

Paul Crawford
5/A
(R-98-1261)

RESOLUTION NO. 290151

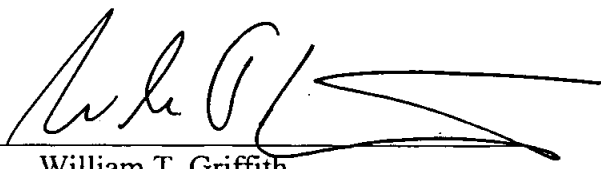
ADOPTED ON MAY 26 1998

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is hereby authorized to execute, for and on behalf of the City, a five-year permit agreement with

Mossy Ford, a copy of which is on file in the office of the City Clerk as Document No.

RR- 290151, for parking and storage of new cars on an approximately 0.68-acre parking lot in City-owned Rose Canyon Operations Station, being a portion of Pueblo Lot 1209, at an initial monthly permit fee of \$4,200, which amount City Valuation Staff has determined to be at fair market value.

APPROVED: CASEY GWINN, City Attorney

By: 

William T. Griffith
Deputy City Attorney

WTG:cdk
04/30/98
Or.Dept.REA
Job:222005
R-98-1261



THE CITY OF

SAN DIEGO

REAL ESTATE ASSETS DEPARTMENT, MAIL STATION 51-A

CIVIC CENTER PLAZA, 1200 THIRD AVENUE, SUITE 1700

SAN DIEGO, CALIFORNIA 92101-4199 TELEPHONE: (619) 236-6020

FAX: (619) 236-6706

April 21, 1995

Files: Property File - N305-1

Permit File - Mossy Ford

Job 222005

Mossy Ford
4570 Mission Bay Drive
San Diego, CA 92109

Attention: Tim Paulus

Re: Right of Entry Permit - Portion of Pueblo Lot 1209, Parking Lot at Rose Canyon Operations Station

The City of San Diego ("City") hereby grants permission to Mossy Ford ("Permittee") to enter upon the above-referenced City-owned property ("permit area"), as delineated on the attached Exhibit "A," upon the following terms and conditions:

1. Permittee's use of the permit area shall be limited to parking and storage of new motor vehicles.
2. Consideration to City for granting this permit shall be a \$360 non-refundable processing fee and a \$4,000 monthly permit fee commencing on the effective date hereof. Permit fees are payable at the office of the City Treasurer on or before the first day of each month. The first and last months' permit fees will be prorated as necessary to achieve payment on the first of the month. Payments postmarked or paid in person after the first of the month will be subject to a 5 percent late charge if 1 to 15 days past due, and to an additional 5 percent late charge if 16 or more days past due. In no event shall the late charge be less than \$25.
3. Beginning with the second year of this permit, the permit fee will be adjusted annually as of May 1st to reflect any increase in the Consumer Price Index during the preceding year. The index used will be the CPI for "All Urban Consumers" for the Los Angeles/Anaheim/Riverside area. Permittee will continue paying the permit fee at the existing rate until notified of the new rate by the City. Permittee will then promptly remit the difference between the permit fees paid at the old rate and those due at the new rate.



DIVERSITY
BRINGS US ALL TOGETHER

4. In lieu of a portion of the cash permit fees, Permittee shall hire and pay contractors to perform landscaping at the Rose Canyon Operations Station and other locations as directed by the City Manager. Permittee shall submit the paid invoices to the City Real Estate Assets Department to receive credit for the amount of the invoices against the permit fees due.
5. This permit shall be in effect on May 1, 1995 and shall expire on April 30, 1998.
6. Permittee certifies that a policy of public liability and property damage insurance, in which "The City of San Diego" is named as an additional insured, has been secured in an amount of not less than \$1 million combined single limit liability with an occurrence claims form and that said policy shall be kept in force for the duration of this permit. A certificate of said insurance shall be filed with the City Real Estate Assets Department upon execution of this permit.
7. Permittee 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 Permittee'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 permit area or the work and operations to be performed under this agreement, and all expenses of investigating and defending against same; provided, however, that Permittee's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the City, its agents, officers, or employees.
8. Permittee 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 Permittee's use of the permit area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
9. All risks in connection with Permittee's use of the permit area and any damages to the improvements thereon, thereunder, or in the vicinity thereof shall be borne in full by Permittee.
10. Permittee shall not use the permit area in any manner which, in the opinion of the City Manager, creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area.
11. This permit is revocable at any time by either City or Permittee upon 90 days advance written notice to the other party. It is mutually agreed that

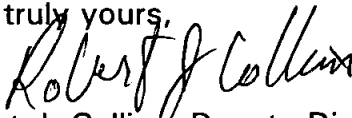
the City of San Diego shall not be obligated for any loss, financial or otherwise, which may be incurred by Permittee as a result of termination of this permit, and, further, that Permittee expressly waives any claim for expense or loss which Permittee might incur as a result of termination of this permit.

12. Permittee recognizes and understands that this permit may create a possessory interest subject to property taxation and that Permittee may be subject to the payment of property taxes levied on such interest. Permittee further agrees that such tax payment shall not reduce any fee paid the City of San Diego hereunder and that such tax shall be paid by Permittee before becoming delinquent.
13. Permittee shall at its sole cost and expense comply with all the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the permit area.
14. Upon expiration or earlier termination of this permit, Permittee shall at its sole cost remove all materials and repair and/or restore the permit area to its original condition, including any hazardous or toxic waste remediation, to the satisfaction of the City Manager.
15. Permittee shall not assign any rights granted by this permit nor any interest therein without the prior written approval of the City Manager. Approval of any such proposed assignment may be withheld in the sole and absolute discretion of the City Manager. Any assignment by operation of law shall automatically terminate this permit.
16. No signs shall be displayed on the permit area without the prior written consent of the City Manager.
17. Maintenance and security of the permit area shall be the sole responsibility of Permittee during the entire term of this permit.
18. This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301.

Please acknowledge your agreement to the foregoing terms and conditions on the enclosed copy of this letter and return it to the City Real Estate Assets Department, together with your insurance certificate and check for \$360 made payable to the "City Treasurer," within 10 days from receipt hereof. You will be billed monthly for the \$4,000 monthly permit fee.

If you should require additional information or have any questions, please call Paul Crawford, Property Agent, at 236-5952.

Very truly yours,



Robert J. Collins, Deputy Director
Asset Management and Marketing Division

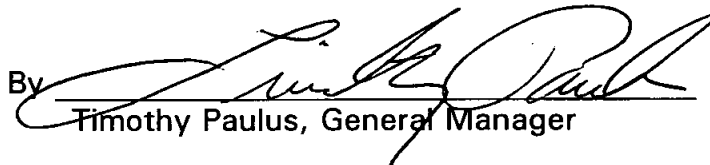
RJC:PTC:dcj (I:\WPO\1995\CRAWFORD\RE-MOSSY.WPD)

Attachments

cc: County Assessor
General Services

THE ABOVE IS ACKNOWLEDGED AND ACCEPTED THIS 26 DAY OF April, 1995.

MOSSY FORD

By 
Timothy Paulus, General Manager

By _____

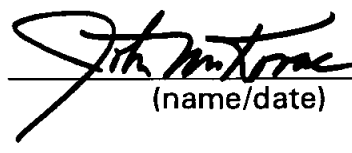
APPROVED AS TO FORM AND LEGALITY

JOHN W. WITT, City Attorney

By 
Chief Deputy City Attorney

DEVELOPMENT AND ENVIRONMENTAL PLANNING

ENVIRONMENTAL CLEARANCE:

 SRENV PLANNER/EAS
(name/date) 4/25/95

LOCATION
SEE DETAILED MAP

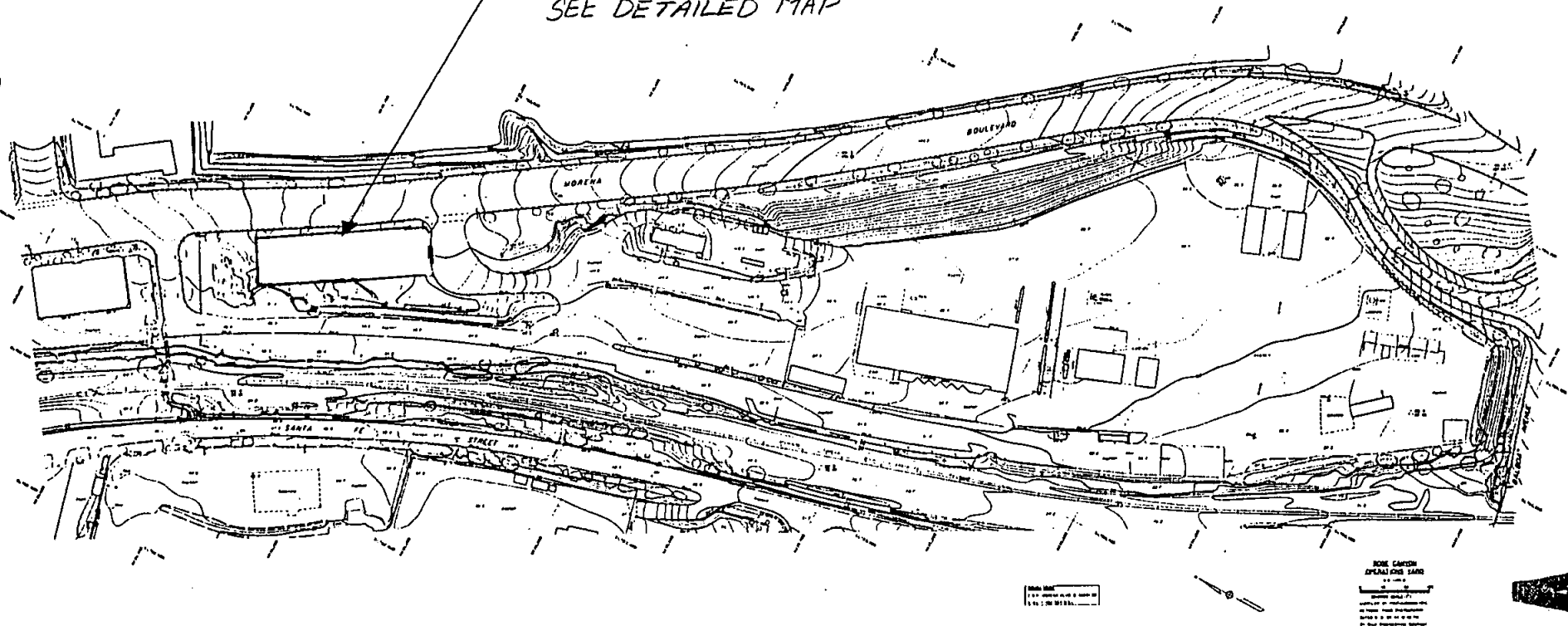


EXHIBIT A

4
N

SCALE 1"=40'

MORENA BLVD

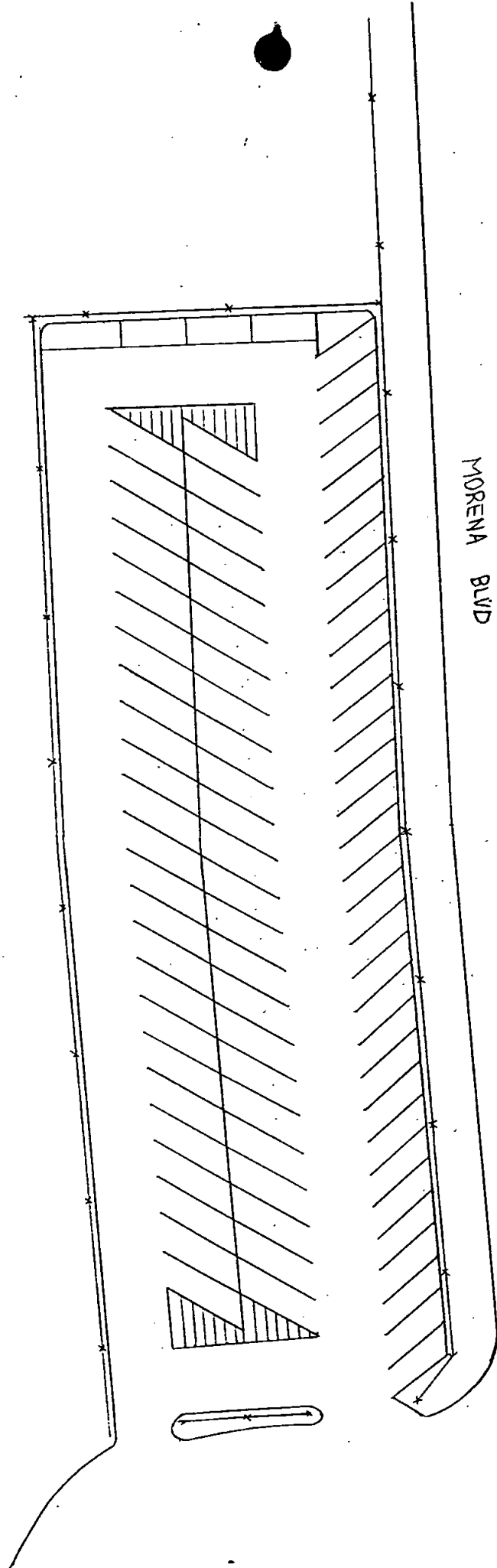


EXHIBIT A



COPY

COPY

THE CITY OF SAN DIEGO

February 27, 1998

Files: Property File - N305-1
Permit File - Mossy Ford
Job: 222005

RECEIVED
MAR 05 1998
REAL ESTATE ASSET

Mossy Ford
4570 Mission Bay Drive
San Diego, CA 92109

Attention: Tim Paulus, General Manager

Re: Right of Entry Permit - Portion of Pueblo Lot 1209, Parking Lot at Rose Canyon Operations Station

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DOCUMENT NO. 22-290151

FILED MAY 26 1998

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Real Estate Assets

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



4. In lieu of a portion of the cash permit fees, Permittee shall hire and pay contractors to perform landscaping at the Rose Canyon Operations Station and other locations as directed by the City Manager. Permittee shall submit the paid invoices to the City Real Estate Assets Department to receive credit for the amount of the invoices against the permit fees due.
5. This permit shall be in effect on May 1, 1998 and shall expire on April 30, 2003.
6. Permittee certifies that a policy of public liability and property damage insurance, in which "The City of San Diego" is named as an additional insured, has been secured in an amount of not less than \$1 million combined single limit liability with an occurrence claims form and that said policy shall be kept in force for the duration of this permit. A certificate of said insurance shall be filed with the City Real Estate Assets Department upon execution of this permit.
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9. All risks in connection with Permittee's use of the permit area and any damages to the improvements thereon, thereunder, or in the vicinity thereof shall be borne in full by Permittee.
10. Permittee shall not use the permit area in any manner which, in the opinion of the City Manager, creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area.

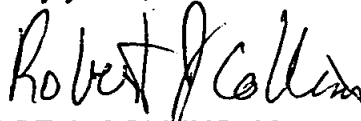
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Please acknowledge your agreement to the foregoing terms and conditions on the enclosed copy of this letter and return it to the City Real Estate Assets Department within 10 days from receipt hereof.

Mossy Ford
February 27, 1998
Page 4

If you should require additional information or have any questions, please call Paul Crawford, Property Agent, at 236-5952.

Very truly yours,



ROBERT J. COLLINS, Manager
Real Estate Assets Department

Date: MAY 26 1998

PTC:csn

Attachments

cc: County Assessor
City Equipment Division

I:\WPO\1998\CRAWFORD\F-MOSSY.66

R-290151

Mossy Ford
February 27, 1998
Page 5

THE ABOVE IS ACKNOWLEDGED AND ACCEPTED THIS 3 DAY OF
March, 1998.

MOSSY FORD

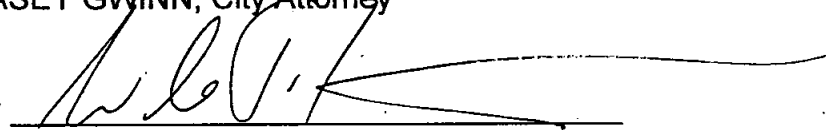
By


Timothy Paulus, General Manager

APPROVED AS TO FORM AND LEGALITY

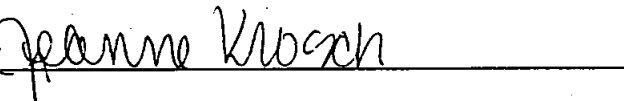
CASEY GWINN, City Attorney

By


Deputy City Attorney

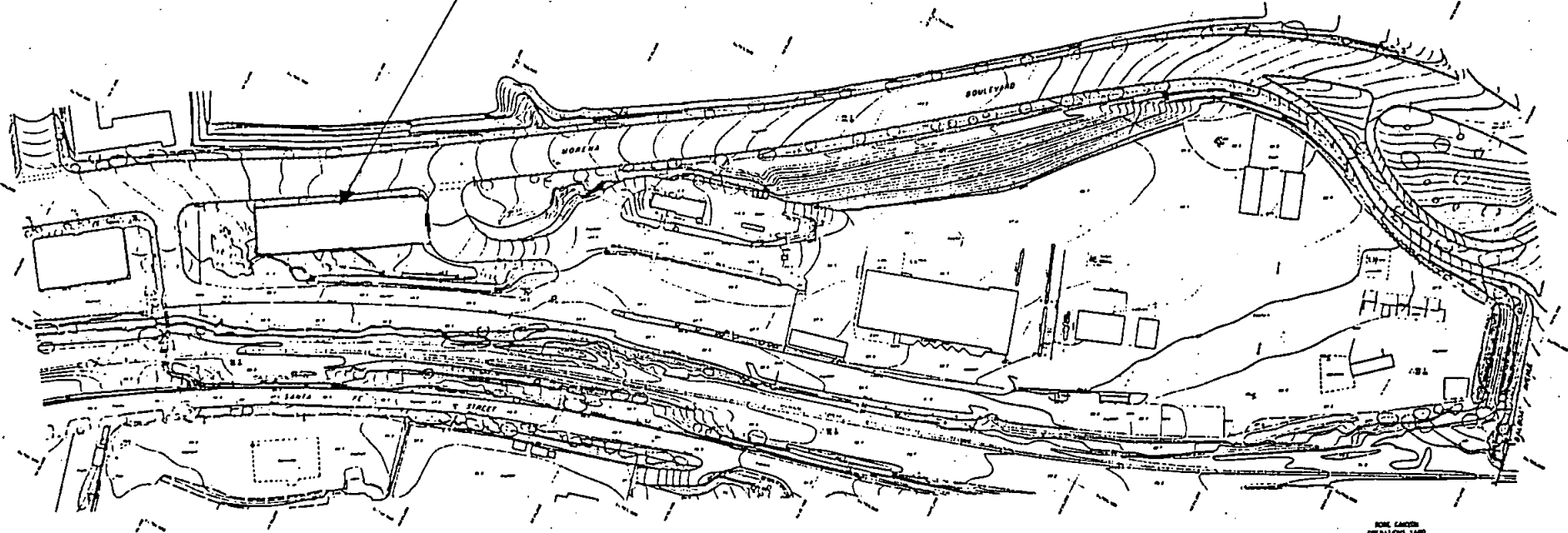
ENVIRONMENTAL ANALYSIS SECTION
ENVIRONMENTAL CLEARANCE:

By


Jeanne Krogh

R-290151

LOCATION
SEE DETAILED MAP



Scale 1:10,000
1 inch = 100 feet

NOTE: LAYOUT
APPROXIMATE
ONLY

EXHIBIT A



SCALE 1" = 40'

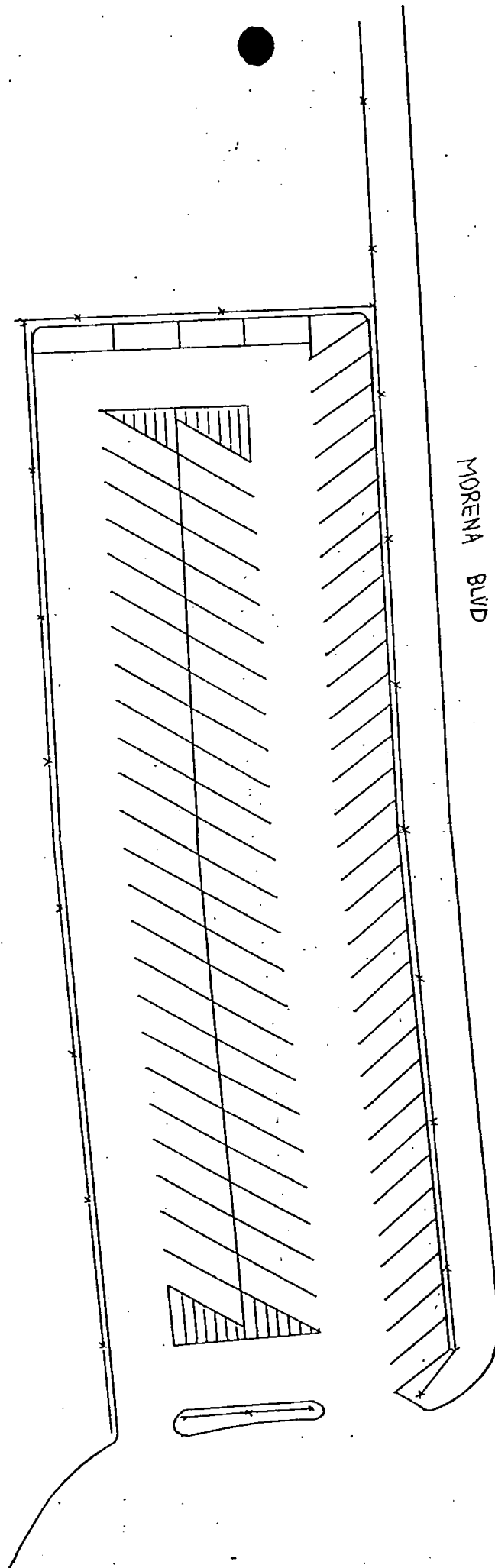


EXHIBIT A

ORIGINAL



THE CITY OF SAN DIEGO

MOSSY FORD, INC.

Flat Rate Lease

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**CITY OF SAN DIEGO
FLAT RATE LEASE**

THIS LEASE AGREEMENT ("Lease") is executed between THE CITY OF SAN DIEGO, a municipal corporation ("CITY"), and MOSSY FORD, INC., a California corporation ("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, located on Morena Boulevard in CITY'S Rose Canyon Operations Station, and being the existing fenced paved parking lot shown on Exhibit "A" attached to this Lease and by this reference made part of this Lease. The real property is hereinafter called the "Premises".
- 1.2 Uses. It is expressly agreed that the Premises are leased to LESSEE solely and exclusively for the purposes of new car storage and for 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 CITY.

LESSEE covenants and agrees to use the Premises for the above-specified purposes and to diligently pursue the purposes throughout the term of this Lease. Failure to continuously use the Premises for the purposes, or the use of the Premises for purposes not expressly authorized in this Lease, shall be grounds for termination by CITY.
- 1.3 Related Council Actions. By entering into 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 Premises.

LESSEE shall be solely responsible for processing all land use, development, and construction approvals required for the use and occupancy of the Premises. This Lease shall not be interpreted by any decision maker on any CITY-issued permit or approval to override or dictate the outcome of any findings required for any permit or development approval.

- 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 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.

1.5 Easements and Reservations.

- a. CITY 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 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 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, LESSEE shall provide competent management of the Premises to the satisfaction of the City Manager. For the purposes of this section, "competent management" shall mean demonstrated ability in the management and operation of a new car storage lot and related activities in a fiscally responsible manner.

SECTION 2: TERM

- 2.1 Commencement. The term of this Lease shall be three (3) years commencing on the first day of the calendar month following execution by the City Manager or designee and approval by the City Attorney. "Lease year" as used in this Lease shall mean the twelve (12)-month period commencing on the first day of the calendar month following the execution of this Lease by the City Manager or designee. CITY or LESSEE may terminate this Lease without cause upon sixty (60) days prior written notice to the other party.
- 2.2 Holdover. Any holding over by LESSEE after Lease expiration or Lease 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 Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease shall continue in full force and effect; provided, however, CITY shall have the right to increase the 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 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. Rent is due monthly in advance on or before the first day of each calendar month. All monthly 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 calendar month. 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 122289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, Suite 100, 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. 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. Rent Amount. The rent for the first year of this Lease shall be Five Thousand Seven Hundred Dollars (\$5,700) per month. The rent for the second and third years of this Lease shall be subject to an adjustment based on the increase, if any, in the Consumer Price Index (CPI) as hereinafter provided.
- b. CPI Index Adjustments. At the end of the first and second years following the effective date of the Lease, the rent shall be adjusted to reflect increases in the CPI.

The index used will be the CPI for "All Urban Consumers" for Los Angeles/Riverside/Orange County, 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 the aforesaid index. If a rental adjustment is calculated using an index from a different base year than 1982-84, 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 the first and second anniversaries of the commencement date of the Lease. Until the rent adjustment can be reasonably determined by the index method, LESSEE shall 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 CITY within thirty (30) days. In no event shall the adjusted rent as established by the CPI be less than the rent in existence immediately prior to the adjustment date.

- c. Rent Credit. In lieu of a portion of the cash rent, LESSEE shall hire and pay contractors to perform CITY-approved landscaping at CITY'S Rose

Canyon Operations Station, Chollas Operations Station, and other locations as directed by the City Manager. LESSEE shall submit the paid invoices on a quarterly basis to CITY'S Real Estate Assets Department to receive credit for the amount of the invoices against the rent due.

- 3.3 Delinquent Rent. If LESSEE fails to pay the rent when due, LESSEE shall 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 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 Twenty-five Dollars (\$25).

In the event that the CITY audit, if applicable, discloses that the rent for the audited period has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit 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. 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.

- 3.4 Inspection of Records. LESSEE agrees to make any and all records and accounts available to CITY for inspection at all reasonable times so that CITY can determine LESSEE'S compliance with this Lease. These records and accounts will be made available by LESSEE at the Premises and will be complete and accurate showing all income and receipts from use of the Premises. LESSEE'S failure to keep and maintain records and make them available for inspection by CITY is a breach of this Lease and cause for termination. LESSEE shall maintain all such records and accounts for a minimum period of five (5) years. This section shall survive expiration or earlier termination of this Lease.

SECTION 4: ASSIGNMENT/DEFAULT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence for all of the terms, covenants, and conditions of this Lease, and, except as otherwise provided in this Lease, 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 in this Lease and shall not sublet the Premises or any part of the Premises, or any right or privilege appurtenant to this Lease, 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 assignment or subletting without CITY'S 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 section 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.

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 Lease which are applicable to the rights acquired. The City Manager may require, as a condition to approval of any sublease of the majority portion of the leasehold or any assignment, 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.

- 4.3 Encumbrance. LESSEE shall not encumber this Lease, its leasehold estate, and its improvements thereon by deed of trust, mortgage, chattel mortgage, or other security instrument during the term hereof.

- 4.4 Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE fails to make any payment required under this Lease when due and fails to make full payment within three (3) days following written notice thereof from CITY; or

- (2) LESSEE defaults in the performance of any covenant or condition required by this Lease to be performed by LESSEE and fails to cure the default within thirty (30) days following written notice from CITY; or if any such default is not curable within thirty (30) days, and LESSEE fails to commence to cure the default(s) within the thirty (30)-day period and diligently pursue the cure to completion; or
- (3) LESSEE voluntarily files or has involuntarily filed against it any petition under any bankruptcy, or insolvency act or law; or
- (4) LESSEE is adjudicated a bankrupt; or
- (5) LESSEE makes 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 of the Premises; and CITY may enter and take possession of the Premises. Provided, however, in the event that any default described in Subsection 4.4a.(2) above 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 the cure to completion.

- b. Abandonment by LESSEE. Even though LESSEE has breached the Lease and abandoned the Premises, 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 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 the 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 the 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 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 taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled but limited 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.

SECTION 5: INSURANCE RISKS/SECURITY

- 5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold CITY, its elected officials, officers, employees, agents, and representatives 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 Lease, 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 sole willful misconduct of CITY, its elected officials, officers, employees, agents, and representatives.
- 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 Two Million Dollars (\$2,000,000) 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.
- b. LESSEE'S responsibility to maintain said insurance also includes the following:
- (1) Additional Insureds. All insurance policies will, by separate endorsement, name "The City of San Diego, its elected officials, officers, employees, agents, and representatives" as additional insureds, protect them against any legal costs in defending claims, and will not terminate without sixty (60) 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. A copy of the insurance policy must be provided prior to CITY'S execution of the Lease and 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.

- (2) 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 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 causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the Premises. 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. The 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 b.(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 Premises within ten (10) days of the 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 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 the damage and to restore the Premises to the condition which existed prior to the damage; or, at CITY'S option, LESSEE agrees to clear and remove from the Premises all debris resulting from the damage within thirty (30) days of written notice from CITY. CITY may determine an equitable deduction in the rent for the period or periods that the Premises are untenable by reason of the 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 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 the 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 on the Premises. In the event that such entry or inspection by CITY discloses that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, but not the obligation, 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 the Premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that the 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. The bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of the 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, maintenance, and repair of the Premises throughout the term. LESSEE

shall 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 all applicable laws. All applicable codes and standards of CITY and other government agencies shall be observed in all maintenance, repairs, and replacements on the Premises.

- 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. 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 Premises. All utilities shall be installed underground.
- 6.6 Construction Bond. Whenever there is any construction to be performed on the Premises, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of one hundred percent (100%) 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 claims, including reasonable attorneys' 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 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 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. If any such unauthorized item is found on the Premises, LESSEE agrees to remove the item at its expense within twenty-four (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

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 the items at LESSEE'S expense.

- d. If any removal of personal property by LESSEE results in damage to the remaining improvements on the Premises, LESSEE agrees to repair all the damage at its expense.
- e. Any necessary removal by either CITY or LESSEE which takes place beyond the expiration or termination of this Lease shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to the 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 the Premises upon expiration or termination of this Lease, then CITY shall have the first right to acquire or purchase 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, the 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 the fact within ten (10) days after the beginning of any claimed delay.

6.12 Hazardous/Toxic Waste. LESSEE shall not allow the installation of 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 769704-1 and by this reference is incorporated in this Lease.

In the event of any release of a hazardous substance in, on, under, or from the Premises at any time during which LESSEE has occupied the Premises under this Lease or under previous agreements, 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 the 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 Premises 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. The 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. To the extent that the presence of hazardous substances occurred during LESSEE'S occupancy of the Premises, 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.

LESSEE'S obligations under this section shall survive expiration or earlier termination of this Lease, pursuant to Section 7.15, Survival, of this Lease.

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 as follows:

Mossy Ford, Inc.
Attention: General Manager
4570 Mission Bay Drive
San Diego, CA 92109;

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 by like notice designate a different address to which notices shall be sent.
- c. Notice served pursuant to the terms of this Section 7.1 shall be effective upon personal service or two (2) days after service by mail.

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 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 or designee 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. LESSEE acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. LESSEE and all of its subcontractors are individually responsible to abide by its contents.

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 on any basis prohibited by law.

LESSEE submitted and CITY acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that LESSEE will take to achieve CITY'S commitment to equal employment opportunities.

LESSEE agrees to insert the foregoing provisions in all subcontracts for any work covered by this Lease so that such provisions will be binding upon each subcontractor. LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by CITY'S Equal Opportunity Contracting Program staff.

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 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. The 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 Lease, agrees that there is no other written or oral understanding between the parties with respect to the 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 (12) months immediately preceding the 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, 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) 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 shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with the 1990 Americans with Disabilities Act and Title 24 of the California Code of Regulations [Building Code] as defined in Section 18910 of the California Health and Safety Code and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.
- 7.14 Best Management Practices. CITY and LESSEE are committed to the implementation of programs to manage activities on the Premises in a manner which aids in the protection of San Diego's precious water resources. LESSEE shall comply with the Best Management Practices ("BMP") including the Stormwater Pollution Prevention Plan ("SPPP") approved by CITY'S Stormwater Management Program. LESSEE shall submit for review and approval by the City Manager or designee, within ninety (90) days of the effective date of this Lease, BMP and SPPP that will control erosion and reduce the amount of pollutants and other sediments discharged from the Premises. The BMP and SPPP will be reviewed periodically by CITY. Upon written notice from the City Manager requesting an update of the BMP, LESSEE shall submit updated BMP and SPPP for City Manager review and approval within ninety (90) days of receipt of notice. LESSEE shall implement any necessary changes to the BMP and SPPP as a result of any review by CITY to ensure compliance with any changes in laws or regulations.

When the BMP and SPPP have been developed and implemented by LESSEE, it is crucial that the practices be enforced and maintained. It is LESSEE'S responsibility to inform employees, contractors, subcontractors, agents, and

vendors of the BMP and SPPP.

- 7.15 Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive the expiration or termination of the Lease.
- 7.16 Corporate Authority. Each individual executing this Lease on behalf of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this Lease is binding upon the corporation in accordance with its terms, and that LESSEE is a duly qualified corporation as provided in Section 9.2, Corporate Name, of this Lease, and all steps have been taken prior to the effective date of this Lease to qualify LESSEE to do business in California.
- 7.17 Supersedure. It is mutually agreed that this Lease, upon its effective date, supersedes and annuls that certain Right-of-Entry Permit executed on May 26, 1998, with Mossy Ford, Inc., City Clerk Document No. RR-290151, 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 that permit.

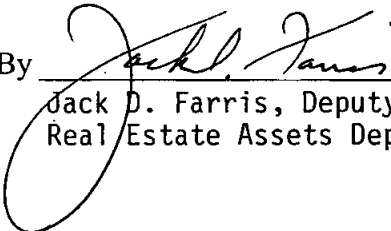
SECTION 8: SIGNATURES

8.1 Signature Page.

This Lease 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 1-11-05

By 
Jack D. Farris, Deputy Director
Real Estate Assets Department

LESSEE: MOSSY FORD, INC.

Date 1-7-05

By 
President

By _____

APPROVED as to form and legality this 13th day of January, 2005

~~CASEY GWINN~~, City Attorney
MICHAEL AGUIRRE

By 
Deputy City Attorney

PC/cj

12/1/04

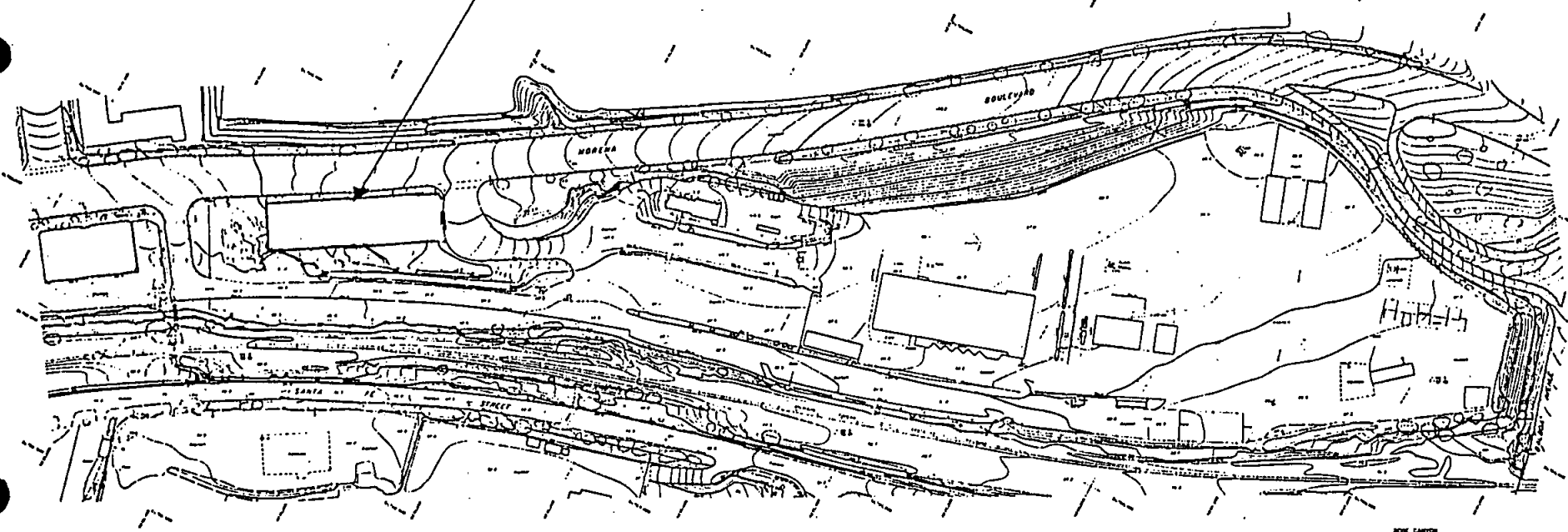
I:\WPO\2004\CRAWFORD\LEASE-MOSSY FORD.wpd

SECTION 9: EXHIBITS

9.1 Parcel Map(s) - Exhibit "A"

See Pages 22a and b.

LOCATION
SEE DETAILED MAP



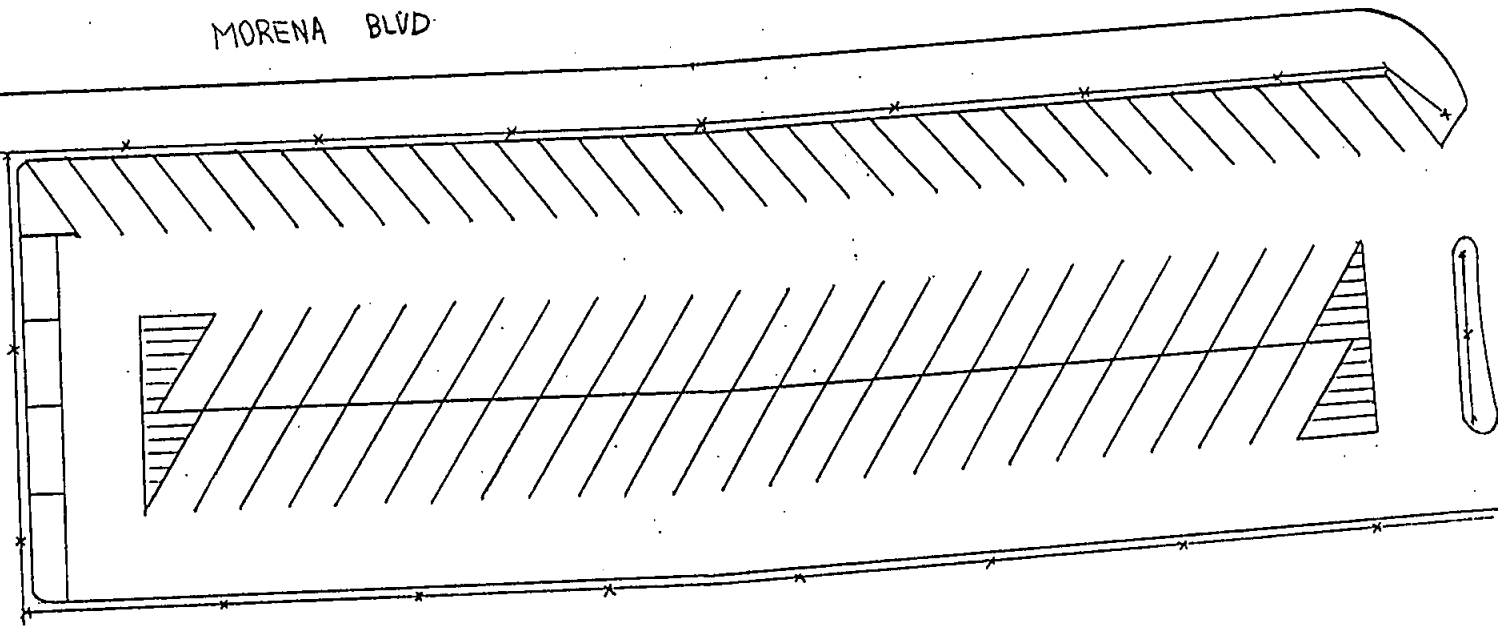
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ROCK CANYON
SPREADING LANE
1:100,000
General Scale 1:100,000
Scale of map projection
Scale of map projection
Scale of map projection

-22a-



MORENA BLVD



-22b-



9.2 Corporate Name.

MOSSY FORD, INC.
CORPORATE NAME

I, John Epps, certify that I am the
SECRETARY of the corporation named in the attached Lease; that
Philip Mossy, who signed this Lease on behalf of the corporation, was then
PRESIDENT of the corporation; that this Lease was duly signed for and on
behalf of the corporation by authority of its governing body, pursuant to a resolution duly
adopted by its Board of Directors on DECEMBER 22, 2004, and is within the
scope of its corporate powers; and that set out below are the names of the officers and directors
of the corporation.

By



SECRETARY

CORPORATE SEAL

Name

Philip Mossy

Title

PRESIDENT

Name

John Epps

Title

SECRETARY / TREASURER.

Name

Title

Name

Title