



Real Estate Assets Department
SDC003

Document Type

LEGAL DOCUMENTS



Sub - Category

AGREEMENTS



Index

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THE CITY OF SAN DIEGO

Flat Rate Lease

DOCUMENT NO. PR 265138-2

FILED FEB 24 1986

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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CITY OF SAN DIEGO
FLAT RATE LEASE

THIS LEASE AGREEMENT is executed between the CITY OF SAN DIEGO, a municipal corporation, herein called "CITY," and DR. JONATHAN S. SMITH, hereinafter called "LESSEE."

SECTION 1: USES

1.01. 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 Exhibit "A" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises". LESSEE acknowledges that CITY is also leasing the premises to the owners of Lots 2 and 3 for access to their properties.

1.02. Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of an access road for ingress and egress for LESSEE to its property and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose.



It is expressly agreed that the driveway portion of the premises will continue to be left open for pedestrian and bicycle access by the public. The rights of City specified in Section 1.05 may be utilized at any time during the lease term and the CITY shall have the right, at its option during the term of the lease, to control access to the leasehold by others than the LESSEE and allow other public agencies to control such access if a need is determined for such control. Further, LESSEE agrees to not place any materials on the premises and understands vehicular parking is strictly prohibited.

LESSEE covenants and agrees to use the premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof. 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.

1.03 Related Council Actions. By the granting of this lease, neither the 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.

1.04 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 there shall be determined and stated in writing by the City Manager of CITY 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.

1.05 Easements and Reservations.

- a. 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 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. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.06 Parking. Parking or storage of any type of vehicle is strictly prohibited.

SECTION 2: TERM

- 2.01 Commencement. The term of this agreement shall be thirty (30) years commencing on the first day of the calendar month following execution by the City Manager. "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.
- 2.02 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered 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.
- 2.03 Quitclaim and Surrender of LESSEE'S Interest. On execution of this lease, the LESSEE shall deliver to the CITY a quitclaim deed in recordable form quitclaiming all its rights in the premises. CITY may record such deed only on the expiration or earlier termination of this lease. In the event the CITY requires any subsequent quitclaim deed, the LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor.

At the expiration or earlier termination of this lease, LESSEE shall surrender the premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the date of execution hereof, and in a decent, safe and sanitary condition, and in the case of termination of this lease by CITY prior to the end of the specified lease term any liens and encumbrances approved in writing by the City Manager during the lease term.

SECTION 3: RENT

- 3.01 Time and Place of Payment. Rent is due annually in advance on or before the first day of each lease year. All annual rents will be prorated during the first and final months of any rental period in order to achieve payment on the first day of each lease year. Checks should 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 1222 First Avenue, Third Floor, San Diego, California.

The place and time 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. LESSEE assumes all risk of loss and late payment charges if payments are made by mail, or if postmarks are illegible, in which case the payment shall be deemed paid upon actual receipt by the City Treasurer.

3.02 Rent.

- a. Rent Amount. The initial rent is Two-Hundred Sixty-Seven Dollars (\$267) per year. Said rent is based upon the above-mentioned three leases for the premises. In the event that any of the other two leases are terminated, LESSEE agrees that the rent will increase proportionately. For example, if one of the other two leases is terminated, the initial annual rent for this lease shall be Four Hundred Dollars (\$400), and adjusted as set forth below. Said rent is subject to adjustments based on increases, if any, in the Consumer Price Index (CPI), as hereinafter provided.
- b. (1) CPI Index Adjustments. At the end of two and one-half (2-1/2) years following the effective date of the lease and at the end of every two and one-half (2-1/2) years thereafter during the lease term, the rent shall be adjusted to reflect increases in the Consumer Price Index (CPI).

The index used will be the CPI for "All Urban Consumers" for Los Angeles/Long Beach/Anaheim, California. If this index is no longer published, the index for adjustment will be the U. S. Department of Labor's Comprehensive Official Index most comparable to aforesaid index. If a rental adjustment is calculated using an index from a different base year than 1967, which equaled a base figure of 100 for the CPI, the base figure used will first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of CITY and LESSEE. If the parties cannot agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor, notwithstanding continued reference herein to "CPI" in any event.

Regardless of the index publication dates, the effective date of the rent adjustment is as specified in this Section 3.02, b.(1). Until the rent adjustment can be reasonably determined by the index method, LESSEE will continue to make payments at the existing rental rate. When the adjustment is determined, the balance of rents due at the adjusted rate will be paid to the CITY within thirty (30) days. In no event shall the adjusted rent as established by the Consumer Price Index be less than the rent in existence immediately prior to the adjustment date.

- (2) Index Adjustment Computation. The rent for each rental period following the adjustment, until the next adjustment or other rental determination as provided herein, shall be determined prior to the date of adjustment by multiplying the rent which is effective immediately prior to said adjustment by the "adjustment figure" established as follows:

The "adjustment figure" shall be established by dividing the "current index" by the "base figure", both as defined herein:

The "base figure" for the first such adjustment shall be a three-month average of index figures published by said CPI using the fourth, fifth and sixth full months preceding the effective date of this agreement.

To illustrate, if the lease began in May, the CPI figures for November (sixth month), December (fifth month) and January (fourth month) preceding May would be averaged to establish the base figure (Example 1).

The "current index" shall be a three-month average of index figures published by said CPI. The three months to be used to establish said average shall be the fourth, fifth and sixth full months preceding the adjustment date.

The "base figure for each successive adjustment shall be the "current index" figure used in the last preceding adjustment period (Example 2).

Example 1

Current Index 121
Base Figure $\frac{121}{110} = 1.10$ (Adjustment Figure)

Effective Rent x 1.10 = Adjusted Rent

Example 2

Current Index 138
Base Figure $\frac{138}{121} = 1.14$ (Adjustment Figure)

Effective Rent x 1.14 = Adjusted Rent

The adjustment figure is then multiplied by the annual rent from the preceding adjustment period and the new rent is determined. Using the foregoing examples, if the rent is now \$1,000 per year, after the first adjustment it will be \$1,100 per year (\$1,000 x 1.10). In the second adjustment it will be \$1,254 per year (\$1,100 x 1.14).

- 3.03 Delinquent Rent. If the LESSEE fails to pay the rent when due, the 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, the LESSEE shall pay an additional ten percent (10%) [being a total of fifteen percent (15%)] which is hereby mutually agreed by the parties 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.

LESSEE agrees to pay such amount 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.

SECTION 4: ASSIGNMENT

- 4.01 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.
- 4.02 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 to use or occupy the premises or any part thereof. Except, however, if LESSEE'S adjacent property is rented to a tenant, tenant may use the premises. Further, if LESSEE sells its property for which this lease provides access, the new owner shall have the right to assume the place of LESSEE under this lease.
- 4.03 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
 - (2) LESSEE shall voluntarily file or have involuntarily filed against it 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 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 Paragraph a. (1) of this section 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.

- b. 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.
- c. 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. The 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 the 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 the CITY shall at all times, subject to applicable statute of limitations, 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.

4.04 Eminent Domain. If all or part of the premises is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of the 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 the 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 the CITY, the remainder 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 of the condemning authority, whichever occurs first, 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 the 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, the LESSEE shall retain its possessory interest in the fair market value of any improvements placed on the premises in accordance with this lease by LESSEE.
- 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.

SECTION 5: INSURANCE RISKS/SECURITY

5.01 Indemnity. LESSEE at all times shall relieve, indemnify, protect and save CITY and any and all of its boards, officers, agents and employees harmless from any and all claims and demands, actions, proceedings, losses, liens, costs, judgments, civil fines and penalties of any nature whatsoever in regard to or resulting from the use of the premises, including, but not limited to, expenses incurred in legal actions, death, injury or damage that may be caused directly or indirectly by:

- a. Any unsafe or defective condition in or on the premises of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the premises,
- b. Any operation, use or occupation conducted on the premises,
- c. Any act, omission or negligence on the part of LESSEE, its employees, agents, sublessees, invitees, licensees or
- d. Any failure by LESSEE to comply or secure compliance with any of the lease terms or conditions.

5.02 Insurance. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:

- a. Homeowner's liability coverage in the amount of not less than ONE MILLION DOLLARS (\$1,000,000) COMBINED SINGLE LIMIT LIABILITY. This policy shall cover all injury or damage, including death, suffered by any party or parties on or in connection with the use or operation of the premises.

- b. Conditions. All insurance companies must be satisfactory to the CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days 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.
- c. Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises.
- d. Accident Reports. LESSEE shall report to CITY any accident causing any serious injury to persons on the premises. This report should 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.
- e. 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 or insurers 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 e., 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.

- 5.03 Waste, Damage or Destruction. LESSEE agrees to give notice to the 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 the 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, or at the CITY'S option LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and resurface the premises in accordance with plans and specifications previously submitted to the 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 5.02, 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.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.01 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 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 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 in the premises.
- 6.02 Entry and Inspection. CITY reserves and shall always have the right 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 days' written notice to LESSEE, to have any necessary maintenance work done for and 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 the 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 the 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.
- 6.03 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 the CITY and in compliance with the Development Plan described in Section 6.09 hereof and with all applicable laws.

6.04 Improvements/Alterations. No improvements, structures or installations shall be constructed within the premises and the premises may not be altered by the LESSEE without prior written approval by the City Manager. The premises are to remain in as near a natural state as possible. Minor grading, under City Engineer Permit and supervision, may be required to correct any drainage or erosion problems to protect adjacent property and to insure adequate access. Within sixty (60) days of lease commencement, the premises shall be surfaced with a minimum of three inches (3") of decomposed granite. The CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations. LESSEE shall maintain the premises in a decent, safe, healthy and sanitary condition.

6.05 Liens. LESSEE will, 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.

6.06 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments and fees assessed or levied upon LESSEE, LESSEE'S activities, or the premises, including any licenses or permits related to the leased premises. LESSEE recognizes and agrees that this lease may create a possessory interest subject to property taxation and that the 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 the CITY.

- 6.07 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 the CITY. 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.
- 6.08 Ownership of Improvements and Personal Property. Upon termination of this lease, LESSEE shall restore said premises to its original condition to the satisfaction of the City Manager and at no cost to the City.
- 6.09 Development Plan. LESSEE agrees to develop the leased premises in accordance with the General 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 development plan are described in Exhibit "B" hereto. The Park and Recreation Department's recommendations are also included within said Development Plan and are hereby incorporated as Exhibit "B-1". 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. Said work shall begin within thirty (30) days of lease commencement and shall be diligently pursued to completion. In no event shall the work not be completed within six months of said date. Failure by LESSEE to comply with the General Development Plan shall constitute a major default and subject this lease to termination by CITY.
- 6.10 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.

SECTION 7: GENERAL PROVISIONS

7.01 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 Property 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 by like notice designate a different address to which notices shall be sent.

7.02 Compliance with Law. LESSEE will at all times in the construction, maintenance, occupancy and operation of the premises, comply with all applicable laws, statutes, ordinances and regulations of the CITY, County, State and Federal Government, at LESSEE'S sole cost and expense. In addition, LESSEE will 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.

7.03 CITY Approval. The approval or consent of the 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.

7.04 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.

7.05 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 attorney's fees.

7.06 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.

- 7.07 Captions. The lease Table of Contents, 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.
- 7.08 Entire Understanding. This lease contains the entire understanding of the parties. The LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties in respect to the lease 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.
- 7.09 CITY Employee Participation Policy. It is the policy of the CITY that all CITY contracts, agreements or leases with consultants, vendors or LESSEES shall include a condition that the contract, agreement or lease shall be unilaterally and immediately terminated by the 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.
- 7.10 Planting Strips. In order to deter vehicular access onto the premises, as well as to adjacent CITY-owned property, LESSEE shall, at its sole cost, landscape and maintain all areas as shown on the attached Exhibit "B" and "B-1." It will be necessary for LESSEE to install a temporary sprinkler system and be responsible for establishing the new plantings.
- 7.11 Noxious Weeds, Pests and Erosion. LESSEE shall take proper corrective action, to the satisfaction of CITY, to prevent the infestation of noxious weeds, pests, and erosion throughout the entire lease premises.

SECTION 8: SIGNATURES

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 FEB 24 1986

By Dayl Gypsy
ASSISTANT TO THE City Manager

Date 11.14.85

LESSEE:

Jonathan S. Smith
Dr. Jonathan S. Smith

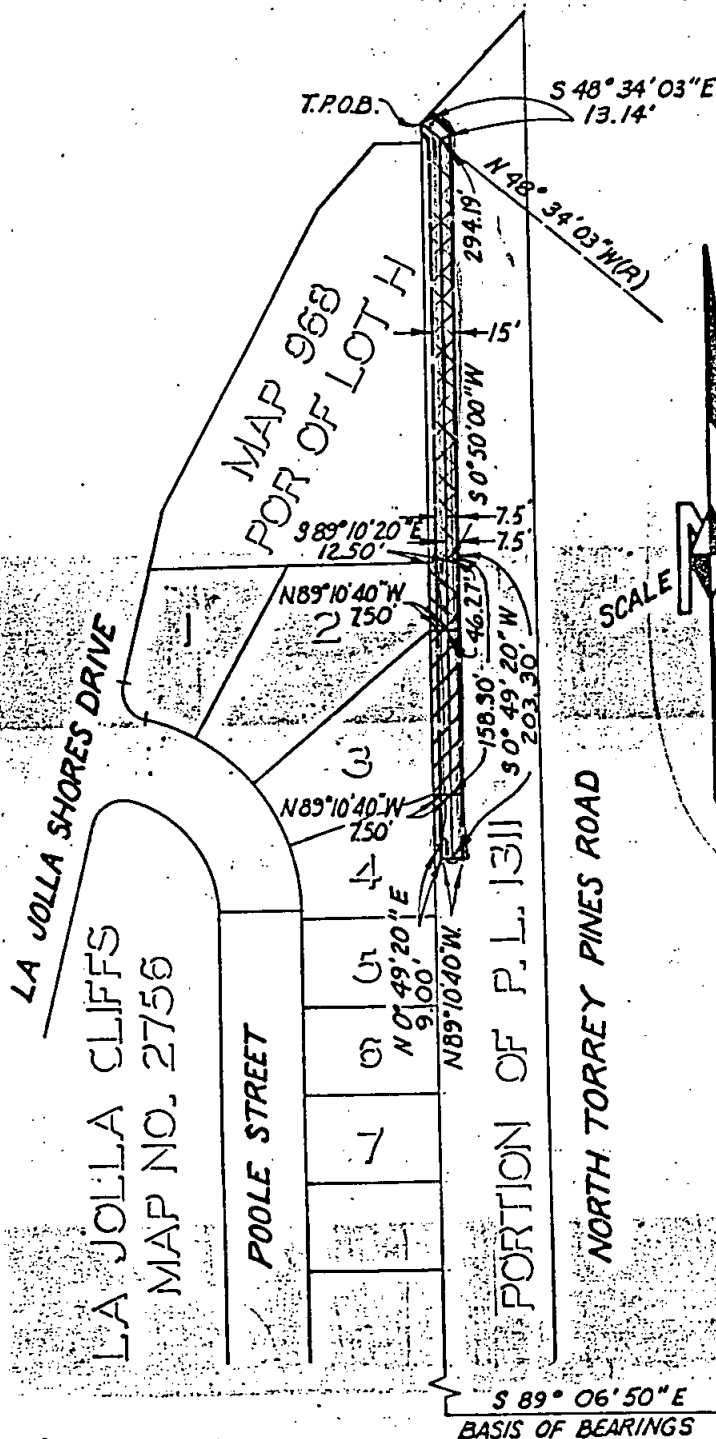
APPROVED as to form and legality this 30 day of June, 1987

By [Signature]
City Attorney

CAF:jw(6)F12
10-9-85

SECTION 9: EXHIBIT "A"

9.01 Property Description



BASIS OF BEARINGS:

THE BASIS OF BEARINGS FOR THIS MAP IS THE SOUTHERLY LINE OF P.L. 1311 PER THE CALIFORNIA COORDINATE SYSTEM ZONE 6, I.E. $S 89^{\circ} 06' 50'' E$.

REFERENCE DRAWINGS:

MAP 2756; 14023-B, 14415-B.

LEGEND:

PROPOSED ACCESS EASEMENTS SHOWN THUS:

PARCEL 1: 
 PARCEL 2: 
 PARCEL 3: 

ASSESSOR'S PARCEL NO.

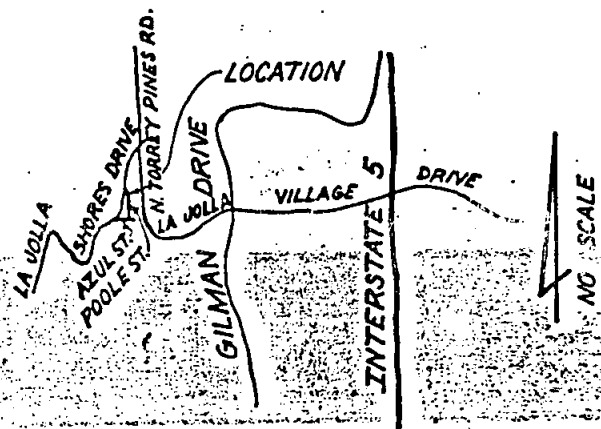
344-080-22.

AREAS:

PARCEL 1: 5535.15 S.F.; 0.127Ac.
 PARCEL 2: 7544.45 SF; 0.173Ac.
 PARCEL 3: 7839.30 SF; 0.180Ac.

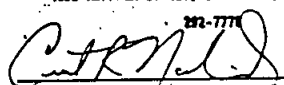
SCALE

1" = 100'



VICINITY MAP

LA JOLLA, CA.

NASLAND ENGINEERING
 CIVIL ENGINEERING • SURVEYING • LAND PLANNING
 1855 RUFFNER STREET, SAN DIEGO, CALIFORNIA, 92111
 292-7777

 3-29-85
 CURT R. NOLAND RCE 35205

ACCESS EASEMENT - IN PUEBLO LOT 1311 OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, KNOWN AS MISCELLANEOUS MAP 36.

SECTION 9: EXHIBIT "B"

9.02 General Development Plan.

The General Development Plan consists of:

- a. Plot Plan
- b. Landscape Plan including planting schedule
- c. Others as applicable

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

CAF:jw(6)F12
10-9-85

EXHIBIT B-1
CITY of SAN DIEGO
MEMORANDUM

RECEIVED

JAN 31 1985

PROPERTY DEPT.

FILE NO.:

DATE : January 30, 1985

TO : Property Agent Cheryl Ferraro

FROM : Open Space Acquisition Supervisor

SUBJECT: Barrier of Eucalyptus Trees on North Torrey Pines Road City-owned Parcels

As you requested, attached is a map showing the location of existing trees in relation to the proposed access easement lease of the City-owned property on North Torrey Pines Road.

Bob Nelson, Open Space Maintenance Manager, stated that an effective barrier, as required by the Public Facilities and Recreation Committee, would require a line of Eucalyptus Polyanthemus with centers about six feet apart. In order to meet this requirement, while incorporating the existing trees into the barrier, the following table indicates the number of new trees that would have to be planted at equidistant intervals between the appropriate lettered existing trees on the map.

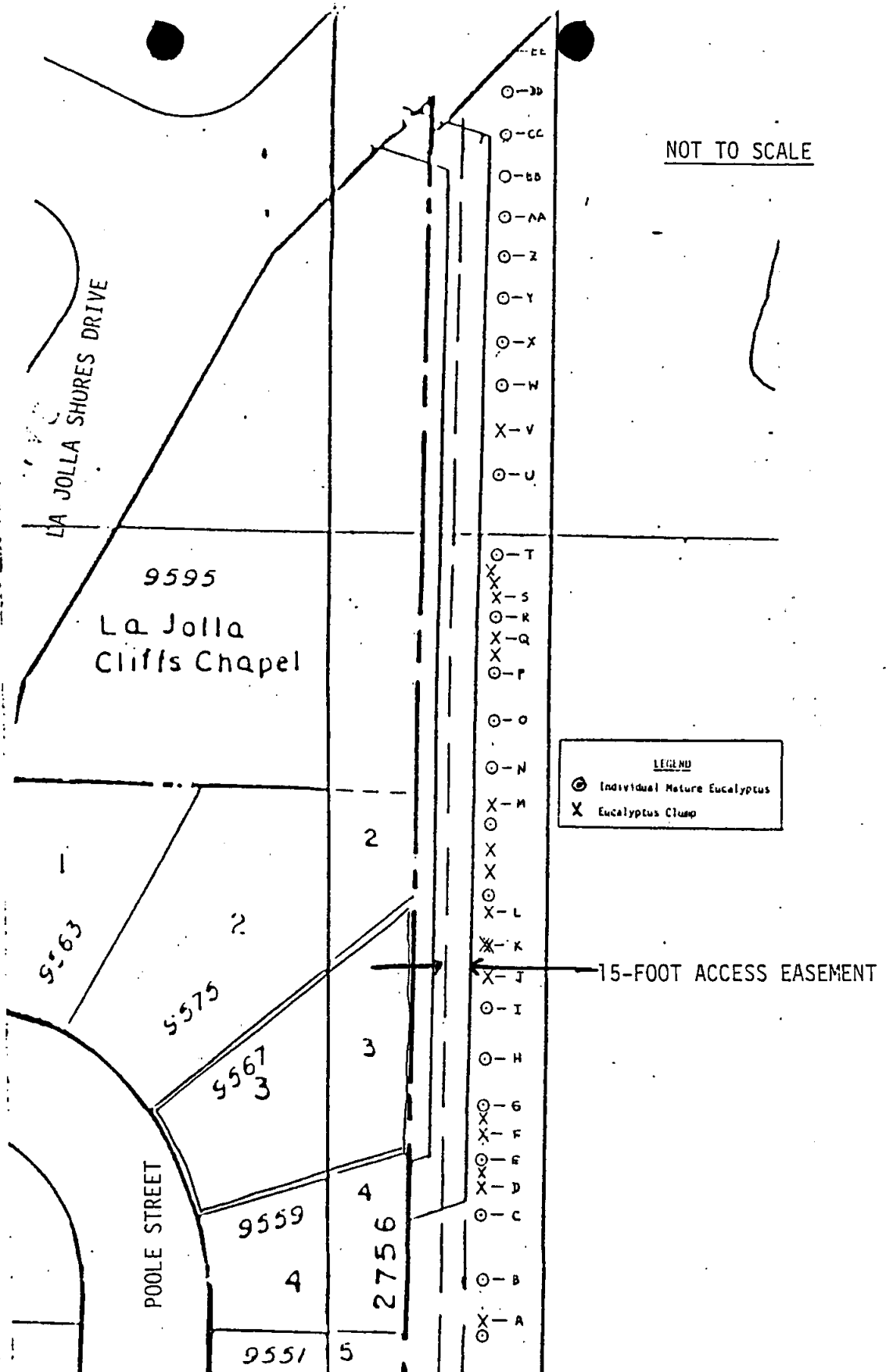
<u>INTERVAL BETWEEN EXISTING TREES</u>	<u>NUMBER OF NEW TREES</u>
A-B	1
B-C	3
C-D	2
E-F	1
G-H	3
H-I	3
I-J	1
J-K	2
K-L	3
M-N	2
N-O	4
O-P	4
Q-R	1
R-S	2
T-U	3
U-V	1
V-W	1
W-X	3
X-Y	3
Y-Z	3
Z-AA	3
AA-BB	3
BB-CC	3
CC-DD	3

There is a space of about twenty feet between tree DD and the edge of the existing sidewalk, EE, on La Jolla Shores Drive. Traffic Engineering has recommended that no new trees be planted in this location to avoid visual problems for motorists with reference to the North Torrey Pines Road/La Jolla Shores Drive intersection.


Nancy Acevedo

DP:csb

cc: Traffic Engineering
Open Space Maintenance Manager



EUCALYPTUS TREE BARRIER REQUIREMENTS

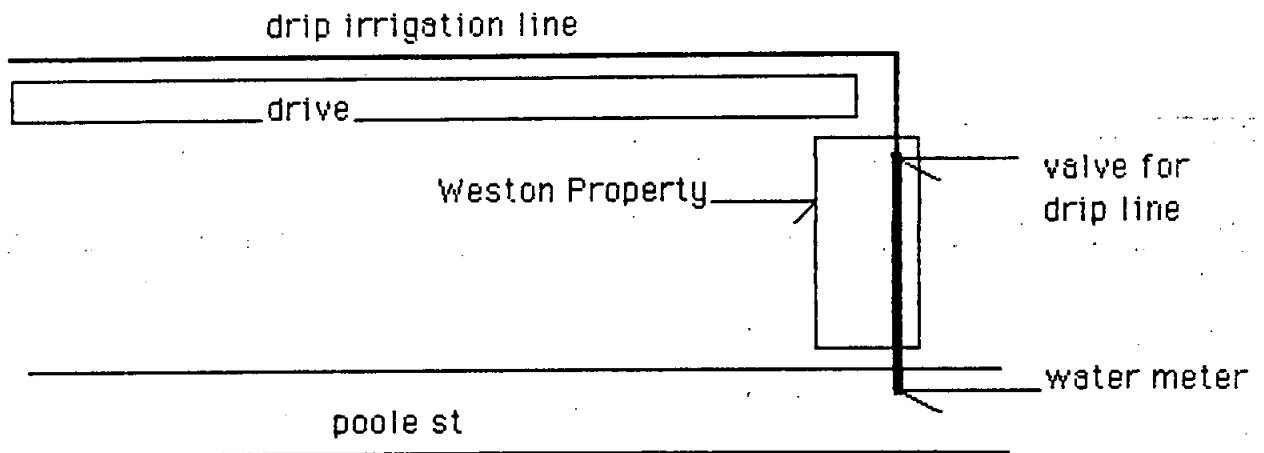
DEVELOPMENT PLAN ESTABLISHED
PURSUANT TO THE CITY OF SAN DIEGO
FLAT RATE LEASE PARAGRAPH 6.09

1. Lessee will grade the leased premises and surface same with three (3) inches of crushed granite, said grading and surfacing to be completed within sixty (60) days of the commencement of the Lease.

2. Lessee will plant fifty-eight (58) eucalyptus trees as designated in Exhibit "B-1" to the Lease, said tree planting to be completed within six (6) months of the commencement of the Lease.

3. Lessee shall install a temporary irrigation system and maintain same until eucalyptus trees are established. Said system shall be comprised of a drip irrigation system at low pressure which will be installed from a valve and electronic station on Weston property. A separate emitter will be present for each tree and shall be maintained until trees are established which is estimated to be approximately one (1) year from date of planting. Said irrigation system will be completed in conjunction with the planting of the trees, but in no event will it be completed later than six (6) months from the commencement of the Lease.

DIAGRAM FOR DRIP IRRIGATION



DESCRIPTION:

Drip line will be installed off existing electronic valve station in rear of Weston Property. Separate valve will be taken from existing main irrigation line which comes directly from city water meter. Back flow preventer and shut off valves are already in existence. Pressure required is just 20 PSI and a pressure regulator will be installed to insure proper pressure. Each emitter is 1gal/hour. One emitter will be installed per tree. Irrigation times will be adjusted based on need.

Let us join hands to conserve water

This is a contract ✓ this is a bid , Made In Duplicate . Date 10-2-85

Address

Zip

Phone

Specifications

Customer

3/10/86
4/10/86
GRR
72200 503
(R-86-1228)

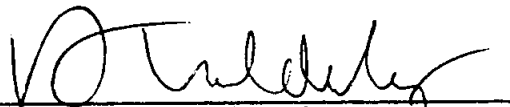
RESOLUTION NUMBER R- **265138**

ADOPTED ON **FEB 24 1986**

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, three lease agreements with ROBERT L. and SUSAN E. WESTON; DR. JONATHAN S. SMITH; and MAXINE BOYL, Trustee, for City-owned property at La Jolla Shores Drive and North Torrey Pines Road for use for access to their adjacent property, at a combined initial annual lease rental of \$801, under the terms and conditions set forth in those lease agreements on file in the office of the City Clerk as Document Nos. RR- 265138 -1, RR- 265138 -2 and RR- 265138 -3.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
12/27/85
Or.Dept:Prop.
Job:218349
R-86-1228
Form=r.none