



THE CITY OF

SAN DIEGO

PROPERTY DEPARTMENT, MAIL STATION 51-A

SECURITY PACIFIC PLAZA, 1200 THIRD AVENUE, SUITE 1700

SAN DIEGO, CALIFORNIA 92101-4199

TELEPHONE: (619) 236-6020

FAX: (619) 696-0590

August 19, 1992

BELINSKY, ARNOLD & ESTHER
ATTN: RICHARD C DENTT
3838 CAMINO DEL RIO NORTH STE#300
SAN DIEGO CA 92108

Dear Lessee:

As you may know, Congress has passed a federal law, "Americans with Disabilities Act" (ADA), including requirements for public accommodations, which became effective on January 26, 1992. This act bars discrimination against persons with disabilities in provision of services, communications, employment and access to building entrances and interiors. Compliance to this Act is far reaching in its application and must be observed by City lessees.

Your lease with the City has a clause entitled "Compliance With Law", or a variation of that title, which makes you as a lessee responsible for obeying all State and Federal laws. The ADA is included under that clause and must be observed. Therefore, any additions, modifications, remodeling, or reconstruction of the leased premises, including temporary structures, must be properly permitted and take into account the requirements of the ADA, as well as State building codes pertaining to access and use of the premises.

It is our suggestion that if you are contemplating any form of modification of your premises that you obtain architectural and/or legal advice to ensure that you have complied with all of the requirements of ADA. If modifications are not contemplated, it is our understanding that you may still have an obligation to make modifications which are readily achievable; that is, modifications which can be completed without much difficulty or expense in order to remove architectural barriers and communication barriers which are structural in nature.

If there are any questions in this matter, the City has appointed an ADA Coordinator, Patricia Sieglen, who can be reached at 236-5979 for questions or clarifications of the Act. You may also wish to consult your own lawyer regarding legal interpretation of the Act.

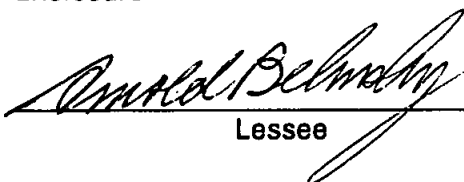
Please acknowledge receipt of this notice by signing, dating and returning the enclosed copy to the above address.

Sincerely,

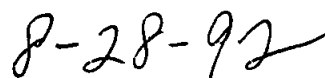
James L. Spotts
Property Director

JLS:GRR:st(3)

Enclosure



Lessee

 , 1992

Date



DIVERSITY
BRINGS US ALL TOGETHER





THE CITY OF

SAN DIEGO

CITY ADMINISTRATION BUILDING • 202 C STREET • SAN DIEGO, CALIF. 92101

OFFICE OF THE
CITY MANAGER
236-6363

October 8, 1987

File: Leases - Rijo Enterprises

Richard C. Dentt, President
Rijo Enterprises, Inc.
c/o Dentt Properties
2650 Camino del Rio North, Suite 310
San Diego, CA 92108

Dear Mr. Dentt:

Re: Your Letter of July 6, 1987, Regarding Lease Agreement Between City of
San Diego and Rijo Enterprises

Property Department staff has reviewed your request of July 6, 1987, to extend the development schedule completion date of the Mercury Street property to September 21, 1987. Based upon the evidence provided in your letter and pursuant to Section 6.10, Unavoidable Delay, of the lease agreement, the City will approve of an extension of the development schedule completion date to September 21, 1987.

However, the provisions of Section 6.12, Failure To Meet Development Schedule, of your lease will be imposed if the improvements are not completed by September 21, 1987.

Should you have any questions on this matter, please call Bob Collins, Property Agent, at 236-5518.

Very truly yours

Maureen A. Stapleton
Deputy City Manager

JLS:RJC:baa(5)43

CITY OF SAN DIEGO	
PROPERTY DEPT.	
☐	DIRECTOR
☐	DEPUTY MANAGER
☒	FILE COPY
☐	CHRON. COPY
☐	ORIGINATOR

RECEIVED

OCT 19 1987

PROPERTY DIRECTOR

A G R E E M E N T

THIS AGREEMENT is made by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and ARNOLD and ESTHER BELINSKY, husband and wife; EDWARD POLLACK and JOAN POLLACK, husband and wife; MIRIAM ISENSEE, an individual; and RICHARD I. SINGER, as trustee for the James Isensee Trust, hereinafter called "BELINSKY, POLLACK, and ISENSEE."

This agreement involves the two parcels of property described in Attachment 1 hereto, which attachment is by this reference incorporated herein. The property described as Parcel A is leased to ARNOLD and ESTHER BELINSKY and the property described as Parcel B is owned by BELINSKY, POLLACK and ISENSEE.

WHEREAS, ARNOLD and ESTHER BELINSKY are the lessees from the CITY of Parcel A, which lease has a term of 55 years commencing July 1, 1986, and a copy of which is on file in the Office of the City Clerk as Document No. RR-266057; and

WHEREAS, BELINSKY, POLLACK, and ISENSEE own adjacent Parcel B in fee; and

WHEREAS, the building presently located on Parcel B is approximately 40 feet from the property line of Parcel A, as more particularly described in Attachment 2 hereto, which attachment is by this reference incorporated herein; and

WHEREAS, the present building regulations of CITY require a minimum of a 60-foot distance between said building and an adjacent property line for the type of construction, allowable area and occupancy classification currently present and utilized and there is, therefore, a nonconforming use as to the present building on Parcel B; and

WHEREAS, BELINSKY, POLLACK, and ISENSEE have agreed to enter into this agreement to, in effect, hold Parcels A and B in one "ownership" during the remaining term of the lease; and

WHEREAS, the building presently located on Parcel A is more than 60 feet from the building located on Parcel B which, in effect, conforms to the intent of the minimum 60-foot separation required by the present CITY regulations regarding type of construction, allowable area and present occupancy classification.

NOW, THEREFORE, in consideration of the above recitals and for other good and valuable consideration, CITY and BELINSKY, POLLACK, and ISENSEE agree as follows:

1. BELINSKY, POLLACK, and ISENSEE agree to, in effect, hold Parcels A and B in one ownership during the remaining term of the above specified lease of Parcel A.

2. BELINSKY, POLLACK, and ISENSEE agree that so long as the CITY'S regulations require a 60-foot separation between building and property line in order to satisfy type of construction, allowable area and present occupancy classification requirements, the building on Parcels A and B shall be separated by a minimum distance of 60 feet, or in the alternative and subject to prior CITY approval, the buildings may be connected to be utilized as a single building.

3. BELINSKY, POLLACK, and ISENSEE further agree that in the event of expiration or earlier termination of the above-described lease, or in the event of sale of Parcel B without concurrent assignment of the Parcel A lease to the purchaser, the building on Parcel B shall be brought into compliance with all then applicable CITY regulations with regard to type of construction, allowable area and occupancy classification.

4. CITY agrees that so long as BELINSKY, POLLACK, and ISENSEE comply with the above provisions and conditions, BELINSKY, POLLACK, and ISENSEE and the building presently located on Parcel B shall be deemed in compliance with CITY'S regulations relating to allowable area for buildings of the type of construction of said buildings and for the occupancy for which the same is presently utilized. CITY further agrees that BELINSKY, POLLACK, and ISENSEE may, at their election, at any time subsequent to the date hereof and prior to the termination of the above-described lease, bring the building on Parcel B into compliance with all then applicable CITY regulations with regard to type of construction, allowable area and occupancy; and if they elect to do so, then all of the obligations of BELINSKY, POLLACK, and ISENSEE set forth in Paragraphs 1 through 3 inclusive, above, shall be deemed fully satisfied.

5. CITY and BELINSKY, POLLACK, and ISENSEE agree that this agreement and all of the covenants and conditions contained herein will be binding and will inure to the benefit of all heirs, successors, and assigns of the parties hereto and shall run with the land.

IN WITNESS WHEREOF, this agreement is executed by The City of San Diego.

Dated this 8th day of march, 1989.

THE CITY OF SAN DIEGO
GORDON W. MURDOCH, DIRECTOR

By *Arnold Belinsky*
Building Inspection Department

ARNOLD AND ESTHER BELINSKY

By _____
Arnold Belinsky

By _____
Esther Belinsky

EDWARD AND JOAN POLLACK

By _____
Edward Pollack

By _____
Joan Pollack

MIRIAM ISENSEE

By _____
Miriam Isensee

IN WITNESS WHEREOF, this agreement is executed by The City of San Diego.

Dated this 8th day of March, 1989.

THE CITY OF SAN DIEGO

STATE OF CALIFORNIA

COUNTY OF San Diego

SS.



On this 8th day of January, in the year 19 90,
before me, the undersigned, a Notary Public in and for said State, personally appeared
Arnold Belinsky and Esther Belinsky

_____, personally known to me
(or proved to me on the basis of satisfactory evidence) to be the person s whose name s
are subscribed to the within instrument, and acknowledged to me that he 7
executed it.

WITNESS my hand and official seal.

Carnage J. Logan
Notary Public in and for said State.
Carnage J. Logan

ACKNOWLEDGMENT—General—Wolcotts Form 233CA—Rev. 5-82
©1982 WOLCOTTS, INC.

3pg-3/3/89

Edward Pollack and Joan Pollack
☒ personally known to me ☐ proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) are
subscribed to this instrument and acknowledged that they
executed the same.

WITNESS my hand and official seal.

Signature Wendy D. Tucker

EDWARD AND JOAN POLLACK

By Edward R. Pollack
Edward Pollack

By Joan Pollack
Joan Pollack

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

SS.

On November 2, 1989

before me, the undersigned, a Notary Public in and for said County
and State, personally appeared Miriam Isensee
aka Miriam Scott

_____, known to me
to be one of the partners of the partnership
that executed the within instrument, and acknowledged to me that
such partnership executed the same.

Signature Mary Ann Rocha
Notary Public in and for said County and State

FOR NOTARY SEAL OR STAMP



STATE OF CALIFORNIA

COUNTY OF San Diego

On March 22, 1989

before me, the undersigned, a Notary Public in and for

said State, personally appeared Richard I. Singer

personally

known to me to be the person is whose name

subscribed to the within instrument and acknowledged to me

that he executed the same.

WITNESS my hand and official seal.

Signature

Stacy Ann Snyder

Stacy Ann Snyder

Name (Typed or Printed)



RICHARD I. SINGER, AS TRUSTEE OF THE
JAMES ISENSEE TRUST

By

Richard I. Singer, as Trustee of
the James Isensee Trust

and legality of the foregoing agreement this
, 1989.

JOHN W. WITT, City Attorney

By

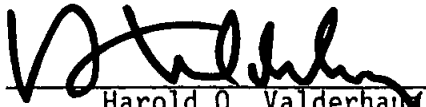
Harold O. Valderhaug
Harold O. Valderhaug
Deputy City Attorney

RICHARD I. SINGER, AS TRUSTEE OF THE
JAMES ISENSEE TRUST

By Richard I. Singer, as Trustee of
the James Isensee Trust

I HEREBY APPROVE the form and legality of the foregoing agreement this
13 day of March, 1989.

JOHN W. WITT, City Attorney

By 
Harold O. Valderhaus
Deputy City Attorney

MLS:baa(5)108
3-07-89

COPY

DOCUMENT NO. RR-266057

FILED JUN 23 1986

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

THE CITY OF SAN DIEGO

MERCURY STREET

LEASE OUTLINE

<u>SECTION</u>	<u>PARAGRAPH</u>	<u>PAGE</u>
SECTION 1:	USES	
1.01	Premises	1
1.02	Uses	1
1.03	Related Council Actions	1
1.04	Quiet Possession	2
1.05	Easements and Reservations	2
1.06	Political Activities	2
SECTION 2:	TERM	
2.01	Commencement	3
2.02	Holdover	3
2.03	Quitclaim and Surrender of LESSEE'S Interest	3
2.04	Surrender of Premises	3
SECTION 3:	RENT	
3.01	Place of Payment	4
3.02	Rent	4
3.03	Gross Income	5
3.04	Inspection of Records	6
3.05	Delinquent Rent and Audit Fees	8
SECTION 4:	ASSIGNMENT	
4.01	Time is of Essence; Provisions Binding on Successors	9
4.02	Assignment and Subletting	9
4.03	Encumbrance	10
4.04	Defaults and Remedies	11
4.05	Eminent Domain	13
4.06	Partnership Liability	14
SECTION 5:	INSURANCE RISKS/SECURITY	
5.01	Indemnity	14
5.02	Insurance	14
5.03	Waste, Damage or Destruction	16
SECTION 6:	IMPROVEMENTS/ALTERATIONS/REPAIRS	
6.01	Acceptance of Premises	17
6.02	Entry and Inspection	17
6.03	Maintenance	17
6.04	Improvements/Alterations	18
6.05	Utilities	18
6.06	Construction Bond	18
6.07	Liens	18
6.08	Taxes	19

LEASE OUTLINE

<u>SECTION</u>	<u>PARAGRAPH</u>	<u>PAGE</u>
	6.09 Ownership of Improvements and Personal Property	19
	6.10 Unavoidable Delay	20
	6.11 Development Plan	20
	6.12 Failure to Meet Development Schedule	21
SECTION 7:	GENERAL PROVISIONS	
	7.01 Notices	21
	7.02 Compliance with Law	21
	7.03 CITY Approval	22
	7.04 Nondiscrimination	22
	7.05 Equal Opportunity	22
	7.06 Partial Invalidity	22
	7.07 Legal Fees	22
	7.08 Number and Gender	22
	7.09 Captions	22
	7.10 Entire Understanding	22
	7.11 Corporate Authority	23
	7.12 Planting Strips	23
	7.13 City Employee Participation Policy	23
	7.14 Mortgage Requirement	23
	7.15 Arbitration	24
	7.16 Traffic Generation	24
SECTION 8:	SIGNATURES	
	8.01 Signature Page	25
SECTION 9:	EXHIBITS	
	9.01 Legal Description	26
	9.02 Description and Listing of LESSEE-owned Improvements	27
	9.03 General Development Plan	28
	"A" Development Plan Drawing	
	"B" City of San Diego Recommended Weekday Trip	
	Generation Rates Summary	

CITY OF SAN DIEGO

PERCENTAGE LEASE

THIS LEASE AGREEMENT is executed between the CITY OF SAN DIEGO, a municipal corporation, herein called "CITY," and Rijo Enterprises, Inc., 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 Section 9.01 herein and by this reference made part of this agreement. Said real property is hereinafter called the "premises".

1.02 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for uses which are in conformance with the applicable zone of the City's Zoning Ordinance designated for the premises and the approved development plan referred to in Section 6 herein and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose.

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 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.

6/86

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 or impair the security of any approved mortgage and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by the CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.06 Political Activities. The leased property shall be used exclusively for the purposes specified in Section I, USES, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.

SECTION 2: TERM

- 2.01 Commencement. The term of this agreement shall be 55 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 mutually agreed 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. CITY shall not record any quitclaim deed without the express consent of any approved leasehold mortgagee.

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.

- 2.04 Surrender of Premises. At termination of this lease for any reason, LESSEE shall execute, acknowledge and deliver to the CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the leasehold 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, the CITY may prepare and record a notice reciting the LESSEE'S failure to execute this lease provision and the notice will be conclusive evidence of the termination of this lease and all LESSEE rights to the premises.

SECTION 3: RENT

- 3.01 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 or delivered to the Office of the City Treasurer, City of San Diego, P.O. Box 2289, San Diego, California, 92112-4165.

The place of payment may be changed at any time by CITY upon thirty (30) days' written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. 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. Pre-Construction Period. Beginning on the effective date of the lease agreement, LESSEE shall pay to CITY Three Thousand Dollars (\$3,000) in advance as payment for the pre-construction period of the lease not to exceed six months. During the pre-construction period, LESSEE shall obtain all necessary permits, approvals and licenses for the proposed development at no cost to the CITY.
- b. Construction Period. Beginning on the first day of the seventh month or upon LESSEE'S receipt of all necessary permits, approvals and licenses, if sooner and continuing through the end of the twelfth month of the lease term, LESSEE shall pay to CITY Two Thousand Seven Hundred and Fifty Dollars (\$2,750) per month in the manner provided in Section 3.01 above.

If LESSEE completes construction of the development prior to the end of the construction period provided above, LESSEE shall commence payment of the rent specified in the operation period below upon completion of the development, hereby defined as the procurement of a certificate of occupancy from the City of San Diego.

LESSEE shall notify CITY in writing upon receipt of all permits, licenses and approvals and upon completion of the development.

- c. Operation Period. Minimum monthly rent. Beginning on the first day of the second year of the lease term, or upon completion of the development as defined in Paragraph 3.02, b. above, if sooner, LESSEE shall pay to CITY a minimum rent of Eleven Thousand Dollars (\$11,000) per month. *Aug 29/82*
- d. Percentage Rent. In addition to the minimum monthly rent, on or before 60 days after the end of each lease year, LESSEE shall pay CITY 20 percent of its gross income (as defined in Section 3.03 herein) received or which became due during the previous lease year from the premises in excess of \$340,000. For the purposes of determining percentage rent due CITY any portion of the premises utilized by LESSEE shall be considered to be rental to LESSEE at the average square foot rent paid by all sublessees.
- e. Rent Adjustment. At the end of the fifth year of the lease term and at the end of the every five-year period thereafter throughout the term of the lease and any extensions thereto, the minimum monthly rent shall be adjusted to a sum which is equal to 75 percent of the average annual rent (minimum monthly rents plus percentage rent) paid during the preceding three lease years. The average annual rent amount shall then be divided by 12 to establish the new minimum monthly rent for the next five-year period. It is recognized that such adjustments shall be calculated by CITY upon completion of payments due for the preceding rental period in order to determine the amount of the adjustment to be effective on the dates stated herein. Until such calculations are completed, LESSEE shall continue paying monthly minimum rents at the prior rate. Any additional rents determined by the adjustments to be due for the months previously paid at the prior rate shall be paid to CITY within 30 days following written notice. In no event shall any such minimum rent adjustment result in a decrease in the minimum rent requirement in effect immediately prior to the adjustment date.

- 3.03 Gross Income. The term gross income shall mean the gross receipts, cash and accounts receivable of the LESSEE from all sources derived from the operation of the premises including gross rental payments from sublessees and any incidental income generate by the LESSEE in, from or about the premises.

To determine gross income earned by LESSEE against which the percentage rent will apply, the term "gross income" hereinabove defined shall not include the following.

All sales taxes, or other Federal, State or Municipal taxes collected from any sublessee or consumer, which has to be accounted for by LESSEE to any government or governmental agency, security deposit(s), if not applied towards rent and assessments of late payment charges to sublessees.

Gross income also shall not include any operating expenses of the building paid by the LESSEE provided, however, that all such operating expenses in excess of 25% in any lease year of the total unadjusted gross rents paid for the premises shall be supported by reasonable documentation that such additional expenses were actually incurred and paid. Such operating expenses shall be recorded on an accountable basis and actually disbursed by LESSEE for maintenance, management (not to exceed 3% of the basic rental amount), common areas, possessory interest taxes, assessments, insurance or utilities, or any other such charge or cost reasonably incurred in the operation of the building and the premises.

The operating expenses for the purposes of this provision shall not include capital improvements, or equipment purchases, interest and amortization of mortgages, depreciation of improvements, executive salaries, ground rent and income and franchise taxes.

3.04 Inspection of Records.

- a. 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 in the City of San Diego and will be complete and accurate showing all income and receipts from use of the premises. LESSEE'S failure to keep and maintain such records and make them available to 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 years.
- b. Financial Statements. Within 60 days after the end of each lease year as previously established herein, LESSEE will, at its expense, submit to CITY a statement in which the total gross receipts and expenses and the corresponding amounts of rents paid CITY for the year are classified according to the categories of business established for any percentage rental and for any other

business conducted on or from the premises. Said statement shall be signed by LESSEE or its authorized agent, attesting to the accuracy thereof, which shall be legally binding upon LESSEE.

- c. Right to Inspect. All LESSEE'S books of account, records and supporting documentation, as described under a. Records will be kept for at least five years and made available to CITY one location within the City of San Diego. Said books and records shall be maintained separate from all other accounts not relating to the leased premises. The CITY, at its discretion, shall have the right to inspect and audit the business of LESSEE, its agents, sublessees, concessionaires and licensees operating on and in connection with the premises as necessary and appropriate for CITY to determine the amounts of rent due CITY in compliance with the requirements of this lease.

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

- d. Audit Cost. The full cost of the CITY'S audit will be borne by CITY unless one or both of the following conditions exists, in which case LESSEE hereby agrees to pay CITY'S cost of audit.

- (1) The audit reveals an underpayment of more than five percent, or more than \$10,000 during any one lease year whichever is less between the rent due as reported and paid by LESSEE pursuant to this lease and rent due as determined by the audit; or
- (2) LESSEE has failed to maintain complete and true books, records, accounts and supporting source documents in strict accordance with the Inspection of Records section.

LESSEE shall pay any deficiency determined by the audit plus interest on such amount as defined in the Delinquent Rent provision of this lease within 30 days of notice thereof by CITY. CITY will credit any overpayment against incoming rents. Any overpayment determined after the end of this lease will be refunded by CITY within 30 days of confirmation by the City Manager of the audit findings.

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

- 3.05 Delinquent Rent and Audit Fees. 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 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.

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. In the event the CITY audit discloses that the unpaid rent is less than five percent of the total rent, then in the event LESSEE fails to pay said unpaid rent within 30 days after written notice from CITY, an additional fee of ten percent (10%) of said unpaid amount shall be added to the unpaid amount to compensate CITY for costs and losses due to such nonpayment. LESSEE agrees to pay such amounts and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this lease.

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. Subject to prior CITY approval in each instance, which shall not be unreasonably withheld, LESSEE may assign this lease and any interest herein and may sublease any portion hereof to an assignee or sublessee who has, the financial capability and overall competence to successfully operate the assigned or subleased portion of the premises in a manner at least comparable to the operations of LESSEE. This lease and any interest herein shall not be assignable by operation of law without the written consent of the CITY. Notwithstanding the foregoing, LESSEE shall be entitled to sublease portions of the premises to sublessees in the ordinary course of LESSEE'S business without the necessity of obtaining CITY'S approval in each instance so long as each sublease is pursuant to a written sublease agreement substantially conforming to a form of sublease agreement which has received the prior approval of CITY and so long as the City receives a traffic generation statement prior to the execution of each sublease in accordance with SECTION 7.16 herein. Anything to the contrary herein notwithstanding, neither the LESSEE nor any sublessee or assignee shall be allowed to occupy the premises without payment of fair market rent.
- *

"Assignment," for the purposes of this clause shall include any transfer of any ownership interest in this lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners, or principals.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions and provisions of this agreement which are applicable to the rights acquired. The CITY may at its sole discretion require upon assignment of the leasehold premises to an assignee who will occupy eighty percent (80%) or more of the premises that the method of minimum monthly rental computation and adjustment of rental be changed so that the annual rent (minimum monthly rent and percentage rent) paid in the year preceding the assignment divided by 12 becomes the new minimum monthly rent. The new minimum monthly rent will, at CITY'S

option, be subject to upward adjustment every three years by use of the Consumer Price Index (CPI) to a maximum of twenty-four percent (24%) in any three-year period in lieu of payment of percentage rent described in Section 3.02 d. and e. hereof. In no event shall the rental under this method of adjustment for any subsequent three-year periods be reduced below the rent in existence immediately preceding the date of adjustment. The CPI index to be used for such adjustments would be the all urban consumers index for the Los Angeles/Long Beach/Anaheim, California area base year 1967. If the aforementioned CPI index is no longer published the index for adjustment will be the U.S. Department of Labor's Comprehensive Office Index most comparable to the aforesaid index.

In the event of an assignment, upon written receipt by CITY of such written agreement, LESSEE shall be relieved of all further obligation or liability arising under the lease and shall no longer be required to perform any of the lease covenants, conditions or provisions providing the assignee has sufficient net worth on the date of assignment, as determined by City Manager, whose approval of the relief of further obligations shall not be unreasonably withheld.

Notwithstanding the provisions of this paragraph, LESSEE shall have the right without further permission from the CITY to assign its interest in this agreement once in the first three years of the lease term to a limited partnership in which it is a general partner having at least a fifty percent (50%) partnership interest.

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

Any subsequent encumbrances on the premises or on any permanent improvements thereon must first have the approval, in writing, of the City Manager, which approval shall not be unreasonably withheld. Such subsequent encumbrances shall also be for the exclusive purpose of development of the premises. Provided, however, after the premises are fully developed in accordance with said development plan to the satisfaction of the City Manager, proceeds from refinancing or from such subsequent encumbrances may be used to reduce LESSEE'S equity. The City Manager may approve any such proposed subsequent encumbrance providing the total of all encumbrance(s) against the leasehold estate does not exceed seventy-five percent (75%) of the value of the leasehold estate including the improvements.

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

Upon prior approval by CITY which shall not be withheld unreasonably, said mortgagee or beneficiary may assign this lease to its nominee, if nominee is a reputable, qualified and financially responsible person in the opinion of CITY. Any deed of trust, mortgage or other security instrument shall be subject to all of the terms, covenants and conditions of this lease and shall not be deemed to amend or alter any of the terms, covenants or conditions hereof.

4.04 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.

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

Should the default or defaults be noncurable by LESSEE, then any approved lender holding a beneficial interest in the leasehold shall have the absolute right to substitute itself to the estate of the LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default and the default, if curable, is cured by such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, the CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges and obligations of the LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.

- 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 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.

4.05 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 and LESSEE, 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 and LESSEE, 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. CITY and LESSEE shall each be entitled to claim and prosecute its claim in court or before an agency for an award of damages for any damages suffered due to such taking.

- 4.06 Partnership Liability. Each general partner of LESSEE shall jointly and severally perform and be responsible for each and every term, covenant and condition and each general partner is jointly and severally liable for performance under this lease.

SECTION 5: INSURANCE RISKS/SECURITY

- 5.01 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. Public liability and property damage insurance in the amount of not less than ONE MILLION DOLLARS (\$1,000,000) COMBINED SINGLE LIMIT LIABILITY with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties, from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE, on or in connection with the use or operation of the premises.

- b. Fire, extended coverage and vandalism insurance policy on all insurable property on the premises, in an amount to cover 100 percent of the replacement cost. All proceeds from a loss shall be payable first to a lender to the extent of any outstanding loan amount and the remainder shall be payable jointly to CITY and LESSEE. The proceeds received by CITY and LESSEE shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property.
- c. Conditions. All insurance policies will name the CITY and any mortgagee as an additional insured, protect the CITY against any legal costs in defending claims and will not terminate without sixty (60) days' prior written notice to the CITY. 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, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises and full applicable Fire Insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. 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.
- d. 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. LESSEE also agrees to acquire any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease. However, no such revisions shall result in an increase of costs of LESSEE'S insurance premiums of at least five percent (5%) in any one lease year.
- e. 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 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.

- f. Failure to Comply. If the 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 f., if LESSEE fails or refuses to take out or maintain insurance as required in this lease, or fails to provide 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 rebuild 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. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenable by reason of such damage.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.01 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 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 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 (10) days' written notice to LESSEE, to have any reasonably necessary maintenance work done for and at the expense of LESSEE and LESSEE hereby agrees to pay promptly any and all costs reasonably 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 reasonably 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 6.12 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. 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 such approval shall not be unreasonably withheld. This provision shall not apply to the construction or alteration of tenant improvements in the interior of the premises. This provision shall not relieve the LESSEE of any obligation under this lease to maintain the premises in decent, safe, healthy and sanitary condition, including structural repair and restoration of damaged or worn improvements. The CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.
- 6.05 Utilities. LESSEE agrees to order, obtain and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground.
- 6.06 Construction Bond. During the construction of any building shell or reconstruction of entire building(s), LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of 100% of the estimated construction costs of the work to be performed or an agreement of indemnity in such amount guarantying the completion of such shell construction in accordance with all plans, specifications and permits previously approved by CITY signed by Rijo Enterprises, Inc. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall ensure that the construction commenced by LESSEE shall be completed in accordance with the plans for the shell of the building approved by CITY or, at the option of CITY, that uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The bond, cash, and any indemnity agreements will be held in trust by CITY for the purpose specified above, or at CITY'S option, they may be placed in an escrow or other trust approved by CITY.
- 6.07 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.

6.08 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments and fees assessed or levied upon LESSEE or the premises including the land, any buildings, structures, machines, equipment, appliances or other improvements or property of any nature whatsoever, erected, installed or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and agrees that this lease may create a possessory interest subject to property taxation and that 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, except as provided in Section 3.03.

6.09 Ownership of Improvements and Personal Property.

- a. All and any 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 the CITY'S property, free of all liens and claims except as otherwise provided in this lease.
- b. If the 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 180 days prior to expiration and the LESSEE shall remove all such improvements, structures and installations as directed by the CITY at LESSEE'S sole cost on or before lease expiration or termination. If the LESSEE fails to remove any improvements, structures and installations as directed, the LESSEE agrees to pay CITY the full cost of any removal.

- c. LESSEE-owned machines, appliances, equipment (other than trade fixtures) and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become the CITY'S property free of all claims and liens, or CITY may at its option remove said items at LESSEE'S expense.
 - d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
 - e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require rental by LESSEE to CITY at the rate in effect immediately prior to said expiration or termination.
 - f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said premises upon expiration or termination of this lease, then CITY shall have the first right to acquire or purchase said personal property.
- 6.10 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY claim the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.
- 6.11 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 "A" hereto. The City Manager or his designee shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk. Failure by LESSEE to comply with the General

Development Plan shall constitute a major default and subject this lease to termination by CITY.

- 6.12 Failure to Meet Development Schedule. Except as provided by Section 6.11, should LESSEE fail to complete construction in accordance with the schedule of development of the General Development Plan hereof, it is specifically agreed by LESSEE and CITY that the CITY will be entitled to damages in the amount of One Hundred Dollars (\$100) for every day of failure to meet said schedule of development until completion of development, said amount representing liquidated damages therefor. In the event that construction is not completed within six months following the date specified for completion in the development plan, CITY may, at its option, terminate this lease.

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 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age or physical handicap 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.
- 7.05 Equal Opportunity. LESSEE agrees to abide by the CITY'S Affirmative Action Program for LESSEES as it exists or is amended to the extent that the program is applicable to this lease. A copy of the program effective as of the date of this lease is on file in the City Clerk's Office and by this reference is part hereof. The program's goal is the attainment of employment for minorities and women in all areas of employment, in a total percentage as established by the CITY for its Affirmative Action Program each year.
- 7.06 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.
- 7.07 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.
- 7.08 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.
- 7.09 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.
- 7.10 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 leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties,

representations and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent or attorney of any other party has made any promise, representation or warranty whatsoever, which is not contained in this lease.

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

- 7.11 Corporate Authority. Each individual executing this lease on behalf of LESSEE represents and warrants that he 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 the LESSEE is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify LESSEE to do business in the state where the premises are situated.
- 7.12 Planting Strips. LESSEE shall, at its sole cost, landscape and maintain all areas shown on the attached plat adjoining the leased premises.
- 7.13 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.
- 7.14 Mortgage Requirements. CITY shall execute such documents and agreements as may be reasonably and customarily required by LESSEE'S leasehold mortgagee which are not contrary to the terms and provisions of this lease. CITY further agrees to modify such provisions of this lease regarding the giving of notice as may be reasonably required by LESSEE'S leasehold mortgagee.

- 7.15 Arbitration. All disputes arising under the provisions of this lease shall be resolved through final and binding arbitration conducted by the American Arbitration Association at San Diego, California.
- 7.16 Traffic Generation. LESSEE is developing, per the lease agreement a 32,000-square-foot improvement on the premises which will be divided into suites and subleased to commercial and industrial users. The City Engineering and Development Department, Transportation and Traffic Engineering Division, has reviewed the proposed development and has, based upon its review of the Serra Mesa Community Plan, allocated 2,000 weekday trips to the premises. A table of recommended weekday trip generation rates summary for various activities, Exhibit "B", is attached and incorporated herein.

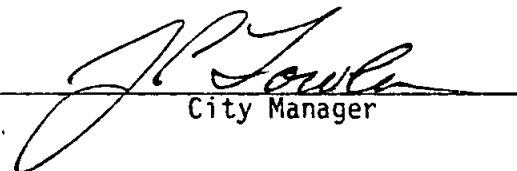
LESSEE agrees to limit the number of weekday trips to 2,000 during the term of this lease agreement and any extension thereto and shall submit a statement to the City Manager with each sublease which includes a table listing the total square footage of the building, the square footage and use of each sublease (including an appropriate land use type from Table "B"), the number of trips generated from each sublease (also obtained from Table "B"), and the total trips generated by the premises. The aforementioned statements and sublessee users will be reviewed periodically by the City Manager.

In the event CITY determines, by reviewing the trip generation table referred to above that LESSEE has exceeded the allowable number of weekday trips (2,000), the City Manager may, at his sole option, require LESSEE to take necessary action to reduce the trip generation to 2,000 trips. Failure by LESSEE to take action as necessary to reduce the trip generation to 2,000 shall constitute a default under this lease and subject the lease to termination.

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.

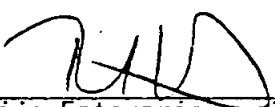
THE CITY OF SAN DIEGO

Date JUN 23 1986

By 
City Manager

LESSEE:

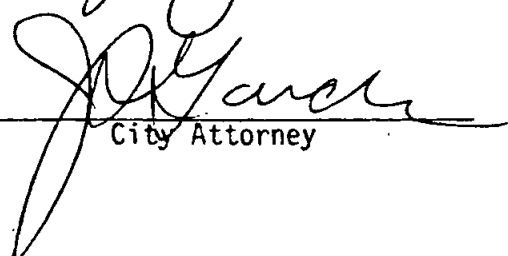
Date April 23, 1986

By 
Rijo Enterprises, Inc., President

By _____

APPROVED as to form and legality this 1st day of July, 1986

Date _____

By 
City Attorney

RJC:baa(6)
4-10-86

SECTION 9: EXHIBITS

9.01 Legal Description

Parcel 1, as shown on a Parcel Map filed in Book of Maps at Page 13058 in the Office of the County Recorder of San Diego County on December 19, 1983, being a lot line adjustment and consolidation of Lots 47, 48, 49 and a portion of Lots 50 and 51 of Aero Industrial Park, according to Map thereof No. 4639 and a portion of Lot 1 of City Highlands, according to Map thereof No. 5594, all being in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, September 30, 1960 and July 1, 1965, respectively.

9.02 LESSEE Improvements Subject to SECTION 6.10, Ownership of
Improvements and Personal Property:

9.03 General Development Plan.

The General Development Plan consists of:

- a. Plot Plan
- b. Development Schedule
- c. Financial Plan
- d. Schematic Elevations
- e. Landscape Plan
- f. Others as applicable

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

RIJO ENTERPRISES INC.

Mercury Street Business Center

Development Flow Chart

[illegible]

EXHIBIT "B"

CITY OF SAN DIEGO ENGINEERING & DEVELOPMENT DEPARTMENT TRANSPORTATION & TRAFFIC ENGINEERING DIVISION

Recommended Weekday Trip Generation Rates Summary (Vehicle-Trips)

LAND USE	RECOMMENDED WEEKDAY TRIP GENERATION RATE	ALTERNATIVE RATE
Residential		
Multi-Family Unit (over 30 D.U./acre)	6 trips/D.U. ¹	
Multi-Family Unit (under 30 D.U./Acre)	8 trips/D.U. ¹	
Single-Family Dwellings (suburban area)	10 trips/D.U. ¹	
Single-Family Dwellings (urbanized area)	9 trips/D.U. ¹	
Retirement/Senior Citizen Housing	4.5 trips/D.U. ²	
Mobile Homes	5.5 trips/D.U. ¹	
Commercial		
Regional Shopping Center:		
Over 1,250,000 sq.ft.	30 trips/1,000 sq.ft. ^{2,3}	
1,000,000 - 1,249,999 sq.ft.	35 trips/1,000 sq.ft. ^{1,2}	
500,000 - 999,999 sq.ft.	38 trips/1,000 sq.ft. ¹	
225,000 - 499,999 sq.ft.	60 trips/1,000 sq.ft. ¹	
Community Shopping Center	70 trips/1,000 sq.ft. ¹	700 trips/acre ¹
Neighborhood Shopping Center	120 trips/1,000 sq.ft. ¹	1,200 trips/acre ¹
Grocery Store	150 trips/1,000 sq.ft. ^{1,3}	
Convenience Store	430 trips/1,000 sq.ft. ²	3,600 trips/acre ²
Freestanding Retail/Strip Commercial	40 trips/1,000 sq.ft. ¹	400 trips/acre ¹
Lumber/Home Furnishing Store	30 trips/1,000 sq.ft. ⁴	
Furniture Store	6 trips/1,000 sq.ft. ⁴	
Discount Store	70 trips/1,000 sq.ft. ³	

EXHIBIT "B"

LAND USE	RECOMMENDED WEEKDAY TRIP GENERATION RATE	ALTERNATIVE RATE
Restaurants		
Quality Restaurant (low turnover)	100 trips/1,000 sq.ft. ^{1,4}	
Sit-down Restaurant (medium-turnover)	200 trips/1,000 sq.ft. ¹	
Sit-down Restaurant (high turnover)	370 trips/1,000 sq.ft. ¹	
Fast-food Restaurant	770 trips/1,000 sq.ft. ^{1,2}	
Offices		
Large Commercial Office (over 100,000 sq.ft.) ⁷	16 trips/1,000 sq.ft. ¹	600 trips/acre ¹
Small Commercial Office (under 100,000 sq.ft.) ⁸	20 trips/1,000 sq.ft. ¹	300 trips/acre ¹
Government Office (other than DMV/Post Office)	40 trips/1,000 sq.ft. ⁴	
Library	46 trips/1,000 sq.ft. ⁴	
Department of Motor Vehicles	170 trips/1,000 sq.ft. ⁴	
Post Office	140 trips/1,000 sq.ft. ⁴	
Medical Office	90 trips/1,000 sq.ft. ¹	80 trips/acre ¹
Visitor Serving Commercial		
Hotel/Motel	10 trips/room ^{1,3,4}	
Tourist Commercial/Commercial Recreation	150-500 trips/acre ^{1,6}	
Auto Serving Commercial		
Car Dealer	58 trips/1,000 sq.ft. ¹	400 trips/acre ¹
Gasoline Service Station	130 trips/pump ⁵	750 trips/station ⁵

EXHIBIT "B"

LAND USE	RECOMMENDED WEEKDAY TRIP GENERATION RATE	ALTERNATIVE RATE
Financial Institutions		
Savings & Loan	74 trips/1,000 sq.ft. ^{3,4}	
Bank (excluding drive-thru lanes)	200 trips/1,000 sq.ft. ^{1,4}	
Bank (drive-thru lanes only)	300 trips/lane	
Cemetery	5 trips/acre ¹	
Airports		
General Aviation Airport	2 trips/average daily flight ¹	
Industrial		
Large Industrial ⁷	8 trips/1,000 sq.ft. ¹	100 trips/acre ¹
Small Industrial ⁸	14 trips/1,000 sq.ft. ¹	130 trips/acre ¹
Large Industrial/Business Park ⁷	12 trips/1,000 sq.ft. ¹	
Small Industrial/Business Park ⁸	18 trips/1,000 sq.ft. ¹	200 trips/acre ¹
Scientific Research & Development ⁷	8 trips/1,000 sq.ft. ¹	100 trips/acre ¹
Warehousing	5 trips/1,000 sq.ft. ³	80 trips/acre ⁴
Rental Storage	1.7 trips/1,000 sq.ft. .16 trips/storage vault ⁴	25 trips/acre ⁴
Truck Terminal	60 trips/acre ⁴	
Institutional		
House of Worship (Church or Synagogue)	60 trips/acre ⁴	300 trips/each ⁴
Military Base	2.5 trips/military civilian employee ¹	
Hospital	20 trips/bed ¹	
Convalescent Hospital	3 trips/bed ²	

EXHIBIT "B"

LAND USE	RECOMMENDED WEEKDAY TRIP GENERATION RATE	ALTERNATIVE RATE
Education		
Four-year University or College	2.8 trips/student ¹	
Two-year College (Junior College)	1.5 trips/student ¹	
High School (Secondary School)	1.5 trips/student ¹	
Junior High School (Middle School)	1.0 trips/Student ^{1,2}	
Elementary School (Grade School)	1.4 trips/student ¹	
Recreation		
Park (undeveloped)	5 trips/acre ¹	
Park (developed)	40 trips/acre ¹	
Golf Course	6 trips/acre ⁴	
Bay & Ocean Beaches/Park	1,000 trips/1,000 ft. shore ¹	70 trips/acre ¹
Lake (with boating)	50 trips/1,000 ft. shore ¹	6 trips/acre
Zoo or Sea Life Park	100 trips/acre ¹	
Marina	4 trips/berth ¹	
Sports Facility	1 trip/attendee ¹	42 trips/acre ¹
Racquetball/Tennis/Health Club	40 trips/court ¹	45 trips/1,000 sq.ft

EXHIBIT "B"

NOTES

¹SANDAG/CALTRANS, San Diego Traffic Generators, (1971-1982) (including studies not yet published)

²Arizona Department of Transportation, Trip Generation Intensity Factors (1/1/79 version).

³I.T.E., Trip Generation (1982) (Draft).

⁴CALTRANS District 4, Trip Ends Generation Research Counts (1975-1982).

⁵COMSIS, Quick Response Urban Travel Estimation Techniques and Transferable Parameters, NCHRP Report #187 (1978).

⁶A range is shown to the wide variety of land uses associated with this category. See the "Definitions of Land Use Categories for Trip Generation Purposes" for additional information.

⁷"Large" is applicable where buildings are over 100,000 sq.ft. or where parcels are over 8 acres in size.

⁸"Small" is applicable where buildings are under 100,000 sq.ft. where parcels are under 8 acres in size.

*Property 303
Collis*
(R-86-2409)

RESOLUTION NUMBER R- 266057

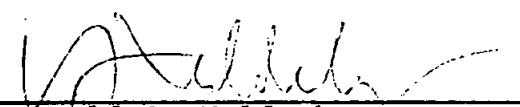
ADOPTED ON JUN 23 1986

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, a 55-year lease agreement with RIJO ENTERPRISES, INC., for a 1.7-acre lot on the southeast corner of Mercury Street and Engineer Road with an appraised value of \$1.309 million, for the purpose of developing a 32,000-square-foot commercial/industrial building, at an initial rent of \$132,000 per annum upon completion of development, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR- 266057.

BE IT FURTHER RESOLVED, that the payment of a real estate broker's commission of approximately \$32,400, in accordance with the provisions of Municipal Code Section 22.0905, is hereby authorized and approved solely and exclusively from the proceeds of the lease.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
06/02/86
Or.Dept:Prop.
Job:217894
R-86-2409
Form=r.none

Property 503
Collins

(R-86-2410)

RESOLUTION NUMBER R- 266058

ADOPTED ON JUN 23 1986

BE IT RESOLVED, by the Council of The City of San Diego that it be, and it is hereby certified, that the information contained in the mitigated ENVIRONMENTAL NEGATIVE DECLARATION NO. END-85-0692 dated May 27, 1986, in connection with the lease of a 1.7-acre lot at Mercury Street and Engineer Road, on file in the office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970, as amended, and the State guidelines thereto, and that said Declaration has been reviewed and considered by this Council.

APPROVED: John W. Witt, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
06/02/86
Job:217894
Or.Dept:Prop.
R-86-2410
Form=r.neg

NOTICE OF DETERMINATION

TO: ☒ County Clerk
County of San Diego
220 W. Broadway
San Diego, CA 92101

FROM: City of San Diego
City Administration Building
202 "C" Street
San Diego, CA 92101

Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

EQD Number: END-85-0692

State Clearinghouse Number: _____
(If submitted to Clearinghouse)

Project Title: RIJO LEASE

Project Location: East side of Mercury St. between Balboa Ave. and Engineer Rd. in the Serra Mesa Community Planning area (Parcel 1, Book of Maps, p. 13058, County of San Diego, filed December 19, 1983).

Project Description: A 1,768 acre lot in the M-1A zone, proposed for a 32,000 sq. ft. commercial/industrial building.

This is to advise that The City of San Diego City Council on 6-23-86 approved the above described project and made the following (date) determinations:

1. The project in its approved form will, ☒ will not, have a significant effect on the environment.
 2. — An Environmental Impact Report was prepared for this project and certified pursuant to the provisions of CEQA.
☒ A Negative Declaration was prepared for this project pursuant to the provisions of CEQA. Resolution R-266058.
- Record of project approval may be examined at the address above.
3. Mitigation measures — were, ☒ were not, made a condition of the approval of the project.
 4. (EIR only) Findings — were, ☒ were not, made pursuant to CEQA Guidelines Section 15091.
 5. (EIR only) A Statement of Overriding Considerations — was, ☒ was not, adopted for this project.

It is hereby certified that the final environmental report, including comments and responses, is available to the general public at the office of the Environmental Quality Division, Fifth Floor, 202 "C" Street, San Diego, CA 92101.

Date Received for Filing: _____


Signature

Deputy City Clerk
Title

Council Consent, 6/23/86, Item 125 R266057

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER:

TO: CITY ATTORNEY

2. FROM: (ORIGINATOR)
PROPERTY DEPT./PROPERTY MANAGEMENT DIVISION

3. DATE: CITY ATTORNEY
May 23, 1986
May 30 5 50 PM '86

4. SUBJECT:
Proposed Lease Agreement - Mercury Street and Engineer Road

5. PREPARATION OF: ☒ RESOLUTION(S) ☐ ORDINANCE(S) ☐ AGREEMENT(S) ☐ DEED(S)

1. Authorizing the City Manager to execute a lease agreement with Rijo Enterprises, Inc., for City-owned property at the intersection of Mercury Street and Engineer Road.
2. Certifying that Council has reviewed and considered the mitigated Negative Declaration, EQD No. 85-0692, dated May 27, 1986.
3. Authorizing the payment of a real estate brokers's commission.*

*For approximately \$32,400 in accordance with Municipal Code 22.0905.

COUNCIL DISTRICT 5 COMMUNITY AREA: Serra Mesa REPORT TO COUNCIL

6. SUPPORTING INFORMATION: (INCLUDE ONLY INFORMATION NOT COVERED ON FORM 1472A, "DOCKET SUPPORTING INFORMATION".)

ACTION REQUESTED BY: Property Director.
DESCRIPTIVE LOCATION: 1.7-acre lot on the southeast corner of Mercury Street and Engineer Road.

VALUE OF PROPERTY: \$1.309 million as established by the Property Director.

DOCUMENTS SUBMITTED: Original and 6 copies of the proposed lease agreement.

BASIC TERMS:

Purpose: Development of a 32,000-square-foot commercial/industrial building.

Term: 55 years.

Rent: \$132,000 per annum upon completion of development.

Area: 1.7 acres.

ENVIRONMENTAL ASSESSMENT: The City of San Diego as lead agency under CEQA has prepared and completed a mitigated Negative Declaration, EDQ No. 85-0692, dated May 27, 1986, covering this activity.

HANDLING: DO NOT RECORD. Deliver documents to Property Department, Attention Bob Collins, M.S. 503, for further handling.

7. FOR INFORMATION CONTACT: (NAME & MAIL STA.)

RANDORPH:Collins 503

8. TELEPHONE NO.

6792/5518

9. CHECK IF "DOCKET SUPPORTING INFORMATION" ATTACHED ☐

10. COMPLETE FOR ACCOUNTING PURPOSES:

FUND/DEPT.	BUDGETED	UNBUDGETED
ORGANIZATION		
OBJECT ACCOUNT		
JOB ORDER		
WORK ORDER NO.		
C.I.P. NO.		
FACILITY		
AMOUNT		

12. ESTIMATED COST:

Job: 217894

cc: ☒ Docket

REDI BOOK PAGE 345

THOMAS BROS MAPS PAGE 53 D-1

ed(1)

11. ROUTING AND APPROVALS

ROUTE (✓)	APPROVING AUTHORITY	APPROVAL	DATE SIGNED
✓	DEPARTMENT DIRECTOR	<i>[Signature]</i>	5/29/86
X	CLEARING AUTH. EQD mm	<i>[Signature]</i>	5/29/86
X	DEPUTY CITY MANAGER	<i>[Signature]</i>	5-30-86
	AUDITOR		
✓	CITY ATTORNEY		
✓	ORIGINATING DEPARTMENT	<i>[Signature]</i>	6/3/86
X	MGR. DOCKET CLERK		
✓	RULES COMMITTEE		

☐ CONSENT ☐ ADOPTION

☐ REFER TO _____ DATE _____