

FILED APR 30 1968

LEASE AGREEMENT

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

THIS LEASE AGREEMENT, executed in duplicate this 8th day of November, 1968, at SAN DIEGO, CALIFORNIA, by and between THE CITY OF SAN DIEGO, a municipal corporation, in the County of San Diego, State of California, hereinafter referred to as the "CITY", and TRI-SQUARE CONSTRUCTION CO., INC., a California corporation, whose address is 1031 Dolorita Ave
Glendale 8, Calif., California, hereinafter referred to as "LESSEE,"

WITNESSETH

ARTICLE I

Denise

*See 1st Amend
Doc 726824*

*See 1st
Amendment
726824*
The CITY hereby leases to LESSEE and LESSEE hereby leases and hires from CITY that parcel of real property, together with appurtenances thereto, situated in the COUNTY OF SAN DIEGO, STATE OF CALIFORNIA; the legal description of said parcel of real property to be inserted in Article 1 shall be determined from the Master Plan as approved by the City Manager and required to be submitted under Article XXXII of this agreement. Said parcel is hereinafter referred to as the "Premises".

ARTICLE II

TERM

The term of this Lease shall be the period of FIFTY (50) YEARS, beginning on the date of execution and ending 7th November, 2017.

ARTICLE III

USE OF THE PREMISES

The premises shall be used for the primary purpose, and Lessee shall have the right, of constructing, operating and maintaining thereon a Public Camping Facility substantially of the type and nature described in the Master Plan which is attached hereto and marked Exhibit C, for tents, campsters and self-propelled bus-type camping facilities and such other

For additional uses, see letter 1-13-71

related uses as shall be first approved in writing by City Manager, and for such incidental uses as maintaining and operating a general merchandise store, a laundromat, a gift shop or shops, an equipment rental, boat slips and launching ramps, enclosed dry boat and boat trailer storage in a structure designed to conform with other buildings in the development to store a limited number of campers' boats, a recreation center and snack bars. Lessee shall in addition to the foregoing have the right to use the said premises to operate and maintain thereon activities which are incidental to the foregoing and such other activities as may have first been approved by the City Manager in writing which from time to time are deemed desirable to serve the patrons of the Public Camping Facility and the public all without discrimination as to race, creed or national origin.

CITY does not object to Off Premises Sale of Alcoholic Beverages in said General Merchandise Store.

See 3rd Amendment.

LESSEE shall use the premises only for the purpose of conducting thereon the business for which they are devised and shall diligently conduct such business to produce a reasonable and substantial gross income.

LESSEE shall not permit travel trailers, defined as towed items in which to live, to occupy the premises.

ARTICLE IV

RENT

The rent which LESSEE hereby agrees to pay to CITY and which shall be paid at the Office of the Treasurer of THE CITY OF SAN DIEGO, Administration Building, Community Concourse, San Diego, California, 92101, is as follows:

A. For that portion of the Term when the development is under construction and expiring prior to commencement of operations, which is hereby defined as the opening of the Camping Facility to the public, as evidenced by sales or admissions to the general public, the rent shall be the sum of \$500.00 per month payable monthly in advance. Provided, however, the sum of Six Thousand Dollars (\$6,000.00) paid as consideration for the option to lease the Premises shall be applicable to the rent payable during the construction period.

If operations begin within the time specified in the MASTER PLAN, attached hereto as EXHIBIT "C", then the total sum paid as rent during the construction and option period but excluding any sums paid for an extension of the contract periods as approved by City Manager, shall be applied and credited to the rent to become due during the first year of operations as specified in Paragraph B of this ARTICLE IV. In the event LESSEE does not begin construction of the Public Camping Facility within 60 days after execution of this Lease, then this Lease shall be automatically terminated. The City Manager, however, in his discretion, may grant one 30-day extension period for the commencement of construction after which further delay to begin construction will cause the automatic termination of the Lease Agreement unless the development schedule is revised by an amendment to this Lease approved by City Council.

B. After the commencement of operations, as hereinabove defined, and continuing thereafter for the remainder of the Term, LESSEE shall pay to CITY a sum of money equal to the total of the sums computed on the basis of the various percentages of LESSEE'S gross income as hereinafter set forth in this Subparagraph (B) of ARTICLE IV, or the minimum yearly rent as hereinafter set forth in this Subparagraph (B) of ARTICLE IV, whichever of the two sums is the greater.

1. The percentage rental which LESSEE agrees to pay CITY shall be computed on the basis of the following percentages:

- (a) TWENTY PERCENT (20%) of the gross revenues from Campsites, or other facility whose primary function is to furnish lodging.
- (b) THREE PERCENT (3%) of gross revenues from operation of a General Merchandise Store.
- (c) FIVE PERCENT (5%) of gross revenues from the sale or service of any alcoholic beverages dispensed from any facility regardless of its primary function.

- (d) FIVE PERCENT (5%) of gross revenues from operation of a Curio and Gift Shop.
- (e) THREE PERCENT (3%) of gross revenues from operation of a Recreation Hall.
- (f) THREE PERCENT (3%) of gross revenues from operation of a Snack Bar.
- (g) SEVEN PERCENT (7%) of gross revenues from operation of Laundry Facilities.
- (h) SEVEN PERCENT (7%) of gross revenues from the operation of Equipment Rentals and from any other sale, service or operation on the leased premises approved under the purposes for which this Lease is granted and not specified in (a) through (g) above; or such other percentage of gross income as may be agreed upon by the parties prior to the commencement of any activity, service or operation not herein contemplated.

In the event the parties cannot reach an agreement on the percentage rent to be paid to CITY, then such activity, service or operation shall not be entered into by LESSEE.

- See 3rd Amend.*
- (i) Rent paid to CITY from LESSEE-owned coin-operated vending machines shall be computed and included in the computation of rent due in accordance with subparagraphs B 1 b through B 1 h of this ARTICLE IV, on the basis of total gross income from said machines. Provided, however, that said rent paid for coin-operated telephones, cigarette machines, and other coin-operated vending machines which may from time to time be mutually acknowledged and agreed in

writing to be installed primarily for the public convenience; shall be computed on the basis of the income received by LESSEE rather than on the gross income of the machine, if LESSEE has no ownership equity in said machine, and if the total gross income from all non-LESSEE-owned vending machines on the leased premises does not exceed \$500.00 per month. However, the total gross income produced by said non-LESSEE-owned 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 percentages of said gross income in accordance with Subparagraphs B1b through B 1 h of this Article IV.

- (j) LESSEE may, with prior written approval of City Manager, pay a flat monthly rental in lieu of any of the percentage rents prescribed in aforesaid Subparagraphs B1 (d) through B 1 (i) of this Article IV, in an amount mutually estimated to be equivalent to that amount of rent which said percentage rents would produce.

Provided, however, either CITY, acting by or 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 Subparagraph B1 (j) of this ARTICLE IV. Following such review, in the event City Manager and Lessee agree in writing upon a revision of the rental provisions of this Subparagraph B 1 (j) of this Article IV, 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 Subparagraph B 1 (j), as then in effect, shall become no longer effective and the percentage rates for which this Subparagraph B 1 (j) were substituted shall be in full effect.

See 3rd Amend.
for section B-1 (K)

When a portion of the premises is leased by LESSEE to a sublessee, the rental and the use of the premises shall be subject to approval of CITY in the manner set forth in Article X of this agreement. It is contemplated that CITY shall not receive less rent under a Sublease Agreement than if that operation were conducted by the LESSEE. The rent received by LESSEE from the SUBLESSEE above rental paid to CITY shall not be computed as part of the LESSEE'S gross income against which the percentage rental applies.

LESSEE shall render monthly to CITY an accounting of gross income and rent due, based upon the percentage rental herein set forth and shall, in accordance with such accounting, pay to CITY the percentage rent due for such month on or before the 30th day following the month in which such gross income was earned as specified in ARTICLE V of this Lease Agreement.

In the event that LESSEE fails to pay the applicable rent when due, LESSEE shall pay CITY, in addition to the delinquent rent, a sum of money equal to Five Per Cent (5%) of said delinquent rent. In the event said delinquent rent is still unpaid after fifteen (15) days of becoming delinquent, LESSEE shall pay CITY, in addition to the delinquent rent, a sum of money equal to Ten Per Cent (10%) of said delinquent rent. Such additional sum or sums shall be deemed compensation to CITY for loss resulting from such delinquency, including cost of servicing the delinquent account. The City Manager of CITY may for a good cause

waive any such delinquency compensation charge upon written application of LESSEE prior to the delinquent period.

Notwithstanding the foregoing provision for delinquent rent compensation, failure of LESSEE to pay said rent when due shall constitute a default which, at the option of the City Manager, shall be grounds for termination by CITY under the provisions of Article XVI of this agreement.

- (deleted)*
Amended
See 1st
Amendment
Doc 726 824
2. The minimum annual rental (hereinafter referred to as the "Minimum Annual Rent") shall be paid in arrears at the expiration of each year of the term and shall be computed on the basis of an area of 1,721,750 square feet of land and an area of 255,000 square feet of water being included within the Premises.

- 1st Amendment*
See 3rd
Amendment
A, B, C (B)
- Deleted*
- (a) ~~Deleted~~ For the first FIVE (5) years beginning with the date the operation, as hereinabove defined as being evidenced by any service or sales of admission to the Public Camping Facility or any part thereof, to the general public or commencing with the first day of the fourteenth calendar month after execution of this Lease, whichever of the two dates is sooner, the minimum annual rent shall be two cents (\$.02) per square foot per year for the land area and one cent (\$.01) per square foot per year for the water area, if any, or a total minimum annual rent of \$36,985⁰⁰.

- (b) The Minimum Annual Rent for the term of the lease after the first five (5) years may be adjusted at City's option and at the expiration of each subsequent five (5) year period so that the Minimum Annual Rent for the ensuing five (5) year period will be a sum of

money equal to Sixty-six and Two-thirds Percent (66-2/3%) of the average annual rent actually paid by LESSEE during the previous five (5) year period.

ARTICLE V

MAINTENANCE OF RECORDS

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 as provided elsewhere in this Agreement), including the amount of any manufacturer's or importer's excise tax included in the prices of property 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. Gross income, however, 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, but the amount of such taxes shall be shown on the books and records elsewhere herein required to be maintained. Whenever the rent hereunder is dependent on percentage calculations of gross income accruing to LESSEE, LESSEE shall keep, or cause to be kept, true, accurate and complete records and double entry books from which the CITY can at all times determine the nature and amounts of income subject to rental percentage from the operation of the Premises. Such records shall 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, purchase invoices and tickets issued. In the event of admission charges, LESSEE shall issue serially-numbered tickets for each paid admission and shall keep adequate records of said serial numbers issued and of those unused. LESSEE shall furnish CITY with a printer's certificate showing the quantity, type and serial numbers of all admission tickets printed for use in connection with admissions. All sales or rentals of merchandise and services rendered shall be recorded by means of a cash register system which automatically issues a customer's receipt or certifies

the amount recorded on a sales slip. Said cash register shall have a locked-in total which is constantly accumulating, which total cannot be reset, and at the option of the CITY, a constantly locked-in accumulating printed transaction counter which cannot be reset, and/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 for a period of five years and made available at one location within the limits of the City of San Diego. Not later than the last day of each month, LESSEE shall render to CITY a detailed statement as to the source of the receipts showing all money accrued and sales made during the preceding 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. CITY shall, through its duly authorized agents or representatives, have the right to at any and all reasonable times 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.

ARTICLE VI

QUIET POSSESSION

LESSEE, paying the said rent and performing the covenants and agreements aforesaid, 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 hereinbefore specified or, if LESSEE is dispossessed through action of a title superior to CITY'S, or if LESSEE is limited in any of the uses permitted in the leased premises for any reason, then and in any 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 reduction of the rent covering the period or periods during which LESSEE is prevented from having the quiet possession and full use of the demised premises.

ARTICLE VII

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 Premises are hereby leased. Unless included within said purposes authorized by CITY or necessarily incidental to such uses, no use shall be made or permitted to be made of the Premises, nor acts done, which will increase the existing rate of insurance upon the building or buildings, if any, belonging to CITY which may be located on the Premises or in which the Premises may be located, or cause a cancellation of any insurance policy covering said building or buildings, or any part thereof, nor shall any article which may be prohibited by the standard form of fire insurance policy be or be permitted to be kept, used, or sold in or about said Premises. The LESSEE shall, at its sole cost and expense, comply with any and all requirements, pertaining to the Premises, of any insurance organization or company, necessary for the maintenance of reasonable fire and public liability insurance, covering said buildings and appurtenances.

ARTICLE VIII

MECHANIC'S LIEN BOND

LESSEE will save CITY free and harmless and indemnify CITY against all claims for labor and materials in connection with improvements, repair or alterations to the Premises, and the cost of defending against such claims, including reasonable attorney's fees.

During any period that improvements, repairs, or alterations are being constructed on the Premises by anyone other than the CITY, the LESSEE shall file with the CITY a bond conditioned for the payment in full of the claims of all persons performing labor upon or furnishing materials to be used, in the amount of the estimated cost of the improvement, or repair as determined by the City Manager. The 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.

In the event any lien for labor or materials or arising from any such construction is imposed or recorded against the leased premises and the lien holder attempts to perfect such lien by a lawsuit and the LESSEE shall have failed to comply with the requirements of this ARTICLE VIII, this Lease shall be subject to termination at the expiration of five (5) days after service of summons in such lawsuit upon the CITY; 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.

Further provided, that in the event LESSEE fails to file said bond and a mechanic's lien is recorded and an action is commenced to foreclose such lien, then any lender or lending agency or person who is a beneficiary under a trust deed or mortgagee under any mortgage securing any loan on or in connection with the Premises which was recorded with the prior consent of CITY shall be notified of the failure of the LESSEE to give the bond and shall have 30 days to satisfy any such mechanic's lien, and if such financial institution lender or lending agency or person does so satisfy and remove such lien and action, then this Lease shall continue in effect for the remainder of the Term.

ARTICLE IX

ENTRY AND INSPECTION

CITY reserves, and shall always have the right to enter the 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 Premises are not in a safe, healthy and satisfactory condition or a violation of any Municipal, County, State or Federal ordinance, statute or law, or any breach of condition of Lease, CITY shall have the right, after ten (10) days' written notice to LESSEE, to have any necessary maintenance work done for and at the expense of the LESSEE.

LESSEE agrees to pay promptly any and all costs incurred, including reasonable expenses of CITY in having such necessary work done in order to keep

said premises in a safe, healthy and satisfactory condition and to cure any violations or breach of conditions of Lease. Repayment thereof shall be deemed to be a part of the rental and paid as such on the next day upon which rent becomes due.

Upon demand by CITY, LESSEE shall file a faithful performance bond in an amount equal to one-half of the annual rent paid to CITY based on the previous twelve-month period. The rights reserved in this and the following Section shall not create any obligations elsewhere in this Lease imposed on CITY.

ARTICLE X

ASSIGNMENT

LESSEE shall not assign this Lease or any interest herein, and shall not sublet the 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 Premises, without the prior written consent of the City Manager of CITY. 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. 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. Provided, however, any lender whose loan has been approved by the CITY has the option to take over as LESSEE, as provided in Article XVI, Remedies of City.

ARTICLE XI

COMPLIANCE WITH LAW

LESSEE shall, at its sole cost and expense, comply and secure compliance with all requirements of Municipal, County, State and Federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, or the operations conducted thereon, and shall faithfully observe, and secure

observance with, in the use of the Premises, all Municipal Ordinances and County, 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 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 Final Judgment after appeal, if appeal is taken 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 CITY is a party 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.

ARTICLE XII

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.

ARTICLE XIII

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 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 in any manner changing the terms hereof or to stop 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.

ARTICLE XIV

MERGER

The voluntary or other surrender of this Lease by LESSEE or a mutual cancellation thereof, shall not work a merger, but will operate as an assignment to it of any or all such subleases or subtenancies. Any such surrender or mutual cancellation shall have no effect upon the rights of any lender whose loan has been approved by the CITY, unless the surrender or mutual cancellation provides for full satisfaction of the lender's trust deed or mortgage.

ARTICLE XV

NOTICES

Control and administration of this Lease is under the jurisdiction of the City Manager of THE CITY OF SAN DIEGO 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, 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 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 be also sent by registered or certified mail to any lender whose loan has been approved by the CITY.

ARTICLE XVI

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 his rights hereunder will be terminated as hereinafter provided if such default or defaults is or are not cured, 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 either or 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 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 the mortgagee or beneficiary shall take the appropriate action required, if any, by Article XXVIII - Lease Encumbrance, and this Lease shall not terminate if said mortgagee or beneficiary take the appropriate action as set out in Article XXVIII and proceed with reasonable diligence thereafter; provided further, that if mortgagee or beneficiary shall be required to perfect its right to cure said default or defaults through litigation, 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 shall first correct or cause to be corrected said default or defaults and pay the costs therefor (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 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.

(b) In the event that said bond is inadequate or non-existent, CITY shall notify beneficiary or mortgagee ten (10) days prior to exercising its right to 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 as rent which 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.

(c) CITY may terminate this lease 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 with beneficiary.

Should said default or defaults be of a non-curable type or nature, such as being impossible to, not practical to, or not feasible to cure, 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 the period set out in Article XXVIII 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 cure of the default or defaults by mortgagee or beneficiary as set out in Article XXVIII, and LESSEE expressly assigns all its interest in and to its leasehold estate in that event. Aforementioned assignment extends to entire leasehold indicated in "Exhibit B" or Parcel 1.

ARTICLE XVII

HOLDING OVER

Any holding-over after the expiration of the Term for any cause shall be construed to be a tenancy from month to month, at any rental selected by CITY which has been in effect during the Term, 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.

ARTICLE XVIII

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 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 Hold Harmless Clause between LESSEE and CITY shall not apply to any injury, death, or damage caused by the CITY, its officers, employees, or authorized agents.

ARTICLE XIX.

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 to property or any public or private nuisance, shall keep the premises clean and clear of refuse and obstructions and shall dispose of all wastes, 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 uses 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 Section (d) of Article XXIII hereof marked "Insurance". 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 with due diligence 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) of Article XXIII hereof entitled "Insurance", and upon receipt thereof, said mortgagee or trust deed beneficiary holding said insurance proceeds shall carry out the provisions of Part 2 of Clause (d) thereof.

(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 Article XXIII hereof entitled "Insurance" and 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 said Option (b), CITY may have the additional options of either (i) continuing this Lease in full force and effect; or (ii) 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.

ARTICLE XX

OWNERSHIP OF IMPROVEMENTS

All improvements of a permanent nature excepting trade fixtures installed by LESSEE in accordance with the provisions hereof shall become the property of the CITY at CITY'S option, upon expiration or sooner termination of this

Agreement. Trade fixtures installed by LESSEE shall be and remain the property of LESSEE. LESSEE shall have the right to remove said trade fixtures within a reasonable time after the termination of this Agreement at LESSEE'S own expense, provided that any damage to the remaining improvement shall be repaired and the Premises left in good order and condition. In the event LESSEE does not so remove said trade fixtures, 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 the CITY, any property, real or personal, not reverting to CITY, not so removed by LESSEE may be deemed abandoned, and may be removed at LESSEE'S expense. "TRADE FIXTURES" as used herein shall be described as any item stored or located in or on the premises which is not attached to the structure and whose removal does not leave visible evidence of such removal.

ARTICLE XXI.

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 improvement, alteration or change to the interior of a building, the exterior design of which has heretofore been approved in writing by the City Manager of CITY), except in accordance with plans and specifications previously submitted to the City Manager of said CITY and approved, in writing, by him. LESSEE shall submit to the CITY a realistic estimate of the cost of any improvements to be installed by the LESSEE upon the Leased Premises prior to the commencement of construction. This estimate shall be subject to verification by the CITY upon completion of improvements.

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.

*2% of
Gross income
for repairs
upkeep & maintenance*

To insure a high level of physical maintenance of buildings and grounds and to guard against obsolescence LESSEE shall: Beginning on the fifth (5th) year and in each year thereafter spend a minimum of 2% percent of annual gross income for repairs, upkeep and maintenance of leased premises, exclusive of Capital Improvements. CITY shall not be required to make any improvements, repairs or alterations not herein specifically required. LESSEE hereby waives all right 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 by Section 1941 of said Civil Code.

ARTICLE XXII

SIGNS

CITY and LESSEE shall agree upon the type, size and design of a sign or signs to be installed on the Leased Premises in accordance with the established sign policy for Mission Bay Park.

ARTICLE XXIII

INSURANCE

Upon taking physical possession of the Leased Premises LESSEE agrees to take out and maintain 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 of 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. Upon taking physical possession of the Leased Premises, LESSEE shall maintain the minimum amount of not less than Two Hundred Thousand Dollars (\$200,000.00) 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 the 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 deemed to be a part of the rental and paid as such 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 the LESSEE agrees to defend in the name of and on behalf of the CITY all claims or suits for damages and all fixed costs and interest on all such legal proceedings and pay all sums which the 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 injury to or destruction of property not owned, leased, occupied, or used by, or in the care, custody of, or control of the LESSEE or of the CITY, or of any employee of the LESSEE or of the CITY subject to the following conditions:

- (a) This agreement shall not apply to any injury or death caused by any employee of the CITY;
- (b) The CITY shall not voluntarily assume any liability or incur any expenses or settle any claim without the written consent of the LESSEE;

(c) The LESSEE shall deliver to the City Manager of the CITY a policy of bodily injury and property damage liability insurance issued by a company licensed to transact such business in the State of California, indicating that the LESSEE has in that company bodily injury and property damage liability insurance as required in Article XXIII, 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 certificate.

(d) LESSEE also agrees upon commencement of construction on the leased premises to take out and maintain during the entire remaining 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 at least 80% of 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 policy without prior written notice to CITY. LESSEE shall pay the premium for such insurance and shall require that any such insurance proceeds 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

Article XIX of this Agreement, 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 the CITY securing a construction or other loan provided for in Article XXVIII "Lease Endurance" herein, then and for that period all policies of fire insurance shall be made payable jointly to the mortgagee or beneficiary and the named insured and surrendered to the 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 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 both CITY and mortgagee or beneficiary in lieu of restoration of premises, and said improvements are not reconstructed, repaired or replaced, the insurance proceeds shall be retained by said mortgagee or beneficiary to the extent 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 premises to a neat and clean condition and then for CITY and LESSEE as their interest may appear.

CITY reserves the right to increase the percentage of 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.

ARTICLE XXIV - *deleted & replaced by*
CONTROL BY LESSEE *3rd Amendment*

See 1st Amendment Doc 726824 also See 2nd Amendment Doc 731191

A part of the consideration for the granting of this Lease is the personal qualifications and abilities of Yale O. Willis. Therefore, the corporation named herein as LESSEE shall remain owned and controlled by Yale O. Willis; at least to the extent of 51% of the issued stock of said corporation, and he shall actively administer and supervise the business enterprise operated on the Leased Premises unless a residential manager is approved by City; provided, however, that in the event that the above-named party shall become incapacitated, then the stockholders shall select a manager acceptable to CITY to so administer and supervise the said operations. The corporation herein named shall be limited to the operation of the demised premises under the terms of this Agreement. Sale or transfer of stock in, or divestment of any interest in said corporation by the above-named person in excess of said 51% shall be considered an assignment of interest and shall be treated in accordance with the provisions of ARTICLE X of this Agreement; provided, however, that the stock of any stockholder may be assigned to his spouse or direct lineal heirs upon notification in writing to the CITY, and providing management is approved by CITY. CITY to have right to require identification of minority stockholders.

ARTICLE XXV

STANDARD OF EMPLOYEES

The LESSEE and its employees will at all times conduct themselves and the operations on the Leased Premises in a creditable manner. In the event that LESSEE employs any persons in the exercise and use of the rights, licenses and privileges herein granted who do not conduct themselves in a creditable manner in the opinion of the City Manager of CITY, LESSEE agrees to dismiss such persons from his employ within ten (10) days of receiving written notice from the CITY that such persons are not satisfactory to the City Manager.

ARTICLE XXVI

DAMAGED EQUIPMENT

LESSEE agrees to salvage within 24 hours, any of LESSEE'S equipment within Mission Bay declared by CITY to be a menace to navigation or a nuisance and to salvage or cause to be salvaged any sunken vessel or equipment upon the Leased Premises irrespective of ownership. CITY may require that any tents, campsters, trailers, other equipment and boats not kept in a clean and orderly condition be removed from the Leased Premises.

ARTICLE XXVII

EMINENT DOMAIN-CONDEMNATION

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, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, the interests of City and lessee in the award or consideration for such transfer and the effect of the taking or transfer upon this lease agreement shall be as follows:

- a. In the event of such taking or transfer 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 the 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 or transferred 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 or transferred and from and after such date the rental required to be paid by LESSEE to CITY in and by Section (C) 1 a of this lease shall be reduced in the proportion to which the area so taken or transferred bears to the total area of the demised premises.

- b. In the event of the taking or transfer 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 or transferred vests in the condemning authority.
- c. In the event the entire leased premises are taken or so transferred, this lease and all of the right, title and interest thereunder shall cease on the date title to said premises so taken or transferred vests in the condemning authority.
- d. In the event of any taking or transfer under Sections a, b or c hereof, LESSEE shall not be entitled to any award of compensation except for the taking of buildings, fixtures, equipment and improvements owned by LESSEE or by reason of the relocation of the same, and for the unamortized portion of the offsite improvements constructed by LESSEE in accordance with this lease.

ARTICLE XXVIII

LEASE ENCUMBRANCE

The CITY does hereby consent and agree that the LESSEE may encumber this Lease, leasehold estate and the improvements thereon by deed of trust, mortgage, chattel mortgage or other security type instrument to assure the payment of a promissory note or notes of the LESSEE in accordance with the 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 the said Master Plan for the Leased Premises; 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: Off-site improvements

for service of the Leased Premises; on-site 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 or such other normal expenses. Any subsequent encumbrance on the real property must first be approved in writing by the City Manager.

In the event it is desired to assign the beneficial interest of any deed of trust, mortgage or other type security instrument, such assignment must first be approved by CITY. Any assignee of a beneficial interest shall have the same rights under this Lease as the assignor. CITY agrees not to unreasonably withhold consent to assignments of the beneficial interest. 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 previously approved by it as its new tenant under this lease with all the rights and privileges of the original LESSEE, and that in the event that said nominee is a reputable, qualified and financially responsible operator in the opinion of the CITY, the CITY hereby agrees that upon the filing of an application for the consent to such assignment, the CITY will give its consent thereto, and agrees not to unreasonably withhold such consent.

Anything in this Lease to the contrary notwithstanding, CITY shall not exercise any remedy available to it for default hereof by LESSEE, unless and until CITY, as a condition precedent to such exercise, shall have given notice to said beneficiary or mortgagee, by registered or certified mail, postage prepaid, addressed as said beneficiary or mortgagee shall from time to time instruct CITY (or, in the absence of such instruction, addressed as shown on said deed of trust or mortgage), which notice shall specify the nature and extent of said claimed default. Thereafter, said beneficiary or mortgagee shall have the right and power to cure said default in the manner hereinafter provided and thereby cause this Lease to remain in full force and effect.

a. If said default be in the payment of rental, taxes, insurance premiums, amount claimed under mechanic's lien on the Leased Premises or any other sum of money required to be paid by LESSEE, said beneficiary or mortgagee may pay the same to CITY or other proper payee within 30 days after the mailing of said notice to beneficiary or mortgagee; if so paid, said default shall be cured and this Lease shall remain in full force and effect. If, after any such payment to CITY by the beneficiary, LESSEE pays the same to CITY, or in the event CITY waives default, CITY shall promptly refund said payment to said beneficiary or mortgagee.

b. If said default be other than specified in subparagraph (a) above, CITY shall not exercise any such remedy if:

- (1) Within 60 days after the mailing of said notice to mortgagee or beneficiary, said mortgagee or beneficiary commences foreclosure (by judicial action or trustee's sale) of its mortgage or deed of trust; and
- (2) Such foreclosure be prosecuted with reasonable diligence; and
- (3) Prior thereto, said beneficiary or mortgagee shall first have obtained, in writing, the approval of CITY of all prospective purchasers participating at said foreclosure sale other than beneficiary or mortgagee as to their reputation, qualifications, and financial responsibility, which approval CITY agrees not unreasonably to withhold; and

- (4) Within a reasonable time after foreclosure sale, the purchaser thereof cures such default, if said default is curable from both a feasible and practical standpoint, or if default is impossible to cure, said default shall be incontrovertibly deemed cured upon such foreclosure sale.

ARTICLE XXIX

UTILITIES

LESSEE agrees to provide the following utilities services, water, sewer, power and communications service and road to the property line of the Leased Premises to be occupied by the LESSEE and in such a manner as to enable the LESSEE to connect with and utilize said services. Any special or unusual utility services will be provided by LESSEE. 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 by the LESSEE shall be installed underground at LESSEE'S expense according to specifications of said CITY. CITY shall have the right to connect to water, sewer, telephone, gas or 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 cost incidental to such 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 the Leased Premises as recommended and approved by CITY, it being understood and agreed that CITY shall perform for the Leased Premises usual fire and police protection.

ARTICLE XXX

SCHEDULE OF OPERATIONS

LESSEE agrees to operate the Leased Premises and associated facilities continuously throughout the entire term of this Agreement after such premises are first opened to the public in order to serve the public interest and in accordance with sound business practices.

Closing of portions of the Premises for a limited period for remodeling, or alterations during times of least interference with the public's use of the Premises will be granted by the CITY upon request in writing with reasonable notice by the LESSEE. All facilities upon the Leased Premises shall be open to the public during a regular schedule of days and hours which shall be subject to approval of the City Manager. Provided, however, LESSEE may close the premises for limited periods during the off-season upon prior approval of City Manager. The length of stay permitted during any one occupancy shall be regulated by the City Manager. The usual limitation shall be two (2) weeks and in no case shall any patron of LESSEE be permitted a continuous occupancy in excess of thirty (30) days. *See 3rd amend*

Residents of the City of San Diego, prior to June 15 of each year, shall have priority for making reservations of accommodations for their own use during the period June 15 through Labor Day of the current year. During the period June 15 through Labor Day and the balance of the year all other admissions will be on a first served basis.

Maximum Daily Camping Fees shall not exceed one and one-half times fees charged by the California Department of Beaches and Parks for similar accommodations.

Type and quality of service furnished by LESSEE must qualify for the conditions and requirements of the "A" Card issued by Department of Health for CITY to operators of food-handling establishments.

ARTICLE XXXI

CANCELLATION

Deleted by 3rd Amend.

If CITY by Resolution of City Council determines the uses of the demised premises provided by ARTICLE I hereof are inconsistent with public convenience and necessity and further that the demised Premises shall not be used for said purposes during the remaining term of this Lease, then CITY shall have the right to terminate the lease upon one (1) year's written notice to LESSEE and upon payment to the LESSEE of compensation for the improvements placed upon the demised Premises by the LESSEE and compensation for the unamortised portion

of the offsite improvements. The amount of compensation shall be the appraised depreciated value at the date of cancellation of said Lease. Said appraised depreciated value will be determined by a qualified appraiser selected by mutual consent or by the ^{Superior} ~~Supreme~~ Court of San Diego County if mutuality cannot be reached. No compensation shall be paid by the CITY for any costs not approved in accordance with the provisions of ARTICLE XXI of this Agreement, provided, however, that should said cancellation occur during a period within which there is in existence a mortgage or deed of trust on the leasehold given by LESSEE with the consent of the CITY to secure any construction loan or other loan provided for in Article XXVIII herein, then in no event shall the amount payable by the CITY on cancellation of this Lease be less than the amount sufficient to fully discharge all such loans approved by CITY, and as they may have been modified or extended with the consent in writing of the CITY. Should mortgagee or beneficiary neglect to obtain approval of the CITY as to any modification or extension of the loan or loans, any cancellation payment to the mortgagee or beneficiary may be reduced by the amounts the unpaid balance of the loan or loans would have been further reduced had the modification or extension not been granted by said mortgagee or beneficiary.

In the event of termination of this Lease in accordance with the provision of this Article, LESSEE shall be under no obligation whatsoever to restore the Premises to the conditions which existed at the commencement of the Term nor to demolish, destroy or remove any improvement or structure situated upon the Premises.

CITY shall be under no obligation to compensate LESSEE for improvements made without CITY'S consent, which are not authorized by the provisions of this Agreement nor any improvements made after the date of notice of CITY'S election to terminate this Lease unless there shall have been an expressed Agreement to the contrary.

ARTICLE XXXVII

DEVELOPMENT

Deleted

See 1st Amendment Doc 726824
A. Onsite - The development of the Leased Premises shall be in accordance with the "Rules and Regulations for Special Occupancy Trailer Parks and Tent Camps", California Administrative Code, Title 8, Chapter 9, Article 2.5, and established City Practices.

See 3rd Amendment
All construction on the leased premises shall conform to the Master Plan which was submitted during the Option Period and approved by the City Manager, and filed in the Office of the City Clerk as Document No.

723338; and the approved Construction Plans which were also submitted during the Option Period. Changes or alterations to the Master Plan may be made with mutual consent of the parties. The total cost for improvements to be constructed on the leased premises shall not be less than the amount specified in said Master Plan.

Construction shall commence within sixty (60) days from the date of this document and shall be completed within three hundred and sixty-five (365) days from commencement of construction.

B. Offsite.- LESSEE agrees to construct all of the improvements outside of the leased premises which are required by the CITY in connection with the development of the Public Camping Facility, as shown on the approved construction plans. The cost of said offsite improvements shall not exceed \$346,000.00 as specified in said Master Plan. CITY agrees that funds spent by LESSEE subject to approval of City Manager to make these improvements, plus a Five Percent (5%) per year simple interest charge on the declining balance may be offset against LESSEE'S rental payment on the basis of One Hundred Percent (100%) of rental revenues produced by the leased premises and paid to the CITY as specified in Article IV of this Agreement until the offsite improvements and the interest equivalent have been reimbursed to LESSEE. CITY to reserve the right to pay the remaining balance of the cost of said offsite improvements at any time without penalty.

ARTICLE XXXIII

FAITHFUL PERFORMANCE BOND

LESSEE shall maintain with the CITY a Faithful Performance Bond in the amount of \$10,000.00 in cash, a proper surety bond, or other security, satisfactory to CITY and payable to CITY for loss resulting from failure of LESSEE to comply with the covenants and conditions of this lease agreement, or for reimbursement to CITY for expenses incurred in performing itself such covenants or conditions after breach by LESSEE, including the costs and reasonable attorney's fees for defending CITY against any claims resulting from such failure of LESSEE. Such surety bond shall not assure any payment of rent under the provisions of this Lease. However, if a cash bond or other method of security is maintained with CITY, it shall assure payment of rent.

ARTICLE XXXIV

FAITHFUL PERFORMANCE FOR CONSTRUCTION

LESSEE shall file with the 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 to comply with said development plan of the Master Plan as outlined in Article XXXII hereof, or payable to CITY for expenses incurred in performing itself said development plan or any portion thereof. Or LESSEE may deposit in escrow or in a trust fund or in any other manner acceptable to the CITY, the said 100% of the construction costs, to be available for construction, improvements and furnishings on the leased premises and for reimbursement to the CITY for its 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 the said development of the Master Plan. In the event LESSEE does not have on deposit the said amount to be used for such development, or the Faithful Performance bond or cash, this lease may, at the option of the CITY, be declared terminated and of no further force and effect, and that in the event of such termination, LESSEE shall forthwith

remove from 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. Provided, however, LESSEE may as an alternate file a bond as outlined above for each development phase of the Master Plan at least 30 days prior to the scheduled commencement date. In the event LESSEE fails to file said bond, then LESSEE by execution of this agreement hereby authorizes CITY to purchase said bond in the name of LESSEE and to charge LESSEE for the premium of said bond on the following month's rent.

ARTICLE XXXV

SCHEDULE OF PRICES

Prices of merchandise, equipment and services shall be comparable with like merchandise, equipment or services offered in the City and County of San Diego. LESSEE shall submit to the City Manager for approval a list of the items to be sold or rented, the prices charged therefor, and the quality and quantity for which the price is established. The City Manager shall have the right to approve or disapprove any items to be sold or rented, the prices charged therefor and the quality and quantity. Thereafter, there shall be no change in the quality or quantity or price, nor change in the items available for sale or rent without prior City Manager approval. In the event that CITY and LESSEE cannot agree on the quality, quantity, or price of any item to be sold or rented, then this item shall not be sold or rented by LESSEE.

ARTICLE XXXVI

LANDSCAPING

LESSEE shall develop the landscaping on the entire leased premises in accordance with landscaping plans and specifications previously approved, or as subsequently amended by mutual agreement of the parties hereto. LESSEE shall maintain such landscaping in accordance with standards set by the CITY and maintained by CITY for other developed park areas. All service areas shall be constructed and landscaped so as to conceal them from public view.

ARTICLE XXXVII

RESTRICTIVE ASSOCIATIONS

It is the intention of this lease that the entire demised premises shall be operated for the benefit of the general public without regard for race, creed or national origin. This provision does not preclude the establishment of Clubs, associations, or groups for purposes consistent with the permitted uses of the leased premises. Provided, however, such clubs, associations, or groups shall not have exclusive use of any portions of the leased premises or facilities located thereon; that membership in such clubs, associations or groups is available to the general public under reasonable regulations contained in the by-laws of said organizations, that charges in connection therewith are not discriminatory, but, instead reflect a fair cost for providing the merchandise and services rendered. The purpose for which said organization is established and the by-laws of said organization or any changes thereto shall be subject to the written approval of the City Manager.

ARTICLE XXXVIII

RESERVATION FOR CITY USE

CITY hereby reserves all rights, title and interest in any and all gas, oil, minerals and water, upon or beneath said leased premises. CITY shall have the right to enter said leased premises for the purpose of drilling, operating and maintaining such installations as are necessary or desirable for the development of said gas, oil, mineral and water rights or for 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 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 the premises and will reimburse LESSEE for physical damages done to permanent improvements located on the leased premises resulting from the CITY'S exercising the rights retained in this paragraph. The leased premises shall also be subject to the right of the U.S. Government as they now or may be hereafter appear to exert dominion over the water area of Mission Bay, such as dredging and other governmental purposes.

ARTICLE XXXIX

QUALITY OF SERVICE

Merchandise and equipment offered for sale on the leased premises shall be in keeping with the demand of the public for quality, quantity, and variety, and no special brand of merchandise, supplies or equipment shall be handled for sale exclusively. The prices for all merchandise and services shall be reasonable commensurate with good quality merchandise and service and shall be subject to City Manager approval.

ARTICLE XXXX

BEACH AREA

LESSEE hereby agrees that that portion of the leased premises developed as beach shall be available for use by the general public without discrimination as to race, color, creed or national origin. LESSEE shall maintain said beach area and shall not impair access to said beach area from adjoining beach areas.

ARTICLE XXXXI

ORAL REPRESENTATIONS

It is specifically understood and agreed hereby that this lease contains the complete expression of the whole agreement between the parties hereto, and that there are no promises, representations, agreements, warranties or inducements, either expressed orally or implied by the said parties, except as are fully set forth herein, and, further, that this lease cannot be enlarged, modified or changed in any respect except by written agreement duly executed by and between the said parties.

See Article ~~XXXXII~~ in First Amendment, Doc 726824
See Article ~~XXXXIII~~ in Second Amendment Doc 731191

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. 189493, authorizing such execution, and the LESSEE has caused this Agreement to be executed and its corporate name and seal to be affixed by the proper officers the day and year first above written.

THE CITY OF SAN DIEGO

By Walter Hahn, Jr.
City Manager

TRI-SQUARE CONSTRUCTION CO., INC.

By John E. O'Connell, Jr.
President

I HEREBY APPROVE THE FORM AND LEGALITY of the foregoing Lease Agreement this 24th day of April, 1968.

EDWARD T. BUTLER, City Attorney

By James P. McShane, Jr.
~~Chief~~ Deputy

PARCEL 1:

THOSE PORTIONS OF ACRE LOT 75 OF PACIFIC BEACH, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 854, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; PORTIONS OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AND KNOWN AS MISCELLANEOUS MAP NO. 36, TOGETHER WITH A PORTION OF MISSION BAY WHICH WAS GRANTED TO THE CITY OF SAN DIEGO BY ACT OF THE LEGISLATURE OF THE STATE OF CALIFORNIA, APPROVED APRIL 27, 1945 ENTITLED "AN ACT GRANTING CERTAIN LANDS, TIDE LANDS AND SUBMERGED LANDS OF THE STATE OF CALIFORNIA TO THE CITY OF SAN DIEGO UPON CERTAIN TRUSTS AND CONDITIONS", DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE CENTER LINE OF OLNEY STREET AND OLIVER AVENUE AS SHOWN ON PACIFIC BEACH, ACCORDING TO MAP NO. 922, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID CENTER LINE OF OLNEY STREET, SOUTH $14^{\circ}29'$ EAST 390.00 FEET; THENCE LEAVING SAID CENTER LINE NORTH $75^{\circ}31'$ EAST 40.00 FEET TO THE EASTERLY LINE OF OLNEY STREET AS SHOWN ON SAID MAP NO. 854, BEING THE TRUE POINT OF BEGINNING; THENCE ALONG SAID EASTERLY LINE SOUTH $14^{\circ}29'$ EAST 560.00 FEET; THENCE NORTH $75^{\circ}31'$ EAST 880.00 FEET; THENCE SOUTH $14^{\circ}29'$ EAST 250.00 FEET; THENCE NORTH $75^{\circ}31'$ EAST 1150.00 FEET; THENCE NORTH $9^{\circ}27'33''$ WEST 913.59 FEET TO A POINT IN A LINE WHICH BEARS NORTH $75^{\circ}31'$ EAST PARALLEL WITH THE SOUTHERLY LINE OF PACIFIC BEACH DRIVE, FORMERLY PACIFIC AVENUE AS SHOWN ON MISSION BAY PARK TRACT, ACCORDING TO MAP THEREOF NO. 1120, FILED IN THE OFFICE OF SAID COUNTY RECORDER, FROM THE TRUE POINT OF BEGINNING; THENCE ALONG SAID PARALLEL LINE SOUTH $75^{\circ}31'$ WEST 2110.00 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING FROM THAT PORTION LYING UPLAND FROM THE MEAN HIGH TIDE LINE ALL OIL, GAS, OTHER HYDROCARBONS AND MINERALS, TOGETHER WITH THE RIGHT TO USE THE SURFACE OF SAID LAND AND ALL PORTIONS OF THE SUBSURFACE OF SAID LAND FOR THE DEVELOPMENT AND PRODUCTION OF OIL, GAS, OTHER HYDROCARBONS AND MINERALS FROM BENEATH SAID LAND AS RESERVED BY THE STATE OF CALIFORNIA, IN AN AGREEMENT RECORDED OCTOBER 21, 1964 UNDER RECORDER'S FILE NO. 192661.

ALSO EXCEPTING FROM THAT PORTION LYING BELOW THE MEAN HIGH TIDE LINE ALL THE DEPOSITS OF MINERALS, INCLUDING OIL AND GAS, TOGETHER WITH THE RIGHT TO PROSPECT FOR, MINE AND REMOVE SUCH DEPOSITS AND TO OCCUPY AND USE SO MUCH OF THE SURFACE AS MAY BE REQUIRED THEREFORE AS RESERVED BY THE STATE OF CALIFORNIA IN AN ACT OF THE LEGISLATURE APPROVED APRIL 27, 1945, STATUTES OF CALIFORNIA, CHAPTER 142.

RESOLUTION No. 19221

SA-
Boone

Adopted on MAR 10 1970

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 an Assignment of Interest, Assumption of Lease and Consent to Assignment of Interest with YALE O. WILLIS, LAMOTT DUPONT COPELAND, JR., and PENINSULAR LIFE INSURANCE COMPANY, a Florida corporation, by which the City consents to Lamott Dupont Copeland, Jr. assigning to Peninsular Life Insurance Company, all his rights, title and interest in the capital stock of Mission Bay Campland, Inc., a Delaware corporation, lessee of that certain lease agreement dated November 8, 1967, and filed in the office of the City Clerk as Document No. 723339, under the terms and conditions set forth in the form of Assignment of Interest, Assumption of Lease and Consent to Assignment of Interest.

731147

APPROVED: JOHN W. WITT, City Attorney

By

Clifton E. Reed, Deputy

rb/3-4-70

RESOLUTION No. 199119

5A-
Barone
MAR 10 1970

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 Consent to Assignment of Lessee's Interest in Lease, by which the City consents to the collateral assignment of that certain Lease Agreement dated November 8, 1967, and filed in the office of the City Clerk as Document No. 723339, as amended, by MISSION BAY CAMPLAND, INC., a Delaware corporation, to FIDELITY MORTGAGE INVESTORS, a Massachusetts business trust, under the terms and conditions set forth in the Consent to Assignment of Lessee's Interest in Lease, on file in the office of the City Clerk as Document No.

731143

APPROVED: JOHN W. WITT, City Attorney

By _____

Clifton E. Reed, Deputy

rb/3-4-70

RESOLUTION No. 19920

5A
Barone

MAR 10 1970

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 Second Amendment to Lease Agreement with MISSION BAY CAMPLAND, INC., a Delaware corporation, as lessee, amending that certain Lease Agreement which is on file in the office of the City Clerk as Document No. 723339, as assigned by assignment filed in the office of the City Clerk as Document No. 727225, as amended, to require that (1) both Yale O. Willis and Peninsular Life Insurance Company, a Florida corporation, shall maintain 51% controlling ownership of Mission Bay Campland, Inc., (2) Yale Willis shall maintain active supervision of the lease operation, and (3) and adding a provision regarding legal proceedings if necessary by the City, under the terms and conditions set forth in the form of Second Amendment to Lease Agreement, on file in the office of the City Clerk as Document No. 731144.

APPROVED: JOHN W. WITT, City Attorney

By Clifton E. Reed, Deputy

rb/3-4-70

RESOLUTION No. 234059

(P. 72-10417)

Adopted on

JUL 27 1979

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

That the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a Sublease Agreement with ASSOCIATED MOBILE RESTATES, a California limited partnership, as Lessee, for the purpose of providing office and ship space for a Mission Bay Harbor Federal Substation, for a term of five years, at a monthly rental of \$30, under the terms and conditions set forth in that Sublease Agreement on file in the office of the City Clerk as Document No. 700000.

APPROVED: **John W. Witt, City Attorney**


DENNIS C. VALENZUELA, Mayor

10:12 PM
6-12-79
J.C. Dept. Property
J-01 11279

PARCEL 2:

THAT PORTION OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AND KNOWN AS MISCELLANEOUS MAP NO. 36, TOGETHER WITH A PORTION OF MISSION BAY WHICH WAS GRANTED TO THE CITY OF SAN DIEGO BY ACT OF THE LEGISLATURE OF THE STATE OF CALIFORNIA, APPROVED APRIL 27, 1945 ENTITLED "AN ACT GRANTING CERTAIN LANDS, TIDE LANDS, AND SUBMERGED LANDS OF THE STATE OF CALIFORNIA TO THE CITY OF SAN DIEGO, UPON CERTAIN TRUSTS AND CONDITIONS", DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE CENTER LINE OF OLNEY STREET AND OLIVER AVENUE AS SHOWN ON PACIFIC BEACH, ACCORDING TO MAP THEREOF NO. 922, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID CENTER LINE OF OLNEY STREET, SOUTH $14^{\circ}29'$ EAST 390.00 FEET; THENCE LEAVING SAID CENTER LINE NORTH $75^{\circ}31'$ EAST 40.00 FEET TO THE EASTERLY LINE OF SAID OLNEY STREET AS SHOWN ON PACIFIC BEACH, ACCORDING TO MAP THEREOF NO. 854, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID EASTERLY LINE SOUTH $14^{\circ}29'$ EAST 660.00 FEET; THENCE NORTH $75^{\circ}31'$ EAST 880.00 FEET; THENCE SOUTH $14^{\circ}29'$ EAST 250.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH $14^{\circ}29'$ EAST 600.00 FEET; THENCE NORTH $75^{\circ}31'$ EAST 425.00 FEET; THENCE NORTH $14^{\circ}29'$ WEST 600.00 FEET; THENCE SOUTH $75^{\circ}31'$ WEST 425.00 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING FROM THAT PORTION LYING UPLAND FROM THE MEAN HIGH TIDE LINE ALL OIL, GAS, OTHER HYDROCARBONS AND MINERALS, TOGETHER WITH THE RIGHT TO USE THE SURFACE OF SAID LAND AND ALL PORTIONS OF THE SUBSURFACE OF SAID LAND FOR THE DEVELOPMENT AND PRODUCTION OF OIL, GAS, OTHER HYDROCARBONS AND MINERALS FROM BENEATH SAID LAND AS RESERVED BY THE STATE OF CALIFORNIA IN AN AGREEMENT RECORDED OCTOBER 21, 1964 UNDER RECORDER'S FILE NO. 192661.

ALSO EXCEPTING FROM THAT PORTION LYING BELOW THE MEAN HIGH TIDE LINE ALL THE DEPOSITS OF MINERALS, INCLUDING OIL, AND GAS, TOGETHER WITH THE RIGHT TO PROSPECT FOR, MINE AND REMOVE SUCH DEPOSITS AND TO OCCUPY AND USE SO MUCH OF THE SURFACE AS MAY BE REQUIRED THEREFORE AS RESERVED BY THE STATE OF CALIFORNIA IN AN ACT OF THE LEGISLATURE APPROVED APRIL 27, 1945, STATUTES OF CALIFORNIA, CHAPTER 142.

DESCRIPTION BY: RON JOHNSON

1/23/68

KC

PHASING OF FACILITIES (See Drawings)

PHASE I

Part A

Fill and grade entire site (East section by dredge fill via City contract)

Construct breakwater (rip rap via City contract)

Dredge waterfront and construct beach (via City contract)

Complete campsite area, West section:

300 ± campsites

5 washroom bldgs., 2 with dorms

Roads and paths

Water, sanitary sewer, storm drainage, electrical & gas systems

Basic landscaping, and irrigation system

Fencing

Recreation facilities

Semi-complete central complex

Administration/Commercial Bldg.

Central parking area and patios

Entrance boulevard with fencing to close site

Semi-complete waterfront area

1 washroom building

Parking lots and waterfront road with oiled surface

Boat Launching Ramp No. 1

1/2 of Marina No. 1 floats

Construct 3 main advertising signs

Complete offsite improvements

Pave Olney Street to Pacific Beach Drive

Extend storm sewer, sanitary sewer, and water

Grading, ditch, and entrance drive on Pacific Beach Drive reservation

Install area lighting in West, Central, and Waterfront areas

Part B

Construct Recreation Bldg. and Covered Arcade

Construct Boat Storage Bldg. No. 1 with temporary utilities

Construct portion of Marina No. 1:

Boat Launching Ramp No. 2

Boat Launching Pier

Portion of floats

CONSTRUCTION SCHEDULE (See Drawings and Phase Schedule)

PHASE I, PART A - (West & Central sections of 300 Campsites, 6 Washrooms, Admin./Commercial Bldg. and 1/2 of Marina No. 1.)

Start construction within 30 days of execution of lease by the City and substantially complete within 150 days. Note: Roads and parking areas at waterfront subject to condition of dredge fill. (The Lessees intention is to start construction by May 15, 1968, and complete within 120 days, or by Sept. 15, 1968.)

PHASE I, PART B - (Recreation Bldg.; Boat Storage Bldg. No. 1; portion of Marina No. 2; View Tower)

Start construction within 3 months of lease execution and complete within 6 months thereafter.

PHASE II, PART A - (East section of 300 Campsites, 6 Washrooms, Concession Bldgs.; Boat Storage Bldg. No. 2; complete Marina No. 1)

Start when dredge fill is suitable or within 12 months of execution of lease, whichever is sooner, and complete within 6 months thereafter.

PHASE II, PART B - (Completion of Marina No. 2; Boat Storage Bldg. No. 3; Additions to Commercial Bldg.; Mis. Concession Stands, Landscaping and Recreation Facilities)

Complete within one year of completion of Phase II, Part A.

Phase I, Part 3 (Contd.)

Construct View Tower
Construct Concession Bldg. No. 1

PHASE II

Part A

Complete campsite area East section:

300 ± campsites
6 washrooms
Roads and paths
Water, sanitary sewer, storm drainage, electrical and gas systems
Basic landscaping and irrigation system
Recreation facilities

Construct Boat Storage Bldg. No. 2
Complete Marina No. 1
Construct Concession Bldg. No. 2

Part B

Complete Marina No. 2
Construct Boat Storage Bldg. No. 3
Complete landscaping and irrigation systems
Construct additions to Admin./Comm'l. Bldg.
Construct misc. concession stands, recreation facilities
Complete fencing at Pacific Beach Drive when it is extended

PARCEL 1:

THOSE PORTIONS OF ACRE LOT 75 OF PACIFIC BEACH, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 854, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; PORTIONS OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AND KNOWN AS MISCELLANEOUS MAP NO. 36, TOGETHER WITH A PORTION OF MISSION BAY WHICH WAS GRANTED TO THE CITY OF SAN DIEGO BY ACT OF THE LEGISLATURE OF THE STATE OF CALIFORNIA, APPROVED APRIL 27, 1945 ENTITLED "AN ACT GRANTING CERTAIN LANDS, TIDE LANDS AND SUBMERGED LANDS OF THE STATE OF CALIFORNIA TO THE CITY OF SAN DIEGO UPON CERTAIN TRUSTS AND CONDITIONS", DESCRIBED AS FOLLOWS:

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PARCEL 2:

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DESCRIPTION BY: RON JOHNSON
1/23/68
KC

EXHIBIT C (Document No. 723338) filed -

Map Rack as # 107