s expense, obtain through LandAmerica National Commercial Services (“LNCS”) preliminary title documentation. A preliminary title report or binder (the “Binder”) shall be issued giving the current condition of title to the Premises, together with copies of all instruments necessary to fully explain the scope and effect of any matters listed as exceptions in the Binder whereby LNCS is bound to issue to Tenant or its nominee, for an amount to be determined by Tenant, an A.L.T.A. Policy - Standard Form B 1992, or a comparable form, with extended coverage if such form is not approved in the state in which the Premises is located (the “Title Policy”). In the

event the Binder reflects any matters or conditions exist which Tenant reasonably determines will interfere with its intended development or use of the Premises, or the rights granted Tenant in this Lease, Tenant may terminate this Lease within the time period provided for in Article 20 of this Lease.

4. Landlord's Warranty

Landlord represents and warrants that to the best of its knowledge: (i) the Building is structurally sound and that there are no latent defects therein of which Landlord is, or has reason to be, aware; and (ii) all common areas and any and all common area facilities of the Building are in compliance with and shall be maintained by Landlord under Article 8 of the Lease throughout the Term and any Extended Term of the Lease in compliance with the Americans With Disability Act of 1990, as amended ("ADA"). Landlord's "knowledge" shall be deemed to include the knowledge of Elizabeth C. Morris, Carrol Vaughan and Steve Snyder as of the date this Lease is executed on behalf of the Landlord. Except as otherwise provided herein, any improvements or repairs to the Building, if any, including, but not limited to, improvements or repairs to foundation, footings, load bearing walls or utilities provided to the Building discovered to be necessary during Tenant's construction shall be completed by Landlord at Landlord's expense (unless caused by Tenant).



REPORT

DATE ISSUED: July 18, 2003

ITEM 100

REPORT NO: HCR03-053
For the Agenda of July 23, 2003

SUBJECT: Approval of Purchase and Sale Agreement for the Housing Commission's Proposed Office Development (District 2)

SUMMARY

Issue No. 1: Should the San Diego Housing Commission recommend that the Housing Authority authorize the Chief Executive Officer (CEO) to proceed with the purchase of the Housing Commission's proposed office development to be located at Smart Corner at 12th Avenue and "C" Street in Downtown San Diego, conditioned upon approval of the Development and Disposition Agreement (DDA) concerning this project by the Redevelopment Agency of the City of San Diego?

Recommendation 1a: That the Housing Commission rescind its approval of the initial draft of the Purchase and Sale Agreement (PSA) for Smart Corner, voted on June 28, 2002, and referenced in Housing Commission Report No. HCR 02-063 in conjunction with the Housing Commission's proposed new office facility.

Recommendation 1b: That the Housing Commission recommend Housing Authority approval of a new PSA (Attachments 1 and 2a and 2b) with Lankford & Associates, Inc., or a Limited Liability Company of which Lankford & Associates, Inc. is the managing member owning not less than 51% of the company, provided that the composition of the Limited Liability Company is approved by the Housing Commission's CEO, or designee and General Counsel, and authorize the CEO to execute a PSA as approved by General Counsel to effectuate the purchase for an acquisition cost not to exceed \$23,846,160.

Recommendation 1c: That the Housing Commission recommend the Housing Authority approve a total development budget of \$26,532,510, authorize the CEO to expend up to this amount, and delegate the resolution of all cardinal issues related to the acquisition of



the proposed new office facility to the Board of the Housing Commission, so long as initial annual principle and interest costs do not exceed \$1,754,000.

Recommendation 1d: That the Housing Commission form a new office facility advisory ad-hoc committee to be comprised of Commissioners Salas, Yip and Adams-Brooks to provide Housing Commission staff direction and resolve non-cardinal issues related to the acquisition of the proposed new office facility. “Non-cardinal” are those issues not involving changes to the essential elements of the transaction, but including all other types and kinds of issues related to the transaction. Upon the advice of the new office facility advisory ad hoc committee and General Counsel, the authority to make decisions concerning non-cardinal issues shall be vested in the CEO of the Housing Commission.

Fiscal Impact No. 1: Approval of the acquisition of Smart Corner would result in a total projected cost of up to \$26,532,510 (Budget is shown in Attachment 3). Sources of funding would include:

Loan Proceeds	\$20,441,260
SDHC Equity	\$ 1,500,000
SDG&E Credit	\$ 150,000
Value of Existing Headquarters	\$ 4,441,250
Total Sources of Funds	\$26,532,510

Ongoing operating expenses would be approved each year in the Housing Commission’s annual budget.

Issue No. 2: If it is decided to pursue purchase of a new office facility at the Smart Corner, how should the Housing Commission finance acquisition of the property?

Recommendation 2a: That the Housing Commission reject financing term sheets provided by Buchanan Street Partners, L.P. in conjunction with their contract as Financial Advisors to the Housing Commission. A summary of proposed terms is included in Attachment 4.

Recommendation 2b: That the Housing Commission recommend Housing Authority accept the Financing Term Sheet provided by US Bank directly to the Housing Commission (Attachment 5), and authorize the CEO, with advice and concurrence of General Counsel and the Commissioners’ new office facility advisory ad hoc committee, to seek a firm financing commitment consistent with that term sheet, and authorize execution of all required documents to secure a 2-year forward commitment for financing and 5-year permanent financing in an amount not to exceed \$21 million at a fixed interest rate of no greater than 7 percent.

Fiscal Impact No. 2: This action will result in expenditures of fees and costs of up to \$271,350 to US Bank and in the creation of a non-recourse fixed rate mortgage obligation to the Housing Commission of up to \$21 million to be secured by the new office facility.

Environmental Review: The actions being recommended herein are approval of an agreement to purchase and sell an office building and a parking garage. No obligation of the Housing Commission to purchase the office building and parking garage exist under the PSA unless and until all environmental clearances have been obtained. Approval of a purchase and sale of real property by the Housing Commission is categorically exempt under the provisions of California Environmental Quality Act (CEQA) as discussed herein. Further, CCDC has reviewed environmental reports for the full block development, and any approval of the DDA would require certification of all environmental documents. For a more thorough discussion of the environmental review, please see Attachment 6.

Previous Related Actions: On September 21, 2001, and November 27, 2001, the Housing Commission and Housing Authority, respectively, authorized the CEO to execute an Exclusive Negotiating Agreement (ENA) with Lankford & Associates, Inc. for potential development of the Housing Commission Headquarters facility at Smart Corner at 12th Avenue and "C" Street in San Diego (Report HCR01-105 and HCR01-105 Supplemental).

On June 7, 2002, the Housing Commission authorized the CEO to execute up to two (2) 30-day extensions to the ENA with Lankford & Associates, Inc. (Report HCR02-053).

On June 28, 2002, the Housing Commission voted to recommend approval of a PSA with Lankford & Associates, Inc. to the Housing Authority (Report HCR02-063). This document was never brought forward to the Housing Authority for approval and was never executed.

Future Related Actions: Approval of the recommendations contained in this report will be sought at a joint meeting of the Housing Authority and the Redevelopment Agency scheduled for July 29, 2003. If recommendations in this report are adopted at the joint meeting, purchase offers will be entertained and Housing Commission staff will return to the Housing Commission and the Housing Authority at a future date for specific approval to sell the Housing Commission's office at 1625 Newton Avenue.

BACKGROUND

The San Diego Housing Commission historically has utilized its own revenues (no City General Funds are involved) to provide for all of its administrative needs, including office space. It moved into its current main offices at 1625 Newton Avenue in 1984, when its staff consisted of fewer than half the current number of employees and it assisted thousands fewer

For the Agenda of July 23, 2003

Approval of Purchase and Sale Agreement for the Housing Commission Proposed Office Development

Page 4

families than now (with a budget of \$21.5 million compared to today's \$163 million). The Housing Commission owns this retrofitted warehouse facility outright.

Over the past 19 years, renovations have been made to the site, and warehouse space has been built out in increments to accommodate the need for more employees. Rather than continue to invest more funds to cobble out additional office space at Newton, several years ago the Housing Commission decided to lease two other office facilities off site. The result is a scattered workforce, overcrowding in the main office site, inefficient visitors' waiting and interview areas, as well as deteriorating building systems.

The Agency has in recent years been reluctant to spend the millions of dollars necessary to make the needed major renovations because of concerns about return on investment and because renovations would not improve the site's access to public transportation and its shortage of parking spaces. The building is in an industrial area, and continuing to upgrade an office facility would overprice it for the warehouse-dominated neighborhood.

However, the building's deteriorating floors, inefficient heating and ventilation system, electrical re-wiring needs, and other problems can no longer be ignored. For the past few years, the Agency has set aside funds toward major renovation or other options, and in July of 2000, it established an ad hoc subcommittee of the Board to work with staff and Keyser Marston & Associates (KMA) to investigate options. KMA was directed to conduct a financial analysis for each potential choice, including: renovation, lease new offices, or buy a new facility. (The current situation, the "do nothing" base case, was quickly eliminated as an option due to the inadequate conditions cited above.) KMA's analysis eliminated leasing as an option because of its expense and no equity appreciation, verified that renovation would yield a poor return on investment and leave the Agency with transportation issues, and suggested a further investigation into purchase opportunities. Criteria established by the Board in the search for a new office facility included: provide appropriate physical space (size, functionality, parking, etc.), contribute to a neighborhood revitalization effort, be financially advantageous, and, if possible, provide housing along with office space.

In the meantime, CCDC, which had purchased a city block at 12th Avenue and "C" Street, sought a developer for a transit-oriented, mixed-use development—with retail, office space, and homes—on the site to help meet its redevelopment plan goals. It issued a Request for Proposals for same, and the Housing Commission issued a Request for Qualifications for developers interested in developing an office facility for the Agency.

Lankford & Associates, Inc., successfully responded to both solicitations, and on November 27, 2001, the Housing Authority authorized the Housing Commission to enter into an Exclusive Negotiating Agreement (ENA) with Lankford & Associates. Since that time, the Commission staff and General Counsel have been involved in negotiations with Lankford &

Associates, Inc. The proposed PSA attached hereto is the result of those efforts. Summary and full text of the proposed PSA are found in Attachments 1 and 2.

DISCUSSION

Development Concept

The proposed PSA would have Lankford (the “Developer”) build a five-story office facility consisting of one floor—the ground floor—for lease to retail establishments, one floor for office space to be leased to other organizations, and three floors for the Housing Commission’s offices. Under the building, the Developer would construct a parking garage. These facilities (collectively the “Project”) would be constructed for a fixed fee guaranteed maximum price of \$23,846,160.

Across from the Project, on the same site, the developer proposes to build a separate 19-story building to contain ground floor retail space and private residential condominium units (the “Developer Portion”). The Housing Commission has no direct involvement with the residential building.

The site would also contain an easement for a realigned MTDB trolley track with a new station; the site also accommodates several bus lines. The trolley station and its related components would be financed and developed by MTDB.

The entire Smart Corner site, including the Project, the Developer Portion, and the MTDB trolley station, sit within “air-rights” parcels atop the underground parking garage.

CCDC, owner of the Smart Corner site, proposes to enter into a DDA with Lankford & Associates, Inc., to develop it. On July 16, 2003, CCDC voted to recommend Redevelopment Agency approval of the DDA.

Ownership Structure

Ownership During Construction:

The Developer shall own the Project, as well as other components of the Development, until the completion of the Project, whereupon the Housing Commission would use its financing to purchase the completed improvements comprising the Project.

Permanent Ownership:

The final ownership of the components of the development would be as follows:

SDHC – 5-story office building, to be owned by the Housing Commission consisting of ground floor retail, 3-stories of Housing Commission office space, one floor of rental space for other office users

Lankford & Associates – 299-unit condominium building to be owned by residential users and ground floor retail

MTDB – An easement diagonally through the site for MTDB, on which a new Trolley station would operate

SDHC Garage – 634-space subterranean garage, to be owned by the Housing Commission, of which 367 spaces are set aside for residential users and 267 spaces are for the Housing Commission's Project

Financing

The \$26.5 million development budget includes all costs associated with the acquisition and occupancy of the Smart Corner facility by the Housing Commission (Attachment 3). In addition to the purchase price (which includes tenant improvement allowances), the project budget contains amounts for fixtures, lease up commissions, financing costs and moving expenses. The acquisition would be funded from a variety of sources, enumerated in the Fiscal Impact section, and includes a conventional bank loan.

One of the challenges of this proposed acquisition was how the Housing Commission could effectively lock-in fixed interest rate permanent financing for acquisition of a building that will not be completed for approximately two years. In order to assist Housing Commission staff with that effort, on February 28, 2003, the Housing Commission authorized a 120-day Brokerage Services Agreement with Buchanan Street Partners, L.P. (BSP). The primary stated purpose of the contract was to assist the Housing Commission in obtaining a 2-year forward commitment for permanent financing for approximately \$20 million at the lowest possible rate.

Although BSP was unable to produce the term sheet meeting the criteria for the desired financing, they were able to secure three term sheets for construction/short term take-out financing (Attachment 4). This alternate concept would have the Developer utilize the available money during the construction phase and then have the Housing Commission utilize the funds for acquisition at the completion of construction. Unfortunately, each of the three term sheets is lacking in key respects, and Housing Commission staff recommends the rejection of all the term sheets provided by BSP under the terms of their contract. Shortcomings include amount, terms, organizational structure and pricing, among other issues.

US Bank currently provides banking services to the Housing Commission. In order to provide the highest level of service, they have worked diligently with Housing Commission staff to provide an advantageous term sheet (Attachment 5). Their proposed variable rate of LIBOR plus 2.25% is lower than any of those provided by BSP, and their proposed loan amount of up to \$21 million adequately meets the needs of the project, exceeding those provided by BSP.

As was stated above, it is the Housing Commission's desire to obtain fixed rate financing in order to lock in operating cost. Interest rate risk is most effectively managed by the execution of a SWAP, a separate and distinct financial instrument that effectively converts a variable rate to a fixed rate. The cost of a SWAP is based on a published percentage rate and is additive to the variable rate. If the Housing Commission had been able to lock into a fixed rate on the date of their initial proposal, the "all in" rate (LIBOR plus 2.25% margin plus SWAP) would have been approximately 5.96%, and is currently hovering around 6.5 %. However, because we are unable to lock the rate until all the public body approvals have been received, final bank commitment issued, and documents executed, we have included in our pro-forma analyses for both 6% and 7%. It is expected that the actual rate will fall between those two rates. The draft PSA includes a provision that allows the Housing Commission to exit the deal if the interest rate exceeds 7% at the time of execution of the forward commitment.

Budget Analysis

Occupancy costs for the new facility have been estimated by KMA. The costs will be a function of the loan payment amount plus the operating expenses (utilities, janitorial, etc.) minus any revenue earned from the leased retail, offices and parking. Based on conservative income and expense projections, the occupancy cost for the proposed new office facility is shown in Attachment 7, as a range. Even at the higher price these costs are reasonable for the type of structure envisioned. However, it is also appropriate to analyze the budget implications to the Housing Commission of a new office facility.

In the first year of ownership of the new facility, the Housing Commission would be faced with the challenge of having to spend as much as between \$378,000 - \$533,000 more than it currently budgets for office space. Because KMA projects that Smart Corner rental income will rise faster than hard costs for occupancy, this differential over current expenditures would decline over time (Attachment 8). By the fifth year of occupancy, even the high estimate for Smart Corner would cost less than the renovation option. In the long term, annual expenditures for the new facility would actually become less expensive than the "as is" scenario, but the need to address the short-term gap cannot be ignored. For perspective, this first year cost differential represents approximately 2% of the administrative portion of the FY04 Budget.

A year ago, during the deliberations concerning the Housing Commission's FY03 Budget, Housing Commission staff also produced estimates of 5-year budget projections. This Smart Corner proposal is within the projected budget increase for office expenses.

Over two years ago, the Housing Commission embarked on a re-engineering effort. It was this effort that enabled it to become one of the most successful in the U.S. in terms of its ability to use all available vouchers. This successful business redesign provided greater housing benefit to clients and also enabled the Agency to earn additional annual administration fees from HUD.

The Housing Commission will be able to meet the challenge it will face in FY 2005 because of similar re-engineering undertakings. These have already begun and have included a reduction of management staff, and a shifting other positions from administrative areas to direct service. Strategic process redesigns in other areas will continue, and several revenue-generating programs included in the adopted Business Plan are being pursued. These changes will not reduce service in the Agency's core programs.

It is noteworthy that the Housing Commission would face a similar financial challenge even were it to choose the alternative of renovating its site. In fact, the first year cost difference between renovating and purchasing at the upper end 7% interest rate is only \$80,000.

Of course, this challenge would not be necessary in the "do nothing" scenario, but not renovating Newton Avenue is not a viable option, as safety and deferred maintenance issues are of increasing concern.

By meeting the Agency's space needs with an investment that will yield the greatest return, the Housing Commission will in time have substantially more equity in a downtown building. It might choose to borrow against this equity, or the building could be sold in the future with the appreciated value applied toward a new facility to house all City departments.

Risks and Mitigation

1. Rental Income. There is some risk involved with realizing the rental income included in the pro forma. To mitigate this risk, rental income from the following sources was estimated conservatively:

- One floor of the office space will be available for lease to other organizations. Although it is not possible to obtain firm commitments from potential lessees so far in advance, several non-profit organizations have expressed interest in leasing the available space, and its location near San Diego City College offers additional opportunities.

- The ground floor in the proposed office facility will be available for lease to retail establishments; the site is adjacent to one of the busiest trolley stops in the City, making the retail space very desirable for businesses.
- The rental income derived from the parking garage is an important part of making the proposal affordable to the Housing Commission. KMA has concluded that there is currently a shortage of parking in the area, which will be exacerbated by planned development that would eliminate several surface parking lots, thereby increasing the likelihood of full utilization of the parking garage.

2. Sale of Newton. There is also risk involved in selling the Newton Avenue property with appropriate pricing and timing. However, brokers indicate that downtown development is creating a market for displaced businesses nearby, and that the market for similar properties is strong. The Housing Commission does have short-term contingency plans if the property is not sold within two years; but, naturally, these would add to the cost.

3. Interest Rates. Another risk concerns interest rates. Short term, LIBOR and SWAP rates have been somewhat volatile. Rates cannot be fixed until US Bank completes its due diligence (60 – 90 days from Housing Authority approval). To ensure that the purchase price is attainable, the PSA would give the Housing Commission the option of canceling the transaction if interest rates rise above 7%, but with no worthwhile substitute. Without an office facility occupant, construction financing for the entire 12th & “C” block would be jeopardized.

There is an additional long-term interest rate concern. Assuming the Housing Commission completes the acquisition, the US Bank loan is fixed for no more than five years and the Housing Commission must secure longer term financing. Interest rates might be higher then. Among other contingency plans, securing tax exempt financing for a “seasoned” building with tenants in place would be a possibility. Such financing would not impinge on the City’s ability to issue housing bonds or other municipal borrowings (Attachment 9). Also, the Housing Commission could substitute a longer term loan at any time during the five year US Bank loan term without penalty.

CONCLUSION

Approval of this proposed action would improve access for clients while resolving overcrowding and physical condition issues at the Housing Commission’s current facility. It will create greater operating efficiencies, accommodate possible future growth, and allow for long-term capital appreciation. The new building would meet the City’s sustainable building guidelines, be fully accessible, and contribute to meeting redevelopment plan goals. SEIU Local 535 leadership, which represents most of the Housing Commission employees, has been

consulted regarding this matter and is supportive of going forward with this development opportunity.

Housing Commission has analyzed the Housing Commission's options and position with regard to the need to extensively renovate its current facility or relocate. It has been assisted by an ad hoc committee of Commissioners and by KMA. The analysis has included extensive review of the viability of the Smart Corner and other alternatives. The necessary "due diligence" has been performed to ensure reasonable costs, within industry standards, and negotiations have proceeded in good faith with the Developer, pursuant to the Housing Authority approved ENA.

The proposed development plan has some added cost burden in the short term, but it represents the best available option for meeting the Housing Commission's criteria. Importantly, it offers a unique long term business opportunity. The resulting cost of occupancy is below market for a fully serviced similar space. This is achieved by generating rental income at this busy location to offset more and more of the Housing Commission's costs each year.

ALTERNATIVES

Alternative No. 1: Direct Housing Commission staff to proceed with the renovation of the Newton Avenue facility. This alternative is not recommended due to the cost of the rehabilitation and the significant disruption to staff and clients during the construction phase. Return on investment is unfavorable, as this extensive renovation would not substantially increase the value of the property. In addition, this alternative does not address the problems of inadequate parking and access to public transportation, nor is there an opportunity to offset costs with rental income. Leveraging the Newton Avenue building equity for housing in the future is limited, especially compared to the Smart Corner.

Alternative No. 2: Direct staff to pursue new construction or acquisition opportunities outside of the downtown area. This alternative is not recommended, in part, because CCDC's participation has helped make this opportunity feasible and it is unlikely that similar opportunities will become available. Also, it is unlikely that the rental revenue income that would be derived from Smart Corner could be duplicated outside of downtown.

Alternative No. 3: Direct staff to lease other office space. This is not recommended, as it is the most expensive alternative.

Respectfully submitted,

Approved by,

Signature on File with Original Document

Steve Snyder
Asset Manager

Elizabeth C. Morris
Chief Executive Officer

Information: S Snyder 578-7545

Attachments:

1. Executive Summary of the Purchase and Sale Agreement
- 2a. Purchase and Sale Agreement*
- 2b. Escrow Instructions* (see 2a PSA)
3. Project Budget
4. BSP Term Sheet
5. US Bank Term Sheet Summary
6. Environmental Review
7. Occupancy Cost Comparison
8. Cost Difference Over Time
9. 11/21/01 City of San Diego Memo from Patricia T. Frazier
10. Developer's Statement for Public Disclosure*

*Distribution of this attachment is limited due to its length. Complete copies are on file at the Office of the City Clerk, 202 C Street, 2nd Floor, and at the Office of the San Diego Housing Commission, 1625 Newton Avenue.