



Real Estate Assets Department
SDC003

Document Type

LEGAL DOCUMENTS



Sub - Category

AGREEMENTS



Certified Mail #464647

September 26, 1973

File: Leases-Drogin, Stephen B.
(Block 309 Pacific Beach)

Mr. Stephen B. Drogin
P. O. Box 977K
San Diego, California 92109

Dear Mr. Drogin:

This letter will confirm items discussed in our meeting of September 23, 1973 relative to the City audit of your lease operation.

1. Enclosed Credit Invoice No. P-4546 credits your account for the \$4352.90 previously billed on Invoice No. 4525. Also, enclosed is Invoice No. P-4547 which reflects an adjustment in the amount that you owe the City and represents the minimum annual rent due at September 30, 1972.
2. Security deposits will not be considered as gross income, but rooms rented to employees must be included at their full value for rental purposes.
3. Records of gross income must be kept on an accrual basis. Gross income must be reported when earned and all rent payments owed to the City must be paid when due whether or not you receive a billing for them.
4. Have an adding machine tape of the charges due at the first of each month made by a person that does not handle the cash payments for better control of the accounts receivable, and enter the total amount in the ledger as a credit to rent income in that month.
5. To facilitate a change of the lease year to a calendar year basis, you are hereby instructed to include the period from October 1, 1972 through December 31, 1973 in your annual audit report required by the lease agreement. This report must be prepared by a Licensed Accountant or a Certified Public Accountant and submitted to the City with any minimum annual rent payment due before March 1, 1974.

Stephen B. D. [redacted]

-2-

[redacted]ember 26, 1973

Please return Invoice No. P-4547 with your remittance of \$4054.18 within five days from receipt of this letter.

Very truly yours,

L. S. Walters
Lease Administrator

LSW:hlb

Enclosures

cc: Deputy City Manager Blair
Budget Director
City Auditor
Contract Administrator

PROPERTY DEPARTMENT

DOCUMENT NO. 737414
FILED SEP 21 1971
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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LEASE AGREEMENT

THIS LEASE AGREEMENT is executed by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY", and STEPHEN B. DROGIN, an individual, hereinafter called "LESSEE".

(A) DEMISE. 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, delineated on EXHIBIT C attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises".

1. Said premises are leased to LESSEE for the purposes of construction, operation and maintenance of a multiple residential development as shown on the approved Precise Plan of Development filed in the Office of the City Clerk as Document No. 737410 and such other uses incidental thereto as are approved in writing by the City Manager of CITY, and for no other purpose.

2. LESSEE covenants to use said premises only for the aforesaid purposes for which they are leased and to diligently conduct the business thereon to produce a reasonable and substantial gross income.

(B) TERM. The term hereof shall be fifty-five (55) years commencing on the first day of the calendar month following execution of this lease agreement by CITY.

(C) RENT. The rent shall be paid by LESSEE to CITY at the Office of the City Treasurer, City Administration Building, Community Concourse, San Diego, California 92101, and shall be as follows:

1. CONSTRUCTION PERIOD. For that portion of said term beginning on the effective date of this lease and ending upon the commencement of operations which is hereby defined as the opening of said premises for business as evidenced by apartment rentals; or the availability of apartments for rent; or the sale of any goods or services, whether payment is actually made or not, the rent payable to CITY shall be:

ONE THOUSAND AND NO/HUNDREDTHS DOLLARS-----

(\$1,000.00)

PER MONTH, PAYABLE ON OR BEFORE THE

FIRST DAY OF EACH CALENDAR MONTH IN ADVANCE;

PROVIDED, HOWEVER, the total sum of TWELVE THOUSAND AND NO/HUNDREDTHS DOLLARS-----(\$12,000.00) heretofore paid by LESSEE to CITY as the purchase price for the option to lease said premises shall be credited proportionally to rents due during said Construction Period.

2. OPERATIONS PERIOD. For that portion of said term beginning on Commencement of Operations, as hereinabove defined, and for the remainder of said term, LESSEE shall pay to CITY monthly in arrears within thirty (30) days following the last day of each calendar month the following rent:

- a) SEVEN AND SEVENTY-SIX HUNDREDTHS PERCENT (7.76%) OF LESSEE'S COMMISSIONS DERIVED FROM ALL COIN-OPERATED MACHINES IN WHICH LESSEE HAS NO OWNERSHIP EQUITY; AND
- b) SEVEN AND SEVENTY-SIX HUNDREDTHS PERCENT (7.76%) OF ALL GROSS INCOME, AS HEREINAFTER DEFINED, FROM ALL OTHER SOURCES ON SAID PREMISES;

PROVIDED, HOWEVER, during the first ten (10) years of said term, in the event that the total amount of said percentage rent paid by LESSEE to CITY in any one year during said term is less than TWENTY FOUR THOUSAND AND NO/HUNDREDTHS DOLLARS-----(\$24,000.00), hereinafter referred to as the "Minimum Annual Rent", then LESSEE shall pay to CITY the difference between said amounts within sixty (60) days following the last day of such lease year; then, commencing on the tenth anniversary of the effective date of this lease, and on the commencement of every eleventh year thereafter, said Minimum Annual Rent to be paid to CITY shall be adjusted to SIXTY SIX AND TWO-THIRDS PERCENT (66 2/3%) of the annual average of actual rents paid, including any rents computed to have been payable, during the last preceding ten (10) year period thereof except, however, in no event shall the Minimum Annual Rent during any ten (10) year period of said term be less than the Minimum Annual Rent required for the last preceding ten (10) year period thereof;

PROVIDED FURTHER, if construction is completed and operations are commenced in accordance with the schedule of the Precise Plan of Development identified in Section (A) 1, hereof, then all rents paid to CITY during the aforesaid Construction Period including the balance, if any, of the purchase price of the option not previously credited during the aforesaid Construction Period, shall be credited proportionally to rents due during the first one (1) year of this Operations Period. 7/1/72

3. GROSS INCOME. "Gross Income" as used in this lease shall include all income resulting from occupancy of the leased premises from whatever source derived or to become due. Provided, however, Gross Income shall not include federal, state or municipal taxes collected from the consumer as such taxes (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a governmental agency accompanied by a tax return or statement. The amount of such taxes shall be shown on the books and records elsewhere herein required to be maintained. The aforesaid percentage rent shall be calculated and paid by LESSEE on the basis of said gross income whether the income is received by LESSEE or by any approved sublessee or their agents and all gross income received by any sublessee or other party as a result of occupancy of said premises or the operation thereof shall be regarded as gross income of LESSEE for the purpose of calculating the percentage rent hereunder required to be paid by LESSEE to CITY, except as otherwise specified in subparagraph a) of Section (C) 2 hereof.

4. DELINQUENT RENT. In the event LESSEE fails to pay the applicable rents when due as previously provided herein then LESSEE shall pay CITY in addition to the delinquent rent, a sum of money equal to FIVE PERCENT (5%) of said delinquent rent; provided, however, in the event said delinquent rent is still unpaid after fifteen (15) days of becoming delinquent then LESSEE shall pay CITY, instead of said FIVE PERCENT (5%), a sum of money equal to TEN PERCENT (10%) of said delinquent rent. It is the intent of this provision that CITY shall be compensated by such additional

sums for loss resulting from rental delinquency including costs to CITY for servicing the delinquent account. The City Manager of CITY may for good cause waive any such delinquency compensation charge upon written application of LESSEE prior to the delinquent period.

(D) COVENANTS AND CONDITIONS.

1. RECORDS. LESSEE shall keep true, accurate and complete records in a manner and form satisfactory to CITY. Such records shall show all transactions relative to the conduct of operation of the leased premises, and such transactions shall be supported by documents of original entry such as sales slips, cash register tapes, purchase invoices and tickets issued or other means satisfactory to CITY. Within thirty (30) days of said commencement of operations, LESSEE shall submit to CITY for approval the manner and form in which said records will be maintained. Upon receipt of approval of said form of records, LESSEE shall make no changes thereto without prior written approval of CITY. Said records shall be maintained separate from all other accounts not relating to operation of the leased premises. Not later than the thirtieth day of each month, LESSEE shall render to CITY, a detailed statement as to the source of the receipts showing all gross income of the preceding calendar month together with the amount payable to CITY as hereinabove provided and shall accompany same with a remittance of the amount so shown to be due CITY. LESSEE shall also maintain accurate records of actual and projected operating expenses and revenue, and such other operating information as CITY, from time to time, deems necessary and LESSEE shall submit such information to CITY upon request. Said books of account and records shall be made available at one location within the limits of the City of San Diego. CITY shall have, through its duly authorized agents or representatives, the right to examine and audit said books and records at any and all reasonable times. Within sixty (60) days after the end of each lease year hereof, LESSEE shall cause an audit of the business of LESSEE, its agents, sublessees, concessionaires or licensees operating on said premises to be made by a licensed public accountant or certified public accountant, and shall forthwith upon completion of such audit furnish a copy of such audit to CITY without any cost and expense to CITY. In the event such audit discloses that the percentage rental required for the preceding lease year exceeds the amounts of monthly percentage rental paid to CITY by LESSEE during said period, LESSEE shall immediately pay the amount of such deficiency to CITY. Also, in the event said audit discloses that the percentage rental on the annual gross sales for the preceding lease year is less than the amount of Minimum Annual Rent required therefor, LESSEE shall pay to CITY the amount of such deficiency.

Lease year changed to a
calendar year ending Dec 31, see
letter dated Sept 26, 1973

2. QUIET POSSESSION. LESSEE, paying the said rent and performing the covenants and agreements hereof, shall and may at all times during the said term peaceably and quietly have, hold and enjoy the said premises for the term aforesaid. If CITY for any reason whatsoever cannot deliver possession of the said premises to LESSEE at commencement of said term as hereinabove specified, or if LESSEE is dispossessed through action of a title superior to CITY'S, then and in either of such events, this lease shall not be void or 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 deduction of the minimum annual rent covering the period or periods during which LESSEE is prevented from having the quiet possession of the leased premises.

3. TAXES. LESSEE shall pay and discharge before delinquency all taxes and assessments which may be levied upon or against the leased premises during the term of this lease.

4. MECHANIC'S LIEN BOND. LESSEE shall save CITY free and harmless and indemnify CITY against all claims for labor and materials in connection with improvements, repairs or alterations to the leased premises and the cost of defending against such claims, including reasonable attorney's fees, excluding any such claims resulting from work performed by CITY or by CITY'S contractors.

In the event that improvements, repairs or alterations are constructed on the leased premises by other than CITY or CITY'S contractors, the LESSEE shall either (a) file with the CITY a bond conditioned for the payment in full of the claims of all persons performing labor or furnishing materials therefor, in the amount of the claim plus estimated costs of attorney's fees in defending said claims as determined by the City Manager, which bond shall be acknowledged by the LESSEE as principal and by a corporation licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety, or (b) provide CITY with such other security or assurance against liens as may be approved in writing by CITY.

In the event that a lien is recorded under Chapter II of Title 4 of Part 3 of the California Code of Civil Procedure against the leased premises and the lien-holder

attempts to perfect such lien by a lawsuit and the LESSEE has failed to comply with the requirements of this paragraph, this lease may be terminated at the option of CITY at the expiration of thirty (30) days after notice of such lawsuit is given in writing to LESSEE by CITY and the LESSEE fails to cure said lien or to provide CITY with other adequate assurance against said lien to CITY'S satisfaction within said thirty (30) day period; provided, however, that the City Manager shall have the right to continue this lease in full force and effect by notifying the LESSEE in writing of his election to do so. Provided, further, that in the event LESSEE fails to file said bond and a mechanic's lien is recorded and action is commenced to foreclose such lien, then any lender or lending agency or person who is a beneficiary under a trust deed or other instrument securing any loan on or in connection with the leased premises which was recorded with the prior written consent of the City Manager of CITY, shall be notified of the failure of the LESSEE to give the aforesaid bond and said beneficiary shall have thirty (30) days to remove any such mechanic's lien and foreclosure action from the records and if said beneficiary does so remove such lien and action from the records, then this lease shall continue in force.

5. ENTRY AND INSPECTION. CITY reserves, and shall always have the right to enter said premises for the purpose of viewing and ascertaining the condition thereof, or to protect its interest in the premises or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses, in the opinion of the City Manager, that the condition of said premises is not safe, healthy or satisfactory, or is in violation of any municipal, county, state or federal ordinance, statute or law, or is in breach of any condition of this lease, CITY shall have the right to cause any such condition to be rectified at the expense of the LESSEE upon ten (10) days written notice to LESSEE. LESSEE agrees to pay promptly any and all costs incurred by CITY in having such necessary work done. Further, after the determination of the City Manager as hereinabove provided, CITY may at its option, without additional notice, demand that LESSEE file a faithful performance bond in an amount sufficient to pay the costs to correct said condition and/or violation. The rights reserved in this and the following section shall not create any obligations on CITY nor increase obligations elsewhere in this lease imposed on CITY.

6. RESERVATION OF CITY RIGHTS. CITY hereby reserves all rights, title and interest in any and all gas, oil, mineral and water beneath said leased premises. CITY shall have the right to enter said leased premises for the purpose of making repairs to or developing the municipal services of the CITY. CITY hereby reserves the right to grant and use such easements or establish and use such rights of way over, under, along and across said leased premises as may be necessary for municipal services. Provided, however, CITY shall not unreasonably interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages to the permanent improvements of LESSEE, if any, located on the leased premises resulting from CITY'S exercising the rights retained in this paragraph. Such reimbursement shall include a deduction in the minimum annual rent proportionate to the duration and area of said physical damage, if any, as determined by the City Manager.

7. COMPLIANCE WITH LAW. The LESSEE shall, at its sole cost and expense, comply and secure compliance with all the requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining in any manner to the said premises, or the operations conducted thereon, and shall faithfully observe and secure observance with, in the use of the premises, all municipal ordinances and state and federal statutes now in force or which may hereafter be in force, and shall pay before delinquency all taxes, assessments and fees assessed or levied upon the LESSEE or the leased premises by reason of any buildings, structures, machines, appliances or other improvements or property of any nature, erected, installed or maintained by LESSEE or by reason of the business or other activities of LESSEE upon or in connection with the said leased premises. The final judgment of any court of competent jurisdiction, including the appellate courts of the State, should recourse be had thereto, or the admission of LESSEE or any sublessee or permittee in any action or proceeding against them or any of them, whether the CITY be a party thereto or not, that the LESSEE, sublessee or permittee has violated any such ordinances or statutes in the use of the premises shall be conclusive of that fact as between CITY and LESSEE.

8. ASSIGNS. Time is of the essence of each and all of the terms and provisions of this lease and this lease shall inure to the benefit of and be binding upon

the parties hereto and any successors of LESSEE as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements to this lease shall extend to and bind any assigns or sublessees of LESSEE.

9. WAIVER. The waiver by CITY of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or of any subsequent breach of the same or of any other term, covenant or condition of this lease. The subsequent acceptance of rent hereunder by CITY shall not be deemed to be a waiver of any preceding breach by LESSEE of any term, covenant or condition, of this lease, regardless of CITY'S knowledge of such preceding breach at the time of acceptance of such rent; nor shall any failure on the part of CITY to require or exact full and complete compliance with any of the covenants, conditions or agreements of this lease be construed as changing in any manner the terms hereof or to prevent CITY from enforcing the full provisions hereof.

10. MERGER. The voluntary or other surrender of this lease by LESSEE, or a mutual cancellation thereof, shall not work a merger and shall, at the option of CITY, terminate all or any existing subleases or subtenancies, or may, at the option of CITY, operate as an assignment to CITY of any or all such subleases or subtenancies.

11. ADMINISTRATION OF LEASE; NOTICES. Control and administration of this lease shall be vested in the City Manager of CITY as to CITY'S interest herein and any communication relative to the terms or conditions or any changes thereto or any notice or notices provided for by this lease or by law to be given or served upon CITY may be given or served by registered letter deposited in the United States mails, postage prepaid, and addressed to the City Manager, attention Property Director, City Administration Building, Community Concourse, San Diego, California 92101. Any notice or notices provided for by this lease or by law to be given or served upon LESSEE may be given or served by registered letter deposited in the United States mails, postage prepaid, addressed to LESSEE at such address designated in writing by LESSEE, or may be personally served upon LESSEE or upon any person hereafter authorized by LESSEE to receive such notice. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the principals of the parties so served.

12. REMEDIES OF CITY. In the event that (1) LESSEE shall default in the performance or fulfillment of any covenant or condition herein required to be performed or fulfilled by LESSEE and shall fail to cure said default within thirty (30) days following the service on LESSEE of a written notice from CITY specifying the default complained of, or (2) LESSEE shall file a voluntary petition in bankruptcy, 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 or by reason of LESSEE in or to the said premises or in or to further possession thereof and CITY may thereupon enter and take possession of said premises and expel LESSEE and all persons so claiming rights thereto.

Provided, however, in the event that there is a deed of trust or mortgage on the leasehold interest given by LESSEE with the consent of CITY to secure a loan or loans as provided for herein, CITY shall not terminate this lease until it shall have, as a condition precedent, served upon the mortgagee or beneficiary written notice of the default or defaults complained of and, if said defaults are curable, the mortgagee or beneficiary shall have thirty (30) days from service of such notice within which to commence such cure as may be necessary, and this lease shall not terminate if said mortgagee or beneficiary shall prosecute said cure with reasonable diligence thereafter, and said thirty (30) day period shall be extended during the time required for said mortgagee or beneficiary to perfect, through litigation or through foreclosure, its rights to cure. Provided, further, that if the mortgagee or beneficiary shall be required to perfect its right to cure said default or defaults through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that such default or defaults may be expeditiously corrected:

- (a) CITY may correct or cause to be corrected said default or defaults and charge the costs therefor (including costs incurred by CITY in enforcing this provision) to the account of the LESSEE, which charge shall be due and payable on the date that the rent is next due after presentation by CITY of a statement of all or part of said costs.

- (b) CITY may correct or cause to be corrected said default or defaults and pay the costs thereof (including costs incurred by CITY in enforcing this provision) from the funds of any faithful performance cash bond on deposit with CITY, or CITY may call on the bonding agent to correct said default or defaults or to pay the cost of such correction performed by or at the direction of the CITY.
- (c) CITY may terminate this lease as to the rights of LESSEE herein by assuming liability for any trust deed or mortgage theretofore approved by CITY, or CITY may substitute for said terminated LESSEE a new LESSEE satisfactory to the mortgagee or beneficiary.

Should said default or defaults be of a noncurable type or nature; then the mortgagee or beneficiary shall have the absolute right to substitute itself to the estate of the LESSEE hereunder and to commence performance of this lease and this lease shall not terminate if such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself and commence performance within said thirty (30) day period after service upon it of said written notice of default by the CITY.. In the event of the election by the mortgagee or beneficiary to substitute itself to LESSEE'S estate hereunder, the CITY expressly consents to said substitution and authorizes said mortgagee or beneficiary to perform under this lease with all the rights and privileges of the original LESSEE hereunder, subject to cure of the default if both possible and feasible by mortgagee or beneficiary and LESSEE expressly assigns all its interest in and to its leasehold estate in that event.

13. INSURANCE. LESSEE shall procure and maintain public liability and property damage insurance from an insurance company licensed to transact business in the State of California to protect against loss from liability imposed by law for damages on account of bodily injury, including death resulting therefrom, suffered or alleged to be suffered by any person or persons whomsoever resulting directly or indirectly from any act or activities of LESSEE or any person acting for LESSEE or under LESSEE'S control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from acts or activities of LESSEE or any person acting for LESSEE or under LESSEE'S control or direction. Such public liability and property damage insurance shall be

maintained in full force and effect during the entire term of this lease in the amount of not less than ONE MILLION DOLLARS (\$1,000,000.00) single limit liability policy. LESSEE shall submit a certificate of said insurance to the Property Department of CITY on or before the effective date of this lease. Said certificate shall specify that the policy of said insurance may not be terminated or cancelled without prior written notice to CITY by the insurance company. Provisions of this paragraph as to insurance shall not be construed as limiting in any way the extent to which LESSEE may be held responsible for the payment of damages to persons or property resulting from its activities or the activities of any person or persons for which LESSEE is responsible.

LESSEE shall also procure and maintain during the entire term of this agreement, a policy of fire and extended coverage insurance on all permanent property of an insurable nature located upon the leased premises. Said policy shall be written by an insurance company licensed to transact business in the State of California, and in an amount sufficient to cover at least 80% of the replacement cost of said property. LESSEE shall submit a certificate of said policy to the Property Department of CITY on or before the effective date of this lease. Said policy shall contain a condition that it is not to be terminated or cancelled without prior written notice to CITY by the insurance company. LESSEE shall pay the premium for such insurance and shall require that any insurance proceeds resulting from a loss under said policy are payable jointly to CITY and LESSEE and said proceeds shall constitute a trust fund to be reinvested in rebuilding or repairing the damaged property or said proceeds may be disposed of as specified in Section (D) 15, WASTE, DAMAGE OR DESTRUCTION hereof; provided, however, that within the period during which there is in existence a mortgage or deed of trust upon the leasehold given by LESSEE with the prior consent of CITY securing a loan as provided for in Section (D) 23, ENCUMBRANCE hereof, then and for that period all policies of fire insurance and extended coverage shall be made payable jointly to the mortgagee or beneficiary and the named insured and surrendered to said mortgagee or beneficiary and any proceeds collected therefrom shall be held by said mortgagee or beneficiary for the following purposes: (1) As a trust fund to pay for the reconstruction, repair or replacement of the damaged or destroyed improvements in kind and scope in progress payments as the work is performed with any excess remaining after completion of said work to be retained by said

mortgagee or beneficiary and applied in reduction of the debt secured by such mortgage or deed of trust with any excess remaining after full payment of said debt to be paid over to LESSEE, or (2) in the event that this lease is terminated with consent of both CITY and mortgagee or beneficiary and said improvements are not reconstructed, repaired or replaced, the insurance proceeds shall be retained by said mortgagee or beneficiary to the extent necessary to fully discharge the debt secured by said mortgage or deed of trust and said mortgagee or beneficiary shall hold the balance thereto without liability for restoration of the premises to a neat and clean condition and then for CITY and LESSEE as their interests may appear; provided further, however, nothing herein shall prevent LESSEE, at its option and with approval of said mortgagee or beneficiary, from filing a faithful performance bond in favor of said mortgagee or beneficiary in an amount equivalent to said insurance proceeds in lieu of surrendering said insurance proceeds to said mortgagee or beneficiary. CITY reserves the right to increase the limits of liability when, in the opinion of CITY, the value of the improvements covered is increased, subject to the availability of such insurance at the increased limits.

LESSEE shall not use or permit the use of said premises for any purpose other than the purposes for which said premises are hereby leased. LESSEE shall at his sole cost and expense comply and secure compliance with all insurance requirements necessary for the maintenance of reasonable fire and public liability insurance covering said premises, buildings and appurtenances.

14. INDEMNITY. CITY, its agents, officers and employees, shall not be liable, nor held liable, for any claims, liabilities, penalties, fines, or for any damage to the goods, properties or effects of LESSEE or any of the LESSEE'S representatives, agents, employees, guests, licensees, invitees, patrons or of any other persons whatsoever, nor for personal injuries to, or deaths of them, whether caused by or resulting from any acts or omission of LESSEE in or about the leased premises, or any act or omission of any person or from any defect in any part of the leased premises or from any other cause or reason whatsoever. LESSEE further agrees to indemnify and save free and harmless CITY and its authorized agents, officers and employees against any of the foregoing liabilities and any costs and expenses incurred by CITY on account of any claim or claims therefor. Provided, however, that this

paragraph shall not apply to any injury, death or property damage caused by CITY, its officers, employees or authorized agents.

15. WASTE, DAMAGE OR DESTRUCTION. LESSEE shall give notice to CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE shall not commit or suffer to be committed any waste or injury, or any public or private nuisance, shall keep the premises clean and clear of refuse and obstructions and shall dispose of all garbage, trash and rubbish. If the leased premises shall be damaged by any cause which renders the premises untenable, unsightly or unfit for the uses or purposes for which the same are leased and said damage is repairable within a reasonable time, LESSEE shall make or cause to be made full repair of said damage to restore the premises to the condition which existed prior to said damage, or LESSEE shall clear and remove from the said leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to City Manager and approved in writing by him in order to replace the operation in kind and scope which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section (D) 13, INSURANCE hereof.

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.

In the event LESSEE fails to commence or complete said repairs, restoration or replacement within the time specified herein, CITY shall have the option to do any of the following:

- (a) CITY may terminate this agreement by the giving of notice of such termination in writing to the mortgagee or trust deed beneficiary. The insurance proceeds shall be used to carry out the provisions of Section (D) 13, INSURANCE hereof; or
- (b) CITY may make or cause to be made said repairs, restoration or replacement of improvements, or to restore the premises to a clean and neat condition and charge the costs therefor (including costs incurred by CITY in enforcing this provision) to the account of the LESSEE, and LESSEE

authorizes CITY to use the insurance proceeds and any proceeds held in trust for said repairs, restoration or replacement, or to restore the premises to a clean and neat condition in accordance with Section (D) 13 INSURANCE hereof.

In the event CITY selects aforesaid option (b) CITY may have the additional options of either (1) continuing this lease in full force and effect, or (2) terminating this agreement with respect to the LESSEE by either assuming liability for any mortgage or deed of trust theretofore approved by CITY, or CITY may substitute for said terminated LESSEE a new lessee satisfactory with the mortgagee or beneficiary thereof.

16. CONSTRUCTION, ALTERATIONS. LESSEE shall not construct or install any buildings or structures on said premises or otherwise improve or alter said premises in any manner except in accordance with plans and specifications previously submitted to the City Manager and approved in writing by said City Manager. LESSEE shall not make any major structural or architectural design alterations to approved buildings, structures or improvements installed on said premises except in accordance with plans and specifications previously approved in writing by the City Manager. This provision shall not limit or set aside any obligation of LESSEE under this lease to maintain said premises in good condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make any improvements or alterations to said premises or to assume any expense therefor.

17. MAINTENANCE. LESSEE shall assume full responsibility for the operation and maintenance of said premises throughout the term hereof without expense to CITY. LESSEE shall perform all repairs and replacements necessary to maintain and preserve said premises in clean, safe and substantial condition in a manner satisfactory to CITY and in compliance with all applicable laws. CITY shall not be required to perform any maintenance, repairs or services or to assume any expense whatever therefor in connection with said premises.

18. OWNERSHIP OF IMPROVEMENTS. All improvements except trade fixtures installed by LESSEE in accordance with the provisions hereof shall become the property of CITY at CITY'S option, upon expiration or sooner termination of this agreement. Trade fixtures installed or owned by LESSEE shall be and remain the property of LESSEE.

LESSEE shall have the right to remove said trade fixtures prior to the termination of this agreement at LESSEE'S own expense, provided that any damage to the remaining improvements shall be repaired and the premises left in good order and condition.

In the event LESSEE does not so remove said trade fixtures and improvements not owned by or reverting to CITY prior to the expiration of this agreement, CITY may remove, or sell, or destroy the same at the expense of LESSEE, and LESSEE shall pay to CITY the reasonable cost of any such removal, sale or destruction together with the reasonable cost of repair of damages to CITY'S property resulting from such removal, sale or destruction. At the option of CITY, any property, real or personal, not so removed by LESSEE may be deemed abandoned, and may be removed and sold by CITY and all income received by CITY therefrom shall be the property of CITY exclusively.

19. SIGNS. The type, size and design of all exterior signs to be installed on the leased premises shall be subject to prior written approval of the City Manager of CITY.

20. CONTROL BY LESSEE. Notwithstanding the provisions of Section (D) 21 ASSIGNMENT hereof, regulating assignment of leasehold interest, the LESSEE shall have the right without further permission to assign his interest in this agreement once, either to a corporation or to a limited or general partnership upon written notification to CITY. The consent to the one assignment does not waive the requirement for approval of the City Manager of CITY for any subsequent assignment which approval shall not be unreasonably withheld. The corporation or partnership named as assignee shall remain owned and controlled by the party named herein as LESSEE at least to the extent of FIFTY-ONE PERCENT (51%) of (1) the issued voting stock of said corporation, or (2) the interest of said partnership. Sale or transfer of any of said controlling stock or partnership interest in any manner so as to limit or remove control of the operations conducted on the leased premises from said party shall be considered an assignment of this lease and shall be subject to the provisions of said Section (D) 21 hereof. Sale or transfer of noncontrolling stock or interest shall be reported to CITY, giving the names and addresses of the purchasers together with the interest purchased. CITY shall have the right at any time to require a report of the existing stockholders or partners. The acquisition of any of the issued voting stock of said corporation or interest in said partnership by an heir or beneficiary in a will of

the party hereto named herein as LESSEE, through or pursuant to probate proceedings of a court of competent jurisdiction, may be transferred without further approval of CITY upon written notification thereof. Provided, however, that if such transfer removes active management from said party, CITY shall have the right to approve or disapprove the manager appointed to actively manage the operations conducted on the leased premises or said transfer shall be subject to the provisions of said Section (D) 21 hereof. Throughout the term of this lease, LESSEE agrees to maintain competent management of all operations on said premises to the City Manager's satisfaction.

21. ASSIGNMENT AND SUBLETTING. LESSEE shall not assign this lease or any interest therein, and shall not sublet the said premises or any part thereof, or any right or privilege appurtenant thereto, without the prior written consent of the City Manager of CITY except as otherwise provided in Sections (D) 20 CONTROL BY LESSEE, (D) 22 RENTAL OF DWELLING UNITS, and (D) 23 ENCUMBRANCE hereof. A consent to one assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without such consent shall be void, and shall at the option of CITY, terminate this lease. This lease and any interest herein shall not be assignable by operation of law without the written consent of the City Manager. In the event CITY consents to an assignment of the entire leasehold, or the LESSEE exercises his privilege, under (D) 20, of assigning without CITY permission to a corporation or partnership in which LESSEE retains 51% of the issued voting stock or the interest of said partnership, CITY shall not hold assignor liable for further responsibility or interest in this lease agreement from the effective date of such assignment.

22. RENTAL OF DWELLING UNITS. Notwithstanding the provisions of Paragraph (D) 21 ASSIGNMENT AND SUBLETTING hereof, regulating subletting, LESSEE shall have the right to sublet or rent dwelling units consistent with the purpose of this lease without prior CITY approval. It is expressly understood that said subleases or rental agreements shall be subordinate and subject to all of the terms and provisions of this lease agreement. If any of the terms and conditions of the subleases or rental agreements are inconsistent with or contrary to any of the terms and conditions set forth in this lease agreement, the latter shall govern.

23. ENCUMBRANCE. LESSEE may encumber the leasehold estate by deed of trust, mortgage, or other security type instruments to assure the payment of a promissory note or notes of the LESSEE in accordance with a financial plan approved in writing by City Manager, upon the express condition that the net proceeds of such loan or loans received by the LESSEE be devoted exclusively to the purpose of developing the leased premises and for the primary purpose of constructing the facilities in accordance with Section (D) 24 DEVELOPMENT hereof; however, a reasonable portion of the loan proceeds may be disbursed for, or applied to payment of incidental costs of such construction, including but not limited to any one or more or all of the following: offsite improvements for service of the leased premises; onsite improvements; escrow charges; premiums for hazard insurance, or other insurance or bonds required by CITY; title insurance premiums and reasonable loan costs such as discounts, interest and commissions; also architectural, engineering and attorney's fees and such other normal expenses. Any subsequent encumbrances on the real property or to any permanent improvements thereon, must first have the approval in writing of City Manager. In the event said deed of trust, mortgage or other security type instrument should at any time have the beneficial interest thereto assigned; such assignment must be first approved by CITY, and CITY agrees not to unreasonably withhold such consent. The CITY further consents and agrees that in the event said deed of trust, mortgage or other security type instrument should at any time be in default and be foreclosed, the CITY will accept the mortgagee or beneficiary thereof as its new tenant under this lease with all the rights and privileges of the original LESSEE and, in the event that it is desired thereafter by said mortgagee or beneficiary to assign this lease to its nominee and said nominee is a reputable and financially responsible operator in the opinion of CITY, the CITY hereby agrees that upon the filing of an application for consent to such assignment, CITY will give its consent thereto. In the event LESSEE is in default under any provision of this lease, CITY agrees to serve written notice thereof upon said mortgagee or beneficiary to cure said default if said default is curable, or to allow said mortgagee or beneficiary to substitute itself to LESSEE'S estate hereunder and to operate the lease premises if said default is noncurable, all as set forth in Section (D) 12 REMEDIES OF CITY hereof.

24. DEVELOPMENT. The development of the leased premises shall be in accordance with the Precise Plan of Development identified in Paragraph 1 of Section A DEMISE, hereof. Said Precise Plan, among other things, shall show the design, materials of construction, elevations and colors of all structures; the plot plan of all structures and improvements; the uses of all facilities; the schedule of development; the financing plan and such other factors as are necessary or desirable in the opinion of the City Manager. No changes shall be made to said approved Precise Plan without written approval of the City Manager.

25. NON-DISCRIMINATION. LESSEE shall not discriminate in any manner against any person or persons on account of race, color, creed or national origin 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.

26. SURRENDER OF PREMISES. At the expiration or earlier termination of this lease, LESSEE shall execute, acknowledge and deliver to CITY, within five (5) days after written demand from CITY, a valid and recordable quitclaim deed of all of the said premises hereof, sufficient to remove all interest in this lease from the title to said premises.

27. UTILITIES. LESSEE shall order, obtain and pay for all utilities and service and installation charges in connection therewith. All water, sewer, power and communication lines installed within said premises by or for LESSEE shall be installed underground at LESSEE'S expense according to specifications of CITY. CITY shall have the right to connect to water, sewer, telephone, power, gas and other utility lines as are now or hereafter installed upon the leased premises, and shall have the right of access to make and maintain such connections. CITY agrees to pay the costs of such CITY connections and to provide such separate metering devices as may be necessary in order that CITY may pay for the services used by it. LESSEE shall install and maintain fire hydrants on said premises as recommended and approved by CITY.

28. CONSTRUCTION BOND. LESSEE shall file with CITY a Faithful Performance Bond in the amount of 100% of the construction costs in cash or proper corporate surety bond satisfactory to CITY or in a combination of cash and said surety bond payable

to CITY for loss resulting from failure of LESSEE to complete development of said premises in accordance with the Precise Plan of Development as provided in Section (D) 24 DEVELOPMENT hereof, or payable to CITY for expenses incurred in performing itself said development or any portion thereof; or LESSEE may deposit in escrow or in a trust fund or in any other manner acceptable to CITY, the said 100% of the construction costs, to be available for construction, improvements and furnishings on the leased premises and for reimbursements to CITY for damages in the event of failure of LESSEE to complete construction in accordance with the terms of this agreement. The escrow or trust or other deposit shall specify that such amount is to be used exclusively for the purpose of improving said leased premises in accordance with said Precise Plan. In the event LESSEE does not comply with the provisions of this section, this lease may, at the option of CITY, be declared terminated and of no further force and effect and, in the event of such termination, LESSEE shall forthwith vacate the leased premises and shall have no further right or claim thereto, and shall have no right or claim to damages or compensation for any loss suffered by reason of such termination. CITY agrees that any security previously submitted by LESSEE and accepted by CITY during the option period preceding this lease and which guarantees disbursement of construction funds, shall serve as compliance with this provision only to the extent of the construction costs previously secured thereby.

29. EMINENT DOMAIN. In the event the leased premises or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, then the interests of CITY and LESSEE in the award and the effect of the taking upon this lease agreement shall be as follows:

- a) In the event of such taking of only a part of the leased premises, leaving the remainder of said premises in such location and in such form, shape and size as to be used effectively and practicably in the opinion of CITY for the conduct thereon of the operations permitted hereunder, this lease shall terminate and end as to the portion of the premises so taken as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the leased premises not so taken and from and after such date the Minimum Annual Rental required by this lease to be paid by LESSEE to CITY shall be reduced in the proportion to which the area so taken bears

to the total area of the demised premises, provided, however, CITY shall have the right to substitute like property and maintain the rent schedule without diminution.

- b) In the event of the taking of only a part of the leased premises, leaving the remainder of said premises in such location, or in such form, shape or reduced size as to render the same not effectively and practicably usable, in the opinion of CITY, for the conduct thereon of the operations permitted hereunder, this lease and all right, title and interest thereunder shall cease on the date title to said premises or the portion thereof so taken vests in the condemning authority.
- c) In the event the entire leased premises are so taken this lease and all of the right, title and interest thereunder shall cease on the date title to said premises so taken vests in the condemning authority.
- d) In the event of any taking under Subparagraphs (a), (b) or (c) hereof, the only portion of any award of compensation which shall be paid to LESSEE shall be the fair market value of LESSEE'S interest in the improvements placed upon the leased premises by LESSEE which are taken, and any damages resulting from such taking.
- e) Notwithstanding the foregoing provisions of this Section (D) 29, CITY may, in its discretion and without affecting the validity and existence of this lease, transfer the CITY'S interests in said premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. In the event of such transfer by CITY, LESSEE shall be entitled to recover from the said authority for the fair market value of LESSEE'S interest in the improvements placed upon the leased premises by LESSEE in accordance with the provisions of this lease.

30. LEGAL PROCEEDINGS. Should it become necessary for CITY to commence legal proceedings to collect rent, recover possession, or enforce any other provision of this lease, LESSEE agrees to pay all legal costs in connection therewith, including a reasonable sum as attorney's fees. The parties agree that the law of the State of California shall be used in interpreting this lease agreement and will govern all disputes under this lease agreement and will determine all rights thereunder. At the option of either party, venue of any action involving this lease agreement may

be in, or changed to the County of San Diego or the Southern District of California. Personal service either within or without the State of California shall be sufficient to give personal jurisdiction to any court in which an action is filed for litigation of rights under this lease agreement.

31. CITY APPROVAL AND CONSENT. The approval or consent of the CITY, the City Manager or any employee or agent of the CITY, where required by any provisions of this lease, shall not be unreasonably withheld.

32. PREVENTED PERFORMANCE. If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of nature, restrictive governmental laws or regulations, riots, strikes, lock-outs or other cause without fault and beyond the control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay; and the period for the performance of any such act shall be extended for the duration of such delay; provided, however, this section shall not excuse LESSEE from the prompt payment of any rental or other charge required of LESSEE hereunder except as may be expressly provided elsewhere in this lease.

33. VERBAL REPRESENTATIONS. This lease contains the complete expression of the whole agreement between the parties hereto and there are no promises, representations, agreements, warranties or inducements either expressed verbally or implied except as are fully set forth herein. This contract cannot be enlarged, modified or changed in any respect except by written agreement between the said parties.

IN WITNESS WHEREOF, this Lease Agreement is executed by the City of San Diego, acting by and through its City Manager, and by Lessee.

Dated SEP 21 1971, 1971

THE CITY OF SAN DIEGO

By Walter Hahn
City Manager

LESSEE

Stephen B. Drogin
Stephen B. Drogin

APPROVED as to form and legality this 21st day of September, 1971.

JOHN W. WITT, City Attorney

By Henry L. Marshall
Deputy

DSB:ar
September 29, 1970

LEGAL DESCRIPTION

Lots 1 through 40, and the vacated alley, in Block 309, Pacific Beach, according to Map thereof No. 922, filed September 24, 1904 in the Office of the Recorder of the County of San Diego; together with those vacated portions of Noyes Street, Oliver Avenue and Olney Street adjoining said Block 309 in the City of San Diego, County of San Diego, State of California.

EXHIBIT C

DSB:jh