

COPY

THE CITY OF SAN DIEGO

THE LODGE AT TORREY PINES PARTNERSHIP

Percentage Lease

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**CITY OF SAN DIEGO
PERCENTAGE LEASE**

THIS LEASE AGREEMENT is executed between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and THE LODGE AT TORREY PINES PARTNERSHIP, a California limited partnership, of which Anne L. Evans, William L. Evans, Grace Evans Cherashore, David L. Cherashore, Anne Evans Quinn, Timothy M. Quinn and Robert H. Gleason are the general partners, and Nancy Evans Kyzer and Margaret Evans are the limited partners, hereinafter called "LESSEE."

SECTION 1: USES

- 1.1 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the CITY of San Diego, County of San Diego, State of California, described in Section 9.1 hereof. Said real property is hereinafter called the "premises" or "leased premises."
- 1.2 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of a resort hotel, including a golf clubhouse, locker rooms, restaurants, bars, meeting and banquet space, gift shop and pay parking, in accordance with the Initial and, if applicable, General Development Plan referenced in Section 6.12 hereof, and for such other related or incidental purposes as may be first approved in writing by the CITY Manager and for no other purpose whatsoever.

The use of the premises for any unauthorized purpose shall constitute a substantial default and subject this lease to termination at the sole option of the CITY.

LESSEE covenants and agrees to use the premises throughout the term hereof for the above-specified purposes and to diligently conduct the business thereon, consistent with sound business practices, to produce the most gross income that can be reasonably expected. Failure to continuously use the premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

- 1.3 Related Council Actions. By the granting of this lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the premises. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the leased Premises. However, once the CITY approves a development proposal for the premises, then the CITY shall reasonably support that same proposal before any other governmental authority.
- 1.4 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold, and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but CITY and LESSEE shall then reasonably agree to a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises.
- 1.5 Easements and Reservations.
- a. Without surface entry, CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the premises.
 - b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.
 - c. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

- 1.6 Competent Management. Throughout the term of this lease agreement, LESSEE shall provide competent management of the leased premises to the satisfaction of the CITY Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a resort hotel and related activities in a fiscally responsible manner.

SECTION 2: TERM

Commencement Date :
June 5, 1995

- 2.1 Commencement. The term of this agreement shall be forty (40) years commencing on the first day of the calendar month following execution by the CITY Manager. Notwithstanding its execution, this lease shall not be deemed effective unless and until the named LESSEE under this lease becomes the successor lessee under the existing lease referenced in Section 7.17 hereof. Upon that date, the existing lease shall be deemed superseded and terminated and this lease effective. Upon the approval of a General Development Plan satisfactory to the Real Estate Assets Department/CITY Manager in accordance with Section 6.12 hereof and LESSEE demonstrating to CITY that it possesses the funds and permits necessary to undertake and complete the General Development Plan, the terms and conditions of the lease will be extended for an additional fifteen (15) years. CITY shall cooperate in allowing the extension to become effective concurrently with the funding of a loan if necessary to satisfy the lender. "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this lease by the CITY Manager.
- 2.2 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 2.3 Surrender of Premises. At termination of this lease for any reason, LESSEE shall execute, acknowledge, and deliver to CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the premises. The premises shall be delivered free and clear of all liens and encumbrances not created by CITY and in a decent, safe, and sanitary condition.

If LESSEE fails or refuses to deliver the required deed, CITY may prepare and record a notice reciting LESSEE'S failure to execute this lease provision, and the notice will be conclusive evidence of the termination of this lease and all LESSEE'S rights to the premises.

SECTION 3: RENT

- 3.1 Time and Place of Payment. All rents required herein must be made payable to the CITY Treasurer and mailed to the Office of the CITY Treasurer, CITY of San Diego, P.O. Box 2289, San Diego, California, 92112-4165, or delivered to the Office of the CITY Treasurer, CITY Operations Building, 1222 First Avenue, Third Floor, San Diego, California.

The place of payment may be changed at any time by CITY upon thirty (30) days' written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the CITY Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

3.2 Rent.

- a. Minimum Rent. The annual minimum rent established for the first five (5) years following the effective date of this lease is one hundred twenty thousand dollars (\$120,000.00), which is ten thousand dollars (\$10,000.00) on a monthly installment basis.

If the minimum rent is greater than the percentage rent on a calendar month basis, then 1/12 of the annual minimum rent is required to be paid for that month. Minimum rents are to be paid in monthly installments on or before the day of the calendar month when percentage rents are due pursuant to Section 3.3, Payment Procedure, hereof.

Provided, however, in the event that the combined total percentage rent payments and monthly installments during any lease year equal or exceed the required annual minimum rent for that year, then for the balance of such year, LESSEE shall discontinue paying monthly installments of the minimum rent and shall continue paying only percentage rents until the beginning of the ensuing lease year. Provided further, in the event minimum rents paid plus percentage rents paid exceed the annual minimum rent and also exceed the rent which would have been paid if the percentage rent had been paid on total gross income for that lease year, the excess over the annual minimum rent shall be credited against the next payable rent as it becomes due. It is the intent of this provision that LESSEE shall pay monthly installments of the annual minimum rent as a guarantee against the percentage rent requirement and that the greater of the two requirements, minimum or percentage, whichever occurs throughout the term, shall prevail on an annual basis.

If LESSEE makes a major renovation defined as at least 14 rooms out of service for more than one month) of the premises during the first ten (10) years of the lease term, then the minimum rent shall be abated to the extent that portions of the premises are out of service. During this period, however, LESSEE shall continue to pay percentage rent for all ongoing operations, if any. The period of the abatement shall be the lesser of the actual period of construction or twelve (12) months should LESSEE elect to use this abatement prior to the submittal of a General Development Plan as set forth in Section 6.12 hereof or the period of construction set forth in a General Development Plan approved by CITY. LESSEE shall notify CITY at least six (6) months in advance of any request for abatement. Such a rental abatement shall occur only once.

- b. Minimum Rent Adjustment. Effective at the beginning of the first day of the sixth lease year of this lease and at the beginning of each Real Estate Assets Department five year (5) period thereafter during the term, the annual minimum rent shall be eighty percent (80%) of the annual average of actual rents paid or accrued during the five (5) years preceding the adjustment date. Said annual minimum rent shall then be divided by twelve (12) to establish the new monthly minimum rent. It is recognized that such adjustments shall be calculated by CITY upon completion of payments due for the preceding rental period in order to determine the amount of the adjustment to be effective on the dates stated herein. Until such calculations are completed, LESSEE shall continue paying monthly minimum rents at the prior rate. Any additional rents determined by the adjustment to be due for the months previously paid at the prior rate shall be paid to CITY within thirty (30) days following written notice. In no event shall any such minimum rent adjustment result in a decrease in the minimum rent requirement in effect immediately prior to the adjustment date.
- c. Percentage Rents. Percentage rents will be calculated on a calendar month basis and will consist of the following percentages of the gross income resulting from the use of the premises:

<u>Percentages</u>	<u>Business Activities</u>
7%	Rooms
3%	Food and Non-Alcoholic Beverages
6%	Alcoholic Beverages
6%	Gift Shop
10%	Pay Parking, Guest Room Movie Commissions and Coin-operated Telephone Commissions
7%	Guest Room Phones

Twenty-five Percent (25%) Of commissions or any other compensation paid to LESSEE or sublessees for the right to install or operate coin-operated vending, game, or service machines or devices on the premises, except those already noted above or 10% of the gross income from any such coin-operated machines or devices owned, rented, or leased by LESSEE or sublessees for use on the premises.

Ten Percent (10%) Of all other authorized activities.

The CITY Manager, in his sole discretion, may approve another percentage rate or flat rate of rent for each other incidental service or operation supplementary to the permitted use(s) set forth under Section 1.2, Uses, hereof as may be approved in writing by the CITY Manager. Provided, however, any activity conducted on the premises without prior approval by the CITY Manager shall be subject to the requirements of Section 3.7, Unauthorized Use Charge, hereof.

- d. Percentage Rate Adjustment. At least six (6) months prior to the end of the tenth year of the term of this agreement and at least six (6) months prior to the end of each ten-year period thereafter, the parties hereto, by mutual consent or through appraisal as hereinafter set forth, will adjust the percentage rates of LESSEE'S gross income to be paid CITY effective upon the first day of the succeeding ten (10) year period. Said adjustment will be made to the degree necessary to provide a fair rental to CITY as determined by the CITY Manager and LESSEE, taking into consideration the criteria set forth in Section 3.02e. below. In the event that such adjustment is not made by mutual consent prior to two (2) months before the end of said ten-year periods, then the parties hereto will refer the matter to appraisal under the terms hereinafter set forth. CITY will waive the first ten (10) year adjustment if LESSEE undertakes an expansion of the premises to a minimum of 125 rooms. However, this waiver will only take place if a development plan for such an expansion is approved by the CITY prior to the end of the tenth lease year. Nothing in this section shall be construed to signify approval by the CITY of any expansion.
- e. Percentage Rate Appraisal. In the event the parties do not agree upon the amount of adjustment to said percentage rates as provided for in the previous section, then the adjustment shall be determined by a qualified professional independent real estate appraiser selected by mutual consent of the parties to this agreement from the list of appraisers approved by CITY. CITY and LESSEE agree to equally share the cost of the mutually

selected appraiser. In the event the parties do not reach agreement as to selection of a mutually acceptable appraiser, then CITY and LESSEE shall each select a qualified professional independent real estate appraiser who in turn will select a third qualified professional independent real estate appraiser. In the event a mutually acceptable third appraiser is not agreed upon between the two selected appraisers within ten (10) days, then the third appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his or her individual capacity, upon application by either CITY or LESSEE with prior notice thereof to the other party. In the event that the Superior Court judge declines to make the appointment, the parties hereto agree that the third appraiser shall be promptly determined in accordance with the rules of the American Arbitration Association. The three (3) appraisers shall each act to set the percentage rates to be applied to LESSEE'S percentage rate adjustment. The appraisers shall complete the assignment within sixty (60) days of appointment. Each party shall pay the cost of its own selected appraiser, and both CITY and LESSEE agree to equally share the cost of the third mutually selected or court-appointed appraiser. CITY and LESSEE agree to accept and be bound by the percentage rates determined in each category of percentage rent by utilizing the average of the two closest appraisal amounts.

In establishing the percentage rates for the items under controversy, the appraisers shall consider CITY'S property as a fee simple absolute estate, and as vacant land and available for a full lease term equal to the initial full term of lease on the open market for the authorized purposes of this lease at the commencement of the rental period under review. The appraisers will be guided by prevailing market percentage rates for operations of similar size and characteristics primarily within the Southern California area, if available. In the event the appraisal is not completed in time to permit the percentage adjustment to be made upon the applicable commencement of the ten-year period, LESSEE agrees to continue to pay rent in accordance with the then-existing lease rates, and the adjustment, when determined, will be retroactive to said effective date of rental adjustments hereinabove established. Any deficiency shall be paid by LESSEE to CITY within sixty (60) days after determination of the new percentage rate(s). IN NO EVENT, HOWEVER, SHALL ANY RENT ADJUSTMENT RESULT IN ANY DECREASE IN ANY PERCENTAGE RENTAL RATE. Notwithstanding the foregoing, the CITY Manager, in his sole discretion, may determine that no market value adjustment is necessary and waive the requirement for the appraisal process for any specific adjustment period.

3.3 Payment Procedure. On or before the last day of the calendar month following the calendar month in which the gross income subject to rents was earned, LESSEE shall provide CITY with a correct statement together with a payment of rent on all applicable gross receipts in a form selected by CITY. The statement will be signed by LESSEE or its authorized agent attesting to the accuracy thereof, which shall be legally binding upon LESSEE. Each statement will indicate or include:

- a. One-twelfth of the annual minimum rent until the full annual rent is achieved in any lease year.
- b. Total gross receipts for the subject month, itemized as to business categories for which separate percentage rents are established. A gross receipts breakdown of each business conducted on the premises must be included when a reported category shows gross income to be from more than one business operation.
- c. The percentage rental due CITY, computed and totaled.
- d. The accumulated total of all rents previously paid for the current lease year.
- e. Payment in the greater of the two following amounts:

One-twelfth of the annual minimum rent or the total percentage rent due CITY computed as described in this section.

Any rents due CITY from sublease activities or operations will begin with the earliest of the following dates (whether or not prior approval was given by CITY as required by this lease and whether or not a separate percentage rent was established by CITY):

- (1) Sublease commencement date.
- (2) Physical occupancy date.
- (3) Earliest activity date (i.e., sale of goods, solicitation of business, construction or alterations, etc.).

3.4 Gross Income. "Gross income" or "gross receipts", as used in this lease, shall include all income resulting from occupancy of the leased premises from whatever source derived whether received or to become due. Provided, however, gross income shall not include federal, state, or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as

a separate charge) and paid over periodically by LESSEE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by LESSEE in computing gross income. Gross income shall not include refunds for goods returned for resale on the premises or refunds of deposits. Gross income shall not include bad debt, provided such allowance does not exceed two percent (2%) of total revenue, voluntary gratuities paid to employees (but shall include mandatory service charges, if any), the value of complimentary services or accommodations, the amount paid for agency commissions (provided, however, that such commissions shall not be paid to any entity owned by the LESSEE or any of the partners of LESSEE, shall reasonably conform to industry standards in the Southern California hotel market, and shall not exceed ten percent (10%) of total revenue) or advance deposits, until applied. However, advance deposits which are forfeited shall be considered gross revenues subject to rent. The amount of such taxes and refunds shall be clearly shown on the books and records of LESSEE. The percentage rent shall be calculated and paid by LESSEE on the basis of said gross income whether the income is received by LESSEE or by any sublessee, permittee or licensee, or their agents, and all gross income received by any sublessee, permittee, licensee, or other party as a result of occupancy of said premises or the operation thereof shall be regarded as gross income of LESSEE for the purpose of calculating the percentage rent hereunder required to be paid by LESSEE to CITY, except as may be otherwise specified by or pursuant to this lease.

3.5 Inspection of Records.

- a. Records. LESSEE shall, at all times during the lease term, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, or other documents as necessary to allow CITY to easily determine the total gross income.

Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day.

In the event of admission charges or rentals, LESSEE shall issue serially numbered tickets for each such admission or rental and shall keep an adequate record of such tickets, as well as a record of unissued tickets.

All retail sales and charges may be recorded by a system other than cash registers or other comparable devices provided such system is approved by CITY.

- b. Financial Statements. Within sixty (60) days after the end of each lease year as previously established herein, LESSEE will, at its expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of rents paid CITY for the year are classified according to the categories of business established for any percentage rental and for any other business conducted on or from the premises. Said statement shall be signed by LESSEE or its authorized agent attesting to the accuracy thereof, which shall be legally binding upon LESSEE.
- c. Right to Inspect. All LESSEE'S books of account, records, and supporting documentation, as described under Section 3.5a. hereinabove, will be kept for at least five (5) three (3) years and made available to CITY in one location within the CITY of San Diego. Said books and records shall be maintained separate from all other accounts not relating to the leased premises. The CITY, at its discretion, shall have the right to inspect and audit the business of LESSEE, its agents, sublessees, concessionaires, and licensees operating on and in connection with the premises as necessary and appropriate for CITY to determine the amounts of rent due CITY in compliance with the requirements of this lease.

At CITY'S request, LESSEE shall promptly provide, at LESSEE'S expense, any necessary data to enable CITY to fully comply with all requirements of the state or federal government for lease information or reports concerning the premises. Such data will include, if required, a detailed breakdown of LESSEE'S receipts and expenses.

- d. Audit Cost. The full cost of CITY'S audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case LESSEE hereby agrees to pay CITY'S cost of audit(s):
 - (1) The audit(s) reveal an underpayment of more than five percent (5%) between the rent due as reported and paid by LESSEE pursuant to this lease and rent due as determined by the audit(s); or
 - (2) LESSEE has failed to maintain complete and true books, records, accounts, and supporting source documents in strict accordance with this section hereof.

LESSEE shall pay any deficiency determined by the audit(s) plus interest on such amount as defined in Section 3.6, Delinquent Rent and Audit Fees,

hereof, within thirty (30) days of notice thereof by CITY. CITY will credit any overpayment against incoming rents. Any overpayment determined after the end of this lease will be refunded by CITY within thirty (30) days of confirmation by the CITY Manager of the audit(s) findings.

- e. Default. LESSEE'S failure to keep complete and accurate records by means of double-entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with covenants of this lease, a breach of this lease and cause for termination.

- 3.6 Delinquent Rent and Audit Fees. If LESSEE fails to pay the rent when due, LESSEE will pay, in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)], which is hereby mutually agreed by the parties hereto to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payments of rent be less than Ten Dollars (\$10).

In the event CITY audit(s), if applicable, discloses that the rent for the audited period(s) has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit(s) plus ten percent (10%) per year on the amount by which said rent was underpaid, in addition to the unpaid rents as shown to be due CITY, as compensation to CITY for administrative costs and loss of interest as previously described herein. In the event CITY audit(s) discloses that the unpaid rent is less than five percent (5%) of the total rent, and should LESSEE fail to pay said unpaid rent within thirty (30) days after written notice from CITY, an additional fee of ten percent (10%) of said unpaid amount shall be added to the unpaid amount to compensate CITY for costs and losses due to such nonpayment. LESSEE agrees to pay such amounts and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this lease.

- 3.7 Unauthorized Use Charge. LESSEE shall pay CITY twenty percent (20%) of the gross receipts for any service or use that is not permitted by this lease. This payment is subject to the due date provided in this lease for rental payments and the provision for delinquent rent. The existence of the twenty percent (20%) charge in this clause and the payment of this charge or any part of it, does not

constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the leased premises.

SECTION 4: ASSIGNMENT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants, and conditions of this lease, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 4.2 Assignment and Subletting. LESSEE shall not assign this lease or any interest therein and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the CITY Manager in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the written consent of the CITY Manager.

"Assignment" for the purposes of this clause shall include any transfer of any ownership interest in this lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners, or principals. However, an "Assignment" for purposes of this clause shall not include an assignment of an ownership interest in LESSEE upon the death or disability of any partner or to any lineal descendant of Anne L. Evans, or trust created for their benefit. Additionally, an "Assignment" for purposes of this clause shall not include a transfer of this lease to an entity where a majority-in-interest of the ownership is held by Anne L. Evans, her lineal descendants, and(or) any initial partner of LESSEE or a trust created for her or their benefit.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this agreement which are applicable to the rights acquired. The CITY Manager shall require, as a condition to approval of any sublease of the majority portion of the leasehold (51% or more of the value of the premises area) or any assignment (except assignments allowed above), that this lease or the requested sublease otherwise be revised to comply with standard CITY lease

requirements that are then current. Pursuant to CITY Charter Section 225, the CITY Manager must review and approve every person or entity which will have an interest in this lease as a sublessee or assignee. The CITY Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

- 4.3 Encumbrance. Subject to prior consent by CITY, which shall not be unreasonably withheld, LESSEE may encumber this lease, its leasehold estate, and its improvements thereon by deed of trust, mortgage, chattel mortgage, or other security instrument to assure the payment of a promissory note or notes of LESSEE, upon the express condition that the proceeds of such loan or loans be devoted exclusively to the purpose of developing the leased premises in accordance with Section 6.12, Development Plans, hereof. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the premises; on-site improvements; escrow charges; premiums for hazard insurance or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest, and commissions; and architectural, engineering, and attorneys' fees and other normal expenses incidental to such construction.

Any subsequent encumbrances on the premises or on any permanent improvements thereon must first have the approval in writing of the CITY Manager, whose approval shall not be unreasonably withheld. Such subsequent encumbrances shall also be for the exclusive purpose of development of the premises. Provided, however, after the premises are fully developed in accordance with said Initial and, if applicable, General Development Plan to the satisfaction of the CITY Manager, proceeds from refinancing or from such subsequent encumbrances may be used to reduce LESSEE'S equity. Such encumbrances shall not exceed eighty percent (80%) of the value of the property at the time of encumbrance.

In the event any such approved deed of trust or mortgage or other security-type instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, CITY will accept the approved mortgagee or beneficiary thereof as its new tenant under this lease with all the rights, privileges, and duties granted and imposed in this lease.

Upon prior written approval by CITY, said mortgagee or beneficiary may assign this lease to its nominee, if nominee is a reputable, qualified, and financially responsible person or entity in the opinion of CITY. Any deed of trust, mortgage, or other security instrument shall be subject to all of the terms, covenants, and conditions of this lease and shall not be deemed to amend or alter any of the terms, covenants, or conditions hereof. Pursuant to CITY Charter Section 225, the CITY Manager must review and approve every person or entity which will have

a financial interest in this lease. The CITY Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

4.4 Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, and LESSEE shall fail to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against it (and not dismissed within sixty (60) days) any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Section 4.4a.(1), hereinabove is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

- b. Remedies of Lender. Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default, and the default, if curable, is cured by such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.
- c. Abandonment by LESSEE. Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.
- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the city Manager in order to constitute a valid and binding waiver. CITY'S delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is CITY-owned and held in trust for the benefit of the citizens of the CITY of San Diego and that any failure by the CITY Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the CITY Council directs the CITY Manager to take action or require the cure of any default after such default is brought to the attention of the CITY Council by the CITY Manager or by any concerned citizen.

- 4.5 Eminent Domain. If all or part of the premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:
- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - b. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - c. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the premises taken.
 - d. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
 - e. Transfer. CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.
 - f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.
- 4.6 Partnership Liability. Each general partner of LESSEE shall jointly and severally perform and be responsible for each and every term, covenant, and condition, and each general partner is jointly and severally liable for performance under this lease.

SECTION 5: INSURANCE RISKS/SECURITY

- 5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold the CITY, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the leasehold or the work and operations to be performed under this agreement, and all expenses of investigating and defending against same; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or willful misconduct of the CITY, its agents, officers, or employees.
- 5.2 Insurance.
- a. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:
- (1) Public liability and property damage insurance in the amount of not less than One Million Dollars (\$1,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises.
 - (2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.3, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.
- b. LESSEE'S responsibility to maintain said insurance also includes the following:
- (1) Additional Insured. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in

defending claims, and will not terminate without thirty (30) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. Prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.

- (2) Modification. CITY, at it's discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice. LESSEE shall comply with CITY'S requirements so long as the applicable insurance is typical of insurance carried by a majority of similar hotels in the Southern California area in accordance with industry standards. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- (3) Accident Reports. LESSEE shall report to CITY any accident or any serious injury to persons on the premises, where claims exceed the amount of LESSEE'S then current insurance deductibles. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.
- (4) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection (4), if LESSEE fails or refuses to take out or maintain insurance as required in this lease or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE, and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.3 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage to the extent said damage is required to be insured under the terms of this Lease; or, at CITY'S option, and subject to available insurance proceeds, LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the premises shall be commenced by LESSEE within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenable by reason of such damage.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the present condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this lease. LESSEE further acknowledges that the premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises, and that LESSEE does not hold CITY responsible for any defects whether apparent or latent, in the premises, including the presence of any hazardous wastes.

- 6.2 Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days' written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.
- 6.3 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises throughout the term. LESSEE will make all repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with the Initial and, if applicable, General Development Plan described in Section 6.12, Development Plans, hereof and with all applicable laws.
- 6.4 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the CITY Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the CITY Manager and that such approval shall not be unreasonably withheld. However, LESSEE may make decorative interior changes without prior CITY Manager approval. This provision shall not relieve LESSEE of any obligation under this lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.
- 6.5 Utilities. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All new utilities will be installed underground.

- 6.6 Construction Bond. Whenever there is any construction to be performed on the premises for which CITY approval is required in excess of \$100,000 (subject to increase by percentage increases in the Consumer Price Index from the effective date of the Lease). LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.
- 6.7 Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the premises and the costs of defending against such claims, including reasonable attorney's fees.
- If improvements, alterations, or repairs are made to the premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:
- a. take all actions necessary to record a valid release of lien, or
 - b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.
- 6.8 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and agrees that this lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.
- 6.9 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. However, CITY approval is not

required for business signage necessary in the ordinary course of business which comply with applicable sign laws, such as signs required by law, exit signs, and room number signs. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.

6.10 Ownership of Improvements and Personal Property.

- a. Any and all improvements, trade fixtures, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE shall at lease expiration or termination be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except as otherwise provided in this lease.
- b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or one hundred eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.
- c. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
- d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
- e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.
- f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said premises upon expiration or termination of this lease, then CITY shall have the first right to acquire or purchase said personal property if it is sold;

CITY must promptly act, within thirty (30) days, to buy the personal property.

- 6.11 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.
- 6.12 Development Plans. LESSEE agrees to renovate the leased premises in accordance with the Initial Development Plan approved by the CITY Manager and filed in the Office of the CITY Clerk which plan is hereby incorporated by this reference. The general contents and provisions of the Initial Development Plan are described in Section 9.2 hereof. The CITY Manager or his designee shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without CITY Council approval and a document evidencing any approved changes shall be filed in the Office of the CITY Clerk. Failure by LESSEE to comply with the Initial Development Plan shall constitute a major default and subject this lease to termination by CITY. The CITY Manager, in his sole discretion, may approve an extension of the date specified for completion in the Initial Development Plan of up to one (1) year without further CITY Council approval.

In order to obtain the extension contemplated in Section 2.1 hereof and prior to the end of the sixth year of the lease term, LESSEE must submit a General Development Plan for approval by the CITY Manager. This General Development Plan shall, at a minimum, show one of the two following scenarios:

- a. An expansion of the premises to a minimum of 125 rooms; or
- b. An extensive renovation (defined as replacement or substantial remodeling of all existing seventy-four (74) guestrooms and public areas) costing a minimum of \$2,500,000.

Should LESSEE submit a General Development Plan and should the CITY Manager approve such a plan, LESSEE agrees to develop the leased premises in accordance with the General Development Plan approved by the CITY Manager. The CITY Manager or his designee shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without CITY

Council approval and a document evidencing any approved changes shall be filed in the Office of the CITY Clerk. Failure by LESSEE to undertake or comply with the General Development Plan shall cause this lease to revert to the remainder of its original forty (40) year term. The CITY Manager, in his sole discretion, may approve an extension of the date specified for completion in the General Development Plan of up to one (1) year without further CITY Council approval.

- 6.13 Hazardous/Toxic Waste. LESSEE will not allow the installation of additional underground storage tanks or release of hazardous substances in, on, under, or from the premises. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances.

"Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the CITY Clerk as Document 769704 and by this reference is incorporated herein.

In the event of any release of a hazardous substance during the term of this Lease by other than CITY, LESSEE shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

LESSEE agrees to assume the defense of, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S operations on the premises, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the premises, LESSEE shall give written notice to the CITY Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if LESSEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the CITY Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. LESSEE will notify the CITY Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the premises. In addition, LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of CITY.

At any time within the twelve (12) months before the expiration or earlier termination of this lease, LESSEE, at CITY'S sole option, shall cause an environmental assessment of the premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Said environmental assessment shall be obtained at the sole cost and expense of LESSEE and shall establish what, if any, hazardous substances exist on, in, or under the premises, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, then said environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. LESSEE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred, but only if the presence of the hazardous materials was caused during the term of this Lease by other than CITY.

- 6.14 Failure to Meet Development Schedule. Should LESSEE fail to complete construction in accordance with the schedule of development of the General Development Plan hereof, it is specifically agreed by LESSEE and CITY that CITY will be entitled to damages in the amount of Five Hundred Dollars (\$500) for every day of failure to meet said schedule of development until completion of development, said amount representing liquidated damages therefor. In the event that construction is not completed within twelve (12) months following the date specified for completion in the General Development Plan, CITY may, at its option, cause this Lease to revert to the remainder of its original forty (40) year term. The CITY Manager, in his sole discretion, may approve an extension to the development schedule of up to one (1) year without further CITY Council approval.
- 6.15 Coastal Commission Approval. LESSEE shall comply with the California Coastal Act, at its sole cost, and apply to the San Diego Coast Regional Commission or other such authorized state body for any necessary coastal development permit authorizing the construction of improvements in the Coastal Zone.
- 6.16 Asbestos Disclosure. CITY discloses to LESSEE that portions of the structural components of the premises may contain asbestos. CITY acknowledges that it has provided LESSEE with all information in its possession concerning asbestos on the premises. LESSEE acknowledges having received notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. LESSEE shall disclose the existence of asbestos on the leased premises, as required by Health and Safety Code Section 25915. LESSEE agrees to

indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the leased premises.

SECTION 7: GENERAL PROVISIONS

7.1 Notices.

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at the leased premises or at such other address designated in writing by LESSEE; and to CITY as follows:

CITY Manager
Attention Real Estate Assets Director
CITY Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

or to any mortgagee, trustee, or beneficiary, as applicable, at such appropriate address designated in writing by the respective party.

- b. Any party entitled or required to receive notice under this lease may be like notice designate a different address to which notices shall be sent.

7.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the CITY Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.

7.3 CITY Approval. The approval or consent of CITY, wherever required in this lease, shall mean the written approval or consent of the CITY Manager unless otherwise specified, without need for further resolution by the CITY Council.

7.4 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE'S use of the premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

7.5 Compliance with CITY'S Equal Opportunity Contracting Program.

- a. Equal Opportunity Contracting. LESSEE shall submit to the Project Manager statistical information as requested in the City of San Diego Contract Activity Report indicating the amount of subcontracting provided by firms during the period covered by the report. This information should be accompanied by an invoice from each subconsultant/subcontractor/vendor/service provider listed in the report.
- b. Equal Employment Opportunity. LESSEE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or place of birth.

Upon request by the CITY of San Diego, LESSEE will submit a current Work Force Report and, if required, an Equal Employment Opportunity Plan which sets forth the actions that LESSEE will take to achieve the CITY'S goals for the employment of African Americans, American Indians, Asians, Filipinos, Latinos, women, and people with disabilities.

Further, LESSEE will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this lease agreement so that such provisions will be binding upon each subcontractor.

- c. Local Business and Employment. LESSEE acknowledges that the CITY of San Diego seeks to promote employment and business opportunities for local residents and firms on all CITY contracts. LESSEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this lease agreement from local residents and firms as opportunities occur. LESSEE is encouraged to hire qualified local residents and firms whenever feasible.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this lease agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.

7.6 Partial Invalidity. If any term, covenant, condition, or provision of this lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.

- 7.7 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.
- 7.8 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.9 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties, representations, and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this lease.

The failure or refusal of any party to read the lease or other documents, inspect the premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this lease will be valid unless it is in writing and signed by all parties.

- 7.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or LESSEES shall include a condition that the contract, agreement, or lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who, within the twelve months immediately preceding such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the CITY Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the CITY Council.
- 7.12 Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, where applicable, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The LESSEE'S policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs.
 - (4) The penalties that may be imposed upon employees for drug abuse violations.
- c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

7.13 Disabled Access Compliance. LESSEE agrees to comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); where applicable and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE'S compliance shall include but not necessarily be limited to the following:

- a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
- c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.

- d. Where required by law, LESSEE shall comply with CITY'S disabled access requirements by bringing up to code and making accessible any areas of the premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of LESSEE.
- e. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this lease.

7.14 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.

7.15 Plastic Food Containers.

- a. LESSEE shall not, after the effective date of this lease, provide to its customers any prepared food in polystyrene foam food packaging, nor shall LESSEE obtain or keep any polystyrene foam food packaging of a type, design, and condition suited for providing prepared food to its customers for consumption off the leased premises.
- b. LESSEE'S food packaging for prepared food to be consumed on the premises or for takeout food shall be biodegradable, and LESSEE shall provide upon demand evidence in the form of paid invoices to indicate the purchase of biodegradable containers in amounts sufficient to indicate compliance with this section. LESSEE'S food packaging for prepared food to be consumed off the premises shall be biodegradable unless LESSEE demonstrates to the satisfaction of CITY that biodegradable food packaging materials are not available for purchase in the quantities required by LESSEE. In the event that biodegradable food packaging materials are not available for purchase in the quantities required by LESSEE, LESSEE may limit its use of such packaging to the amount actually available.
- c. For purposes of this lease, the following definitions are applicable:
 - (1) "Prepared food" means foods or beverages which are prepared on the leased premises by cooking, chopping, slicing, mixing, freezing or squeezing, and which require no further preparation to be consumed.

- (2) "Food packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws and lids which are not intended for reuse, on or in which any foods or beverages are placed or packaged on the leased premises.
- (3) "Takeout food" means prepared foods or beverages requiring no further preparation to be consumed and which are purchased in order to be consumed off the leased premises.

7.16 Sale of Foodstuffs And Snack Bars. LESSEE shall sell upon the leased premises and have the exclusive right to sell upon the leased premises foods, beverages, tobacco and confections. LESSEE shall also operate the Facilities (as defined below), and shall have the first and exclusive right to sell and(or) serve at other locations upon Torrey Pines Golf Courses, food, non-alcoholic and alcoholic beverages, tobaccos, confections, or other merchandise first approved in writing by CITY, so long as LESSEE operates said Facilities. This provision shall not preclude an individual from bringing his/her own food and(or) non-alcoholic beverages onto the golf course for his/her own personal consumption. The "Facilities" shall include the existing snack bar, a second snack bar (if approved by the CITY Manager), mobile service carts, temporary additional facilities for special events, and such other facilities as approved by the CITY Manager. If CITY desires to develop a permanent food and(or) beverage facility or facilities at the Torrey Pines Golf Courses in addition to the Facilities and LESSEE desires to operate such a permanent facility or facilities, then CITY and LESSEE shall first negotiate in good faith to arrive at an agreement satisfactory to the CITY Manager and LESSEE under the same rent percentages and substantially similar terms and conditions as contained in this lease. If LESSEE does not desire to and otherwise refuses to operate the Facilities or any other permanent food and(or) beverage facility or operation on said golf courses outside the leased area, then CITY shall be free to let such concessions to any other person or persons. LESSEE's food and beverage operations, including special events, on the golf course, shall be subject to the following amendments:

- a. CITY has the right to review this exclusive use as it concerns special events upon a future sale by LESSEE (excluding assignments not subject to CITY approval according to Section 4.2 hereof);
- b. LESSEE will provide its services for special events at market prices as determined for catered events at other LESSEE-operated hotels;
- c. LESSEE will not unreasonably withhold its services for any special event;
- d. LESSEE will allow the donation of food and(or) beverages by the sponsors of any special event at the request of the CITY Manager; provided,

however, the LESSEE is able to charge a market price for the services, if any, provided by LESSEE in connection with such food and(or) beverage, including but not limited to portage, set up, equipment rental, and service labor;

- e. LESSEE will allow the CITY to bypass the exclusive for the Super Bowl or similar CITY-wide events at the request of the CITY Manager provided, however, that there be no more than one such event per year, that such event not be primarily sited at the golf course and be no longer than one (1) day, and that, if bids are solicited, LESSEE is allowed to bid on the food and beverage service to be provided, if any.

7.17 Supersedure. It is mutually agreed that this lease, upon execution, supersedes and annuls that certain lease executed on the 2nd day of October, 1961, with Torrey Pines Inn, Inc., Document 629873, as amended, which is hereafter void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under such agreement.

SECTION 8: SIGNATURES

8.1 Signature Page.

IN WITNESS WHEREOF, this lease agreement is executed by CITY, acting by and through its CITY Manager, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

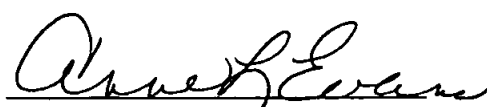
Date: 4/27/95

By: 

LESSEE:

THE LODGE AT TORREY PINES PARTNERSHIP,
a California limited partnership

Date: 4-21-95

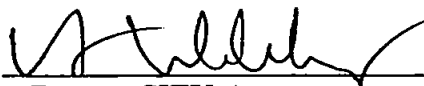
By: 

Its: Managing General Partner

Signatures Continued Next Page

APPROVED as to form and legality this 27 day of April, 1925.

JOHN W. WITT, CITY Attorney

By: 
Deputy CITY Attorney

SECTION 9: EXHIBITS

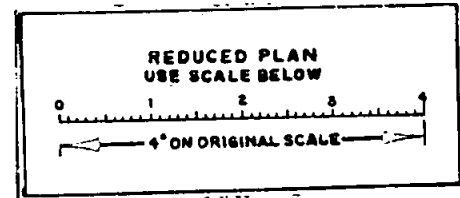
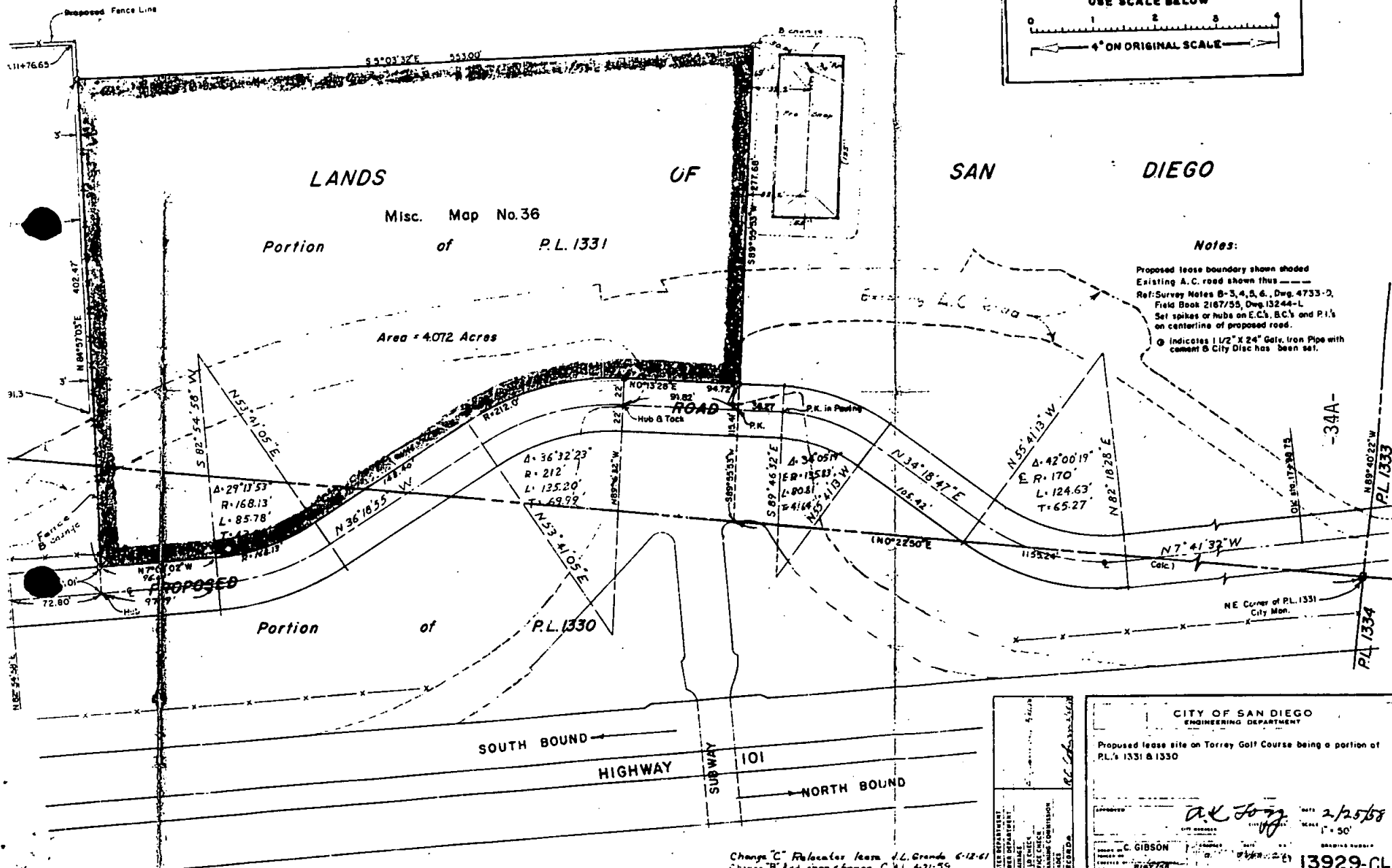
9.1 Legal Description.

LEGAL DESCRIPTION

All those portions of Pueblo Lots 1330 and 1331 of the Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State of California, according to Map thereof made by James Pascoe in 1870, a copy of which map was filed in the Office of the County Recorder of San Diego County, November 14, 1921, as Miscellaneous Map No. 36, more particularly described as follows:

Commencing at the Northeast corner of Pueblo Lot 1331, which corner is the common corner of Pueblo Lots 1330, 1331, 1333, and 1334; thence South $00^{\circ}22'50''$ West, 1155.24 feet; thence South $89^{\circ}55'53''$ West, 115.41 feet to the TRUE POINT OF BEGINNING; thence continuing South $89^{\circ}55'53''$ West, 277.68 feet; thence South $05^{\circ}03'32''$ East, 553.00 feet; thence North $84^{\circ}57'03''$ East, 402.47 feet; thence North $07^{\circ}05'02''$ West, 96.61 feet to the beginning of tangent 168.13-foot radius curve, concave Southwesterly; thence Northerly and Northwesterly along the arc of said curve through a central angle of $29^{\circ}13'53''$, a distance of 85.78 feet; thence tangent to said curve, North $36^{\circ}18'55''$ West, 148.40 feet to the beginning of a tangent 212.00-foot radius curve, concave Northeasterly; thence Northwesterly and Northerly along the arc of said curve through a central angle of $36^{\circ}32'23''$, a distance of 135.20 feet; thence North $00^{\circ}13'28''$ East, 94.72 feet returning to the TRUE POINT OF BEGINNING.

Drawing 13929-CL / Job 220592 / P. Crawford



Notes:

Proposed lease boundary shown shaded
Existing A.C. road shown thus ---
Ref: Survey Notes B-3, 4, 5, 6, Dwg. 4733-D,
Field Book 2167/55, Dwg. 13244-L
Set spikes or hubs on E.C.'s, B.C.'s and P.I.'s
on centerline of proposed road.
⊙ Indicates 1 1/2" x 24" Galv. iron Pipe with
cement & City Disc has been set.

CITY OF SAN DIEGO ENGINEERING DEPARTMENT	
Proposed lease site on Torrey Golf Course being a portion of P.L.'s 1331 & 1330	
APPROVED: <i>A.K. Fong</i> DATE: 2/25/68 SCALE: 1" = 50' DRAWN: C. GIBSON CHECKED: <i>[Signature]</i> DATE: 2/25/68	13929-CL

Change "C" Relocates from J.L. Grande 6-12-61
Change "R" Relocates from C.W. 6-12-61

9.2 Initial Development Plan.

The Initial Development Plan consists of:

- a. Description of Improvements
- b. Renovation Schedule
- c. Estimated Costs
- d. Plot Plan

and is filed in the Office of the CITY Clerk referenced in this lease.

INITIAL DEVELOPMENT PLAN

THE LODGE AT TORREY PINES

(March 24, 1995)

I. INTRODUCTION:

This Initial Development Plan ("Plan") contemplates the operation of the property currently known as the Torrey Pines Inn in its existing configuration with remodeling and redecorating, but without major redevelopment (i.e., the demolition of existing structures or an expansion of existing facilities). However, it sets forth the improvements necessary to upgrade the physical facilities, service, systems, and marketing of the property to a well-managed and well-maintained, value-oriented, family and golf destination hotel. The specific improvements planned are listed below in Section II. Section III addresses the estimated schedule for implementation of the Plan and Section IV sets forth its estimated costs. A plot plan is attached as "Exhibit A."

This Plan attempts to ascertain the renovations necessary to achieve the level of improvements and operation desired. The new ownership is generally familiar with the physical condition of the property and its existing operations and has performed the due diligence necessary to purchase the property. However, we will not have the opportunity to do the extensive inspections we feel are necessary to intimately understand the property prior to taking over the leasehold. Additionally, we have not been able to fully investigate the local market for the property or properly determine

INITIAL DEVELOPMENT PLAN

THE LODGE AT TORREY PINES

its appropriate market position. Finally, we are uncertain of the exact resources, human and otherwise, necessary to operate the property in the manner we envision. Therefore, although this Plan sets out extensive specific improvements, some items will undoubtedly be added to this list. Conversely, other items may be deleted because the need to complete them is unnecessary to achieve the level of physical and service quality contemplated for the property. In all cases, however, the intent of this Plan is to achieve those quality levels originally envisioned regardless of which improvements are completed and which services are altered or initiated.

II. DESCRIPTION OF IMPROVEMENTS:

A. FRONT ENTRANCE AND EXTERIOR:

Over the course of the Plan period, the hotel will be converted to a craftsman-style lodge reminiscent of the bungalows designed by the likes of California architects Irving Gill and Green and Green during the period from 1900 to 1915 and seen in so many historic locations throughout San Diego. The property will be complete with stained-glass windows, ornamental wooden architectural features, wood shingles, and river-rock detailing. Heavy emphasis will be placed on natural materials, light, warmth

INITIAL DEVELOPMENT PLAN

THE LODGE AT TORREY PINES

(both of materials and physically through the use of fireplaces) and the organic, fluid design typical of buildings of that style and period.

The main sign for the building will be removed and replaced with an updated monument sign on a decorative rock wall. The service entrance immediately in sight upon driving up to the hotel will be relocated to the side of the building. The most prominent new feature at the main entrance will be a porte cochere extending from the front doors of the facility. The doors themselves will be replaced with custom wood and glass doors and many of the windows in the public buildings will be replaced with similar detailing.

The prominent facades of the buildings will be covered with wood shingles to emulate the craftsman style and non-structural wood detailing will be added to the beams and eaves of the buildings. Additionally, all buildings will have structural problems repaired (currently thought to be minimal) caused by dry rot and pest damage.

The parking areas will be reconfigured, then resurfaced and restriped to become more efficient. Parking will be removed from the area immediately in front of the main building to enhance the project's curb appeal. Parking controls will be installed.

The landscaping of the property will be enhanced to feature the natural beauty of the environment, highlight the torrey pines

INITIAL DEVELOPMENT PLAN

THE LODGE AT TORREY PINES

on the property, and emphasize the panoramic views of the golf course and the Pacific Ocean beyond. All trees will be trimmed by certified arborists and a large torrey pine will be relocated to the front of the property to become the lodge's signature feature. All landscaping at the front of the property will be replaced and enhanced. Landscape lighting will be installed throughout the property for both aesthetic and safety reasons.

B. LEGAL AND SAFETY ISSUES:

While the public restrooms have been remodeled to achieve accessibility for the disabled and some guestrooms have been made accessible, there are still a number of architectural barriers at the site which impede access, most of them due to the topography of the property. Access will be created from the lobby to the pool area and from the pool area to the lower level servicing the coffee shop and golf course. Additionally, ramps will be installed to allow better access to guestrooms and throughout the property, especially at the front entrance which will be reconfigured to remove the steps currently located there.

All required signage will be manufactured and installed. This includes tactile letter and braille signage required by the ADA, toxic material warnings required by Proposition 65, and alcohol warning signs among others.

INITIAL DEVELOPMENT PLAN

THE LODGE AT TORREY PINES

The telephone system and call accounting system will be upgraded for compliance with FCC regulations and the North American Numbering Plan currently in place.

C. GUESTROOM BUILDINGS:

The guestroom buildings themselves will be painted and all roofs will be repaired as necessary. The hallways of these buildings need particular attention because their look is currently very institutional. We will begin by replacing the carpeting in all hallways, wallpapering the interior hallways, and painting the exterior hallways. We will also repair and(or) replace all the skylights and install all new light fixtures throughout. Additionally, we will engineer a solution for the source of the excessive noise generated by the guestroom doors and will install legally conforming guestroom number signage.

D. LOBBY AND FRONT DESK REMODELING:

We will remodel the look and feel of the main lobby to create a comfortable, warm, and inviting lodge great room. This will be achieved through the use of a muted color palette and natural materials. We will begin by replacing the current flooring with hardwood floors or quality carpet. Additionally, we will install all new chairs, tables, and lamps, many manufactured by the

INITIAL DEVELOPMENT PLAN

THE LODGE AT TORREY PINES

original makers of craftsman furniture or authentically reproduced. The north wall (with the zigzag wall feature) will be removed and a fireplace installed. Artwork from native California plein air artists of the period will be installed.

The front desk will be remodeled to accommodate computerized registration, a more efficient operation, and increased guest services.

E. COFFEE SHOP REMODEL:

Our plan is to extensively remodel the existing coffee shop located on the lower level of the property immediately adjacent to the golf course. This renovation will take advantage of the facility's setting and panoramic view of the golf course, cliffs, and Pacific Ocean beyond. We hope to turn this outlet into a destination for golfers and local professionals alike.

This remodeling will begin with a reconfiguration of the existing back of house, kitchen, and storage area located on this level. This will allow for more efficient operation of the area and the ability to serve more guests.

The most important feature of the rebirth of this facility will be the construction on an extensive outdoor patio. This patio will be constructed of rock walls and clinker brick and will be complete with lattice and glass screen walls to block the

INITIAL DEVELOPMENT PLAN

THE LODGE AT TORREY PINES

prevailing wind. Functional and accent lighting will be installed as will outdoor heating. A service station will also be constructed to properly handle the dining activity.

The entry doors will be replaced as will some of the windows in the existing facility to allow more natural light and to add to the design ambiance of the restaurant. The carpet will be replaced and all new tables and chairs will be installed. The existing banquettes will be reupholstered and new artwork installed. The entire counter area will be reconstructed and the overhead detailing will be redesigned. Finally, new locational and entry signage will be manufactured and installed.

F. GOLF BAR REMODEL:

This area will be renovated at the same time as the coffee shop in a similar style. The same furniture, fixtures, and equipment installed there will be installed in this outlet. Again, the entry doors and windows will be replaced to match the new exterior design of the hotel. Also, new locational and entry signage will be installed in addition to required legal signage.

G. MAIN BAR REMODEL:

The look and feel of this bar will be enhanced to effectively realize its potential as a comfortable, club-atmosphere sports bar.

INITIAL DEVELOPMENT PLAN

THE LODGE AT TORREY PINES

The room will be full of black and white photographs of early car races held at the site and classic moments in Torrey Pines golf history. We will purchase and install sports memorabilia on shelves around the room. The bar itself will be remodeled to provide for more efficient operation and service.

All new furniture will be installed, including tables, chairs, and banquettes. Additionally, the ceiling will be redone to provide more detailing; decorative and accent lighting will be added to highlight these details and the art and memorabilia throughout the bar. Finally, new carpeting will be installed as well as new locational and entry signage (in addition to required legal signage).

H. BANQUET SPACE REMODEL:

This space needs to be remodeled to meet the spacial configuration needs of group meeting planners and the aesthetic concerns of banquet and catering customers. First, access doors must be installed from the ballroom to the meeting room. The rooms will also have the windows replaced to match the exterior design standard of the hotel. The ceilings will be renovated and replaced with architectural detailing and new lighting fixtures will be installed. From an operational standpoint, the service bars will be renovated and new banquet chairs will be purchased. Also,

INITIAL DEVELOPMENT PLAN

THE LODGE AT TORREY PINES

locational and legal signage will be installed.

Most importantly, the area of the hotel currently in use as a multi-room private office will be converted to additional break-out meeting space. This will involve replacement of the carpeting and all furnishings in that location.

I. MAIN KITCHEN:

The kitchen appears to be in serviceable condition although some of the equipment is quite old. Accordingly, equipment will be replaced on an as-needed basis. Initially, all storage areas will be painted and cleaned. Additional work may be required based on Health Department recommendations after their initial inspection following transfer of the food service permit and such improvements will be made immediately.

J. MARKETING AND REVENUE ENHANCEMENTS:

One of the most important aspects of the change in ownership and management will be a focus on repositioning and marketing the property. The quality of the product will change, the level of service will change, and the public perception of the property must change with it if we are to be successful for ourselves and the City. We must quickly and effectively get the word out among the golfers, local community, surrounding businesses, meeting planners,

INITIAL DEVELOPMENT PLAN

THE LODGE AT TORREY PINES

travel agents, travel wholesalers, tour packagers, and the international travel community.

Completing this task will start with renaming the property and redesigning its logo. We will then design and print all new brochures, sales kits, and themed items such as pens, pads, matchbooks, et cetera. In the food and beverage outlets, all new menus will be designed, compiled, and tested.

New advertisements will be developed and produced. Most importantly, the hotel will be included in all collective advertising placed by the Bahia Hotel and Catamaran Resort Hotels. It will also be included in the other hotels' travel packages and foreign tour plans.

A front desk computer system will be installed to better sell reservations and monitor business. A significant increase in business will come from integrating the property into our central reservations office and obtaining new 800 numbers for national and international reservations. Guest history information will be maintained to assist in increased guest service and direct mail campaigns.

As previously mentioned, some of the private offices will be converted to revenue-generating meeting space. Additionally, three guestrooms currently out of service and used as manager apartments will be completely renovated to current guestroom standards and

INITIAL DEVELOPMENT PLAN

THE LODGE AT TORREY PINES

placed back in service, thus increasing the inventory of the property by almost five percent.

III. PROPOSED SCHEDULE:

In the last section, we set forth the anticipated scope of renovations necessary during the first three years of our operation of the Lodge at Torrey Pines. This section will lay out the proposed schedule for these improvements. For the reasons stated above, it is only possible to estimate the phasing of these improvements within annual time blocks. Again, because of the nature of the project, certain items will be completed earlier than anticipated and some will occur later due to a more logical scheduling of the planned projects once we have a better feel for the physical condition and operation of the property.

A. FIRST YEAR (MONTHS 1-12):

The immediate priorities are the legal and safety issues (Section II.B.), including health-related improvements in the main kitchen (Section II.I), which will be completed within this initial timeframe. We will also commence the front entrance and exterior improvements by replacing the main property sign and beginning the landscaping enhancements noted in Section II.A. The improvements to the guestroom building exteriors and hallways (Section II.C.)

INITIAL DEVELOPMENT PLAN

THE LODGE AT TORREY PINES

will begin immediately as will the marketing and revenue enhancement items included in Section II.J. Many of these marketing items will continue through the period of this Plan and, indeed, throughout the term of the Lease.

The renovation of the coffee shop (Section II.E.) and the first phase of the golf bar remodel (Section II.F.) will be undertaken during the business lulls during the first year of operation following implementation of the new Lease. Obviously, construction of these improvements is subject to an extensive permitting process and dependent on obtaining such permits in a timely manner. Finally, the private office space noted in Section II.H. will be converted to meeting space.

B. SECOND YEAR (MONTHS 13-24):

The major exterior improvements will begin following the Summer of 1996. This comprises the majority of the items in Section II.A. with the exception of items already undertaken in the first year and includes specifically the facade rework, the relocation of the service entrance, and the parking improvements. At the same time, the lobby and front desk renovations (Section II.D.) will begin. Finally, with the renovation of the exterior of the main building, we will complete the balance of the remodeling of the meeting and banquet spaces noted in Section II.H. Any

INITIAL DEVELOPMENT PLAN

THE LODGE AT TORREY PINES

remaining work required for the golf bar renovation will also be completed in the second year of operation under the new Lease.

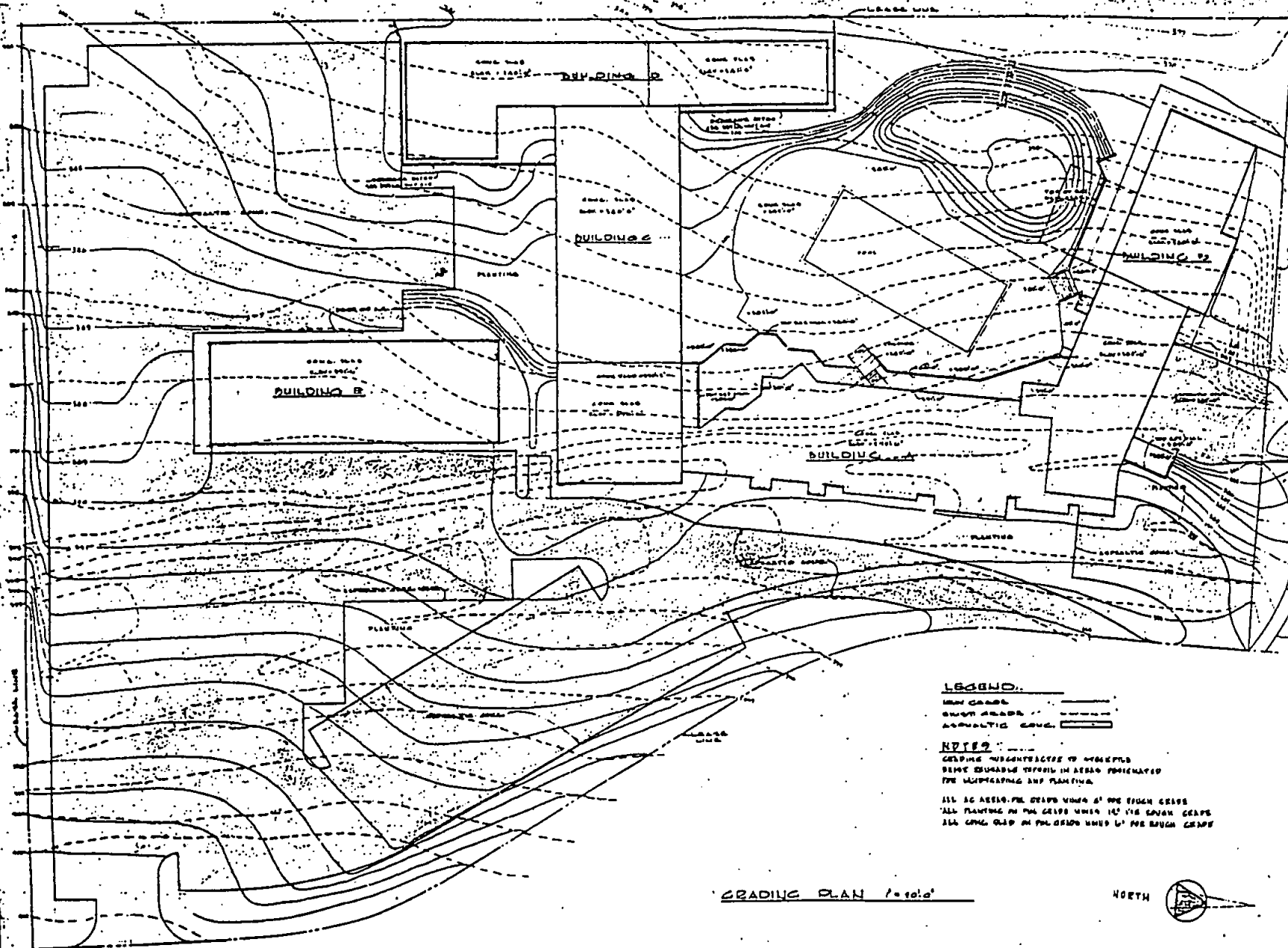
C. THIRD YEAR (MONTHS 25-36):

During the third year, exterior improvements will continue and be completed as will remodeling of the lobby, front desk, and remaining public areas of the hotel scheduled for renovation. We will also commence the redecorating and remodeling of the main bar noted in Section II.G. Finally, any necessary improvements to the main kitchen will be scheduled for the third year.

IV. ESTIMATED COSTS:

We are committed to spending the estimated cost of the proposed improvements over the term contemplated by this Initial Development Plan regardless of which improvements are actually completed. That amount is currently estimated to be \$500,000. However, without more information about the specific condition of the existing facilities and the resources necessary for their efficient daily operation, it is impossible to more exactly assign costs to each of the items listed in Section II.

EXHIBIT A
INITIAL DEVELOPMENT PLAN
THE LODGE AT TOREY PINES



ORDINANCE NUMBER O- 18172 (NEW SERIES)

ADOPTED ON APR 24 1995

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A 40-YEAR LEASE, WITH A 15-YEAR OPTION, FOR THE CONTINUED MAINTENANCE, OPERATION AND IMPROVEMENT OF THE LODGE AT TORREY PINES WITH A LEASEHOLD AREA OF APPROXIMATELY FOUR ACRES, AND ALSO GRANTING TO THE LESSEE EXCLUSIVE RIGHTS FOR THE ENTIRE LEASE TERM ON THE ADJACENT APPROXIMATELY 360 ACRES TORREY PINES GOLF COURSES FOR THE PURPOSES OF SELLING FOOD, BEVERAGES, OR OTHER MERCHANDISE APPROVED BY THE CITY MANAGER.

BE IT ORDAINED, that the City Council hereby authorizes the City Manager to execute a percentage lease with THE LODGE AT TORREY PINES PARTNERSHIP, a California limited partnership, of which Anne L. Evans, William L. Evans, Grace Evans Cherashore, David L. Cherashore, Anne Evans Quinn, Timothy M. Quinn and Robert H. Gleason are the general partners, and Nancy Evans Kyzer and Margaret Evans are the limited partners, with a term of 40 years with a conditional option to extend for an additional 15 years, with the leased premises consisting of approximately four acres in the Torrey Pines area, for the primary purpose of operation and maintenance of a hotel with the market value of such real estate having been determined by City staff to be the percentage rents payable to the City under the lease, with rents and other terms and conditions as more particularly set forth in that percentage lease on file in the office of the City Clerk as Document No. OO- 18172.

BE IT FURTHER ORDAINED, that the City Council specifically approves the provision in the above described lease which grants to the lessee the exclusive right to sell and serve food and beverages during the entire lease term on the adjacent approximately 360 acres utilized for and known as the Torrey Pines Golf Courses, with such exclusive rights being in the nature of a right of first refusal.

BE IT FURTHER ORDAINED, that this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Chief Deputy City Attorney

HOV:ps
03/31/95
04/18/95 REV.1
Or.Dept:REA
O-95-96
Form=o+t



THE LODGE AT TORREY PINES



THE CITY OF SAN DIEGO

December 17, 2002

Bill Evans
Evans Hotels
998 West Mission Bay Drive
San Diego, CA 92109

Reference: Torrey Pines Golf Courses – Supplemental Reserved Nonresident Tee Times for The Lodge at Torrey Pines

Dear Mr. Evans:

This is to confirm our agreement regarding supplemental tee times for the Lodge. This supplemental agreement is in addition to the previous tee time agreement for 20 players per day. Listed below are the proposed terms and conditions.

1. Tee Times Allotment:
 - a. Total of 16 players per day, provided in 4 foursomes, starting the first Saturday in April and ending the last Sunday in October.
 - b. The term of this agreement shall expire on October 31, 2005.
 - c. Times shall be distributed throughout the day at the reasonable discretion of City's Golf Operations Manager.
 - d. Monthly play will be distributed 50% on the south course (8 players per day) and 50% on the north course (8 players per day), with exact reasonable distribution at the discretion of City's Golf Operations Manager.
2. Schedule:
 - a. No credit will be given for loss of tee times for the following reasons:
 - i. Buick Invitational Tournament (approximately 10 to 12 days);
 - ii. City-Sponsored Amateur Tournament (approximately 6 days);
 - iii. Junior World Tournament (approximately 7 days);
 - iv. Any other PGA or USGA Tournament (variable days);
 - v. Inclement weather (but see Item 2.d. below); and
 - vi. Regular course maintenance causing the closing of either course (2 days).
 - b. When one-day tournaments displace Lodge's tee times but are less than full-course tournaments, such times will be replaced on the same day based on the mutual agreement of the parties. All play schedules showing



Real Estate Assets

1200 Third Avenue, Suite 1700, MS 51A • San Diego, CA 92101-4199
Tel (619) 236-6020 Fax (619) 236-6706

any such displacement will be provided by City to Lodge at least 90 days in advance.

- c. For one-day, full-course tournaments (other than those noted in Item 2.a above), City shall give 90 days advance notice to Lodge. For these tournaments, weekday times (Monday through Thursday) will be replaced on weekdays, and weekend times (Friday through Sunday) will be replaced on weekends over a reasonable period of time (but in no case more than 60 days) by mutual agreement of the parties.
- d. In the event of inclement weather, Lodge will be given the right of first refusal for nonreserved starter times on the next available playing day, up to the total number of tee times lost due to the most recent period of inclement weather.

3. Consideration:

a. Tee Time Pricing:

- i. Lodge will pay for each round guaranteed, regardless of whether such round is actually utilized. A round will be considered "guaranteed" if Lodge has not returned any daily allotted round to City as set forth in Item 3.a.ii. below.
- ii. Lodge will be allowed to return unreserved rounds no later than noon 8 calendar days prior to the tee time date. Notwithstanding the provisions of Item 4.a. below, at the request of either party, City and Lodge agree to renegotiate the provisions of this Item 3.a.ii. concerning the return of the tee times as of the completion of the first April-through-October period under this agreement.
- iii. Lodge will pay for each round at either (i) the then-current non-resident rate plus a reservation surcharge of \$25 per player for the north course, or (ii) the then-current nonresident rate plus a reservation surcharge of \$30 per player for the south course.
- iv. Fees will be payable to City monthly, based on actual tee times guaranteed. City will prepare an invoice for each calendar month that will be presented to Lodge by the 5th of the next month and payable in conjunction with Lodge's monthly rent payment due under its lease with City.

b. Rent:

- i. City will receive no percentage rent on the actual cost of tee times, cart rentals, and other similar services provided to Lodge guests.
- ii. City will receive percentage rent on the markup on tee times and cart rentals (i.e., the difference between the amount charged the guest and Lodge's actual cost) provided to Lodge guests at the then-current percentage rent for guest room rentals, if part of a room package.

- c. TOT: All gross revenues associated with golf course charges are subject to Transient Occupancy Tax at the then-current rate.
- d. These amounts are subject to confirmation by audit.

4. Amendment:

- a. The provisions contained above shall be subject to renegotiation 3 years from the date of execution of this agreement, provided both City and Lodge wish to extend the term.
- b. During the term of this agreement, the rates or surcharge shall not decrease unless an independent party confirms that the then-current rate plus surcharge paid by Lodge are equal to or greater than the market rate for nonresident tee times. In such case, City and Lodge agree to negotiate in good faith to agree on an equitable adjustment in rates and/or surcharge.

If acceptable, please sign and date where indicated on the enclosed copy of this letter and return it to Paul Crawford of this office.

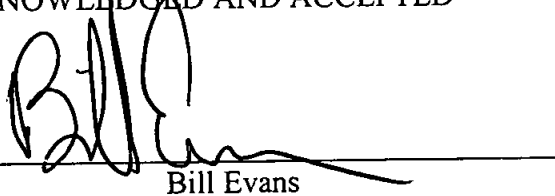
Sincerely,



Tim C. Rothans
Deputy Director
Real Estate Assets Department

ACKNOWLEDGED AND ACCEPTED

By


Bill Evans

Date

Jan 2, 03

PTC/cj

Enclosure

cc: Ellen Oppenheim, Park & Recreation Director
Terri Williams, Park & Recreation Deputy Director
Jim Allen, Golf Operations Manager

File: Lease -- The Lodge at Torrey Pines Partnership

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**TORREY PINES GOLF COURSE
AGREEMENT ON RESERVED NONRESIDENT
TEE TIMES**

THIS AGREEMENT ("Agreement") is executed between THE CITY OF SAN DIEGO ("City") and THE LODGE AT TORREY PINES PARTNERSHIP ("Lodge") pursuant to Section 3.8, Additional Consideration to CITY, of the lease between City and Lodge, as amended by the Second Amendment to Lease Agreement, City Clerk Document No. RR-293587, filed July 31, 2000. This Agreement supersedes all existing agreements relating to reserved tee times, except as set forth in said lease. City and Lodge agree that Lodge will be allowed nonresident tee times at Torrey Pines Golf Course upon the following terms and conditions:

1. Tee Times Allotment:

- a. Total of 20 players per day, provided in 5 foursomes.
- b. Times shall be divided as follows:
 - i. 8 players (2 foursomes) per day between 7:30 and 8:30 a.m., and
 - ii. 12 players (3 foursomes) per day between 11:30 a.m. and 12:30 p.m.
- c. Monthly play will be distributed 60% on the south course (12 tee times per day) and 40% on the north course (8 tee times per day), with exact reasonable distribution at the discretion of City's Golf Operations Manager.

2. Schedule:

- a. No credit will be given for loss of tee times for the following reasons:
 - i. Buick Invitational Tournament (approximately 10 to 12 days);
 - ii. City-Sponsored Amateur Tournament (approximately 6 days);
 - iii. Junior World Tournament (approximately 7 days);
 - iv. Any other PGA or USGA Tournament (variable days);
 - v. Inclement weather (but see Item 2.d. below); and
 - vi. Regular course maintenance causing the closing of either course (2 days).
- b. When one-day tournaments displace Lodge's tee times but are less than full-course tournaments, such times will be replaced on the same day based on the mutual agreement of the parties. All play schedules showing any such displacement will be provided by City to Lodge at least 90 days in advance.
- c. For one-day, full-course tournaments (other than those noted in Item 2.a. above), City shall give 90 days advance notice to Lodge. For these tournaments, weekday times (Monday through Thursday) will be replaced on weekdays, and weekend times (Friday through Sunday) will be replaced on weekends over a reasonable period of time (but in no case more than 60 days) by mutual agreement of the parties.
- d. In the event of inclement weather, Lodge will be given the right of first refusal for nonreserved starter times on the next available playing day, up to the total number of tee times lost due to the most recent period of inclement weather.

3. Consideration:

- a. **Security:** Lodge will provide security to patrol the golf course and its parking lots, maintenance yard, and clubhouse. Such security will be on a roving basis and from dusk to dawn only. In order to assist Lodge in providing this service, City will provide Lodge with the use of a golf cart.

b. Tee Time Pricing:

- i. Lodge will pay for each round guaranteed, regardless of whether such round is actually utilized. A round will be considered "guaranteed" if Lodge has not returned any daily allotted round to City as set forth in 3.b.ii. below.
- ii. Lodge will be allowed to return unreserved rounds as follows:
 - (1) Eight rounds may be returned no later than noon 2 calendar days prior to the tee time date; and
 - (2) Twelve rounds may be returned no later than noon 8 calendar days prior to the tee time date.
- iii. Lodge will pay for each round at either (i) the then-current nonresident rate plus a reservation surcharge of \$25 per player for the north course, or (ii) the then-current nonresident rate plus a reservation surcharge of \$30 per player for the south course.
- iv. Fees will be payable to City monthly, based on actual tee times guaranteed. City will prepare an invoice for each calendar month that will be presented to Lodge by the 5th of the next month and payable in conjunction with Lodge's monthly rent payment due under its lease with CITY.

c. Rent:

- i. City will receive no percentage rent on the actual cost of tee times, cart rentals, and other similar services provided to Lodge guests.
 - ii. City will receive percentage rent on the markup on tee times and cart rentals (i.e., the difference between the amount charged the guest and Lodge's actual cost) provided to Lodge guests at the then-current percentage rent for guest room rentals, if part of a room package.
- d. TOT:** All gross revenues associated with golf course charges are subject to Transient Occupancy Tax at the then-current rate.
- e.** These amounts are subject to confirmation by audit.

4. Amendment:

- a. The provisions contained above, with the exception of Item 1.a., shall be subject to renegotiation every 3 years from the date of execution of this Agreement.
- b. During the term of this Agreement, the rates or surcharge shall not decrease unless an independent party confirms that the then-current rate plus surcharge paid by Lodge are equal to or greater than the market rate for nonresident tee times. In such case, City and Lodge agree to negotiate in good faith to agree on an equitable adjustment in rates and/or surcharge.
- c. Any amendment to this Agreement may be enacted by the written approval of the City Manager.

5. Tournament Play:

a. Booking:

- i. Lodge will also have the continuing right to book group tournaments for hotel guests in addition to daily allotted times. When requesting to book tournaments for its guests, Lodge will indicate the party(ies) for whom the tournament booking is being made. Evidence of an agreement between Lodge and the

party(ies) for whom tournament bookings are made is subject to confirmation by audit.

- ii. City's Golf Operations Manager will schedule up to 24 months in advance for tournaments of 72 or more players and 18 months in advance for tournaments of fewer than 72 players.
- iii. Tournament booking requests by Lodge will be responded to by City within 48 hours of request, except in the case of an urgent request, in which case a response will be made within 5 hours.

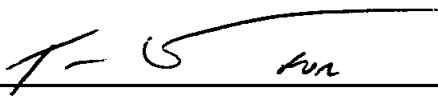
b. Payment:

- i. For tournaments booked more than 12 months in advance, Lodge will pay the then-current tournament rate plus a reservation surcharge of \$5 per player.
- ii. For tournaments booked fewer than 12 months in advance, Lodge will pay the then-current tournament rate.
- iii. In all cases, payment will be in accordance with the then-current policies concerning payment and golf cart use.

IN WITNESS WHEREOF, this Agreement is executed by City, acting by and through its City Manager pursuant to City Council Resolution R-293587, and by Lodge, acting by and through its lawfully authorized officer.

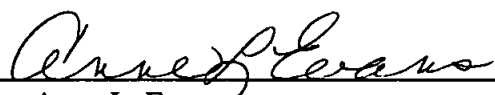
THE CITY OF SAN DIEGO

Date 1-6-03

By 
William T. Griffith
Real Estate Assets Director

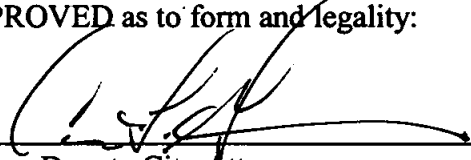
THE LODGE AT TORREY PINES
PARTNERSHIP

Date 9-20-02

By 
Anne L. Evans
Managing General Partner

APPROVED as to form and legality:

Date 1-14-03

By 
Deputy City Attorney

PTC/cdj-w
09/17/02

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