



THE CITY OF

SAN DIEGO

PROPERTY DEPARTMENT, MAIL STATION 51-A
SECURITY PACIFIC PLAZA, 1200 THIRD AVENUE, SUITE 1700
SAN DIEGO, CALIFORNIA 92101 TELEPHONE: (619) 236-6020

July 28, 1987

Mr. Lawrence D. Lamb
City of San Diego
Property Department
Security Pacific Plaza
1200 Third Avenue, Suite 1700
San Diego, CA 92101

8/11/87
C. P. 100 72
Lesse
C. P. 100
D. 100 72-1
COUNTY ANNE L. EVANS
LdL

Re: Lease - Bahia Hotel

In regard to the referenced agreement, please change the lessee's name to read:

Anne L. Evans d.b.a. Bahia Resort Hotel

The above defines the title change that I have recently enacted.

Very truly yours,

Anne L. Evans

LDL:baa(1)43

ABOVE ACCEPTED:

By:

Deputy City Manager

Date: 8-10-87

MAR 17 1966

* RESOLUTION No. 186643

ADOPTED ON _____

BE IT RESOLVED by the Council of The City of San Diego as follows:

That the City Manager be, and he is hereby authorized and empowered to execute, for and on behalf of said City a Lease Agreement with William D. Evans and Lucy E. Lamoreaux, as lessee, leasing 13.27 acres of land, approximately 2 acres of water, Bahia Point, Mission Bay Park, for a term of fifty (50) years ending in March 2016, for the purpose of constructing, operating, maintaining a cottage resort area improved with cottages, apartments, motel, together with restaurant and cocktail lounge, rental of boats and boat slips and such other complementary facilities approved by The City Manager, under the terms and conditions set forth in the form of Lease Agreement on file in the office of the City Clerk as Document No. 697173.

Presented by _____

APPROVED: EDWARD T. BUTLER, City Attorney

By _____
Robert S. Tease, Chief Deputy

APR 11-66

LEASE AGREEMENT

FILED MAR 21 1966

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

THIS LEASE, executed in duplicate, this 17 day of March, 1966,
by and between THE CITY OF SAN DIEGO, a municipal corporation in the County of
San Diego, State of California, hereinafter called "CITY", and WILLIAM D. EVANS
and LUCY E. LAMOREAUX (formerly LUCY E. COOPER), whose address is 998 West Mission
Bay Drive, San Diego, California, 92109, hereinafter called "LESSEE", WITNESSETH:

(A) DEMISE: The CITY hereby leases to the LESSEE and the LESSEE hires from the CITY, for the purpose of constructing, operating and maintaining a cottage resort area improved with cottages, apartments or motels, together with a restaurant and cocktail lounge, with facilities for the rental of boat slips, rental of boats, and such other complementary facilities as may be first approved in writing by the City Manager of CITY, and for no other purposes, those certain premises with the appurtenances situated in the City of San Diego, County of San Diego, State of California, and more particularly described as follows:

That portion of the tidelands and submerged or filled lands of Mission Bay, formerly False Bay, according to Map thereof made by James Pascoe in 1870, a copy of which Map was filed in the Office of the County Recorder of San Diego, November 14, 1921, and is known as Miscellaneous Map No. 36, all being in the City of San Diego, County of San Diego, State of California, described as follows:

PARCEL I

Beginning at the Southeast corner of Lot 24 in Block 10 of Resubdivision of Blocks 7, 8 and 10 and a portion of Block 9 and Lot "A", Inspiration Heights, according to Map thereof No. 1700, filed in the office of the County Recorder of San Diego County, December 27, 1917; thence along the Southerly line of said Lot 24, South $89^{\circ}55'56''$ West, (Record North $89^{\circ}59'$ West) 25.00 feet to a point of tangent curve in the boundary of said Lot 24; thence South $00^{\circ}04'04''$ East, 2.00 feet to an intersection with a line which is parallel with and 2.00 feet Southerly at right angles to the Southerly line of said Block 10; thence along said parallel line North $89^{\circ}55'56''$ East, 249.70 feet; thence North $05^{\circ}30'00''$ West 104.06 feet to the United States Coast and Geodetic Survey Triangulation Station "Old Town", (The Lambert Grid Co-ordinates, California Zone 6, for said Station "Old Town" are X = 1,712,415.17 - East and Y = 213,819.22 - North) and said Triangulation Station is located at Latitude $32^{\circ}45'02.845''$ North and Longitude $117^{\circ}11'07.200''$ West, being also the point of origin for the San Diego City Engineer's Mission Bay Park Co-ordinate System; thence North 7,745.14 feet and West 19,146.93 feet to the TRUE POINT OF BEGINNING, the Mission Bay Park Co-ordinates of said TRUE POINT OF BEGINNING being North 7,745.14 feet and West 19,146.93 feet; thence North $15^{\circ}33'49''$ East, 91.02 feet to Mission Bay Park Co-ordinates North 7,832.82 feet and West 19,122.51 feet, being also a point on the Mean High Tide Line of Mission Bay, as established on Miscellaneous Map No. 198 recorded in the Office of the County Recorder of San Diego County on June 17, 1948; thence continuing along said Mean High Tide Line as follows: South $76^{\circ}42'39''$ East, 20.00 feet to Mission Bay Park Co-ordinates North 7,828.23 feet and West 19,103.05 feet; thence North $75^{\circ}27'18''$ East 205.98 feet to Mission Bay Park Co-ordinates North 7,879.95 feet and West 18,903.67 feet; thence North $80^{\circ}32'22''$ East 201.56 feet to Mission Bay Park Co-ordinates North 7,923.09 feet and West 18,704.85 feet; thence North $51^{\circ}26'35''$ East 53.10 feet; thence North $37^{\circ}18'49''$ East 100.98 feet; thence North $8^{\circ}51'34''$ East 162.01 feet to a point hereby designated as Station "17" on said Mean High Tide Line; thence North $4^{\circ}30'49''$ West, 203.19 feet to Mission Bay Park Co-ordinates North 8,389.13 feet and West 18,593.16 feet; thence North $16^{\circ}54'27''$ West, 84.06 feet; thence North $25^{\circ}25'48''$ West, 100.02 feet; thence

North 29°25'37" West, 100.40 feet; thence North 36°08'47" West, 102.17 feet to Mission Bay Park Co-ordinates North 8,710.70 feet and West 18,764.33 feet; thence leaving said Mean High Tide Line, North 65°52'30" East, a distance of 435.62 feet; thence South 25°16'00" East, 305.31 feet to a point on the arc of a tangent curve concave Westerly, having a radius of 705.0 feet; thence Southerly along the arc of said curve, through a central angle of 65°16', a distance of 803.08 feet to Mission Bay Park Co-ordinates North 7,858.57 feet and West 18,333.94 feet; thence South 40°00'00" West, tangent to said curve, 496.60 feet; thence North 50°00'21" West, 28.76 feet to the point of tangency of a curve concave Southwesterly, having a radius of 1260.0 feet; thence Northwesterly along the arc of said curve, through a central angle of 24°25'50", a distance of 536.01 feet to the TRUE POINT OF BEGINNING of this Parcel I.

PARCEL II

Beginning at said Station 17 of said Mean High Tide Line of Mission Bay according to said Miscellaneous Map No. 198 hereinbefore described in Parcel I; thence leaving said Mean High Tide Line, South 85°29'11" West a distance of 100.00 feet to a point; thence North 4°30'49" West, a distance of 100.00 feet to a point; thence North 85°29'11" East a distance of 100.00 feet to a point on aforesaid Mean High Tide Line; thence South 4°30'49" East, along said Mean High Tide Line, 100.00 feet to the Point of Beginning of this Parcel II.

(B) TERM: The term shall be fifty (50) years, beginning on the date of execution of this lease agreement by CITY.

(C) RENT: The rent is payable monthly in arrears, except as otherwise provided herein, within one (1) month following the close of the calendar month in which the income was earned, at the office of the City Treasurer, City Administration Building, Community Concourse, San Diego, California, 92101, and shall be as follows:

LESSEE agrees to pay to CITY a sum of money based upon a percentage of gross income and volume of units sold as listed below, or a minimum yearly rental hereinafter set forth, whichever of the two is greater.

1. Beginning upon said date of execution hereof until January 31, 2003, LESSEE shall pay FIVE PER CENT (5%) of the gross income received by LESSEE from rental of rooms, cottages and other living accommodations. Beginning February 1, 2003, for the remainder of said term, LESSEE shall pay SEVEN PER CENT (7%) of gross income from said rental of rooms, cottages and other living accommodations. Provided, however, LESSEE may deduct from such gross income before computing the rent due CITY, any commission or fee paid to a travel agent or bureau, or reservation agent or agency, or other rental agent as a result of procurement or attempted procurement by said agent, bureau or agency of tenants for said rooms, cottages and other living accommodations; provided, further, that such deductions shall not exceed TEN PER CENT (10%) of such gross income and provided further, that no deductions shall be allowed with respect to fees paid to any such agency or bureau if LESSEE has any financial interest therein.
2. FIVE PER CENT (5%) of all gross income from operations of a cocktail lounge and bar dispensing alcoholic beverages, or from any other operation, concession or facility engaged in the sale of alcoholic beverages. The CITY hereby approves, insofar as it is able to do so, the right of LESSEE to engage in the sale of alcoholic beverages on the leased premises, both "on sale" and "off sale" as defined by the California Alcoholic Beverage Control Board; provided, however, that LESSEE shall build adequate facilities in keeping with the design of the leased premises for the dispensing of said alcoholic beverages.
3. ONE PER CENT (1%) of the gross income from operations involving the serving of meals, or the dispensing of food, including but not limited to the coffee shop, restaurant and food dispensed in the cocktail lounge.
4. TEN PER CENT (10%) of gross income from boat slip rental and boat storage.

5. FIVE PER CENT (5%) of gross income from any boat rentals or from fares in conjunction with the operation of any excursion, sightseeing, or shuttle boat and as first approved in writing by the City Manager.
6. FIVE PER CENT (5%) of gross income per month from the operation of a Health Club.
7. a. FOUR PER CENT (4%) of gross income from operation of a Gift Shop; and
- b. FIVE PER CENT (5%) of gross income from any other source not hereinabove stated resulting from occupancy of said premises; provided however, that all revenues arising from telephone and telegraph charges by LESSEE to patrons on said premises shall not be subject to rent. OR,
- c. LESSEE may, with prior written approval of City Manager, pay a flat monthly rental in lieu of the percentage rents prescribed in aforesaid subparagraphs a. and b. of this Section (C) 7, in an amount mutually estimated to be equivalent to that amount of rent which said percentage rents would produce.

*See File
amended 4/24/62*

PROVIDED, HOWEVER, either CITY, acting by and through its City Manager, or LESSEE, may at any time request a review of the rental rates and/or items included for computation of rents provided in this Section (C) 7. Following such review, in the event City Manager and LESSEE agree in writing upon a revision of the rental provisions of this Section (C) 7, then such revision shall become effective immediately, and shall remain in effect for a minimum period of twelve (12) months. In the event that City Manager and LESSEE cannot agree upon a revision following such review, then the provisions of this Section (C) 7, as then in effect, shall remain effective.

8. The minimum annual rental during the first five (5) years of this lease agreement shall be Twenty Thousand and No/100 Dollars (\$20,000.00) per year. Commencing on the fifth (5th) anniversary of the effective date of this lease, and on every fifth (5th) anniversary thereafter, for the duration of this lease, the minimum annual rental to be paid to CITY shall be adjusted to Sixty-six and Two-Thirds Per Cent (66-2/3%) of the annual average of actual rents paid, including any rents computed to have been payable, during the preceding five (5) year period. LESSEE shall pay said minimum rent, if applicable, annually in arrears, within thirty (30) days following each anniversary of the commencement date of this lease.

- Annual
Override*
9. Provided further, in addition to the rents provided hereinabove, LESSEE shall pay to CITY, within thirty (30) days following ^(each) the anniversary date of this lease, additional rent computed as follows: *amended by letter from John Fowler - 8/14/62
date changed from 3-16 to 4-1.*
- a. When LESSEE'S annual gross income under this lease exceeds the sum of \$1,500,000.00, then LESSEE shall pay to CITY One-Half of One Per Cent (1/2 of 1%) of said excess gross income up to a maximum gross income of \$2,000,000.00;
- b. When LESSEE'S annual gross income under this lease exceeds the sum of \$2,000,000.00, then LESSEE shall pay to CITY One Per Cent (1%) of gross income exceeding said \$2,000,000.00.

On the anniversary date of every fifth (5th) year of the duration of this lease, said sums of \$1,500,000.00 and \$2,000,000.00 shall be adjusted upward or downward in the same proportion that the Consumer Price Index of the U.S. Department of Labor, Bureau of Labor Statistics for the San Diego Area at the time shall have increased or decreased in relation to the said price index for February, 1965, hereby agreed to serve as the base of 100%.

10. It is expressly understood and agreed that in all cases where a percentage is required to be calculated and paid on gross income received from any operation, concession or facility, such percentage shall be calculated and paid, whether the income be received by the LESSEE or by any sublessee, and that all income received by a sublessee shall be considered as gross income of the LESSEE for the purposes of calculating any percentage hereunder to be paid by LESSEE to the CITY. It is further agreed that gross income produced by all vending machines and coin-operated telephones not owned by LESSEE, up to and including FIVE HUNDRED DOLLARS (\$500.00) per month shall be subject to rental hereunder only on the basis of actual income received therefrom by LESSEE; PROVIDED, HOWEVER, that the gross income produced by said vending machines and coin-operated telephones in excess of FIVE HUNDRED DOLLARS (\$500.00) per month shall be subject to rental hereunder on the basis of the applicable rates of percentage of gross income stated in Section (C), 1, 2, 3, 4, 5, 6 and 7 aforesaid.
11. 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 Three Per Cent (3%) 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 3%, a sum of money equal to Eight Per Cent (8%) 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 of servicing the delinquent account. Provided, however, non-payment of any such delinquent rents after forty-five (45) days of becoming delinquent, shall constitute a default which, at the option of the City Manager, shall be grounds for termination of this lease by CITY under the provisions of Section (D) 14 hereof. Provided further, CITY Manager, at his option, may for good cause waive any such delinquency compensation required herein, upon written application of LESSEE prior to the delinquent period. The provisions of this Section (C) 11 shall not apply to audit deficiency payments as covered in Section (D) 1 hereof.

(D) COVENANTS AND CONDITIONS:

1. RECORDS. Whenever the rent hereunder is dependent on percentage calculations of gross income accruing to LESSEE, during all of the interval concerned, the LESSEE shall keep, or cause to be kept, true, accurate and complete records and double entry books in a manner and form satisfactory to CITY, such records to show all transactions relative to the conduct of the operation, and such transactions shall be supported by documents of original entry such as sales slips, cash register tapes and purchase invoices. All sales shall be recorded by means of cash register system which automatically issues a customer's receipt or certifies the amount recorded on a sales slip and provides financial controls satisfactory to CITY. Said cash register shall have a locked-in total which is constantly accumulating, which total cannot be reset, and at the option of CITY, a constantly locked-in accumulating printed transaction counter which cannot be reset, or a printed detailed audit tape located within the register. Complete beginning and ending cash register readings shall be made a matter of daily record. Said books of account and records shall be kept or be made available at the demised premises or at such other location as is agreeable to CITY, and shall not be destroyed or disposed of within three (3) years following dates of aforesaid original entry, without prior CITY consent. Not later than the last day of each calendar month, LESSEE will render to CITY a detailed statement as to the source of income showing all moneys accrued and sales made during the preceding month, together with the amount payable to CITY as hereinabove provided and will accompany same with a remittance of the amount so shown to be due CITY; provided however, that CITY shall through its duly authorized agents or representatives have the right at any and all reasonable times to examine and audit said records for the purpose of determining the accuracy thereof, and of the monthly statements of moneys accrued and sales made on said premises. Whenever said audits by CITY disclose that a rental deficiency exists, LESSEE agrees to pay CITY the amount of such deficiency within thirty (30) days following written demand thereof by CITY.

Gross income as used in this lease shall include all income resulting from occupancy of the demised premises from whatever source derived whether received or to become due (except such income as shall be specifically excluded elsewhere in

this agreement), including the amount of any manufacturer's or importer's excise tax included in the prices of goods sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge. Such gross income shall not include federal, state or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a governmental agency as required by such agency. The amount of such taxes, however, shall be shown on the books and records hereinabove required to be maintained. In the event a portion of the rent herein required to be paid is based on units of products received or units of products sold and the remainder is subject in whole or in part to a percentage as additional rent, the amount representing actual sales of units of such products shall be excluded from gross income for purposes of applying percentage to such remainder or any portion thereof.

2. QUIET ENJOYMENT. 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 LESSEE is dispossessed through action of a title superior to CITY's, then 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 by mutual agreement a proportionate deduction of the rent covering the period or periods during which LESSEE is prevented from having the quiet possession of the demised premises.

3. INSURANCE RISKS. The LESSEE shall not use, or permit said premises or any part thereof, to be used for any purpose or purposes other than the purpose or purposes for which the said premises are hereby leased, without the prior written approval of the City Manager.

4. IMPROVEMENTS, REPAIRS, ALTERATIONS. LESSEE shall not make any major exterior alterations or changes in the leased premises, or any building situated thereon, or cause to be made, built or installed thereupon, any improvement (other than any improvement, alteration or change to the interior of a building, the exterior design of which has theretofore been approved in writing by the City Manager of CITY) except in accordance with plans and specifications previously submitted to the City Manager of CITY and approved in writing by him. LESSEE agrees to take good care of the leased premises, fixtures and appurtenances, and of all alterations, additions and improvements to any of them, and make all repairs in and about the same that may be necessary to preserve them in good order and condition (which repairs shall be equal to the original work in respect to quality) and promptly pay the expense of such repairs. CITY shall not be required to make any improvements, repairs or alterations not herein specifically required. LESSEE hereby waives all rights to make repairs at the expense of CITY, as provided in Section 1942 of the Civil Code of the State of California, and all rights provided for by Section 1941 of said Civil Code. If, in the opinion of the City Manager, said premises are not being maintained in reasonably good order and condition, CITY shall give LESSEE written notice to make such repairs or perform such maintenance as is deemed necessary by City Manager. Failure of LESSEE to do such work within thirty (30) days shall give CITY the right to enter upon the premises, to do or cause to be done such work, and LESSEE hereby agrees to pay CITY's cost thereof within thirty (30) days of demand.

5. DISPOSITION OF IMPROVEMENTS. All fixtures and improvements heretofore and hereafter installed on said premises by LESSEE in accordance with the provisions hereof, except landscaping and any underground utilities, and except any fixtures and improvements installed to replace or repair any improvements belonging to CITY, shall be and remain the property of LESSEE. Upon expiration or other termination of this lease for any reason, LESSEE shall remove all said fixtures and improvements belonging to LESSEE from said premises (other than such fixtures and improvements which are two (2) feet or more below the ground surface) without cost to CITY or damage to CITY's remaining property and premises, within ninety (90) days following said expiration or earlier termination of this lease. In the event LESSEE does not so remove said fixtures and improvements, then CITY may remove, or sell, or destroy same at LESSEE's expense, and LESSEE agrees to pay to CITY the reasonable cost of such removal, sale or destruction; or, at CITY's option any property, real or personal, not so removed shall be deemed abandoned. Provided, however, CITY may elect to purchase from LESSEE

at any time prior to expiration or earlier termination of this lease, or within thirty (30) days thereafter, all of LESSEE's fixtures and improvements, at a purchase price therefor mutually agreed upon between CITY and LESSEE. In the event that CITY and LESSEE cannot agree upon said purchase price within thirty (30) days following expiration or earlier termination of this lease, then LESSEE shall remove said fixtures and improvements as hereinabove provided.

6. 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 interest in the premises or to inspect the operations conducted on said premises. 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, including reasonable expenses of CITY in having such necessary work done. Repayment thereof shall be paid on the next day upon which rent becomes due. 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 not to exceed one-half of the annual rent paid to CITY based on the previous twelve month period, to assure correction of 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.

7. MINERAL AND WATER RIGHTS. CITY hereby reserves all rights, title and interest in any and all gas, oil, mineral and water upon or beneath said leased premises. CITY hereby reserves the right to grant such easements or establish such rights of way over, under, along and across said leased premises for utilities, thoroughfares, or access as it may deem advisable for the public good.

Provided, however, CITY shall not unreasonably interfere with LESSEE's use of said premises or invalidate the purposes for which this lease is granted and any physical damages to LESSEE's improvements resulting from CITY's exercising the rights herein reserved, shall be reimbursed to LESSEE by CITY.

8. COMPLIANCE WITH LAW. The LESSEE shall, at its sole cost and expense, comply and secure compliance with all the requirements of all municipal, county, state and federal authorities, now in force, or which may hereafter be in force, pertaining to the said premises, the operations conducted thereon, and the construction, maintenance and removal of improvements 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 of any nature whatsoever, erected, installed, or maintained by LESSEE or by reason of the business or other activities of LESSEE upon or in connection with the said demised premises. The judgment of any court of competent jurisdiction, 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 part thereto or not, that the LESSEE, sublessee or permittee has violated any such ordinance or statute in the use of the premises shall be conclusive of that fact as between CITY and LESSEE.

9. UTILITIES. Except for such installations or utilities as CITY herein expressly agrees to provide, LESSEE shall order, obtain and pay for all utilities, and service and installation charges in connection therewith.

CITY shall have the right to supply electrical power to a public comfort station on Bahia Point from an existing connection to the electrical system of the leased premises. As consideration for the use of such electrical power, CITY shall pay to LESSEE the sum of One Hundred Twenty-Five and No/100 Dollars (\$125.00) on each September 1, yearly in arrears. Provided, however, said consideration shall be subject to annual review and adjustment upon the written demand of either CITY or LESSEE. Provided further, CITY shall have the right to terminate this provision at any time upon ten days' written notice to LESSEE.

10. ASSIGNMENT. 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, or suffer any other person (the agents, officers and employees of CITY excepted) to occupy or use the said premises without the prior consent of the City Manager of CITY, except as otherwise provided in Sections (D) 26 and 30 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 shall not, nor shall any interest therein, be assignable, as to the interest of LESSEE, by operation of law, without the written consent of the City Manager. CITY agrees, however, that such written consent shall not be unreasonably withheld.

11. 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 in this lease shall extend to, and bind any assigns or sublessees of LESSEE.

12. 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 any subsequent breach of the same or any other term, covenant or condition herein contained. 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, other than the failure of LESSEE to pay the particular rental so accepted, 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 estop CITY from enforcing the full provisions hereof, nor shall the terms of this lease be changed or altered in any manner whatsoever other than by written agreement of the CITY and LESSEE.

13. 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 it of any or all such subleases or subtenancies.

14. REMEDIES OF CITY. In the event (a) that LESSEE shall default in the performance or fulfillment of any covenant or condition herein contained on his part to be performed or fulfilled and shall fail to cure such default within thirty (30) days following the service on him of a written notice from the CITY specifying the default or defaults complained of and the date on which LESSEE's rights hereunder will be terminated as hereinafter provided if such default or defaults is or are not cured, provided, however, that with respect to LESSEE's failure to pay rent upon date due, CITY shall be required to give only fifteen (15) days' notice; or (b) that LESSEE shall file a voluntary petition in bankruptcy; or (c) that LESSEE shall be adjudicated a bankrupt; or (d) that LESSEE shall make a general assignment for the benefit of creditors, then and in any of said events, CITY may, at its option, without further notice or demand upon LESSEE or upon any person or persons claiming by, through or under LESSEE, (except the performance and fulfillment by the CITY of the condition precedent to termination of this lease as set forth below) immediately cancel and terminate this lease and terminate each, every, and all of the rights of LESSEE and of any and all persons claiming by, through, or under LESSEE in or to the leased premises and in or to the further possession thereof and may thereupon enter into and upon the leased premises and repossess the same and expel LESSEE and all persons claiming by, through, or under LESSEE. The rights and remedies of CITY as hereinabove set forth, are cumulative only and shall in no wise be deemed to limit any of the other provisions of this lease or otherwise to deny to CITY any right or remedy at law or in equity which CITY may have or assert against LESSEE under any law in effect at the date hereof or which may hereafter be enacted or become effective, it being the intent hereof that the rights and remedies of CITY, as hereinabove set forth, shall supplement or be in addition to or in aid of the other provisions of this lease and of any right or remedy at law or in equity which CITY may have against said LESSEE. Provided, however, that in the event that there is a deed of trust or mortgage on the leasehold interest given by LESSEE with the consent of the CITY to secure a construction or other loan provided for herein, the 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 right to cure. Provided, further, that if 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 non-curable 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 and duties of the original LESSEE hereunder, subject to abatement of the default insofar as possible and feasible by mortgagee or beneficiary, and LESSEE expressly assigns all its interest in and to its leasehold estate in that event.

15. HOLDING OVER. Any holding-over after the expiration of said term for any cause shall be deemed to be a tenancy from month to month at any rental applicable during any prior effective period of the lease selected by CITY, and shall otherwise be on the terms and conditions herein specified so far as applicable. Such holding-over shall include any time employed by LESSEE in removing fixtures and improvements as hereinbefore provided.

16. NOTICES. Control and administration of this lease is under the jurisdiction of the City Manager of CITY 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 letter deposited in the United States mails, postage prepaid, and addressed to the City Manager, Attention: Property Director, City Administration Building, 202 C Street, 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 depositing in the United States mails, postage prepaid, a letter addressed to said LESSEE at the address stated at the commencement hereof, or may be personally served upon said LESSEE (or any one of them) or 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. A copy of any notice or notices sent to LESSEE shall also be sent by registered or certified mail to any lender whose loan has been approved by CITY.

17. WASTE, DAMAGE, OR DESTRUCTION OF PREMISES. LESSEE shall give prompt notice of any fire or damage that may occur from any reason whatsoever. 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 in a manner satisfactory to CITY. If the leased premises shall be damaged by any cause so as to render the premises untenable, unsightly, or unfit for the use or purposes for which the same are hereby let and said damages are reparable within a reasonable time in the opinion of the City Manager, LESSEE shall make or cause to be made full repairs to said damages so as to restore the premises to the condition which existed prior to said damages, or LESSEE shall clear and remove from the said leased premises all debris resulting from said damages 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 Subparagraph (d) of Section (D) 19 hereof. Preliminary steps with a view 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 and/or complete said repairs, restoration or replacement within the time specified herein, then 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 holding the proceeds of insurance as set forth in Section (D) 19 hereof, and upon receipt thereof, said mortgagee or trust deed beneficiary holding said insurance proceeds shall carry out the provisions of Part (2) of Subparagraph (d) of said Section (D) 19.
- (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 for said repairs, restoration or replacement of improvements, or to restore the premises to a clean and neat condition, in accordance with Subparagraph (d) of said Section (D) 19, which insurance proceeds are to be held in trust by a mortgagee or trust deed beneficiary, and LESSEE hereby waives any right of said insurance proceeds.

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 trust deed or mortgage theretofore approved by CITY, or CITY may substitute for said terminated LESSEE a new lessee satisfactory with mortgagee or beneficiary.

18. HOLD HARMLESS. CITY, its agents, officers and employees, shall not be, nor be 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 clientele or of any other persons whatsoever, nor for personal injuries to, or deaths of them, or any of them, whether caused by or resulting from any act 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.

19. INSURANCE. LESSEE agrees to take out and maintain during the entire term of this agreement, public liability insurance with an insurance carrier satisfactory to CITY 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 whatsoever 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 or any person caused directly or indirectly by 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.

LESSEE shall maintain during the entire term of this agreement, the minimum amount of not less than TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) for one person injured in one accident and not less than ONE MILLION DOLLARS (\$1,000,000.00) for more than one person injured in one accident, and in the amount of not less than FIFTY THOUSAND DOLLARS (\$50,000.00) with respect to any property damage aforesaid. If the operation under this agreement results in an increased or decreased risk, in the opinion of City Manager, then the minimum limits hereinabove designated shall be changed accordingly. If LESSEE does not keep such insurance in full force and effect, CITY may take out the necessary insurance and pay the premium, and the repayment thereof shall be paid on the next day upon which rent becomes due. Provisions of this paragraph as to maintenance of 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 it is otherwise responsible.

During the term of this lease LESSEE agrees to defend in the name of and on behalf of CITY all claims or suits for damages and all fixed costs and interest on all such legal proceedings and pay all sums which CITY may become liable to pay as damages imposed upon CITY by law arising out of accidental bodily injury or death suffered or alleged to have been suffered by any person while within or upon the premises described in this lease, and to pay all sums which the CITY may become liable to pay as damages imposed upon CITY by law resulting from accidental damage to or destruction of property not owned, leased, occupied, or used, by or in the care, custody, or control of the LESSEE or of the CITY or of any employee of LESSEE or of CITY subject to the following conditions:

- (a) This agreement shall not apply to any injury or death caused by any employee of CITY;
- (b) CITY shall not voluntarily assume any liability or incur any expenses or settle any claim without the written consent of LESSEE;
- (c) LESSEE shall deliver to the City Manager of CITY a policy of bodily injury and property damage liability insurance issued by a company satisfactory to CITY, licensed to transact such business in the State of California, indicating that LESSEE has in that company bodily injury and property damage insurance as required in this Section (D) 19, and that the policy has been endorsed or does otherwise cover the contractual liability imposed by this agreement and that the insurance company shall notify the City Manager if said policy be terminated or limited in any manner prior to the termination date specified in the policy;
- (d) LESSEE also agrees to take out and maintain during the entire term of this agreement, fire and extended coverage insurance on all property of an insurable nature belonging to LESSEE located upon the leased premises. Said insurance shall be written by an insurance carrier satisfactory with CITY and in an amount sufficient to cover the replacement cost of said property. LESSEE shall require that a policy of such insurance be filed with CITY and that said insurance shall not be terminated or limited in any manner prior to the termination date specified in the certificate without prior written notice to CITY. LESSEE shall pay the premium for such insurance and shall require that any such insurance proceeds in excess of Ten Thousand Dollars (\$10,000.00) resulting from a loss under said policy are payable jointly to CITY and LESSEE in order that said proceeds will be reinvested in rebuilding or repairing the damaged property (or said proceeds may be disposed of as specified in Section (D) 17 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, 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 shall be surrendered to said mortgagee or beneficiary, and any proceeds collected therefrom shall be held by said mortgagee or beneficiary for the following purposes:

22. INTENT OF LEASE. It is the intent of the CITY to grant to the LESSEE the right to construct, operate and maintain a cottage and motel resort area, together with a restaurant and cocktail lounge. In consideration of the granting by CITY to LESSEE of additional facilities, businesses or concessions, LESSEE agrees that if the City Manager of CITY declares that a proposed or existing facility, business or concession conflicts with the intent for which this lease is granted, LESSEE will immediately discontinue such existing use, or abandon such proposed facility, business or concession.

23. RIGHTS OF WAY. CITY agrees to install and pay for sewer and water lines up to the leased premises, and to provide rights of way for underground installations of telephone, power and gas lines. Such installations and rights of way shall be provided on the same terms and conditions as provided to residents of adjacent areas. CITY further agrees to install a fire hydrant on or adjacent to the leased premises at a location designated by the City Manager. LESSEE agrees to install such additional fire hydrant or hydrants upon the leased premises as shall be designated by said City Manager. LESSEE further agrees that CITY shall have the right to connect to water, sewer, telephone, power, gas or other utility lines as are now or hereafter installed upon the leased premises, and shall have the right of access to make such connections. CITY agrees to pay the costs incidental to such connections by CITY and to provide such separate metering devices as may be necessary.

24. TAXES. LESSEE shall pay and discharge before delinquency all taxes and assessments which may be levied upon the leased premises during said term and any extension thereof.

25. PUBLIC USE OF BEACH. LESSEE agrees that the beach and water area outside of the leased premises shall at all times during the life of this lease, be open to the free and unrestricted use by the public and that no improvement by LESSEE or activity of LESSEE on the leased premises shall in any way interfere with the public's right to use said beach and water area.

26. ASSIGNMENT TO FIRM CONTROLLED BY NAMED LESSEES. CITY agrees to give its consent to the assignment of this lease by the LESSEES herein named to any firm, partnership, or corporation, in which the said LESSEES have a controlling interest. In the event that such assignment is made and thereafter, while any such firm, partnership, or corporation is the LESSEE, the LESSEES herein named dispose of or lose their interest therein to the extent that they are no longer in control thereof, this lease may be terminated by CITY upon one hundred eighty (180) days' written notice to the LESSEE.

27. USE OF PARCEL II AND SEVERABLE TERMINATION THEREOF. It is anticipated that that portion of the premises herein described as Parcel II shall be used for the construction and operation of small boat docks or piers. It is also recognized that future changes in regulations or policy may make the retention of this area by LESSEE undesirable to CITY. In such event, CITY may terminate this lease as to Parcel II upon ninety (90) days written notice without any diminution in rent or liability on the part of CITY and the removal or purchase of the improvements thereon shall be made in accordance with Section (D) 5 hereof.

After such termination LESSEE may continue to use such boat facilities only in accordance with the terms of any permission therefor which may be granted by CITY.

28. SIGNS. LESSEE may erect and maintain such advertising signs only as are consistent with the purposes of this lease, and as are approved in writing by the City Manager.

29. COMPETITIVE USES. LESSEE agrees that during the period of this lease, no other property owned by CITY lying within the following described area now existing or to be completed will be leased to other parties for hotel or cottage use, or for auto courts, trailer camps or motels.

(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 and 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 CITY and mortgagee or beneficiary, or as provided in Subparagraph (a) of Section (D) 17 hereof, and said improvements are not reconstructed, repaired or replaced, the insurance proceeds shall be retained by said mortgagee or beneficiary to the extent necessary fully to discharge the debt secured by said mortgage or deed of trust and said mortgagee or beneficiary shall hold the balance thereof, without liability, to restore the leased premises to a neat and clean condition and then for CITY and LESSEE as their interests may appear.

CITY reserves the right to increase the limits of liability of fire insurance and extended coverage when, in the opinion of the CITY, the value of the improvements covered is increased, subject to the availability of such insurance at the increased limits.

20. DEVELOPMENT. LESSEE shall develop said premises in accordance with adequate plans and specifications submitted to CITY by LESSEE and approved in writing by the City Manager prior to any construction thereon, as follows:

(a) LESSEE shall commence construction of a four (4) story seventy (70) unit hotel building and a lobby addition to the existing restaurant and lounge not later than May 1, 1966, and shall pursue said construction, including appurtenant parking and landscaping improvements, diligently to its completion on or before February 1, 1967. Provided, however, that City Manager shall have the right for good cause to extend said commencement and completion dates for an additional period not exceeding (60) days, upon prior written application thereof by LESSEE. Provided further, however, that in the event said hotel building and said lobby addition have not been completed by said February 1, 1967, the rent shall be proportionately increased to reflect any loss in revenue to CITY resulting from the extension of said completion date. In any event, however, failure by LESSEE to complete aforesaid improvements to CITY's satisfaction within a total period of eighteen (18) months following the effective date of this lease, shall give CITY the right, at its option, to accelerate the expiration date of this lease by deleting up to a maximum period of 13 years from the term hereof.

*See front
amended 4/24/72*
(b) LESSEE may increase the total number of dwelling units to three hundred and two (302) during the balance of said term.

(c) LESSEE may increase the number of boat slips existing at the date of execution of this lease, with prior written approval of the City Manager. Provided, however, any repairs, modifications, changes or additions to existing docks and pier from and after the effective date of this lease shall be in accordance with CITY procedures and specifications.

Adequate water area for the construction of such additional boat slips approved by CITY, shall be allocated to LESSEE by CITY upon construction of said boat slips.

(d) LESSEE shall bring all exterior paint color of buildings, docks and floats to CITY's Mission Bay standards prior to June 16, 1966, or at such time as LESSEE undertakes major repainting, whichever date is sooner.

21. CONTINUOUS OPERATION. LESSEE will operate the leased premises and associated facilities continuously and without interruption after such premises are open for operation, and during the entire term of this agreement.

Beginning at the most Northerly tip of El Carmel Point; thence Due West to the intersection of the Easterly line of Mission Boulevard as said Mission Boulevard is located or established as of the date of this instrument; thence Southerly along the Easterly line of said Mission Boulevard to a point Due West from the most Southerly tip of Ventura Point; thence Easterly to the most Southerly tip of Ventura Point; thence following the contour of said Ventura Point in a Northeasterly direction to its most Easterly point; thence Northwesterly in a direct line to the most Easterly point of El Carmel Point; thence following the contour of said El Carmel Point in a Northwesterly direction to the Point of Beginning.

30. LEASE ENCUMBRANCE. CITY does hereby consent and agree that LESSEE may encumber this lease, leasehold estate and the improvements thereon, within the first eighteen (18) months of the term hereof, by deed of trust, mortgage, or other security type instrument to secure payment of a promissory note or notes by LESSEE for an amount not to exceed ONE MILLION THREE HUNDRED THOUSAND DOLLARS (\$1,300,000.00), to a lender or lenders approved in writing by the City Manager. Any subsequent encumbrance on the leasehold estate or lease improvements, including any extension, refinancing or other measure increasing in any manner the aggregate outstanding balance of said deed of trust, mortgage or other security type instrument, must first be approved in writing by the City Manager. In the event said deed of trust, mortgage or other security type instrument should at any time have the beneficial interest assigned, such assignment must be first approved by the CITY, and CITY agrees not to unreasonably withhold such consent. 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, CITY will accept the mortgagee or beneficiary thereunder 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, competent, and financially responsible operator, in the opinion of the CITY, the CITY hereby agrees that upon filing of an application for consent to such assignment, it will give its consent thereto, and agrees not to unreasonably withhold such consent. 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 curable; or, to allow said mortgagee or beneficiary to substitute itself to LESSEE's estate hereunder, and to operate the leasehold premises if said default is not curable, all as set forth in Section (D) 14 hereof.

21. TERMINATION OF PRIOR LEASE. It is mutually agreed that this lease agreement, upon execution hereof, shall supersede and terminate that certain prior agreement heretofore executed between the parties, a copy of which is filed in the Office of the City Clerk as Document No. 48401.

See Assign. Doc. 698871
to S.O.T. S. Bank

IN WITNESS WHEREOF, this lease agreement is executed by the CITY, acting by and through the City Manager of said CITY, under and pursuant to Resolution No. 186643 authorizing such execution, and the LESSEE has caused this agreement to be executed, the day and year first above written.

THE CITY OF SAN DIEGO

By Walter Hatin Jr
City Manager
assistant

LESSEE:

Wm. D. Evans
WILLIAM D. EVANS

Lucy E. Lamoreaux
LUCY E. LAMOREAUX

I HEREBY APPROVE the form and legality of the foregoing lease agreement this 21st day of March, 1966.

EDWARD T. BUTLER, City Attorney

By James B. McGowan, Jr

CONSENT TO OPTION TO RENEW AND EXTEND

The City of San Diego (CITY), as LESSOR under that certain Lease Agreement (Master Lease) entered into with

BAHIA HOTEL ASSOCIATES

(LESSEE), filed in the Office of the City Clerk as Document No. 697319 and that certain Consent to Sublease dated November 22, 1993, hereby consent to that certain Option to Renew and Extend agreement between the above LESSEE (SUBLESSOR) and

**CHARLES A. BERRY
DBA RESORT WATERSPORTS**

(SUBLESSEE) dated June 8, 1994. Said Consent to Sublease and Option to Renew and Extend agreement shall be subordinate to the Master Lease in all respects. The CITY is merely approving the Option to Renew and Extend agreement and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease and Option to Renew and Extend agreement. The CITY is not bound by any term or condition in the Sublease and Option to Renew and Extend agreement which in any way conflicts with or is additional to the provisions of the Master Lease.

In addition, this consent is subject to the same conditions required by the City in that certain Consent to Sublease Agreement executed on November 22, 1993, attached as Exhibit A.

Dated

7-26-94

THE CITY OF SAN DIEGO

By


Supervising Property Agent
for the City Manager

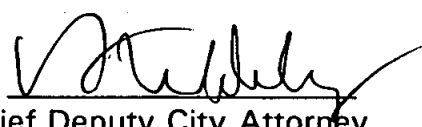
APPROVED AS TO FORM:

JOHN W. WITT, City Attorney

Dated

7/27/94

By


Chief Deputy City Attorney

LMF:DRT