



Real Estate Assets Department
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AGREEMENTS



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SAN DIEGO COUNTY, CA.
VERA L. LYLE
RECORDER

AGREEMENT

THIS AGREEMENT is made by THE CITY OF SAN DIEGO, a municipal NO FEE corporation, hereinafter called "San Diego", and ERNEST W. HAHN, INC., a California corporation, hereinafter called "Hahn".

RECITALS

A. Hahn has submitted a proposal to the City of Escondido which proposes the development of a regional shopping center on approximately 75 acres of land owned by and located within the City of Escondido. Said Hahn proposal requests, in part, (i) that the City of Escondido approve an appropriate zone change permitting the proposed shopping center use, and (ii) that the City of Escondido enter into a long term ground lease with Hahn for the site on which the shopping center is proposed to be built. A copy of said proposed ground lease is on file in the Office of the San Diego City Clerk as Document No. RR-251518-1

B. Said shopping center proposal contemplates and requires the construction of improvements on lands within the City of Escondido which are either owned in fee by San Diego or on lands which are claimed by San Diego to be encumbered with the "right of first refusal" if the lands are sold or leased, or on lands which are claimed by San Diego to be encumbered by a restrictive covenant, easement, and/or reversionary claims, all as more specifically set forth in Recitals C, D and E below.

DOCUMENT NO. RR-251518-2
FILED APR 2 1980
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

C. Said proposed shopping center contemplates the need for a frontage road and a fly-over bridge and appurtenances thereto in an area west and east of Highway 15 in the City of Escondido on land and/or rights-of-way presently owned and controlled by San Diego.

D. A portion of the land which said shopping center proposal contemplates being included under said proposed ground lease is an approximately six-acre parcel in the City of Escondido, now owned by the City of Escondido, and which was purchased from San Diego and is now subject to San Diego's claim of a "right of first refusal" to purchase all or part of said land in the event it is to be "disposed of" by sale or long-term lease, and San Diego has given notice to Hahn and to the City of Escondido that it may enforce its claim of "right of first refusal" to prevent the sale or lease of all or any portion of said land to Hahn or to any party other than San Diego.

E. Said shopping center proposal contemplates the placement of the shopping center site on a portion of an approximately 204-acre site of land in the City of Escondido owned by the City of Escondido which was sold to the City of Escondido by San Diego and is claimed by San Diego to be encumbered by a restrictive covenant which is claimed by San Diego to prevent a use of all or any portion of said land for the proposed shopping center and which San Diego claims gives it the right to money damages and/or a reversionary right to regain the land along with other remedies

if all or any part of it is used as contemplated in the Hahn shopping center proposal.

F. Hahn, by entering into this Agreement, is not acknowledging or admitting in any way the validity, authenticity or legality of any of San Diego's alleged claims of property rights which are referenced and identified within this Agreement. This Agreement is, in part, for the purpose of extinguishing those herein referenced San Diego claims in order to avoid the expense and delay of litigation regarding those alleged claims and to enable the proposed shopping center to be promptly built without land title disputes in the event that and upon the condition that the proposed shopping center is approved by the City of Escondido.

G. Hahn desires to obtain from San Diego such easement rights and/or other property rights in, over and across a portion of property now owned by San Diego, which portion shall not exceed four acres in the aggregate, in order to enable Hahn to construct the frontage road and fly-over bridge referred to in Recital B above, in order to benefit the development of the proposed shopping center, and in addition, Hahn desires to extinguish all of San Diego's claims and alleged interests in the lands required for the proposed shopping center and for related uses in order to be able to present to the City of Escondido a shopping center proposal which eliminates any uncertainty or impossibility of performance arising out of San Diego's alleged claims of encumbrances on any lands contemplated for a use related to the

proposed shopping center. As valid consideration for obtaining the easement rights and/or property rights, and the extinguishment of San Diego's alleged claims, all as provided for herein, the parties agree that in addition to the monetary terms of this Agreement, Hahn's construction of a frontage road and a fly-over bridge as specified herein will, in addition to the benefits which such facilities will confer on the proposed shopping center, confer a significant benefit upon and will increase the value of the property adjoining thereto which is owned by San Diego.

H. San Diego desires to relinquish its real property claims regarding all or portions of the real property required for or related to the proposed shopping center, and San Diego desires to be adequately compensated for its relinquishment and/or transfer of property rights which are necessary to the proposed shopping center as it is presently being proposed. San Diego hereby acknowledges and agrees that Hahn's constructing of said frontage road and fly-over bridge, Hahn's widening of Via Rancho Parkway, and Hahn's construction of the proposed shopping center as provided for herein are actions and physical improvements which benefit and enhance the value of the adjoining and nearby land owned by San Diego. All of the construction and improvement work shall be performed at no cost whatsoever to San Diego.

I. San Diego and Hahn believe and agree that if the said proposed shopping center is approved by the City of Escondido and is thereafter constructed and opened for business, said shopping

center will create a significant number of new jobs and will significantly benefit and stimulate the economy of San Diego County, California.

4 J. Hahn and San Diego are aware and hereby acknowledge that prior to the construction and opening for business of the proposed shopping center it will be necessary for the City of Escondido to prepare, consider and approve an Environmental Impact Report and related documents and to otherwise comply with the provisions of the California Environmental Quality Act and its implementing regulations, and it will also be necessary for the City of Escondido to approve an appropriate General Plan Amendment and zone change request, and it will be necessary for the City of Escondido to execute an appropriate ground lease for the shopping center site and to issue building permits, along with other actions which may be required by law to occur prior to the construction, completion, and opening for business of the proposed shopping center and improvements related thereto. The parties agree that Hahn will not be obligated to pay any moneys under this Agreement until such time as Hahn must first begin to pay "Fixed Rent" to the City of Escondido pursuant to said proposed ground lease, as the same may be amended, which proposed ground lease is to be executed by and between Hahn and the City of Escondido in the event the City of Escondido approves the proposal for the shopping center and related zone changes and grants such other approvals as are required by applicable city,

county or state laws. The parties further agree that Hahn will not be required to make any of the physical improvements specified in this Agreement until such time as the conditions specified herein and in said proposed ground lease, for commencement of construction, are satisfied. Hahn agrees that it shall not amend or modify said proposed ground lease in any manner which materially adversely affects San Diego's rights under this Agreement without San Diego's approval.

NOW, THEREFORE, in consideration of the recitals and mutual obligations of the parties as herein expressed, San Diego and Hahn agree as follows:

1. That San Diego and Hahn shall, within ten (10) days after the date of execution of this Agreement open an escrow by and through which the provisions of this Agreement shall be implemented and completed (i.e., transfer of deeds, notice of execution of lease, notice of intent to commence construction, issuance of building permits, etc.). All of the easements, deeds and other documents required to be delivered by San Diego in accordance with the provisions of Sections 3, 4 and 5 hereof, and all other documents required to be delivered in connection therewith shall be placed in such escrow until the date of commencement of construction by Hahn, at which time such documents shall be recorded. In the event that Hahn shall not commence construction as provided in this Agreement, and in the event that this Agreement

shall thereupon be terminated, all of such documents shall be returned by the escrow holder to San Diego.

2. That Hahn will diligently and in good faith pursue the approval by the City of Escondido of the proposal for the shopping center, the proposal for any required General Plan Amendment, the proposal for a zone change, the proposal for the ground lease, building permits and all activities required by California Environmental Quality Act, and such other approvals as may be required by governmental authorities having jurisdiction.

3. The parties will use their reasonable best efforts to promptly effect a written agreement with the City of Escondido, in the event it approves the proposed shopping center, as to the legal description and design of a frontage road and fly-over bridge over Highway 15 and appurtenances thereto pursuant to the general diagrammatic concept contained in the plat map which is attached hereto and incorporated herein by reference as Exhibit A. The parties understand that it may be necessary to obtain appropriate approvals from CAL TRANS and other governmental agencies for the final configuration and design of the frontage road, fly-over bridge, and appurtenances thereto. Promptly after said agreements have been executed and delivered, San Diego will execute, acknowledge, convey and deliver a deed to and in favor of, the City of Escondido granting appropriate and unconditional easements for the land which will be required to develop and construct said frontage road, fly-over bridge, and appurtenances

thereto. Such improvements shall be performed in accordance with plans and specifications which shall be subject to the approval of San Diego, which approval shall not be unreasonably withheld or delayed. The parties hereby acknowledge that conveyance of such easements to the City of Escondido (without cost to the City of Escondido) for the said frontage road, fly-over bridge and appurtenances thereto, will be required before the shopping center can be completed and opened for business and will be required prior to the time when any money payments under said proposed ground lease will be made to the City of Escondido and prior to the time when any money payments are to be made to San Diego by Hahn under this Agreement. In order to secure an adequate policy of title insurance with respect to the proposed shopping center site and appurtenances thereto, and in order to secure necessary construction loans and permanent loan commitments, in addition to major department store commitments, Hahn will require conveyance of and recording of said easements prior to commencement of construction. Hahn agrees to give San Diego a written notice of intent to begin construction at least twenty (20) days or more prior to commencement of construction. San Diego herein agrees to grant said easements to the City of Escondido within twenty (20) calendar days of receiving said written notice from Hahn. In the event that said recorded easements are required and are indispensable, as determined by Hahn, at an earlier stage (application for building permits, CAL TRANS approval, etc.), then Hahn

shall give San Diego twenty (20) days written notice of this need and San Diego herein agrees to convey said easements to the City of Escondido within twenty (20) calendar days of receiving said written notice from Hahn.

4. San Diego further agrees to convey and transfer to the City of Escondido (without cost to the City of Escondido) a quitclaim deed which conveys to and relinquishes to the City of Escondido any and all right (express or implied) to claim or enforce any covenant running with the land, and any reversionary rights or other enforcement rights, which would restrict or in any way limit any land uses for the 204 acres of land sold to the City of Escondido by the City of San Diego in 1967 pursuant to that certain agreement dated in June, 1967 and recorded on July 17, 1967, in the official records of the San Diego County Recorder's Office File/Page No. 103860, Series 8, Book 1967. A form of the deed required by this paragraph is attached hereto and incorporated herein by reference as Exhibit B. In order to secure an adequate policy of title insurance on the proposed shopping center site and appurtenances thereto, and to secure necessary construction loans and permanent loan commitments, in addition to major department store commitments, Hahn will require conveyance of, and recording of said deed prior to the commencement of construction. Hahn agrees to give San Diego a written notice of intent to begin construction at least twenty (20) days or more prior to commencement of construction. San Diego herein agrees

to convey said deed to the City of Escondido within twenty (20) calendar days of receiving said written notice from Hahn. In the event such recorded deed is required and is indispensable, as determined by Hahn, at an earlier stage (application for building permits, CAL TRANS approval, etc.), then Hahn shall give San Diego twenty (20) days written notice of this need and San Diego herein agrees to convey said deed to the City of Escondido within twenty (20) calendar days of receiving said written notice from Hahn.

5. San Diego further agrees to convey and transfer to the City of Escondido a quitclaim deed which conveys and relinquishes to the City of Escondido the "right of first refusal" encumbering the approximately fifty-two (52) acres of real property owned by the City of Escondido along Bear Valley Parkway and described in that deed of record as File/Page No. _____. A form of said quitclaim deed is attached hereto and incorporated herein by reference as Exhibit C. In order to secure an adequate policy of title insurance on the proposed shopping center site and appurtenances thereto, and to secure necessary construction loans and permanent loan commitments, in addition to major department store commitments, Hahn will require conveyance of and recording of said deed prior to the commencement of construction. Hahn agrees to give San Diego a written notice of intent to begin construction at least twenty (20) days or more prior to commencement of construction. San Diego herein agrees to convey said deed to the

City of Escondido within twenty (20) calendar days of receiving said written notice from Hahn. In the event the said ~~recorded~~ deed is required and is indispensable, as determined by Hahn, at an earlier stage (application for building permits, CAL TRANS approval, etc.), then Hahn shall give San Diego twenty (20) days written notice of this need and San Diego herein agrees to convey said deed to the City of Escondido within twenty (20) calendar days of receiving said written notice from Hahn.

Hahn shall pay, or cause to be paid, during the term of said proposed ground lease, all real property taxes and assessments which are levied or assessed against the land underlying such easement areas, and any improvements thereon and any other assessments which are levied against San Diego's property, and which are solely related to public improvements constructed in connection with the original construction of the Shopping Center. The amount of such real property taxes and assessments shall be equitably prorated with respect to any partial fiscal tax year occurring prior to the term of said proposed ground lease. Hahn shall have the right to exercise the benefit of any provisions of any statute or ordinance permitting such taxes and assessments to be paid in installments over a period of time, provided that Hahn shall pay, upon termination of the term of said proposed ground lease, all such installments which extend beyond the date of such termination, and San Diego agrees to execute any instruments which may be required by the taxing authority in connection with

the election to take advantage of such installment payments. Hahn shall have the right to contest any taxes or assessments or the increase in any taxes or assessments which Hahn is obligated to pay hereunder; provided, however, Hahn shall (i) give San Diego written notice of any such contention to contest at least thirty (30) days before any delinquency could occur, (ii) indemnify and save San Diego harmless from all liability on account of said contest, (iii) take such action as is necessary to remove the effect of any lien which attaches to the land underlying such easements, and the improvements located thereon, due to such contest, and (iv) in the event of a final determination adverse to Hahn, prior to enforcement and foreclosure by sale, pay the amount involved together with all penalties, fines, interest, cost and expenses which may have accrued. It is agreed that nothing herein shall be construed to require Hahn to pay any inheritance, franchise, corporation, income or excess profits taxes or surtaxes, imposed upon or against San Diego, its legal representatives, successors or assigns.

6. Provided (i) the conditions set forth in Sections 3, 4 and 5 have been satisfied, (ii) said proposed ground lease is executed by and between the City of Escondido and Hahn, and (iii) all necessary governmental approvals related thereto including, without limitation, approval of the plans and specifications therefor have been obtained, Hahn agrees to do the following at Hahn's sole cost and expense:

a. Construct a frontage road and fly-over bridge and improvements related thereto on, over and appurtenant to that real property described above in Section 3. Construction standards are to be acceptable to the appropriate approving governmental agency or agencies.

b. Widen from two lanes to four lanes that portion of Via Rancho Parkway which is to provide access to the proposed shopping center which portion is illustrated on the plat map attached hereto as said Exhibit A and incorporated herein by reference. Construction standards are to be acceptable to the appropriate approving governmental agency or agencies.

7. The parties agree that the work and improvements required in Section 6 above will confer a valuable benefit upon, and will enhance the value of, the nearby and adjacent land owned by the City of San Diego.

8. The parties hereby acknowledge and agree that, but for the relinquishment by San Diego of any and all of its claimed reversions, rights of first refusal, and property rights with respect to portions of the land referred to in this Agreement and as provided in this Agreement, it is likely that litigation concerning such claims would ensue and if San Diego were to prevail, it would be necessary for San Diego and Hahn to enter into a ground lease for some or all of such property, in order to enable Hahn to construct and operate the proposed shopping center, as

contemplated in said proposed ground lease between Hahn and the City of Escondido.

9. Hahn and San Diego desire to avoid the necessity and expense of any such litigation and the entering into of a separate ground lease, as stated above, and therefore agree that the payments set forth below, are reasonable and necessary business expenses of Hahn, incurred in connection with and in order to allow for the development, construction and operation of the shopping center, and are payments in the nature of ground lease payments, which will enable Hahn to use the property as above provided, and shall be made by Hahn pursuant to this Agreement.

10. Hahn agrees to pay, in addition to any and all payments required to be made to the City of Escondido pursuant to said proposed ground lease, and as consideration for San Diego's covenants contained herein, the payments recited in Section 11 below, as additional monetary compensation to San Diego. Said payments will become payable at the same time and manner as payments become payable in said proposed ground lease, as the same may be amended. Any disputes or uncertainties arising between the parties herein as to the monetary payments from Hahn to San Diego shall be interpreted and resolved by interpreting the similar provisions and purposes expressed in said proposed ground lease, and amendments thereto, for the proposed site which may be executed by the City of Escondido and Hahn. Said monetary payments shall be made as set forth in Section 11 below.

11. Annual Payments.

11.1 Fixed Annual Payments.

(a) Hahn agrees to pay to San Diego as a Fixed Annual Payment the sum of \$100,000 per year during the Lease Term commencing when the payments of "Fixed Rent" to the City of Escondido commence in accordance with the provisions of Section 3.2 of said proposed ground lease between the City of Escondido and Hahn, which provisions have been expressly adopted below.

11.2 Fixed Annual Payments; Commencement of Hahn's Obligation.

(a) Subject to the terms, covenants, provisions and conditions contained in said proposed ground lease Section 3.2, the obligation to pay the Fixed Annual Payments specified in Section 11.1 hereof shall commence as of the earlier of (A) the first date that the shopping center (including two or more major department stores) opens for business, or (B) January 1, 1983, provided that if the shopping center shall open for business prior to January 1, 1983, with only one major department store being open for business, then Hahn shall pay, as a Fixed Annual Payment, from the date on which the shopping center shall open for business, until the earlier of (i) January 1, 1983, or (ii) the date on which a second major department store shall open for business, one-half of the Fixed Annual Payment specified in Section 11.1 hereof, and provided further that in no event shall the obligation to pay any Fixed Annual Payment commence prior to

the date on which all necessary approvals from the City of Escondido for the construction and operation of the shopping center have been obtained, and until the City of Escondido shall have fully complied with the requirements of Section 5.2 of said proposed ground lease relating to the condition of title of the shopping center site.

(b) In the event that all necessary approvals from the City of Escondido for the construction and operation of the shopping center have been obtained, but necessary approvals of other governmental authorities having jurisdiction, as provided in Section 5.1 of said proposed ground lease, have not been obtained as of January 1, 1983, the commencement of the Fixed Annual Payment shall abate, until the earlier to occur of (i) commencement of construction on the shopping center site or (ii) the issuance of all such necessary approvals of governmental authorities having jurisdiction, but in no event shall such abatement extend beyond October 1, 1984.

(c) In the event that the obligation to pay any Fixed Annual Payment commences after January 1, 1983, in accordance with subparagraph (b) hereof, then during the period commencing on such date, and until October 1, 1984, Hahn shall only pay one-half (1/2) of the Fixed Annual Payment specified in Section 11.1 hereof.

(d) In the event that as of October 1, 1984, the obligation to pay Fixed Annual Payment pursuant to this Section

11.2 has not commenced, for any reason whatsoever (except the failure to issue all necessary approvals by the City of Escondido, as provided in subparagraph (a) hereof, it being expressly agreed that this subparagraph (d) shall be inapplicable in such event), Hahn shall have the option either to commence paying the full amount of the Fixed Annual Payment provided in Section 11.1 hereof, or to terminate this Agreement and said proposed ground lease by giving to San Diego and the City of Escondido thirty (30) days written notice of its election so to do, in which event Hahn and San Diego shall be relieved of further liability hereunder, provided that nothing herein shall be deemed to constitute a waiver by either Hahn or San Diego, of any default by the other, under any other provisions of this Agreement.

11.3 Fixed Annual Payments; Manner of Payment. The Fixed Annual Payments shall be payable in lawful money of the United States, to the San Diego City Treasurer, 202 "C" Street, San Diego, California 92101, in twelve (12) equal monthly installments during each year of the term of said proposed ground lease, in advance, on the tenth (10th) day of each calendar month, without setoff or deduction and without any prior notice, provided, however, that in the event that there shall be, at any time, an abatement or termination of all or any part of the Fixed Rent pursuant to the terms of said proposed ground lease, there shall be a similar abatement or termination, as the case may be, proportionately, in the Fixed Annual Payments. Should the obligation

to pay the Fixed Annual Payments commence on a day of the month other than the first day of such month, then the Fixed Annual Payment for the first fractional month shall be computed on a daily basis for the period from such date to the end of such calendar month and at an amount equal to one-three hundred sixty-fifth ($1/365$) of the Fixed Annual Payment for each such day, and thereafter shall be computed and paid as aforesaid.

11.4 Percentage Rent Payments.

(a) In addition to the Fixed Annual Payments mentioned in Section 11.1 hereof, Hahn shall pay to San Diego within sixty (60) days after the end of each calendar year, as "Percentage Payments" a sum equal to five percent (5%) of the amount by which the Subtenant Rentals (as defined in said proposed ground lease) for each calendar year subsequent to the Mall Completion Date (as defined in said proposed ground lease) exceeds the Minimum Rental Base (as defined in said proposed ground lease). Such amounts shall be appropriately pro-rated if the period in question shall be less than a full calendar year.

By way of example, and merely for purposes of illustrating the method by which the Percentage Payment is to be calculated, if the Subtenant Rentals for the calendar year 1985 are \$3,000,000 and the Minimum Rental Base is \$2,500,000, the excess amount would be \$500,000 and five percent (5%) of such excess amount (i.e. \$25,000) would be paid to San Diego, as a Percentage Payment. As a further example of such calculation,

based upon a partial calendar year, if the Mall Completion Date should occur on October 1, 1982, and Subtenant Rentals for the three month period to December 31, 1982 are \$725,000 and the Minimum Rental Base is \$2,500,000, since this represents only a partial calendar year, the Minimum Rental Base would be proportionately reduced (\$2,500,000 times 3/12 equals \$625,000). The excess amount for such three month period (\$725,000 minus \$625,000) would equal \$100,000 and five percent (5%) of such excess amount (\$5,000) would be paid to San Diego as a Percentage Payment.

(b) As used herein, the term "Minimum Rental Base" means the minimum annual rent under subleases in effect on the Mall Completion Date, including, without limitation, any Major Department Store subleases. In the event there is any unleased space in the Developer Stores or Major Department Store buildings as of the Mall Completion Date, in order to determine the Minimum Rental Base, the average per square foot rent for all leased space in the Developer Stores, and the average per square foot rent for all leased space in the Major Department Store buildings shall be determined, and such average rental rates shall be multiplied by the respective total amounts of unleased space in the Developer Stores and in the Major Department Store buildings. The Minimum Rental Base shall be the total of minimum annual rent under Major Department Store subleases and under subleases for Developer Stores in effect on the Mall Completion Date, plus the sum determined by multiplying the average per

square foot rent for all leased space in the Developer Stores by the total square footage of unleased space in the Developer Stores on that date, plus the sum determined by multiplying the average per square foot rent for all leased space in the Major Department Store buildings by the total square footage of unleased space in the Major Department Store buildings on that date, all as above specified.

(c) Once determined as of the Mall Completion Date, the Minimum Rental Base may only be increased for the following reasons: (i) if any Improvements are built on the shopping center site after the Mall Completion Date and no sublease was in effect and/or no assumed minimum annual rent was included in the Minimum Rental Base on the Mall Completion Date, a separate Minimum Rental Base for such Improvements shall be established based on the amount of the minimum annual rent for each initial sublease of such space. Percentage Payments shall be separately calculated on San Diego's five percent (5%) share of the excess of Subtenant Rentals from such Improvements over the Minimum Rental Base therefore, and shall be calculated on the same basis as Percentage Rent is calculated for the City of Escondido for the original Improvements in the shopping center. An "initial sublease" is defined as the first sublease entered into by Hahn for such portion of leaseable space within the shopping center. (ii) Minimum Rental Base will be increased by that amount of rent payable to Hahn which represents amortization

of leasehold improvement loans or fixture loans made or contributed by Hahn for any sublessee under a sublease ("a Subtenant Loan"). Any such portion of a sublessee's minimum annual rent which is an amortization of a Subtenant Loan shall be clearly designated as such in the sublease.

(d) In addition to the procedures used to determine Minimum Rental Base specified in the preceding Subparagraphs, for purposes of determining Minimum Rental Base the following principles shall apply:

(i) In the event that any initial sublease contains a provision whereunder the minimum annual rent increases in steps over a period of time, those increases in the minimum annual rents shall be added to the Minimum Rental Base for the years in which they apply as the increase in minimum annual rent occurs, provided however there shall be no such increase in the Minimum Rental Base for any minimum annual rent increase occurring after the end of the third full calendar year of any such initial sublease.

(ii) In the event that any initial sublease contains a provision whereunder the rents are percentage rents until an event occurs, such as the opening for business of a Major Department Store, and thereafter the rents are on a minimum annual rent basis, that amount which is to be included in the Minimum Rental Base shall be the amount which is provided in such initial sublease as the minimum annual rent.

(iii) In the event that any initial sublease provides for the payment of percentage rental thereunder and does not contain a provision for payment of a minimum annual rent, there shall be included in the Minimum Rental Base an amount equal to the average minimum annual rent per square foot for space leased under initial subleases for Developer Stores on the Mall Completion Date, times the number of square feet leased under such initial sublease mentioned in this Subparagraph (iii).

(e) As used in this Agreement, the term "Mall Completion Date" shall mean the earliest date when not less than eighty percent (80%) of the gross leaseable area of the Developer Stores shall have been subleased to subtenants pursuant to executed subleases, with such subtenants in occupancy.

Within sixty (60) days of the Mall Completion Date, Hahn shall deliver to San Diego a certificate executed by an authorized officer of Hahn, setting forth the Minimum Rental Base. In order to properly adjust the Minimum Rental Base for any authorized increases, Hahn shall deliver to San Diego, not less than thirty (30) days prior to any distribution of Percentage Payment provided for in this Agreement, a certificate executed by an authorized officer of Hahn, setting forth (i) the amount and the reason for the increase in the Minimum Rental Base, (ii) the effective date of such increase, and (iii) supporting financial data and other information in connection with such increase.

(f) As used herein, the term "Subtenant Rentals" shall include all rentals and other sums or consideration actually received (as determined on a cash and not an accrual basis) by or for the account of Hahn from subtenants or other persons for or in respect to any use or occupation of the shopping center or any part thereof (whether pursuant to lease, concession, license, franchise or otherwise), but shall not include (i) any bona fide allowances, concessions, credits, reductions in rent or other consideration made to any subtenants; and (ii) any amounts received by or for the account of Hahn as contributions to mall and/or other common area maintenance costs, merchants' association dues, or which are a reimbursement to Hahn for all or a portion of the costs which relate to the shopping center (costs which relate to the shopping center shall include, without limitation, real estate taxes and assessments, insurance costs, utility costs and compensation to the manager of the shopping center). Any proceeds of financing or refinancing of all or any part of the shopping center, and amounts received by Hahn under any insurance policy in effect with respect to the shopping center, other than a rental insurance policy, and any condemnation awards, other than an award for loss of rental income, shall not be considered a part of Subtenant Rentals.

(g) It is further agreed that for purposes of this Section 11.4, the term "Subtenant Rentals" shall include any increase in minimum annual rent provided for in any sublease with

a subtenant over and above the minimum annual rent provided for in the initial sublease entered into by Hahn concerning the same building and/or land space.

11.5 Annual Accounting Statement. Hahn will furnish to San Diego, within ninety (90) days after the end of each calendar year, an "Annual Accounting Statement", which shall be a detailed statement of income and expense relating to the determination of the Minimum Rental Base, Subtenant Rentals and Percentage Payments, for such calendar year, prepared at Hahn's expense. San Diego hereby retains the right, at all reasonable times but within ninety (90) days after Hahn's submission of the Annual Accounting Statement, and at Hahn's office in California, to have access to all books, accounts, records and reports, including sales tax reports and any other reports delivered by subtenants of the shopping center to Hahn, that may be kept by Hahn relating to a determination of the Minimum Rental Base or to Subtenant Rentals or to Percentage Payments, and Hahn will permit San Diego to make an inspection, examination or audit thereof by or through San Diego or San Diego's Certified Public Accountant. Should such inspection, examination or audit by San Diego disclose any deficiency in the calculation of Percentage Payments, Hahn shall pay such deficiency to San Diego within thirty (30) days of San Diego's demand together with an interest charge of ten percent (10%) per annum on the deficiency. Such inspection, examination or audit shall be at San Diego's expense, unless such inspection,

examination or audit shall disclose a variance of two percent (2%) or more from the Percentage Payment computed in the Annual Accounting Statement for such period, in which case such inspection, examination or audit shall be at Hahn's expense.

11.6 Late Payment. Any payments required to be made by Hahn to San Diego pursuant to this Agreement are required to be made in a timely manner. In the event any such payment is not made by Hahn within fifteen (15) days after the date such payment was due, Hahn shall pay, in addition to and at the time of making such payment, interest to San Diego on the amount of such payment at the rate of two percent (2%) per annum over the then existing prime rate being charged by Bank of America, from the due date until the date such payment is made.

11.7 Definitions. All capitalized terms used in this Section 11, if not specifically defined herein, shall have the meanings used for such terms in said proposed ground lease.

12. The parties expressly acknowledge and agree that in the event that it shall become necessary, in order to accurately reflect the fact that the payments recited in Section 11 hereof are in the nature of ground lease payments, and that they are reasonable and necessary business expenses of Hahn, incurred in connection with and in order to allow for the development, construction and operation of the shopping center, the parties hereto shall enter into such written modification hereof, and in addition, but without limitation, the execution of such new or

additional documents as may be required to effectuate such purpose. Nothing herein, however, shall relieve Hahn from the obligation to make such ground lease payments, which would be otherwise payable pursuant to this Agreement.

13. San Diego agrees to use its best efforts to cooperate with applicable federal, state and local officials and agencies in connection with any governmental approvals which may be required to construct the said frontage road, fly-over bridge, and appurtenances thereto, and in connection with the widening of the portion of the Via Rancho Parkway designated on said Exhibit A, and in connection with any action necessary to gain approval and to implement (if approved) the proposed shopping center project.

14. The parties agree that this Agreement will become binding on the parties as the various conditions set forth herein occur which require certain acts to be done.

15. So long as this Agreement is in full force and effect, and thereafter, if San Diego has relinquished its alleged claims in accordance with Sections 4 or 5 hereof, San Diego will not exercise or enforce any of its claimed rights to enforce against Hahn or the City of Escondido any "right of first refusal" or any covenant running with the land or any reversionary claim or easement claim as referenced herein or other remedy relating thereto.

16. The parties further agree that this Agreement is binding upon each party and its successors in interest.

17. The parties further agree that, if either party resorts to litigation to enforce any provision of this Agreement, the prevailing party will be entitled to an award for reasonable attorneys' fees and court costs from the other party.

18. If litigation is brought by the parties to this Agreement, or by any others, which results in a delay in the construction or operation of the proposed shopping center, the time for doing any act specified herein, including the making of any payment hereunder, shall be extended for performance until after the litigation preventing the act or acts, is resolved.

19. Notwithstanding any other provision contained in this Agreement, Hahn reserves the right, at its sole discretion, and without obtaining San Diego's approval, to join and associate with other entities in joint venture, partnership or otherwise for purposes of leasing the proposed shopping center site and appurtenances from the City of Escondido, and constructing and/or operating the proposed shopping center, and for performing and enforcing the terms of this Agreement, provided, however, that Hahn's exercise of its right to join and associate with other entities shall not relieve Hahn of its liability to San Diego hereunder.

20. The parties hereto acknowledge and agree that it is their mutual intent that the provisions of this Agreement, whether contained in the Recitals A-J, or in Sections 1-20, are intended

to be binding covenants of the parties, with the same force and effect.

21. Hahn expressly agrees that in the event of a default by Hahn under the Ground Lease during the first ten (10) years of the term thereof which results in a termination of the Annual Payments by Hahn under this Agreement, then, provided San Diego had granted the easements referred to in Section 3 hereof, Hahn shall pay to San Diego the market value of the land underlying such easements, such market value to be determined by appraisal, and furthermore, to be determined as of the date immediately prior to such grant of easements to the City of Escondido by San Diego. Such payment shall be made within thirty (30) days after demand therefore by San Diego.

IN WITNESS WHEREOF, this Agreement is executed by The City of San Diego acting by and through its City Manager, pursuant to Resolution No. _____ authorizing such execution, and by Ernest W.

R-251518

Hahn, Inc., acting through its authorized representative.

2 April 1980
Date of Execution

THE CITY OF SAN DIEGO,
a municipal corporation

By [Signature]
City Manager

8 April 1980
Date of Execution

ERNEST W. HAHN, INC.,
a California corporation

By [Signature]

I HEREBY APPROVE the form and legality of the foregoing
Agreement, this 3 day of April, 1980.

THE CITY OF SAN DIEGO

By [Signature]
John W. Witt, City Attorney

[Signature]

R- 251518

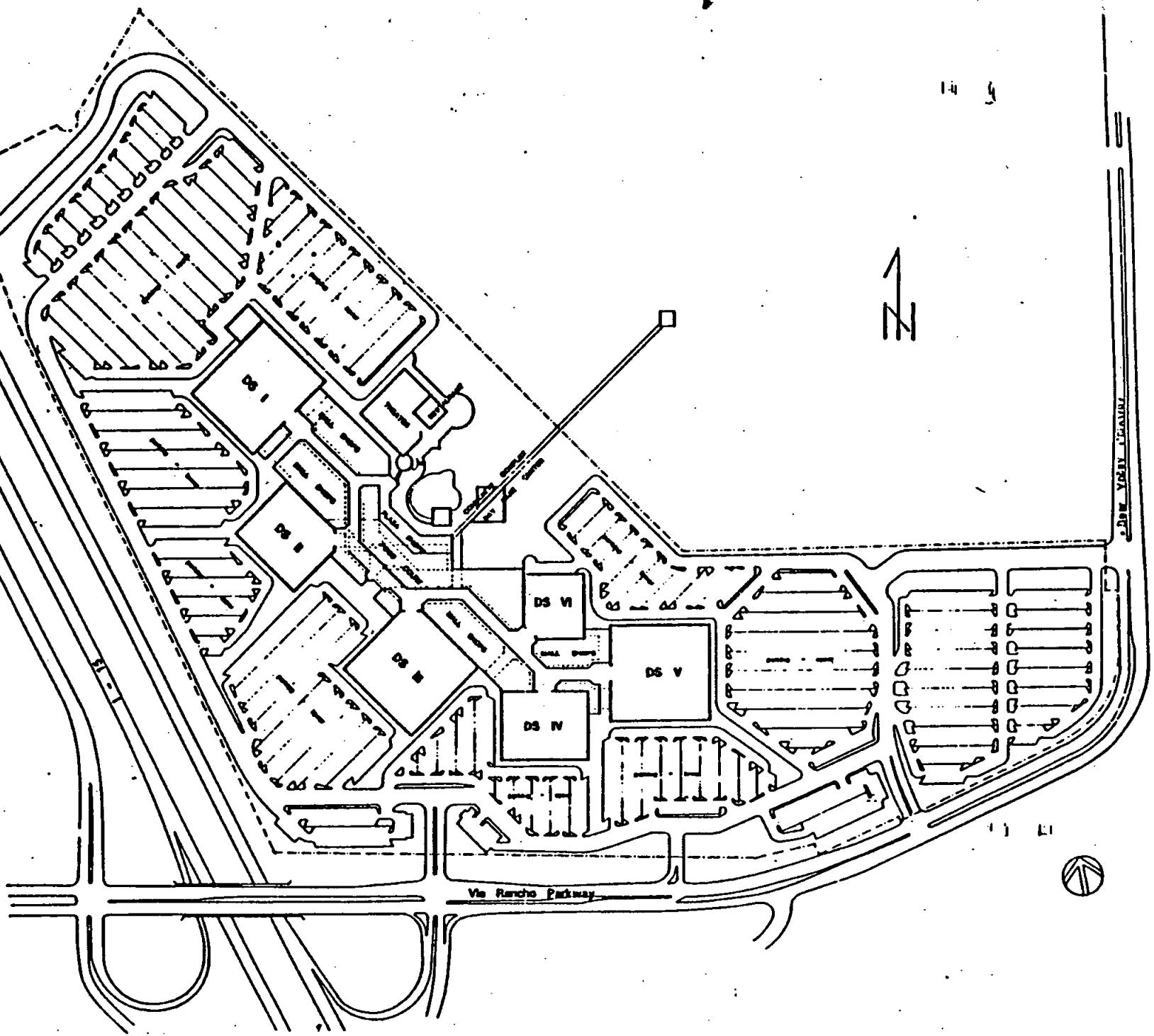
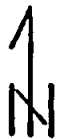


EXHIBIT A

QUITCLAIM DEED

THE CITY OF SAN DIEGO, a municipal corporation, in the County of San Diego, State of California, for valuable consideration, DOES HEREBY QUITCLAIM to CITY OF ESCONDIDO, a municipal corporation in the County of San Diego, State of California all the City's right, title and interest in all that real property situated in the City of Escondido, County of San Diego, State of California described as follows:

That portion of Rancho San Bernardo, according to Partition Map of said Rancho, recorded in Book 2, page 462 of Patents, records of said County, including a portion of the Oaks Tract of said Rancho San Bernardo, according to Map thereof No. 1415, filed in the office the County Recorder of San Diego County, described in Deed to the City of Escondido, recorded July 27, 1967 as File No. 110139 of Official Records more particularly described as follows:

Beginning at the most Easterly corner of Lot 9 of Block 8 of Longview Acres Subdivision Unit No. 2, according to Map thereof No. 2582, filed in the Office of the County Recorder of said County; thence along the boundary line of said Unit No. 2 as follows: South 20°39'12" West (record South 20°13'10" West) 528.48 feet; thence South 23°54'22" West (record South 23°28'20" West) 75.00 feet; South 09°04'42" West (record South 08°38'40" West) 251.74 feet; South 47°24'22" West (record South 46°58'20" West) 361.06 feet to a point in the arc of a 40.00 foot radius curve, a radial line of said curve bears North 42°15'47" East (record North 41°49'45" East) to said point; thence clockwise along said curve 183.48 feet through an angle of 262°49'10"; thence leaving said curve South 83°40'22" West (record South 83°14'20" West) 298.60 feet; thence leaving said boundary line South 00°00'45" East 450.12 feet; thence South 05°38'18" East 1666.61 feet; thence South 69°37'59" East 466.58 feet; thence South 67°00'35" East 5.93 feet to a point in the westerly line of the land described in deed to J. B. Ashby, recorded April 10, 1923 as Document No. 22620 of Official Records; thence along the boundary line of said land North 06°20'50" East (record North 05°55'00" East) 243.26 feet to the Northwest corner of said land; thence South 83°39'10" East 870.09 feet (record South 84°05'00" East 870.00 feet) to the Northeast corner of said land; thence South 06°20'50" West (record South 05°55'00" West) along the Easterly line of said land, 471.14 feet; thence leaving said boundary line South 82°38'02" East 159.79 feet; thence South 02°44'16" East 35.28 feet; thence North 84°47'33" East 248.60 feet; thence South 04°51'30" East 40.00 feet to a point in the center line of the County Highway Route 3, Division No. 1; thence North 85°08'30" East along said center line 54.25 feet to a tangent 1000.00 foot radius curve concave northerly; thence leaving said center line easterly along said curve 103.07 feet through an angle of 05°54'20"; thence

leaving said curve North 19°27'33" East 1186.43 feet; thence North 19°03'03" East 2481.59 feet; thence North 79°51'57" West 524.52 feet; thence North 10°08'03" East 680.00 feet; thence North 05°56'04" West 535.22 feet; thence North 11°24'04" East 150.00 feet to the Northerly line of said Oaks Tract; thence along said Northerly line North 78°35'56" West 400.00 feet; thence South 11°24'04" West 1109.96 feet; thence South 103.96 feet; thence West 1360.00 feet to the East line of the land described in deed to Helen G. Banister, recorded September 1, 1953 as Document No. 120396 of Official Records; thence along said East line South 20.00 feet to the Northeasterly line of said Lot 9, Block 8 first mentioned; thence South 63°50'58" East (record South 64°17'00" East) 60.00 feet to the Point of Beginning.

EXCEPTING THEREFROM any and all access rights in and to the proposed California State Highway over, along and across those courses and distances in the westerly and southerly boundary line of the above described land as follows:

Beginning at the northerly terminus of that course designated as "South 00°00'45" East 450.12 feet"; thence South 00°00'45" East 450.12 feet; thence South 05°38'18" East 1666.61 feet; thence South 69°37'59" East 366.59 feet.

IN WITNESS WHEREOF, The City of San Diego has caused this deed to be executed by its Mayor and City Clerk, pursuant to resolution of the Council authorizing such execution, this _____ day of _____, 1980.

THE CITY OF SAN DIEGO

By _____
Mayor of said City

ATTEST:

City Clerk of said City

QUITCLAIM DEED

The CITY OF SAN DIEGO, a municipal corporation, in the County of San Diego, State of California, for valuable consideration, DOES HEREBY QUITCLAIM TO CITY OF ESCONDIDO, a municipal corporation in the County of San Diego, State of California all the City's right, title and interest in all that real property situated in the City of Escondido, County of San Diego, State of California described as follows:

That portion of Rancho San Bernardo, according to Partition Map of said Rancho, recorded in Book 2, page 462 of Patents, records of said County, including a portion of the Oaks Tract of said Rancho San Bernardo, according to Map thereof No. 1415, filed in the Office of the County Recorder of San Diego County, described in deed to the City of Escondido, recorded February 27, 1975, Recorder's File No. 75-044236 of Official Records of said County more particularly described as follows:

Beginning at the northeasterly corner of that certain tract of land designated "M. Barnett" on Licensed Surveyor's Map No. 180, filed in the Office of the Recorder of said San Diego County, June 8, 1915; thence North 84°05' West along the Northerly line of said "M. Barnett" tract, 1149.5 feet to the Northeasterly corner of a parcel of land conveyed to J. B. Ashby by Deed dated April 10, 1923, and recorded in Book 932, page 422 of Deeds being also a corner of the boundary of land described in Deed to the City of Escondido, recorded July 27, 1967 as File No. 110139 of Official Records; thence along the boundary of said City of Escondido's land as follows: South 06°20'50" West (record South 05°55'00" West) 471.14 feet South 82°38'02" East 159.79 feet; South 02°44'16" East 35.28 feet; North 84°47'33" East 248.60 feet, and South 04°51'30" East 40.00 feet to a point in the center line of the County Highway Route 3, Division No. 1; thence North 85°08'30" East along said center line 54.25 feet to a tangent 1000.00 foot radius curve concave Northerly being the TRUE POINT OF BEGINNING; thence leaving said center line easterly along said curve 103.07 feet through an angle of 05°54'20"; thence leaving said curve North 19°27'33" East 1186.43 feet; thence North 19°03'03" East 2481.59 feet; thence North 79°51'57" West 524.52 feet; thence North 10°08'03" East 680.00 feet; thence southeasterly and parallel with

the northerly line of said Oaks Tract, South 78°35'56" East to the center line of said County Highway Route 3, Division No. 1, thence southerly southwesterly and westerly along said center line to the TRUE POINT OF BEGINNING.

IN WITNESS WHEREOF, The City of San Diego has caused this deed to be executed by its Mayor and City Clerk, pursuant to resolution of the Council authorizing such execution this _____ day of _____, 1980.

THE CITY OF SAN DIEGO

By _____
Mayor of said City

ATTEST:

Clerk of said City

RESOLUTION No. R- 251518 (R80-1820)

Adopted on MAR 31 1980 (REV.)

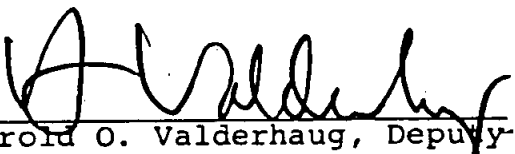
BE IT RESOLVED, by the Council of The City of San Diego as follows:

That the City Manager is hereby authorized and empowered to execute an agreement with ERNEST W. HAHN, INC., a California corporation, pursuant to which The City of San Diego will quit-claim all of its right, title and interest in certain lands consisting of 204 acres and approximately 52 acres which were conveyed by The City of San Diego to The City of Escondido in 1967 and 1975 respectively, and pursuant to which San Diego agrees to convey certain easements for street purposes to The City of Escondido, which easements are needed in connection with a proposed shopping center on a portion of the above described property, and pursuant to which Ernest W. Hahn, Inc. agrees to pay to The City of San Diego One Hundred Thousand Dollars (\$100,000) per year, plus 5% of defined overages, as and when rent amounts are paid to The City of Escondido, pursuant to a proposed ground lease, a copy of which is on file in the office of the City Clerk as Document No. RR-251518-1, under the terms and conditions set forth in that agreement on file in the office of the City Clerk as Document No. RR-251518-2.

BE IT FURTHER RESOLVED, that this authorization is subject to and contingent upon the execution of said agreement by Ernest W. Hahn, Inc. within thirty (30) days following the adoption of

this resolution, and is further contingent upon the execution,
by The City of Escondido, of an agreement relating to the
conveyance of 77-1/2 acres of land, a copy of which agreement
is on file in the office of the City Clerk as Document
No. RR-251518-2

APPROVED: JOHN W. WITT, City Attorney

By 
Harold O. Valderhaug, Deputy

HOV:ps:712.6
3/27/80 Revised 4/1/80

NORTH COUNTY FAIR REGIONAL SHOPPING CENTER

HAHN - CITY OF SAN DIEGO AGREEMENT - RENTAL ANALYSIS

In addition to the required ground lease payments made to the City of Escondido, Hahn agrees to pay additional monetary compensation to the City of San Diego. The Hahn Agreement specifies an annual payment of \$100,000 plus 5% of the subtenant rentals which exceed the minimum rental base. A further summary of the Fixed Annual and Percentage Rent Payments are as follows:

Fixed Annual Payment: \$100,000

- This is fixed for the 55-year term of the lease.
- Payments commenced July 1, 1983.
- Paid in monthly installments of \$8,333.33.
- Due on 10th of month - late of 26th.

Percentage Rent Payment: 5% of defined overage

5% of the subtenant rentals which exceed the Minimum Rental Base. "Minimum Rental Base" being the minimum annual rent charged under subleases in effect on Mall Completion Date. "Subtenant rentals" are revenues received from any improvements built on the shopping center site.

Subtenant Rentals would include:

- offices
- specialty shops
- restaurants
- financial institutions
- major department stores
- any other improvement generating income

"Mall Completion Date" is defined as the earliest date when not less than 80% of the Developer Stores are leased and occupied. Certificate setting forth Minimum Rental Base due 60 days from Mall Completion Date, certificate to be executed by Hahn, Inc. officer and delivered to us.

- Payment is on an annual basis.
- Overage includes amortization payments to Hahn on subtenant loans.
- Payments increase over time due to escalation clauses and percentages included in leases.
- If percentage only rent, Minimum Rental Base established on average square footage cost.

- Not to include bona fide allowances, concessions, credits, rent deductions or other considerations.
- Not to include maintenance or association fees.
- X - Due 60 days into new calendar year, late March 16 (March 17 for leap year).
- Pro-rate if less than year

An Annual Accounting Statement is due 90 days after the end of the calendar year. It is a detailed statement of income and expense relating to the determination of the Minimum Rental Base. The City of San Diego retains the right to inspect all books, accounts, records and reports, including sales tax reports relating to statement. This must be done within 90 days of Hahn's admission of statement. Deficiency, if any, to be paid within 30 days of demand plus 10% per annum interest on deficient amount.

Late Payment. If not paid within 15 days of due date Hahn will pay, in addition to payment due, interest equal to 2% per annum over the Bank of America's prime rate from due date until payment is made.