

FIRST AMENDMENT TO GROUND LEASE

THIS FIRST AMENDMENT TO GROUND LEASE ("First Amendment") is entered into as of this 13th day of AUGUST, 1997, by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE (hereinafter called "Landlord"), a public body, corporate and politic, established and operating pursuant to the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000, et seq.), and JAPANTOWN DEVELOPMENT, L.P. (hereinafter called "Tenant"), a California limited partnership.

RECITALS

A. Landlord and Tenant entered into that certain Ground Lease of even date herewith (the "Lease"). (Unless otherwise indicated, all capitalized terms used in this First Amendment shall have the same meaning as those set forth in the Lease.)

B. Subject to the terms and conditions set forth in this First Amendment, Landlord and Tenant desire to amend the Lease in connection with certain changes related to the Project financing, (1) to reflect a reallocation of sources of construction funds pursuant to that certain First Amendment to Disposition and Development Agreement of even date herewith, and (2) to provide for the HUD requirement that the Lease be amended by an addendum containing special provisions that shall be in effect during any period when the leasehold is subject to a mortgage insured, reinsured, or held by the Federal Housing Commissioner or given to the Commissioner in connection with a resale, or the demised premises are acquired and held by him because of a default under said mortgage.

AGREEMENT

NOW, THEREFORE, Landlord and Tenant agree as follows:

1. Section 207.1 of the Lease is hereby deleted in its entirety and the following is substituted therefor:

"2. [§207.1] Participation Rent.

Subject to Section 207.2a. below, Tenant covenants and agrees to pay for each calendar year beginning on the Commencement Date, in the manner and at the time provided

herein, as Participation Rent to Landlord, without notice, demand, abatement, deduction or offsets, the following sums:

a. One hundred percent (100%) of Distributable Cash Flow (as hereinafter defined), up to an amount equal to a three and five-tenths percent (3.5%) return on the then outstanding balance of the Landlord's Improvement Assistance (as hereinafter defined);

b. After payment of those sums described in Subsection a. above, fifty percent (50%) of the remaining Distributable Cash Flow, until such time as Landlord's Improvement Assistance has been repaid to Landlord in full; all payments to Landlord from time to time pursuant to this Subsection b. shall reduce the outstanding balance of Landlord's Improvement Assistance; and

c. After payment in full of those sums described in Subsections a. and b. above and throughout the remaining term of this Lease, thirty percent (30%) of the Distributable Cash Flow.

d. For purposes of this Lease, "Improvement Assistance" means the sum of (1) One Million Five Hundred Fifty-Seven Thousand Seventy-Five and No/100 Dollars (\$1,557,075.00), being the amount of funding paid by Landlord to Tenant under that certain Third Amended and Restated Pre-Development Agreement and Exclusive Negotiations Agreement dated August 22, 1996 (the "Pre-Development Agreement"); and (2) Three Hundred Fifty Thousand Dollars (\$350,000.00), being the amount of demolition funding paid by Landlord to Tenant for the demolition of structures and other improvements on the Property in preparation for the construction of the Project pursuant to the DDA; and (3) up to Three Hundred Forty-Six Thousand Eight Hundred Nine Dollars (\$346,809.00), being the amount funded by Landlord pursuant to the DDA for the construction of the Community Center; and (4) up to Six Hundred Seventy-Seven Thousand Three Hundred Twenty-Nine Dollars (\$677,329.00), being the amount funded by Landlord pursuant to the DDA for the foundations, excavations and platforms in preparation for construction of the Project; and (5) up to Three Hundred Seventy-Two Thousand Dollars (\$372,000.00), being the amount funded by Landlord pursuant to the DDA for construction of off-site improvements; and (6) up to One Million Two Hundred Fifty-Five Thousand Six Hundred Twenty Dollars (\$1,255,620.00), being the

amount funded by Landlord pursuant to the DDA for construction of retail shells; and (7) up to Two Million Nine Hundred Eighty Thousand Two Hundred Eighty-Five Dollars (\$2,980,285), being the amount funded by Landlord pursuant to the DDA for construction of the Affordable Rental Units; and (8) including with regard to all sums described in clauses (1) through (7) inclusive, accrued and compounded interest thereon at the interest rate of two percent (2%) per year, compounded annually, and commencing to accrue in each case on the date when such sums were disbursed by Landlord, except that interest shall not begin to accrue with regard to the sums described in clauses (1) and (2) until the date of the first disbursement by Landlord of any sums described in clauses (3), (4), (5), (6), and (7) inclusive."

2. A new Section 310 is hereby added to the Lease, as follows:

"9. [§ 310] On-Going Remediation.

a. Tenant acknowledges that a predecessor-in-interest, Miraido Corporation, a California corporation ("Predecessor"), is obligated to perform certain on-going remediation and monitoring activities on the Property pursuant to that certain Escrow Agreement dated July 30, 1997, between Predecessor, Landlord, and an escrow agent.

b. Tenant shall indemnify, defend and hold harmless Landlord, and its successors and assigns, with regard to any default by Predecessor in the performance of its obligations under the Escrow Agreement. Without limiting the foregoing, if Predecessor fails to do so, Tenant shall perform Predecessor's obligations to monitor and remediate at the Property after written notice from Agency of Predecessor's default."

3. A new Exhibit, called Exhibit E and entitled "HUD Addendum", attached hereto and incorporated herein by this reference, is added to the Lease.

4. In the event of a conflict between the terms and provisions of this First Amendment and the terms and provisions of the Lease, the terms and provisions of this First Amendment shall control. In all other respects, the Lease shall remain unchanged and in full force and effect.

5. This First Amendment may be signed in counterparts, all copies of which, when taken together, shall comprise one fully-executed document.

6. The effective date of this First Amendment is the date of final execution of this First Amendment by both parties hereto, as first hereinabove set forth.

IN WITNESS WHEREOF, Landlord and Tenant have executed this First Amendment as of the date first hereinabove written.

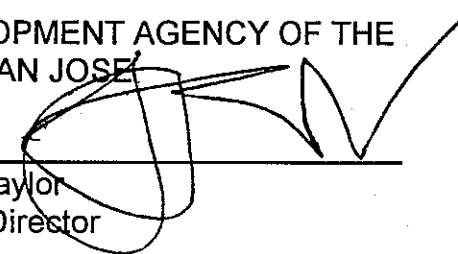
LANDLORD:

REDEVELOPMENT AGENCY OF THE
CITY OF SAN JOSE

APPROVED AS TO FORM:



~~Chief~~ Deputy General Counsel



Frank M. Taylor
Executive Director

TENANT:

JAPANTOWN DEVELOPMENT, L.P.,
a California limited partnership

By A.F. Evans Company, Inc.,
a California corporation,
its general partner

By: 

EXHIBIT E

HUD ADDENDUM

Notwithstanding any other provisions of the Ground Lease and/or the Disposition and Development Agreement, if and so long as this leasehold is subject to a mortgage insured, reinsured, or held by the Federal Housing Commissioner or given to the Commissioner in connection with a resale, or the demised premises are acquired and held by him because of a default under said mortgage:

1. The tenant under the Ground Lease ("Tenant") is authorized to obtain a loan, the repayment of which is to be insured by the Federal Housing Commissioner and secured by a mortgage on the leasehold estate. Tenant is further authorized to execute a mortgage on the leasehold and otherwise to comply with the requirements of the Federal Housing Commissioner for obtaining such an insured mortgage loan.
2. The Federal Housing Commissioner, or his successors in office, shall have the option, in the event that he or his successor in office, through the operation of his contract of mortgage insurance, shall acquire title to the leasehold interest, to purchase good and marketable fee title to the demised premises, free of all liens and encumbrances except such as may be waived or accepted by him or his successor in office, within twelve (12) months after so acquiring the leasehold interest, for the sum of One Million Nine Hundred Ten Thousand Dollars (\$1,910,000), payable in cash, or by Treasury check, provided all rents are paid to date of transfer of title, upon first giving sixty (60) days' written notice to the Landlord or other person or corporation who may then be the owner of the fee, and the owner of the fee shall thereupon execute and deliver to the Federal Housing Commissioner, or his successor in office, a deed of conveyance to the said demised premises, containing a covenant against the grantor's acts, but excepting therefrom such acts of the Tenant and those claiming by, through or under the Tenant of the leasehold interest. Nothing in this option shall require the Landlord to pay any taxes or assessments which were due and payable by the Tenant.
3. If approved by the Federal Housing Commissioner, Tenant may assign, transfer or sell his interest in the demised premises.
- 4.(a) Insurance policies shall be at least in an amount, and in such company or companies and in such form, and against such risks and hazards, as shall be approved by such mortgagee and/or the Federal Housing Commissioner.

- (b) The Landlord shall not take out separate insurance concurrent in form or contributing in the event of loss with that specifically required to be furnished by the Tenant to the mortgagee. The Landlord may at its own expense, however, take out separate insurance which is not concurrent in form or not contributing in the event of loss with that specifically required to be furnished by the Tenant.
- 5.(a) If all or any part of the demised premises shall be taken by condemnation that portion of any award attributable to the improvements or damage to the improvements shall be paid to the mortgagee or otherwise disposed of as may be provided in the insured mortgage. Any portion of the award attributable solely to the taking of land shall be paid to the Landlord. After the date of taking the annual ground rent (but not to include participation rent) shall be reduced ratably by the proportion which the award paid to the Landlord bears to the total value of the land as established by the amount the Federal Housing Commissioner would be required to pay upon acquisition of the fee as set out in paragraph 2 of this Addendum.
- (b) In the event of a negotiated sale of all or a portion of demised premises in lieu of condemnation, the proceeds shall be distributed and ground rents reduced as provided in cases of condemnation, but the approval of the Commissioner and the mortgagee shall be required as to the amount and division of the payment to be received.
6. The Landlord agrees that, within ten (10) working days after receipt of written request from Tenant, it will join in any and all applications for permits, licenses or other authorizations required by any governmental or other body claiming jurisdiction in connection with any work which the Tenant may do hereunder, and will also join in any grants for easements for electric, telephone, gas, water, sewer and such other public utilities and facilities as may be reasonably necessary in the operation of the demised premises or of any improvements that may be erected thereon; and if, at the expiration of such ten (10) working days' period, the Landlord shall not have joined in any such application, or grants for easements, the Tenant shall have the right to execute such application and grants in the name of the Landlord, and, for that purpose, the Landlord hereby irrevocably appoints the Tenant as its Attorney-in-fact to execute such papers on behalf of the Landlord.
7. Nothing in the Ground Lease contained shall require the Tenant to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of the Landlord (but not including any transfer tax payable upon transfer of Landlord's fee interests to Tenant), or any income, excess profits or

revenue tax, or any other tax, assessment, charge or levy upon the rent payable by the Tenant under this Ground Lease.

8. Upon any default under the Ground Lease which authorizes the cancellation thereof by the Landlord, Landlord shall give notice to the mortgagee and the Federal Housing Commissioner, and the mortgagee and the Federal Housing Commissioner, their successors and assigns, shall have the right within any time within six (6) months from the date of such notice to correct the default and reinstate the Ground Lease unless Landlord has first terminated the Ground Lease as provided herein.

At any time after two (2) months from the date a notice of default is given to the mortgagee and the Commissioner, the Landlord may elect to terminate the Ground Lease and acquire possession of the demised premises. Upon acquiring possession of the demised premises Landlord shall notify Commissioner and mortgagee. Mortgagee and Commissioner shall have six (6) months from the date of such notice of acquisition to elect to take a new ground lease on the demised premises. Such new ground lease shall have a term equal to the unexpired portion of the term of the Ground Lease and shall be on the same terms and conditions as contained in the Ground Lease, except that the mortgagee's and Commissioner's liability for ground rent shall not extend beyond their occupancy under such new ground lease. The Landlord shall tender such new ground lease to the mortgagee or Commissioner within sixty (60) days after a request for such ground lease and shall deliver possession of the demised premises immediately upon execution of the new ground lease. Upon executing a new ground lease the mortgagee or Commissioner shall pay to Landlord any unpaid ground rentals due or that would have become due under the Ground Lease to the date of the execution of the new ground lease, including any taxes which were liens on demised premises and which were paid by Landlord, less any net rentals or other income which Landlord may have received on account of this property since the date of default under the Ground Lease.

9. All notices, demands and requests which are required to be given by the Landlord, the Tenant, the mortgagee or the Commissioner shall be in writing and shall be sent by registered or certified mail, postage prepaid, and addressed to the address of the party as given in this instrument unless a request for a change in this address has been sent to the party giving the notice by registered or certified mail prior to the time when such notice is given.
10. The Ground Lease shall not be modified without the consent of the Federal Housing Commissioner.