



Real Estate Assets Department
SDC003

Document Type

LEGAL DOCUMENTS



Sub - Category

AGREEMENTS



FORM OF

THE CITY OF SAN DIEGO

FLAT RATE LEASE

LESSEE - TECOLOTE ASSOCIATES,

A California Partnership

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SECTION 1: USES

- 1.01 Premises
- 1.02 Uses
- 1.03 Related Council Actions
- 1.04 Quiet Possession
- 1.05 Easements and Reservation
- 1.06 Competent Management
- 1.07 Political Activities

CITY OF SAN DIEGO

FLAT RATE LEASE

Approved by Council Resolution

_____ dated _____

THIS LEASE AGREEMENT is executed between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and TECOLOTE ASSOCIATES, a California partnership, hereinafter called "LESSEE."

SECTION 1. USES

- 1.01 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, described in Exhibit "A" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises."
- 1.02 Uses. The premises which consist of vacant and unimproved land are leased to LESSEE for development consistent with CO zoning as in effect at the time of execution of this lease by constructing, operating, and maintaining an office building thereon, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose.

LESSEE covenants and agrees to use the premises for the above specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to continuously use the premises for said purposes or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.
- 1.03 Related Council Actions. By the granting of this lease, neither the CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the premises. Discretionary action includes, but is not limited to, rezonings, variances, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the leased premises.
- 1.04 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or if during the lease term LESSEE

is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises. Said determination of rent reduction shall reasonably reflect the impact of LESSEE's operations.

1.05 Easements and Reservations.

- a. CITY hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the premises.
- b. CITY reserves the right to grant and use easements or establish and use rights-of-way over, under, along and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY'S exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by the CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.06 Competent Management. Throughout the term of this lease agreement LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of an office building in a fiscally responsible manner and expertise in all related business operations.

1.07 Political Activities. The leased property shall be used exclusively for the purposes specified in Section I, USES, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan.

SECTION 2: TERM

- 2.01 Commencement
- 2.02 Right to Extend
- 2.03 Holdover
- 2.04 Quitclaim of LESSEE Interest
- 2.05 Surrender of Premises

SECTION 2: TERM

- 2.01 Commencement. The term of this agreement shall be 30 years commencing on the first day of the calendar month following execution by the City Manager. "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager.
- 2.02 Right to Extend. LESSEE has the right to extend this lease for two additional periods of 10 years each, subject to all original agreements, considerations, covenants and conditions, except that the rent in each instance shall be adjusted initially by appraisal of the fair market value of the leased premises and readjusted thereafter every 2-1/2 years alternately by CPI and market value methods as presently prescribed in the lease. To exercise this right, LESSEE must give CITY six months written notice before the date on which this lease expires and prior to any subsequent extension.
- 2.03 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 2.04 Quitclaim of LESSEE'S Interest. On execution of this lease, the LESSEE shall deliver to the CITY a quitclaim deed in recordable form quitclaiming all its rights in the premises. CITY may record such deed only on the expiration or earlier termination of this lease. In the event the CITY requires any subsequent quitclaim deed, the LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor.

At the expiration or earlier termination of this lease, LESSEE shall deliver the premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the date of execution hereof, and in a decent, safe and sanitary condition, and in the case of termination of this lease by CITY prior to the end of the specified lease term any liens and encumbrances approved in writing by the City Manager during the lease term.

- 2.05 Surrender of Premises. At termination of this lease for any reason, LESSEE shall execute, acknowledge and deliver to the CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the leasehold premises. The premises shall be delivered free and clear of all liens and encumbrances, and in a decent, safe and sanitary condition.

If LESSEE fails or refuses to deliver the required deed, the CITY may prepare and record a notice reciting the LESSEE'S failure to execute this lease provision and the notice will be conclusive evidence of the termination of this lease and all LESSEE rights to the premises.

SECTION 3: RENT

3.01 Place of Payment

3.02 Rent

3.03 Delinquent Rent

SECTION 3: RENT

- 3.01 Place of Payment. Rent is due monthly in advance on or before the first day of each calendar month. All monthly rents will be pro-rated during the first and final months of any rental period in order to achieve payment on the first day of each calendar month. Checks should be made payable to the City Treasurer and mailed or delivered to the Office of the City Treasurer, City of San Diego, P. O. Box 2289, San Diego, California, 92112-4165.

The place and time of payment may be changed at any time by CITY upon thirty (30) days written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. LESSEE assumes all risk of loss and late payment charges if payments are made by mail, or if postmarks are illegible, in which case the payment shall be deemed paid upon actual receipt by the City Treasurer.

3.02 Rent.

- a. Rent Amount. The initial rent is \$10,000 per year payable at the rate of \$833.33 per month. Said rent is subject to adjustments based on increases, if any, in the Consumer Price Index (CPI) and in the fair market value of the leased premises as hereinafter provided.
- b. (1) CPI Index Adjustments. On the first day of the sixth
7/1/88 → (6th) year following the effective date of the lease and
1/1/91 at seven and one-half (7-1/2) years following said effective date and at the end of every five (5) years thereafter during the lease term, the rent shall be adjusted to reflect increases in the Consumer Price Index (CPI).
1/1/96
1/1/01
1/1/06
1/1/11
- The index used will be the CPI for "All Urban Consumers" for Los Angeles/Long Beach/Anaheim, California. If this index is no longer published, the index for adjustment will be the U. S. Department of Labor's Comprehensive Official Index most comparable to aforesaid index. If a rental adjustment is calculated using an index from a different base year than 1967, which equaled a base figure of 100 for the CPI, the base figure used will first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of CITY and LESSEE. If the parties cannot agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor, notwithstanding continued reference herein to "CPI" in any event.

Regardless of the index publication dates, the effective date of the rent adjustment is as specified in this Section 3.02, b.(1). Until the rent adjustment can be reasonably determined by the index method, LESSEE will continue to make payments at the existing rental rate. When the adjustment is determined, the balance of rents due at the adjusted rate will be paid to the CITY within thirty (30) days.

- (2) Index Adjustment Computation. The rent for each rental period following the adjustment, until the next adjustment or other rental determination as provided herein, shall be determined prior to the date of adjustment by multiplying the rent which is effective immediately prior to said adjustment by the "adjustment figure" established as follows:

The "adjustment figure" shall be established by dividing the "current index" by the "base figure", both as defined herein:

The "base figure" for the first such adjustment shall be a three-month average of index figures published by said CPI using the fourth, fifth and sixth full months preceding the effective date of this agreement.

To illustrate, if the lease began in May, the CPI figures for November (sixth month), December (fifth month) and January (fourth month) preceding May would be averaged to establish the base figure (Example 1).

The "current index" shall be a three-month average of index figures published by said CPI. The three months to be used to establish said average shall be the fourth, fifth and sixth full months preceding the adjustment date.

The "base figure" for each successive adjustment shall be the "current index" figure used in the last preceding adjustment period (Example 2).

Example 1

Current Index 121
Base Figure 110 = 1.10 (Adjustment Figure)

Effective Rent x 1.10 = Adjusted Rent

Example 2

Current Index 138

Base Figure $\frac{121}{138} = 1.14$ (Adjustment Figure)

Effective Rent $\times 1.14 =$ Adjusted Rent

The adjustment figure is then multiplied by the monthly rent from the preceding adjustment period and the new rent is determined. Using the foregoing examples, if the rent is now \$1,000 per month, after the first adjustment it will be \$1,100 per month ($\$1,000 \times 1.10$). In the second adjustment, it will be \$1,254 per month ($\$1,100 \times 1.14$).

c. Market Value Adjustments. In addition to said CPI adjustments, upon the first day of the eleventh lease year following the effective date of this agreement and upon the first day of each five-year period thereafter, the rent for the ensuing five years, subject to the aforesaid CPI adjustments, shall be determined by multiplying the capitalization rate of ten percent by the fair market value of the leased premises as of the adjustment date. The fair market value of the leased premises shall be determined by an appraisal made by a professional independent real estate appraiser selected by mutual consent of the parties from the list of appraisers approved by the CITY. In the event the parties cannot reach agreement upon selection of a mutually acceptable appraiser, then CITY and LESSEE will each select a professional independent real estate appraiser who in turn will select a third independent real estate appraiser, which third appraiser will be employed to make the appraisal of the fair market value of the premises and which value will be utilized to determine the adjusted rent previously described herein. In the event that the two selected appraisers fail to mutually select a third appraiser within thirty (30) days, then the third appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his or her individual capacity, on prompt application by either CITY or

LESSEE with notice thereupon to the other party. Said third appraiser shall complete the assignment within sixty (60) days of appointment. Each party shall pay the cost of its own selected appraiser and both CITY and LESSEE agree to equally share the cost of the mutually selected or court appointed third appraiser. CITY and LESSEE agree to accept and be bound by the valuation determined by the selected or appointed appraiser.

In establishing the fair market value of the premises, the appraiser shall consider the property as a fee simple absolute estate and as vacant and available for lease or sale for the authorized purposes of this lease at the commencement of the rental period under review.

The date of value of the appraisal shall be the date of rental adjustment as hereinabove established. In the event the appraisal is not completed in time to permit the adjustment to be made upon the date specified, LESSEE agrees to continue to pay rent in accordance with the then existing lease rates and the adjustment, when determined, will be retroactive to said effective date of rental adjustment. Any deficiency shall be paid by LESSEE to CITY within thirty (30) days after determination of the new rental rate.

- d. Increase Only. In no event shall the adjusted rent, as established by Consumer Price Index or by periodic appraisals as provided for herein, be less than the rent in existence on the day prior to the adjustment date.

3.03 Delinquent Rent. If the LESSEE fails to pay the rent when due, the LESSEE will pay in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, the LESSEE shall pay an additional five percent (5%) (being a total of ten percent (10%)) which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

3.04 Commencement of Rental. Rental payments under this lease shall commence on the first day of the calendar month immediately following the earlier of (i) the expiration of ninety (90) days from its execution, or (ii) the issuance of a building permit for construction of improvements by LESSEE on the subject property. LESSEE agrees to use its best efforts to seek issuance of a building permit at the earliest practicable time.

SECTION 4: ASSIGNMENT

- 4.01 Time is of Essence
- 4.02 Assignment and Subletting
- 4.03 Encumbrance
- 4.04 Defaults and Remedies
- 4.05 Eminent Domain
- 4.06 Partnership Liability

SECTION 4: ASSIGNMENT

- 4.01 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants and conditions of this lease and, except as otherwise provided herein, all of the terms, covenants and conditions of this lease shall apply to, benefit and bind the successors and assigns of the respective parties, jointly and individually.
- 4.02 Assignment and Subletting. Subject to prior CITY approval in each instance, LESSEE may assign this lease or any interest therein and may sublease any portion hereof to an assignee or sublessee who has, in the opinion and in the sole and absolute discretion of City Manager, the financial capability and overall competence to successfully operate the assigned or subleased portion of the premises. This lease and any interest herein shall not be assignable by operation of law without the written consent of the CITY.

"Assignment," for the purposes of this clause shall include any transfer of any ownership interest in LESSEE by any partners, principal, or stockholders, as the case may be. Provided, however, that transfers of interest among existing partners, or to entities which are to remain controlled by such partners, shall not be deemed an "assignment" requiring the consent of CITY but shall require written notification to CITY describing any such transfer.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions and provisions of this agreement which are applicable to the rights acquired.

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

Any subsequent encumbrances on the premises or on any permanent improvements thereon, must first have the approval in writing of City Manager. The City Manager shall have the sole and absolute discretion to approve or disapprove any such proposed subsequent encumbrance.

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

Any default, foreclosure or sale pursuant to said deed of trust, mortgage or other security instrument, shall be invalid with respect to this lease without prior notice thereof to and approved by CITY. Upon prior approval by CITY, said mortgagee or beneficiary may assign this lease to its nominee, if nominee is a reputable, qualified and financially responsible person in the opinion of CITY. Any deed of trust, mortgage or other security instrument shall be subject to all of the terms, covenants and conditions of this lease and shall not be deemed to amend or alter any of the terms, covenants or conditions hereof.

4.04 Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in paragraph a. (1) of this section is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

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

b. Remedies. If the mortgagee or beneficiary shall be required to exercise 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 the default or defaults may be expeditiously corrected:

- (1) CITY may correct said default or defaults and charge the costs thereof 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 to LESSEE and mortgagee or beneficiary of a statement of said costs.
- (2) CITY may correct said default or defaults and may pay the costs thereof from the proceeds of any insurance fund held by CITY, CITY and LESSEE or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or defaults or to pay the costs of correction performed by or at the direction of CITY.
- (3) CITY may terminate this lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE agrees to assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related obligations by CITY. CITY may, as an alternative, substitute for the terminated LESSEE a new LESSEE reasonably satisfactory to the mortgagee or beneficiary. *

Should the default or defaults be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold whose qualifications as an assignee have been approved by CITY shall have the absolute right to substitute itself to the estate of the LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default and the default, if curable, is cured by

such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, the CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges and obligations of the LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.

c. Abandonment by LESSEE. Even though LESSEE has breached the Lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder, including, but not limited to, the right to recover the rent as it becomes due, plus damages.

d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. The CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is City-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or the City staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel but the CITY shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

4.05 Eminent Domain. If all or part of the premises is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of the CITY and LESSEE (or beneficiary or mortgagee), will be as follows:

a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

- b. In the event of a partial taking, leaving the remainder unusable for lease purposes, if in the opinion of the CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - c. In the event of a partial taking, leaving the remainder usable for lease purposes, if in the opinion of the CITY, the remainder of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession of the condemning authority, whichever occurs first, but shall continue for the portion not taken. The minimum rent shall be reduced in proportion to the amount of the improvements taken.
 - d. Award. All monies awarded in any such taking shall belong to CITY whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to, (1) installations or improvements of LESSEE, or (ii) LESSEE's business.
 - e. Transfer. CITY has the right to transfer the CITY'S interests in the premises, in lieu of condemnation, to any authority entitled to exercise the power of eminent domain. If a transfer occurs, the LESSEE shall retain its possessory interest in the fair market value of any improvements placed on the premises in accordance with this lease by LESSEE.
 - f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.
- 4.06 Partnership Liability. Each general partner of LESSEE shall jointly and severally perform and be responsible for each and every term, covenant and condition and each general partner is jointly and severally liable for performance under this lease. The LESSEE will file with the CITY, at the time of execution of the lease a copy of the recorded partnership papers pertaining to formation of Tecolote Associates, a California partnership. The document will identify the responsible members of the partnership acting in behalf of the LESSEE.

SECTION 5: INSURANCE RISKS/SECURITY

5.01 Indemnity

5.02 Insurance

5.03 Waste, Damage or Destruction

5.04 Security Deposit

SECTION 5: INSURANCE RISKS/SECURITY

5.01 Indemnity. LESSEE at all times shall relieve, indemnify, protect and save CITY and any and all of its boards, officers, agents and employees harmless from any and all claims and demands, actions, proceedings, losses, liens, costs, judgments, civil fines and penalties of any nature whatsoever in regard to or resulting from the use of the premises, including, but not limited to, expenses incurred in legal actions, death, injury or damage that may be caused directly or indirectly by:

- a. Any unsafe or defective condition in or on the premises of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the premises by LESSEE, its employees, agents, sublessees, invitees or licensees,
- b. Any operation, use or occupation conducted on the premises by LESSEE, its employees, agents, sublessees, invitees or licensees.
- c. Any act, omission or negligence on the part of LESSEE, its employees, agents, sublessees, invitees, licensees or
- d. Any failure by LESSEE to comply or secure compliance with any of the lease terms or conditions.

5.02 Insurance. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:

- a. Public liability and property damage insurance in the amount of not less than ONE MILLION DOLLARS (\$1,000,000) COMBINED SINGLE LIMIT LIABILITY. This policy shall cover all injury or damage, including death, suffered by any party or parties, from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE, on or in connection with the use or operation of the premises.
- b. Fire, extended coverage and vandalism insurance policy on all insurable property on the premises, in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with the ENCUMBRANCE section hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.

- c. Conditions. All insurance policies will name the CITY as an additional insured, protect the CITY against any legal costs in defending claims and will not terminate without sixty (60) days prior written notice to the CITY. All insurance companies must be satisfactory to the CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises and full applicable Fire Insurance coverage shall be effective upon completion of each insurable improvement. Certificates, in a form satisfactory to the CITY, will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a policy has been obtained which meets the terms of this lease.
- d. Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to acquire any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- e. Accident Reports. LESSEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the premises. This report should contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.
- f. Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer or insurers and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this subsection f., if LESSEE fails or refuses to take out or maintain insurance as required in this lease, or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.03 Waste, Damage or Destruction. LESSEE agrees to give notice to the CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash and rubbish in a manner satisfactory to the CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage, or at the CITY'S option LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to the CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage using for either purpose the insurance proceeds as set forth in Section 5.02 Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration or replacement of the premises shall be commenced by LESSEE within thirty (30) days and the required repairs, restoration or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenable by reason of such damage.

- 5.04 Security Deposit. A security deposit shall be paid to the CITY by LESSEE in the sum of One Thousand Dollars (\$1,000) on or before the effective date of this lease. All or any portion of the principal sum shall be available unconditionally to CITY for correcting any default or breach of this lease by LESSEE, LESSEE'S successors or assigns, or for payment of expenses incurred by CITY as a result of LESSEE'S failure to faithfully perform all terms, covenants and conditions of this lease.

The security deposit shall take one of the forms set out below:

- a. Cash. Cash deposits shall be deposited in an interest bearing account by CITY and interest earned shall be paid to LESSEE annually.

- b. An instrument(s) of credit from one or more financial institutions, subject to regulation and insurance by the state or federal government, pledging that the funds are on deposit and guaranteed for payment, and agreeing that any or all shall be paid to CITY or order upon demand by CITY. Any interest accruing to LESSEE from the financial institution shall not work to decrease the principal amount of deposit required herein.

The financial institution and the form of any instrument pledging the funds must be approved by the CITY.

LESSEE will maintain the required security deposit throughout the lease term and for 90 days thereafter unless previously released by the CITY. Failure to do so shall be considered a default and is grounds for immediate termination of this lease.

In the event CITY utilizes all or any portion of the security deposit, LESSEE shall reimburse the deposit within 10 days of notice from CITY to bring the security deposit up to the full specified amount.

The security or any balance thereof will be returned to the LESSEE within 90 days following expiration or termination of this lease, provided LESSEE has faithfully complied with all terms, covenants and conditions hereof.

The security deposit may be increased by CITY proportionate to any increased performance or rental liability of LESSEE upon 60 days' prior written notice from CITY of such required increase.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.01 Acceptance of Premises
- 6.02 Maintenance
- 6.03 Improvements/Alterations
- 6.04 Utilities
- 6.05 Construction Bond
- 6.06 Liens
- 6.07 Taxes
- 6.08 Signs
- 6.09 Ownership of Improvements
- 6.10 Unavoidable Delay
- 6.11 Development Plan

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.01 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations and observations in making this lease. LESSEE further acknowledges that premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises and that LESSEE does not hold CITY responsible for any defects in the premises.
- 6.02 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises, throughout the term. LESSEE will make all repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy and sanitary condition satisfactory to the CITY and in compliance with the Development Plan described in Section 6.11 hereof and with all applicable laws.
- 6.03 Improvements/Alterations. No improvements, structures or installations shall be constructed within the premises and the premises may not be in any way altered by the LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures or installations may not be made on the premises without prior written approval by the City Manager. This provision shall not relieve the LESSEE of any obligation under this lease to maintain the premises in decent, safe, healthy and sanitary condition, including structural repair and restoration of damaged or worn improvements. The CITY shall not be obligated by this lease to make, or assume any expense for, any improvements or alterations.
- 6.04 Utilities. LESSEE agrees to order, obtain and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground.
- 6.05 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY, prior to commencement of said construction a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The

bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY. In the event that LESSEE fails to comply with this provision, this lease may be terminated by CITY.

- 6.06 Liens. LESSEE will at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations or repairs on or to the premises, and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations or repairs are made to the premises by LESSEE or by any party other than CITY and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

- a. Take all actions necessary to record a valid release of lien, or
- b. File with CITY a bond, cash, or other security acceptable to CITY, sufficient to pay in full all claims of all persons seeking relief under the lien.

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

LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due the CITY.

- 6.08 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without the prior written consent of the CITY. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY or CITY may thereupon remove the item at LESSEE'S cost.

- 6.09 Ownership of Improvements and Personal Property.

- a. All and any improvements, structures and installations or additions to the premises now existing or constructed on the premises by LESSEE, shall at lease expiration or termination, be deemed to be part of the premises and shall become at CITY'S option the CITY'S property, free of all liens and claims except as otherwise provided in this lease.

- b. If the CITY elects not to assume ownership of all or any improvements, structures and installations, CITY shall so notify LESSEE 30 days prior to termination or 180 days prior to expiration and the LESSEE shall remove all such improvements, structures and installations as directed by the CITY at LESSEE'S sole cost on or before lease expiration or termination. If the LESSEE fails to remove any improvements, structures and installations as directed, the LESSEE agrees to pay CITY the full cost of any removal.
 - c. LESSEE-owned machines, appliances, equipment (other than trade fixtures) and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become the CITY'S property free of all claims and liens, or CITY may at its option remove said items at LESSEE'S expense.
 - d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
 - e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require rental by LESSEE to CITY at the rate in effect immediately prior to said expiration or termination.
- 6.10 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY claim the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten days after the beginning of any such claimed delay.
- 6.11 Development Plan. LESSEE agrees to develop the leased premises in accordance with the General Development Plan approved by the City Manager and filed in the Office of the City Clerk which plan is hereby incorporated by this reference. The general contents and provisions of the development plan are described in Exhibit "B" hereto. The City Manager or his designee shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk. Failure by LESSEE to comply with the General Development Plan shall constitute a major default and subject this lease to termination by CITY.

SECTION 7: GENERAL PROVISIONS

- 7.01 Notices
- 7.02 Compliance with Law
- 7.03 City Approval
- 7.04 Nondiscrimination
- 7.05 Affirmative Action
- 7.06 Partial Invalidity
- 7.07 Legal Fees
- 7.08 Number and Gender
- 7.09 Captions
- 7.10 Entire Understanding
- 7.11 Corporate Authority
- 7.12 Landscaping of Adjacent Strip of Parkland

SECTION 7: GENERAL PROVISIONS

7.01 Notices.

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at the leased premises or at such other address designated in writing by LESSEE; and to CITY as follows:

City Manager, Attention Property Director
City Administration Building
202 C Street, M.S. 9A
San Diego, CA 92101-4155

or to any mortgagee, trustee or beneficiary, as applicable at such appropriate address designated in writing by the respective party.

- b. Any party entitled or required to receive notice under this lease may by like notice designate a different address to which notices shall be sent.

7.02 Compliance with Law. LESSEE will at all times in the construction, maintenance, occupancy and operation of the premises, comply with all applicable laws, statutes, ordinances and regulations of the CITY, County, State and Federal Government, at LESSEE'S sole cost and expense. In addition, LESSEE will comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.

7.03 CITY Approval. The approval or consent of the CITY, wherever required in this lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.

7.04 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age or physical handicap in LESSEE'S use of the premises, including, but not limited to, the providing of goods, services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment.

7.05 Affirmative Action. LESSEE agrees to abide by the CITY'S Affirmative Action Program for LESSEES as it exists or is amended to the extent that the program is applicable to this lease. A copy of the program effective as of the date of this lease is on file in the City Clerk's Office and by this reference is part hereof. The program's goal is the attainment of employment for minorities and women in all areas of employment, in a total percentage as established by the CITY for its Affirmative Action Program each year.

- 7.06 Partial Invalidity. If any term, covenant, condition or provision of this lease is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.07 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney's fees.
- 7.08 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the sense requires.
- 7.09 Captions. The lease Table of Contents, section headings and captions for various articles and paragraphs shall not be held to define, limit, augment or describe the scope, content or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. The LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties in respect to the lease premises. Each party has relied on his own examination of the premises, advice from his own attorneys and the warranties, representations and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent or attorney of any other party has made any promise, representation or warranty whatsoever, which is not contained in this lease.
- The failure or refusal of any party to read the lease or other documents, inspect the premises and obtain legal or other advice relevant to this transaction, constitutes a waiver of any objection, contention or claim that might have been based on these actions. No modification, amendment or alteration of this lease will be valid unless it is in writing and signed by all parties.
- 7.11 Landscaping of Adjacent Strip of Parkland. LESSEE shall be responsible, at its sole cost, to landscape and maintain the 16.72-foot strip of parkland shown on the attached plat (Exhibit "A") adjoining the leased premises. Trees and taller shrubs are to be used to give verticality and scale along Tecolote Road. The landscaped strip will serve as an entryway to the nearby Tecolote Park. In addition, the landscaping by the LESSEE will extend around the curve along Morena Boulevard to give a stronger definition to the entryway into the park.

IN WITNESS WHEREOF, this lease agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date: 6/21/83

By: Aune Shores
~~ASSISTANT TO THE~~ City Manager

LESSEE: TECOLOTE ASSOCIATES,
a California Partnership

Date: 4/6/83

By: Paul T. Sparrow
Paul T. Sparrow
Managing General Partner

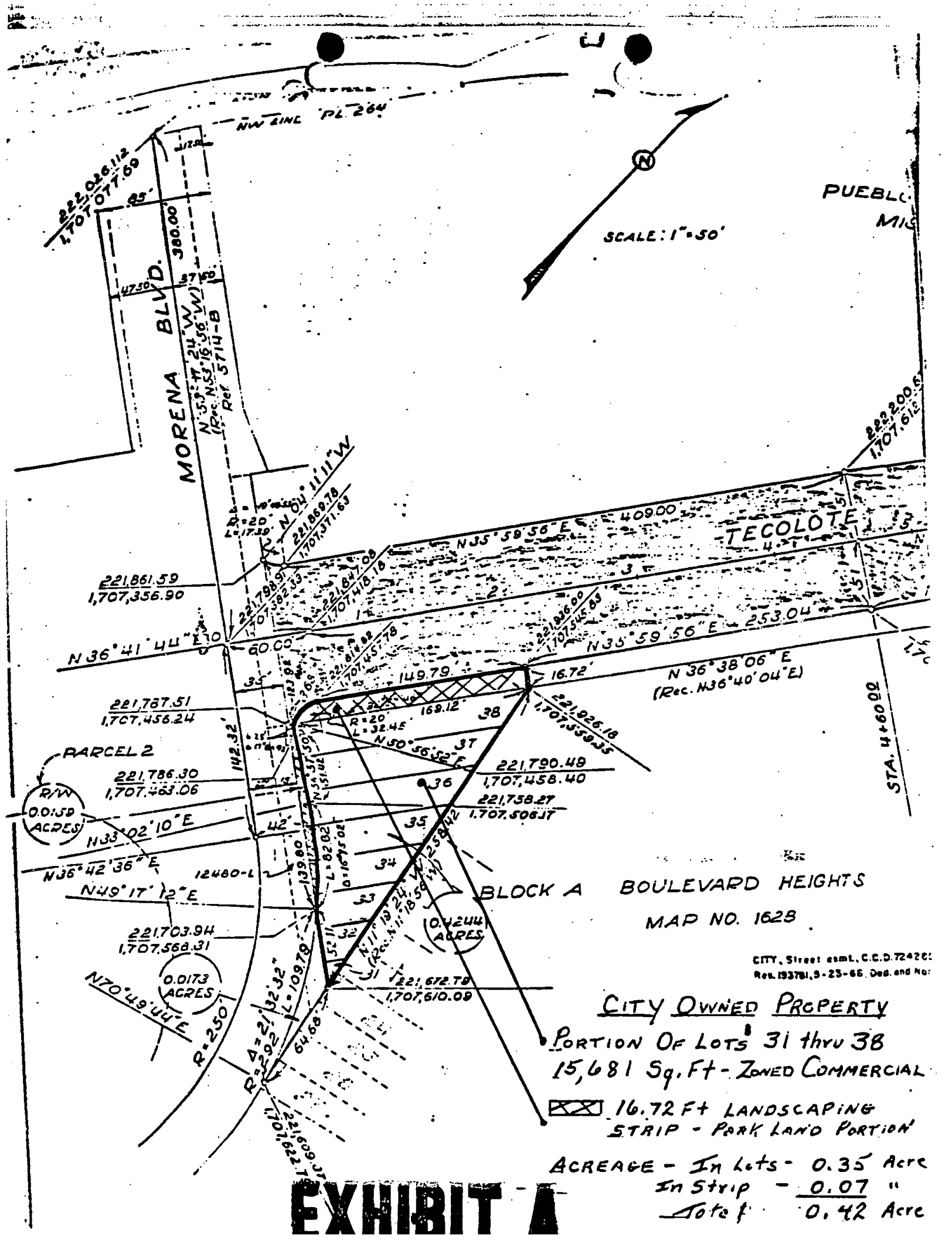
By: Barry K. Moore
Barry K. Moore, Partner

By: William B. Goreham
William B. Goreham, Partner

APPROVED as to form and legality this 21 day of June, 1983

By: W. Stulder
City Attorney

JCB:mh(2) Disk 5
3/24/83



DEVELOPMENT PRO FORMA

Architectural and Engineering \$1.90 sq ft =	\$ 20,000.00
Building Costs - Including parking, landscaping and off-site work \$42.11 sq ft =	442,227.00
Tenant Improvements \$15.00 sq ft =	<u>135,000.00</u>

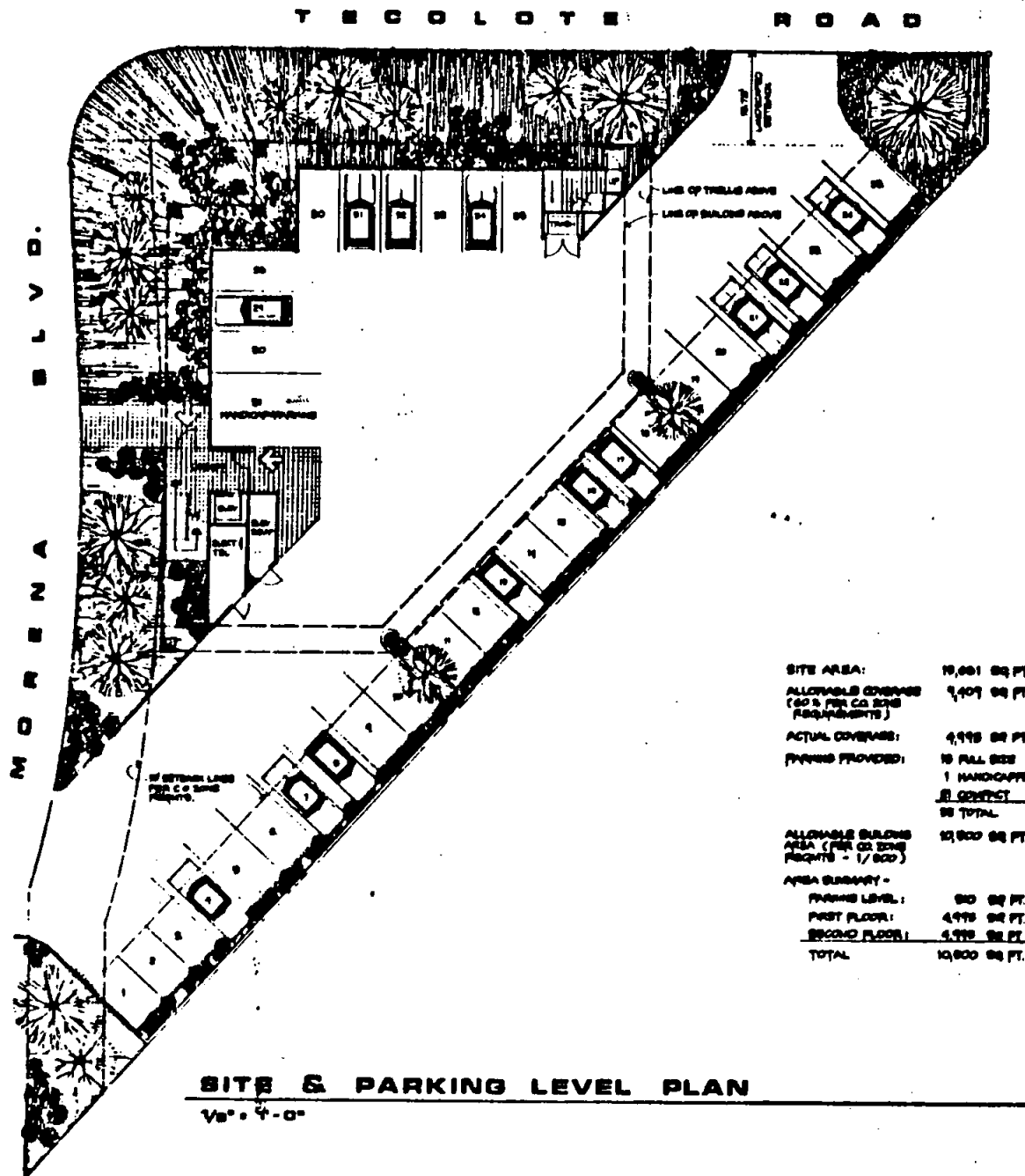
TOTAL COSTS OF CONSTRUCTION	\$597,227.00
-----------------------------	--------------

Interest Expenses - Course of Construction	\$ 49,000.00
Lease Expense through completion	7,497.00
Loan Fees and Recording Costs (4%)	<u>28,000.00</u>

TOTAL PROJECT COSTS	\$681,724.00
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EXHIBIT B

Sheet 1 of 4

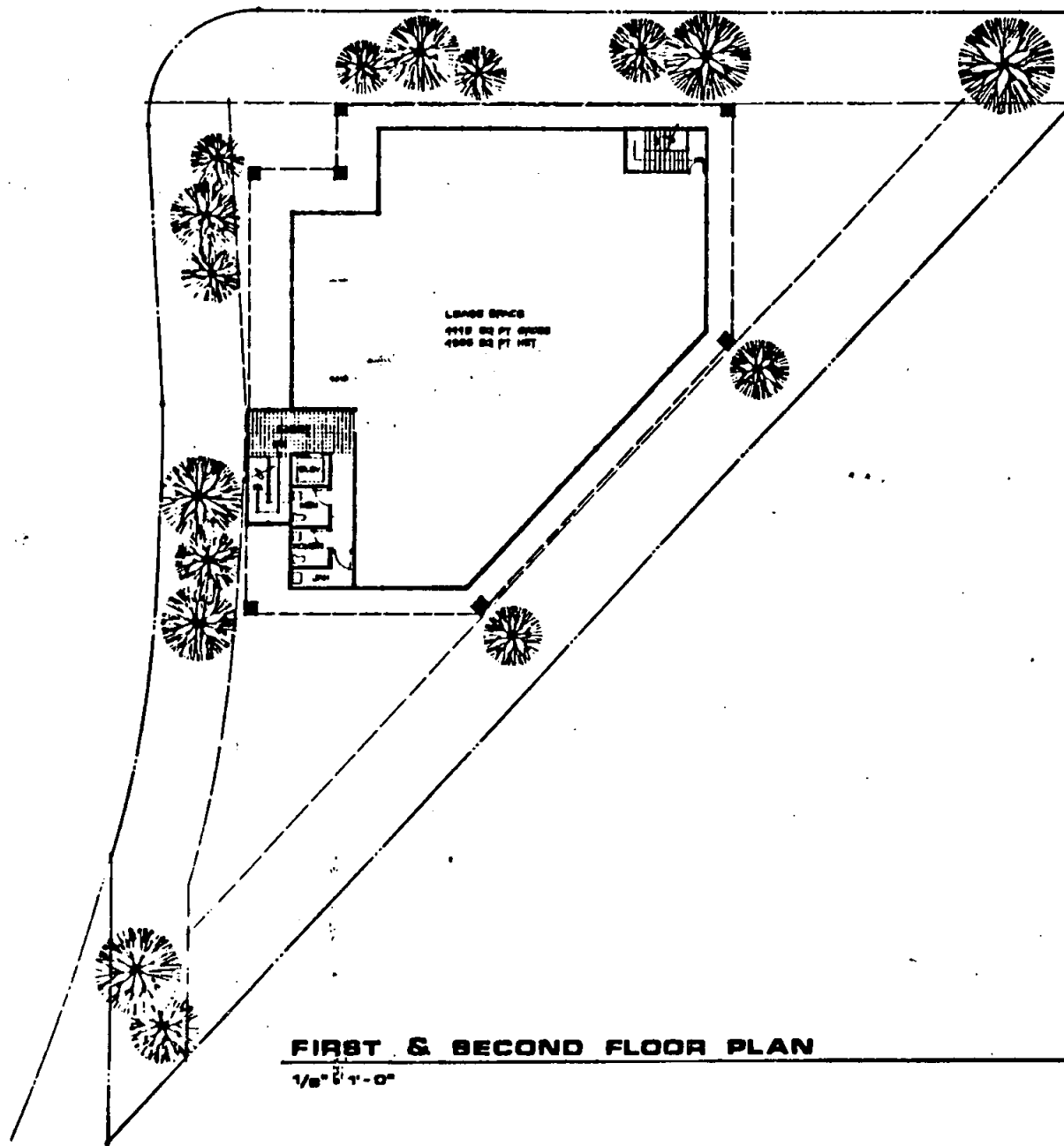


SITE AREA:	19,001 SQ. FT.
ALLOWABLE COVERAGE (60 % PER CO ZONE REQUIREMENTS)	9,409 SQ. FT.
ACTUAL COVERAGE:	4,999 SQ. FT.
PARKING PROVIDED:	18 FULL SIZE 1 HANDICAPPED
	<u>19 SPACES</u>
	99 TOTAL
ALLOWABLE BUILDING AREA (PER CO ZONE REQUIREMENTS - 1/800)	12,800 SQ. FT.
AREA SUMMARY -	
PARKING LEVEL:	800 SQ. FT.
FIRST FLOOR:	4,999 SQ. FT.
SECOND FLOOR:	4,999 SQ. FT.
TOTAL	10,800 SQ. FT.

DONALD R. GOLDMAN & ASSOCIATES

ARCHITECTS AIA
3604 FOURTH AVE
SAN DIEGO 92103

OFFICE BUILDING FOR:
TECOLOTE ASSOCIATES
SAN DIEGO, CA.



FIRST & SECOND FLOOR PLAN

1/8" = 1'-0"

**DONALD R.
GOLDMAN &
ASSOCIATES**

ARCHITECTS AIA
3604 FOURTH AVE
SAN DIEGO 92103

OFFICE BUILDING FOR:

**TECOLOTE
ASSOCIATES**
SAN DIEGO, CA.

On 08/00

SET 344

DEVELOPMENT TEAM

ARCHITECT: Donald R. Goldman & Associates, AIA
3604 Fourth Avenue
San Diego, CA 92103

**PROJECT
ESTIMATOR:** Bruce McDonald
3512 Russell Street
San Diego, CA 92106

ATTORNEYS: Gray, Cary, Ames & Frye
Richard A. Burt and
J. Terence O'Malley
525 Union Bank Building, Suite 2100
San Diego, CA 92101

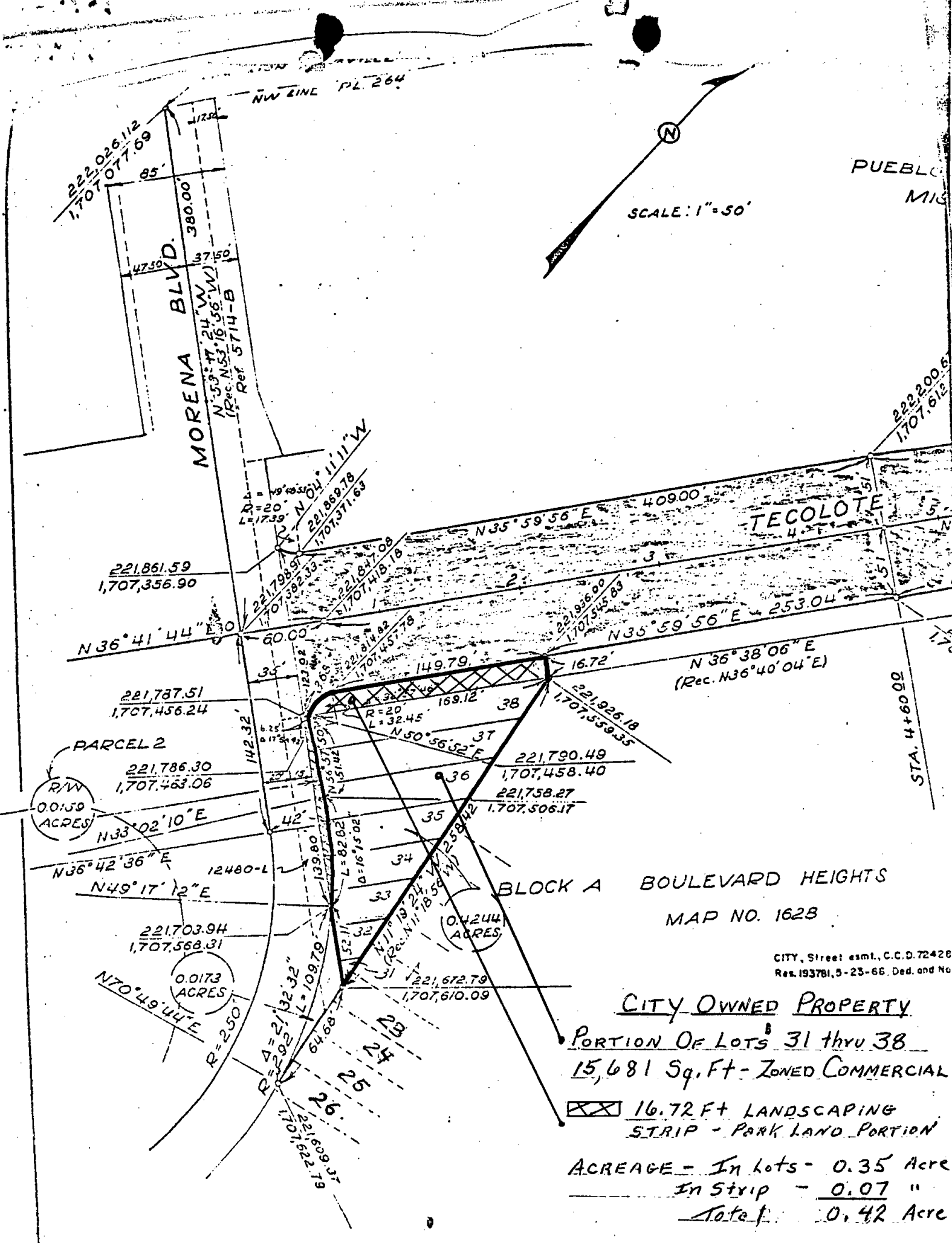
LENDER: La Jolla Bank & Trust Co.
1205 Prospect Street
La Jolla, CA 92037

**GENERAL
CONTRACTOR:** Suto, Inc.
2356 Moore Street, Suite 200
San Diego, CA 92110

**APPLICANT AND
DEVELOPER:** Tecolote Associates
Paul T. Sparrow, Managing General Partner

**CONTACT
PERSON:** Paul T. Sparrow - (619) 295-9545

Sheet 4 of 4



PUEBLO
MIG

SCALE: 1" = 50'

TECOLOTE

BLOCK A BOULEVARD HEIGHTS
MAP NO. 1628

CITY, Street esmt., C.C.D. 724282
Res. 193781, 5-23-66, Ded. and Nor

CITY OWNED PROPERTY

PORTION OF LOTS 31 thru 38
15,681 Sq. Ft - ZONED COMMERCIAL

16.72 FT LANDSCAPING
STRIP - PARK LAND PORTION

ACREAGE - In Lots - 0.35 Acre
In Strip - 0.07 "
Total 0.42 Acre

Copy

RECORDING REQUESTED BY:

J. TERENCE O'MALLEY, ESQ.

WHEN RECORDED MAIL TO:

J. TERENCE O'MALLEY, ESQ.
GRAY, CARY, AMES & FRYE
525 B STREET, SUITE 2100
SAN DIEGO, CA 92101

Assessor's Parcel No. 436-211-21

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is made effective as of September 19, 1983, between the CITY OF SAN DIEGO ("Landlord") and TECOLOTE ASSOCIATES, a California general partnership ("Tenant"), who agrees as follows:

1. Landlord leases to Tenant, and Tenant leases from Landlord, the real property located in the City of San Diego, County of San Diego, State of California, described in Exhibit "A" attached hereto.

2. The term of this Lease is 360 calendar months, plus the partial calendar month, if any, immediately following commencement of the Lease term.

3. Tenant has an option to extend the Lease term for two (2) successive periods of ten (10) years each.

4. This Lease is subject to the terms, conditions and provisions of that certain unrecorded City of San Diego Flat Rate Lease between Landlord and Tenant dated June 21, 1983, all of which are incorporated herein by reference as though set out here in full. The unrecorded Lease shall control in the event of any conflict with this Memorandum of Lease.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease effective as of the date first written above.

LANDLORD:

THE CITY OF SAN DIEGO

By: J. P. Fowler
Title: Deputy City Manager

TENANT:

TECOLOTE ASSOCIATES,
A California General Partnership

By: Paul T. Sparrow
PAUL T. SPARROW
Managing General Partner

By: B. K. Moore
BARRY K. MOORE, Partner

By: William B. Goreham
WILLIAM B. GOREHAM, Partner

CORPORATE ACKNOWLEDGMENT

NO. 202

State of California }
County of San Diego } SS.

On this the 19th day of September, 1983, before me,

Lorna M. Murt
the undersigned Notary Public, personally appeared

J. P. Fowler

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence
to be the person(s) who executed the within instrument as
Deputy City Manager or on behalf of the corporation therein
named, and acknowledged to me that the corporation executed it.
WITNESS my hand and official seal.



Lorna M. Murt
Notary's Signature

Lorna M. Murt

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO) ss.

On this the 13th day of September, 1983, before me,
_____, the undersigned Notary Public,
personally appeared PAUL T. SPARROW,

☒ personally known to me

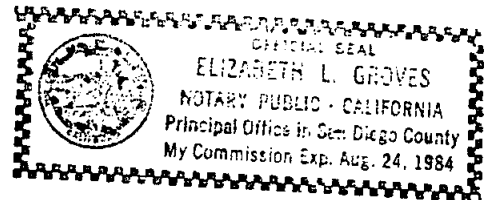
☐ proved to me on the basis of satisfactory
evidence

to be the person(s) who executed the within instrument on
behalf of the partnership, and acknowledged to me that the
partnership executed it.

WITNESS my hand and official seal.

Elizabeth L. Groves
Notary's Signature

(S E A L)



_STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On this the 13th day of September, 1983, before me,
_____, the undersigned Notary Public,
personally appeared BARRY K. MOORE,

☐ personally known to me

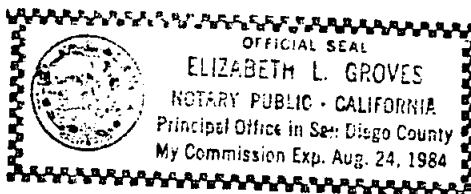
☒ proved to me on the basis of satisfactory
evidence

to be the person(s) who executed the within instrument on
behalf of the partnership, and acknowledged to me that the
partnership executed it.

WITNESS my hand and official seal.

Elizabeth L. Groves
Notary's Signature

(S E A L)



STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO) ss.

On this the 12th day of September, 1983, before me,
_____, the undersigned Notary Public,
personally appeared WILLIAM B. GOREHAM,

☐ personally known to me

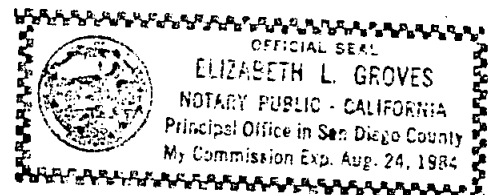
☒ proved to me on the basis of satisfactory
evidence

to be the person(s) who executed the within instrument on
behalf of the partnership, and acknowledged to me that the
partnership executed it.

WITNESS my hand and official seal.

Elizabeth L. Groves
Notary's Signature

(S E A L)



LEGAL DESCRIPTION

EXHIBIT A

Lots 31 through 38 inclusive, in Block "A" of Boulevard Heights, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 1628 filed in the Office of the County Recorder of San Diego County, February 19, 1914.

EXCEPTING THEREFROM the Southwesterly 15.00 feet.

ALSO EXCPETING THEREFROM those portions described in Resolution Nos. 193781, 196220 and 198150 recorded May 29, 1968 as File No. 90110, March 4, 1969 as File No. 38341 and October 8, 1969 as File No. 184930, respectively, all of Official Records.

503
J. Butler

(R-83-1675)

RESOLUTION NUMBER R- 258636

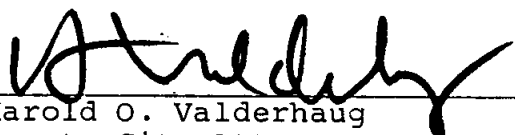
Adopted on JUN 13 1983

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

That the City Manager is hereby authorized to execute, for and on behalf of The City of San Diego, a lease agreement with TECOLOTE ASSOCIATES, a California partnership, for Site 442, consisting of 0.42-acre of City-owned land, with an appraised fair market value of \$188,000, located at Morena Boulevard and Tecolote Road, for the purpose of constructing, operating and maintaining an office building, at an initial annual rent of \$10,000, for a term of thirty (30) years with two 10-year options for renewal, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR- 258636.

APPROVED: John W. Witt, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
4/22/83
Or.Dept:Prop.
Job: 215809
Form=r.none

(R-83-1675)

RESOLUTION NUMBER R- 258636

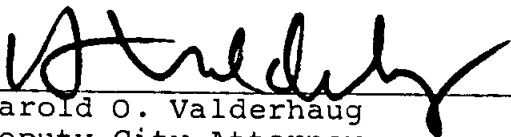
Adopted on JUN 13 1983

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APPROVED: John W. Witt, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
4/22/83
Or.Dept:Prop.
Job: 215809
Form=r.none

Passed and adopted by the Council of The City of San Diego on

June 13, 1983 by the following votes:

YEAS: Mitchell, Cleator, McColl, Jones, Struiksma, Gotch,
Murphy, Martinez, Hedgecock.

NAYS: None.

NOT PRESENT: None.

AUTHENTICATED BY:

ROGER HEDGECOCK
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

By BARBARA BERRIDGE
Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. R-258636 passed and adopted by the Council of The City of San Diego, California, on June 13, 1983.

(SEAL)

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

By Barbara Berridge
Deputy

Prop. - Survey 71 303

FORM OF

THE CITY OF SAN DIEGO

FLAT RATE LEASE

LESSEE - TECOLOTE ASSOCIATES,

A California Partnership

DOCUMENT NO RB-258836

FILED JUN 13 1983

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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SECTION 1: USES

- 1.01 Premises
- 1.02 Uses
- 1.03 Related Council Actions
- 1.04 Quiet Possession
- 1.05 Easements and Reservation
- 1.06 Competent Management
- 1.07 Political Activities

CITY OF SAN DIEGO

FLAT RATE LEASE

Approved by Council Resolution

_____ dated _____

THIS LEASE AGREEMENT is executed between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and TECOLOTE ASSOCIATES, a California partnership, hereinafter called "LESSEE."

SECTION 1. USES

1.01 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, described in Exhibit "A" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises."

1.02 Uses. The premises which consist of vacant and unimproved land are Teased to LESSEE for development consistent with CO zoning as in effect at the time of execution of this lease by constructing, operating, and maintaining an office building thereon, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose.

LESSEE covenants and agrees to use the premises for the above specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to continuously use the premises for said purposes or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

1.03 Related Council Actions. By the granting of this lease, neither the CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the premises. Discretionary action includes, but is not limited to, rezonings, variances, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the leased premises.

1.04 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or if during the lease term LESSEE

is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises. Said determination of rent reduction shall reasonably reflect the impact of LESSEE's operations.

1.05 Easements and Reservations.

- a. CITY hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the premises.
- b. CITY reserves the right to grant and use easements or establish and use rights-of-way over, under, along and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY'S exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by the CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.06 Competent Management. Throughout the term of this lease agreement LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of an office building in a fiscally responsible manner and expertise in all related business operations.

1.07 Political Activities. The leased property shall be used exclusively for the purposes specified in Section I, USES, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan.

SECTION 2: TERM

- 2.01 Commencement
- 2.02 Right to Extend
- 2.03 Holdover
- 2.04 Quitclaim of LESSEE Interest
- 2.05 Surrender of Premises

SECTION 2: TERM

- 2.01 Commencement. The term of this agreement shall be 30 years commencing on the first day of the calendar month following execution by the City Manager. "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager.
- 2.02 Right to Extend. LESSEE has the right to extend this lease for two additional periods of 10 years each, subject to all original agreements, considerations, covenants and conditions, except that the rent in each instance shall be adjusted initially by appraisal of the fair market value of the leased premises and readjusted thereafter every 2-1/2 years alternately by CPI and market value methods as presently prescribed in the lease. To exercise this right, LESSEE must give CITY six months written notice before the date on which this lease expires and prior to any subsequent extension.
- 2.03 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 2.04 Quitclaim of LESSEE'S Interest. On execution of this lease, the LESSEE shall deliver to the CITY a quitclaim deed in recordable form quitclaiming all its rights in the premises. CITY may record such deed only on the expiration or earlier termination of this lease. In the event the CITY requires any subsequent quitclaim deed, the LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor.

At the expiration or earlier termination of this lease, LESSEE shall deliver the premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the date of execution hereof, and in a decent, safe and sanitary condition, and in the case of termination of this lease by CITY prior to the end of the specified lease term any liens and encumbrances approved in writing by the City Manager during the lease term.

- 2.05 Surrender of Premises. At termination of this lease for any reason, LESSEE shall execute, acknowledge and deliver to the CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the leasehold premises. The premises shall be delivered free and clear of all liens and encumbrances, and in a decent, safe and sanitary condition.

If LESSEE fails or refuses to deliver the required deed, the CITY may prepare and record a notice reciting the LESSEE'S failure to execute this lease provision and the notice will be conclusive evidence of the termination of this lease and all LESSEE rights to the premises.

SECTION 3: RENT

3.01 . Place of Payment

3.02 Rent

3.03 Delinquent Rent

SECTION 3: RENT

- 3.01 Place of Payment. Rent is due monthly in advance on or before the first day of each calendar month. All monthly rents will be pro-rated during the first and final months of any rental period in order to achieve payment on the first day of each calendar month. Checks should be made payable to the City Treasurer and mailed or delivered to the Office of the City Treasurer, City of San Diego, P. O. Box 2289, San Diego, California, 92112-4165.

The place and time of payment may be changed at any time by CITY upon thirty (30) days written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. LESSEE assumes all risk of loss and late payment charges if payments are made by mail, or if postmarks are illegible, in which case the payment shall be deemed paid upon actual receipt by the City Treasurer.

3.02 Rent.

- a. Rent Amount. The initial rent is \$10,000 per year payable at the rate of \$833.33 per month. Said rent is subject to adjustments based on increases, if any, in the Consumer Price Index (CPI) and in the fair market value of the leased premises as hereinafter provided.
- b. (1) CPI Index Adjustments. On the first day of the sixth (6th) year following the effective date of the lease and at seven and one-half (7-1/2) years following said effective date and at the end of every five (5) years thereafter during the lease term, the rent shall be adjusted to reflect increases in the Consumer Price Index (CPI).

The index used will be the CPI for "All Urban Consumers" for Los Angeles/Long Beach/Anaheim, California. If this index is no longer published, the index for adjustment will be the U. S. Department of Labor's Comprehensive Official Index most comparable to aforesaid index. If a rental adjustment is calculated using an index from a different base year than 1967, which equaled a base figure of 100 for the CPI, the base figure used will first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of CITY and LESSEE. If the parties cannot agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor, notwithstanding continued reference herein to "CPI" in any event.

Regardless of the index publication dates, the effective date of the rent adjustment is as specified in this Section 3.02, b.(1). Until the rent adjustment can be reasonably determined by the index method, LESSEE will continue to make payments at the existing rental rate. When the adjustment is determined, the balance of rents due at the adjusted rate will be paid to the CITY within thirty (30) days.

- (2) Index Adjustment Computation. The rent for each rental period following the adjustment, until the next adjustment or other rental determination as provided herein, shall be determined prior to the date of adjustment by multiplying the rent which is effective immediately prior to said adjustment by the "adjustment figure" established as follows:

The "adjustment figure" shall be established by dividing the "current index" by the "base figure", both as defined herein:

The "base figure" for the first such adjustment shall be a three-month average of index figures published by said CPI using the fourth, fifth and sixth full months preceding the effective date of this agreement.

To illustrate, if the lease began in May, the CPI figures for November (sixth month), December (fifth month) and January (fourth month) preceding May would be averaged to establish the base figure (Example 1).

The "current index" shall be a three-month average of index figures published by said CPI. The three months to be used to establish said average shall be the fourth, fifth and sixth full months preceding the adjustment date.

The "base figure" for each successive adjustment shall be the "current index" figure used in the last preceding adjustment period (Example 2).

Example 1

Current Index 121
Base Figure $\frac{121}{110} = 1.10$ (Adjustment Figure)

Effective Rent x 1.10 = Adjusted Rent

Example 2

Current Index 138
Base Figure 121 = 1.14 (Adjustment Figure)

Effective Rent x 1.14 = Adjusted Rent

The adjustment figure is then multiplied by the monthly rent from the preceding adjustment period and the new rent is determined. Using the foregoing examples, if the rent is now \$1,000 per month, after the first adjustment it will be \$1,100 per month (\$1,000 x 1.10). In the second adjustment, it will be \$1,254 per month (\$1,100 x 1.14).

- c. Market Value Adjustments. In addition to said CPI adjustments, upon the first day of the eleventh lease year following the effective date of this agreement and upon the first day of each five-year period thereafter, the rent for the ensuing five years, subject to the aforesaid CPI adjustments, shall be determined by multiplying the capitalization rate of ten percent by the fair market value of the leased premises as of the adjustment date. The fair market value of the leased premises shall be determined by an appraisal made by a professional independent real estate appraiser selected by mutual consent of the parties from the list of appraisers approved by the CITY. In the event the parties cannot reach agreement upon selection of a mutually acceptable appraiser, then CITY and LESSEE will each select a professional independent real estate appraiser who in turn will select a third independent real estate appraiser, which third appraiser will be employed to make the appraisal of the fair market value of the premises and which value will be utilized to determine the adjusted rent previously described herein. In the event that the two selected appraisers fail to mutually select a third appraiser within thirty (30) days, then the third appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his or her individual capacity, on prompt application by either CITY or

LESSEE with notice thereupon to the other party. Said third appraiser shall complete the assignment within sixty (60) days of appointment. Each party shall pay the cost of its own selected appraiser and both CITY and LESSEE agree to equally share the cost of the mutually selected or court appointed third appraiser. CITY and LESSEE agree to accept and be bound by the valuation determined by the selected or appointed appraiser.

In establishing the fair market value of the premises, the appraiser shall consider the property as a fee simple absolute estate and as vacant and available for lease or sale for the authorized purposes of this lease at the commencement of the rental period under review.

The date of value of the appraisal shall be the date of rental adjustment as hereinabove established. In the event the appraisal is not completed in time to permit the adjustment to be made upon the date specified, LESSEE agrees to continue to pay rent in accordance with the then existing lease rates and the adjustment, when determined, will be retroactive to said effective date of rental adjustment. Any deficiency shall be paid by LESSEE to CITY within thirty (30) days after determination of the new rental rate.

- d. Increase Only. In no event shall the adjusted rent, as established by Consumer Price Index or by periodic appraisals as provided for herein, be less than the rent in existence on the day prior to the adjustment date.

3.03 Delinquent Rent. If the LESSEE fails to pay the rent when due, the LESSEE will pay in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, the LESSEE shall pay an additional five percent (5%) (being a total of ten percent (10%) which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

3.04 Commencement of Rental. Rental payments under this lease shall commence on the first day of the calendar month immediately following the earlier of (i) the expiration of ninety (90) days from its execution, or (ii) the issuance of a building permit for construction of improvements by LESSEE on the subject property. LESSEE agrees to use its best efforts to seek issuance of a building permit at the earliest practicable time.

SECTION 4: ASSIGNMENT

- 4.01 Time is of Essence
- 4.02 Assignment and Subletting
- 4.03 Encumbrance
- 4.04 Defaults and Remedies
- 4.05 Eminent Domain
- 4.06 Partnership Liability

SECTION 4: ASSIGNMENT

- 4.01 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants and conditions of this lease and, except as otherwise provided herein, all of the terms, covenants and conditions of this lease shall apply to, benefit and bind the successors and assigns of the respective parties, jointly and individually.
- 4.02 Assignment and Subletting. Subject to prior CITY approval in each instance, LESSEE may assign this lease or any interest therein and may sublease any portion hereof to an assignee or sublessee who has, in the opinion and in the sole and absolute discretion of City Manager, the financial capability and overall competence to successfully operate the assigned or subleased portion of the premises. This lease and any interest herein shall not be assignable by operation of law without the written consent of the CITY.

"Assignment," for the purposes of this clause shall include any transfer of any ownership interest in LESSEE by any partners, principal, or stockholders, as the case may be. Provided, however, that transfers of interest among existing partners, or to entities which are to remain controlled by such partners, shall not be deemed an "assignment" requiring the consent of CITY but shall require written notification to CITY describing any such transfer.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions and provisions of this agreement which are applicable to the rights acquired.

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

Any subsequent encumbrances on the premises or on any permanent improvements thereon, must first have the approval in writing of City Manager. The City Manager shall have the sole and absolute discretion to approve or disapprove any such proposed subsequent encumbrance.

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

Any default, foreclosure or sale pursuant to said deed of trust, mortgage or other security instrument, shall be invalid with respect to this lease without prior notice thereof to and approved by CITY. Upon prior approval by CITY, said mortgagee or beneficiary may assign this lease to its nominee, if nominee is a reputable, qualified and financially responsible person in the opinion of CITY. Any deed of trust, mortgage or other security instrument shall be subject to all of the terms, covenants and conditions of this lease and shall not be deemed to amend or alter any of the terms, covenants or conditions hereof.

4.04. Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in paragraph a. (1) of this section is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

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

b. Remedies. If the mortgagee or beneficiary shall be required to exercise 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 the default or defaults may be expeditiously corrected:

- (1) CITY may correct said default or defaults and charge the costs thereof 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 to LESSEE and mortgagee or beneficiary of a statement of said costs.
- (2) CITY may correct said default or defaults and may pay the costs thereof from the proceeds of any insurance fund held by CITY, CITY and LESSEE or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or defaults or to pay the costs of correction performed by or at the direction of CITY.
- (3) CITY may terminate this lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE agrees to assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related obligations by CITY. CITY may, as an alternative, substitute for the terminated LESSEE a new LESSEE reasonably satisfactory to the mortgagee or beneficiary.

Should the default or defaults be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold whose qualifications as an assignee have been approved by CITY shall have the absolute right to substitute itself to the estate of the LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default and the default, if curable, is cured by

such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, the CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges and obligations of the LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.

- c. Abandonment by LESSEE. Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder, including, but not limited to, the right to recover the rent as it becomes due, plus damages.
- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. The CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is City-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or the City staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel but the CITY shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

4.05 Eminent Domain. If all or part of the premises is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of the CITY and LESSEE (or beneficiary or mortgagee), will be as follows:

- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

- b. In the event of a partial taking, leaving the remainder unusable for lease purposes, if in the opinion of the CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - c. In the event of a partial taking, leaving the remainder usable for lease purposes, if in the opinion of the CITY, the remainder of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession of the condemning authority, whichever occurs first, but shall continue for the portion not taken. The minimum rent shall be reduced in proportion to the amount of the improvements taken.
 - d. Award. All monies awarded in any such taking shall belong to CITY whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to, (1) installations or improvements of LESSEE, or (ii) LESSEE's business.
 - e. Transfer. CITY has the right to transfer the CITY'S interests in the premises, in lieu of condemnation, to any authority entitled to exercise the power of eminent domain. If a transfer occurs, the LESSEE shall retain its possessory interest in the fair market value of any improvements placed on the premises in accordance with this lease by LESSEE.
 - f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.
- 4.06 Partnership Liability. Each general partner of LESSEE shall jointly and severally perform and be responsible for each and every term, covenant and condition and each general partner is jointly and severally liable for performance under this lease. The LESSEE will file with the CITY, at the time of execution of the lease a copy of the recorded partnership papers pertaining to formation of Tecolote Associates, a California partnership. The document will identify the responsible members of the partnership acting in behalf of the LESSEE.

SECTION 5: INSURANCE RISKS/SECURITY

5.01 Indemnity

5.02 Insurance

5.03 Waste, Damage or Destruction

5.04 Security Deposit

SECTION 5: INSURANCE RISKS/SECURITY

5.01 Indemnity. LESSEE at all times shall relieve, indemnify, protect and save CITY and any and all of its boards, officers, agents and employees harmless from any and all claims and demands, actions, proceedings, losses, liens, costs, judgments, civil fines and penalties of any nature whatsoever in regard to or resulting from the use of the premises, including, but not limited to, expenses incurred in legal actions, death, injury or damage that may be caused directly or indirectly by:

- a. Any unsafe or defective condition in or on the premises of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the premises by LESSEE, its employees, agents, sublessees, invitees or licensees,
- b. Any operation, use or occupation conducted on the premises by LESSEE, its employees, agents, sublessees, invitees or licensees.
- c. Any act, omission or negligence on the part of LESSEE, its employees, agents, sublessees, invitees, licensees or
- d. Any failure by LESSEE to comply or secure compliance with any of the lease terms or conditions.

5.02 Insurance. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:

- a. Public liability and property damage insurance in the amount of not less than ONE MILLION DOLLARS (\$1,000,000) COMBINED SINGLE LIMIT LIABILITY. This policy shall cover all injury or damage, including death, suffered by any party or parties, from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE, on or in connection with the use or operation of the premises.
- b. Fire, extended coverage and vandalism insurance policy on all insurable property on the premises, in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with the ENCUMBRANCE section hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.

- c. Conditions. All insurance policies will name the CITY as an additional insured, protect the CITY against any legal costs in defending claims and will not terminate without sixty (60) days prior written notice to the CITY. All insurance companies must be satisfactory to the CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises and full applicable Fire Insurance coverage shall be effective upon completion of each insurable improvement. Certificates, in a form satisfactory to the CITY, will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a policy has been obtained which meets the terms of this lease.
- d. Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to acquire any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- e. Accident Reports. LESSEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the premises. This report should contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.
- f. Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer or insurers and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this subsection f., if LESSEE fails or refuses to take out or maintain insurance as required in this lease, or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.03 Waste, Damage or Destruction. LESSEE agrees to give notice to the CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash and rubbish in a manner satisfactory to the CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage, or at the CITY'S option LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to the CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage using for either purpose the insurance proceeds as set forth in Section 5.02 Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration or replacement of the premises shall be commenced by LESSEE within thirty (30) days and the required repairs, restoration or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenable by reason of such damage.

- 5.04 Security Deposit. A security deposit shall be paid to the CITY by LESSEE in the sum of One Thousand Dollars (\$1,000) on or before the effective date of this lease. All or any portion of the principal sum shall be available unconditionally to CITY for correcting any default or breach of this lease by LESSEE, LESSEE'S successors or assigns, or for payment of expenses incurred by CITY as a result of LESSEE'S failure to faithfully perform all terms, covenants and conditions of this lease.

The security deposit shall take one of the forms set out below:

- a. Cash. Cash deposits shall be deposited in an interest bearing account by CITY and interest earned shall be paid to LESSEE annually.

- b. An instrument(s) of credit from one or more financial institutions, subject to regulation and insurance by the state or federal government, pledging that the funds are on deposit and guaranteed for payment, and agreeing that any or all shall be paid to CITY or order upon demand by CITY. Any interest accruing to LESSEE from the financial institution shall not work to decrease the principal amount of deposit required herein.

The financial institution and the form of any instrument pledging the funds must be approved by the CITY.

LESSEE will maintain the required security deposit throughout the lease term and for 90 days thereafter unless previously released by the CITY. Failure to do so shall be considered a default and is grounds for immediate termination of this lease.

In the event CITY utilizes all or any portion of the security deposit, LESSEE shall reimburse the deposit within 10 days of notice from CITY to bring the security deposit up to the full specified amount.

The security or any balance thereof will be returned to the LESSEE within 90 days following expiration or termination of this lease, provided LESSEE has faithfully complied with all terms, covenants and conditions hereof.

The security deposit may be increased by CITY proportionate to any increased performance or rental liability of LESSEE upon 60 days' prior written notice from CITY of such required increase.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.01 Acceptance of Premises
- 6.02 Maintenance
- 6.03 Improvements/Alterations
- 6.04 Utilities
- 6.05 Construction Bond
- 6.06 Liens
- 6.07 Taxes
- 6.08 Signs
- 6.09 Ownership of Improvements
- 6.10 Unavoidable Delay
- 6.11 Development Plan

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.01 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations and observations in making this lease. LESSEE further acknowledges that premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises and that LESSEE does not hold CITY responsible for any defects in the premises.
- 6.02 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises, throughout the term. LESSEE will make all repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy and sanitary condition satisfactory to the CITY and in compliance with the Development Plan described in Section 6.11 hereof and with all applicable laws.
- 6.03 Improvements/Alterations. No improvements, structures or installations shall be constructed within the premises and the premises may not be in any way altered by the LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures or installations may not be made on the premises without prior written approval by the City Manager. This provision shall not relieve the LESSEE of any obligation under this lease to maintain the premises in decent, safe, healthy and sanitary condition, including structural repair and restoration of damaged or worn improvements. The CITY shall not be obligated by this lease to make, or assume any expense for, any improvements or alterations.
- 6.04 Utilities. LESSEE agrees to order, obtain and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground.
- 6.05 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY, prior to commencement of said construction a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The

bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY. In the event that LESSEE fails to comply with this provision, this lease may be terminated by CITY.

- 6.06 Liens. LESSEE will at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations or repairs on or to the premises, and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations or repairs are made to the premises by LESSEE or by any party other than CITY and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

- a. Take all actions necessary to record a valid release of lien, or
- b. File with CITY a bond, cash, or other security acceptable to CITY, sufficient to pay in full all claims of all persons seeking relief under the lien.

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

LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due the CITY.

- 6.08 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without the prior written consent of the CITY. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY or CITY may thereupon remove the item at LESSEE'S cost.

- 6.09 Ownership of Improvements and Personal Property.

- a. All and any improvements, structures and installations or additions to the premises now existing or constructed on the premises by LESSEE, shall at lease expiration or termination, be deemed to be part of the premises and shall become at CITY'S option the CITY'S property, free of all liens and claims except as otherwise provided in this lease.

- b. If the CITY elects not to assume ownership of all or any improvements, structures and installations, CITY shall so notify LESSEE 30 days prior to termination or 180 days prior to expiration and the LESSEE shall remove all such improvements, structures and installations as directed by the CITY at LESSEE'S sole cost on or before lease expiration or termination. If the LESSEE fails to remove any improvements, structures and installations as directed, the LESSEE agrees to pay CITY the full cost of any removal.
 - c. LESSEE-owned machines, appliances, equipment (other than trade fixtures) and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become the CITY'S property free of all claims and liens, or CITY may at its option remove said items at LESSEE'S expense.
 - d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
 - e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require rental by LESSEE to CITY at the rate in effect immediately prior to said expiration or termination.
- 6.10 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY claim the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten days after the beginning of any such claimed delay.
- 6.11 Development Plan. LESSEE agrees to develop the leased premises in accordance with the General Development Plan approved by the City Manager and filed in the Office of the City Clerk which plan is hereby incorporated by this reference. The general contents and provisions of the development plan are described in Exhibit "B" hereto. The City Manager or his designee shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk. Failure by LESSEE to comply with the General Development Plan shall constitute a major default and subject this lease to termination by CITY.

SECTION 7: GENERAL PROVISIONS

- 7.01 Notices
- 7.02 Compliance with Law
- 7.03 City Approval
- 7.04 Nondiscrimination
- 7.05 Affirmative Action
- 7.06 Partial Invalidity
- 7.07 Legal Fees
- 7.08 Number and Gender
- 7.09 Captions
- 7.10 Entire Understanding
- 7.11 Corporate Authority
- 7.12 Landscaping of Adjacent Strip of Parkland

SECTION 7: GENERAL PROVISIONS

7.01 Notices.

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at the leased premises or at such other address designated in writing by LESSEE; and to CITY as follows:

City Manager, Attention Property Director
City Administration Building
202 C Street, M.S. 9A
San Diego, CA 92101-4155

or to any mortgagee, trustee or beneficiary, as applicable at such appropriate address designated in writing by the respective party.

- b. Any party entitled or required to receive notice under this lease may by like notice designate a different address to which notices shall be sent.

- 7.02 Compliance with Law. LESSEE will at all times in the construction, maintenance, occupancy and operation of the premises, comply with all applicable laws, statutes, ordinances and regulations of the CITY, County, State and Federal Government, at LESSEE'S sole cost and expense. In addition, LESSEE will comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.
- 7.03 CITY Approval. The approval or consent of the CITY, wherever required in this lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.
- 7.04 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age or physical handicap in LESSEE'S use of the premises, including, but not limited to, the providing of goods, services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment.
- 7.05 Affirmative Action. LESSEE agrees to abide by the CITY'S Affirmative Action Program for LESSEES as it exists or is amended to the extent that the program is applicable to this lease. A copy of the program effective as of the date of this lease is on file in the City Clerk's Office and by this reference is part hereof. The program's goal is the attainment of employment for minorities and women in all areas of employment, in a total percentage as established by the CITY for its Affirmative Action Program each year.

- 7.06 Partial Invalidity. If any term, covenant, condition or provision of this lease is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.07 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney's fees.
- 7.08 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the sense requires.
- 7.09 Captions. The lease Table of Contents, section headings and captions for various articles and paragraphs shall not be held to define, limit, augment or describe the scope, content or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. The LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties in respect to the lease premises. Each party has relied on his own examination of the premises, advice from his own attorneys and the warranties, representations and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent or attorney of any other party has made any promise, representation or warranty whatsoever, which is not contained in this lease.
- The failure or refusal of any party to read the lease or other documents, inspect the premises and obtain legal or other advice relevant to this transaction, constitutes a waiver of any objection, contention or claim that might have been based on these actions. No modification, amendment or alteration of this lease will be valid unless it is in writing and signed by all parties.
- 7.11 Landscaping of Adjacent Strip of Parkland. LESSEE shall be responsible, at its sole cost, to landscape and maintain the 16.72-foot strip of parkland shown on the attached plat (Exhibit "A") adjoining the leased premises. Trees and taller shrubs are to be used to give verticality and scale along Tecolote Road. The landscaped strip will serve as an entryway to the nearby Tecolote Park. In addition, the landscaping by the LESSEE will extend around the curve along Morena Boulevard to give a stronger definition to the entryway into the park.

IN WITNESS WHEREOF, this lease agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

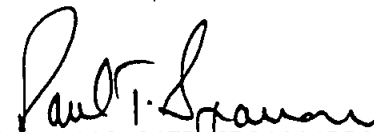
THE CITY OF SAN DIEGO

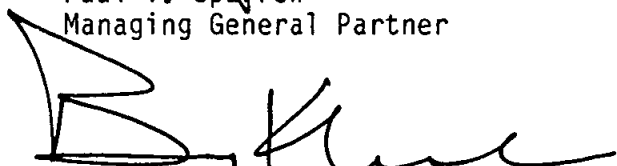
Date: 6/21/83

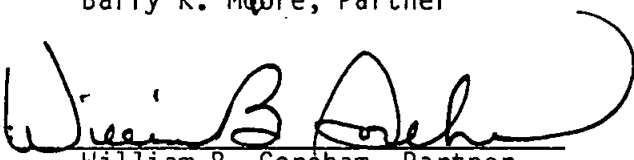
By: 
ASSISTANT TO THE City Manager

LESSEE: TECOLOTE ASSOCIATES,
a California Partnership

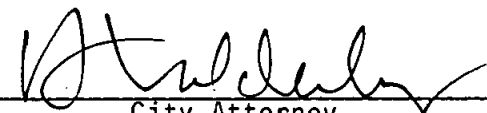
Date: 4/6/83

By: 
Paul T. Sparrow
Managing General Partner

By: 
Barry K. Moore, Partner

By: 
William B. Goreham, Partner

APPROVED as to form and legality this 21 day of June, 1983

By: 
City Attorney

JCB:mh(2) Disk 5
3/24/83

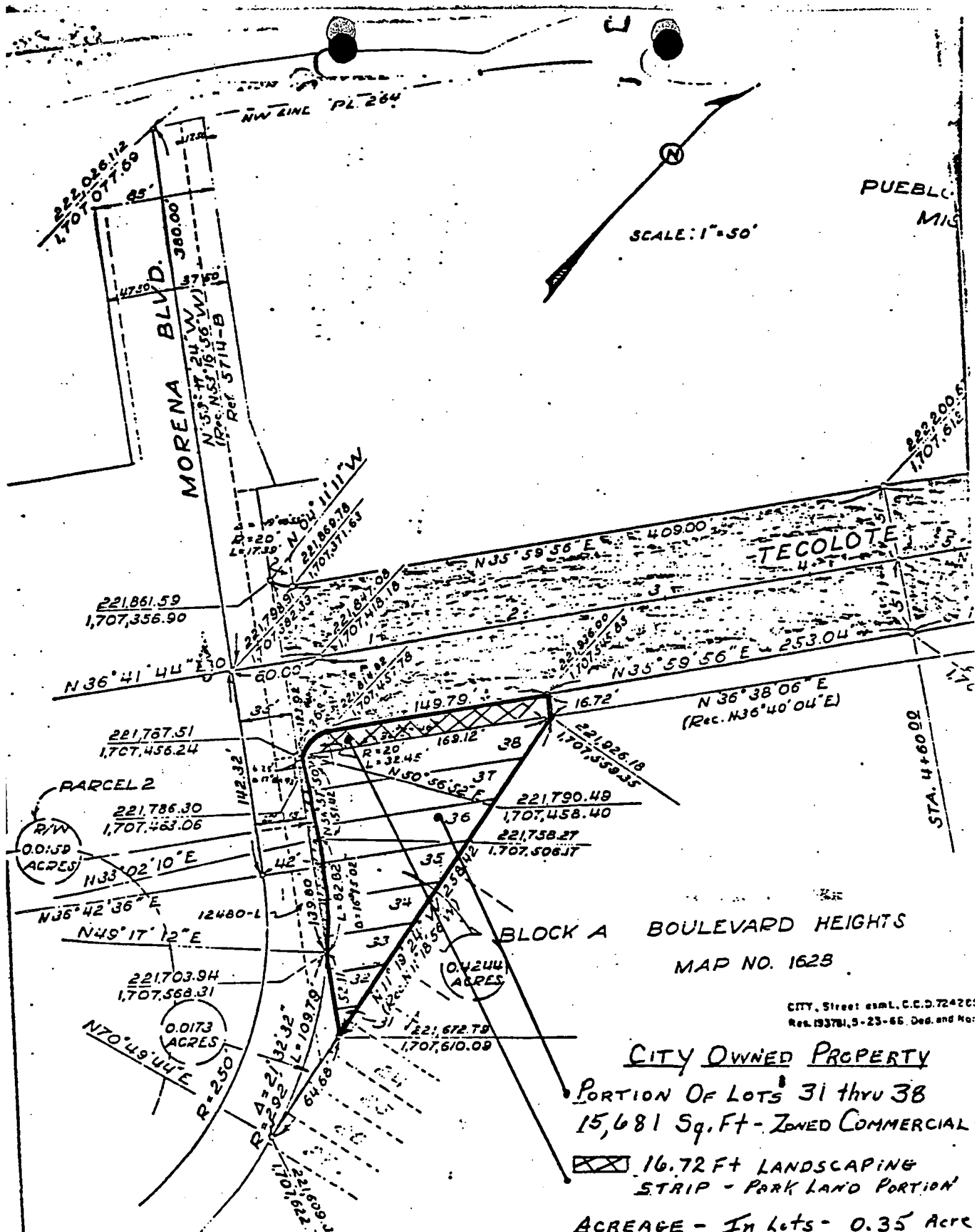


EXHIBIT A

CITY OWNED PROPERTY
 PORTION OF LOTS 31 thru 38
 15,681 Sq. Ft - ZONED COMMERCIAL
 16.72 FT LANDSCAPING STRIP - PARK LAND PORTION

ACREAGE - In Lots -	0.35 Acre
In Strip -	0.07 "
Total	0.42 Acre

CITY, Street asml, C.E.D. 72420
 Res. 193781, 5-23-66, Ded. and No:

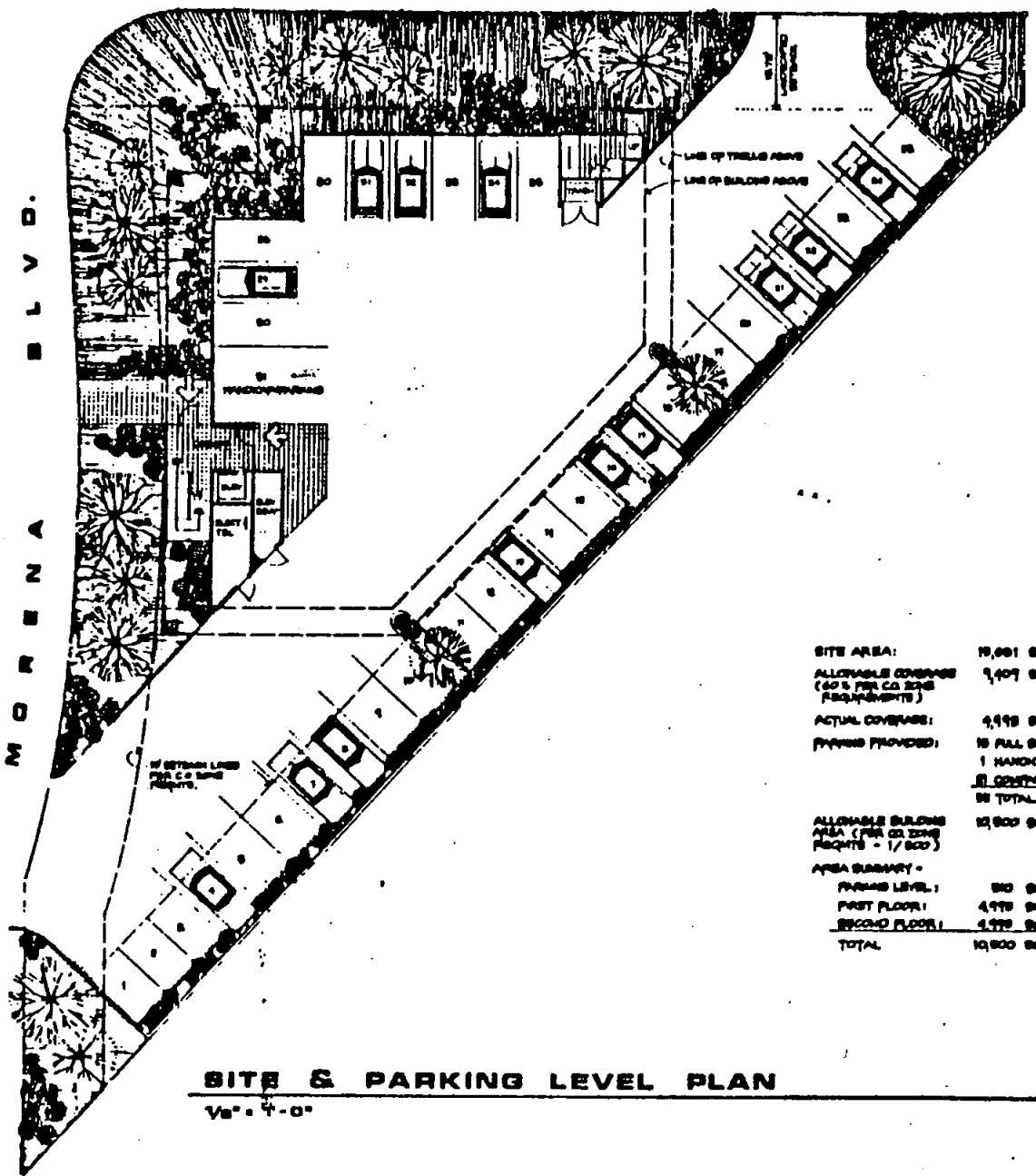
DEVELOPMENT PRO FORMA

Architectural and Engineering \$1.90 sq ft =	\$ 20,000.00
Building Costs - Including parking, landscaping and off-site work \$42.11 sq ft =	442,227.00
Tenant Improvements \$15.00 sq ft =	<u>135,000.00</u>
 TOTAL COSTS OF CONSTRUCTION	 \$597,227.00
 Interest Expenses - Course of Construction	 \$ 49,000.00
Lease Expense through completion	7,497.00
Loan Fees and Recording Costs (4%)	<u>28,000.00</u>
 TOTAL PROJECT COSTS	 \$681,724.00

EXHIBIT B

Sheet 1 of 4

TECOLOTE ROAD



SITE AREA:	19,001 SQ. FT.
ALLOWABLE COVERAGE (60 % PER CO. ZONE REQUIREMENTS)	9,407 SQ. FT.
ACTUAL COVERAGE:	4,979 SQ. FT.
PARKING PROVIDED:	10 FULL SIZE 1 HANDICAPPED 11 TOTAL
ALLOWABLE BUILDING AREA (PER CO. ZONE REQUIREMENTS - 1/800)	12,800 SQ. FT.
AREA SUMMARY:	
PARKING LEVEL:	800 SQ. FT.
FIRST FLOOR:	4,979 SQ. FT.
SECOND FLOOR:	4,979 SQ. FT.
TOTAL:	10,800 SQ. FT.

SITE & PARKING LEVEL PLAN
1/8" = 1'-0"

DONALD F. GOLDMAN & ASSOCIATES
ARCHITECTS AIA
3604 FOURTH AVE
SAN DIEGO 92103

OFFICE BUILDING FOR:
TECOLOTE ASSOCIATES
SAN DIEGO, CA.

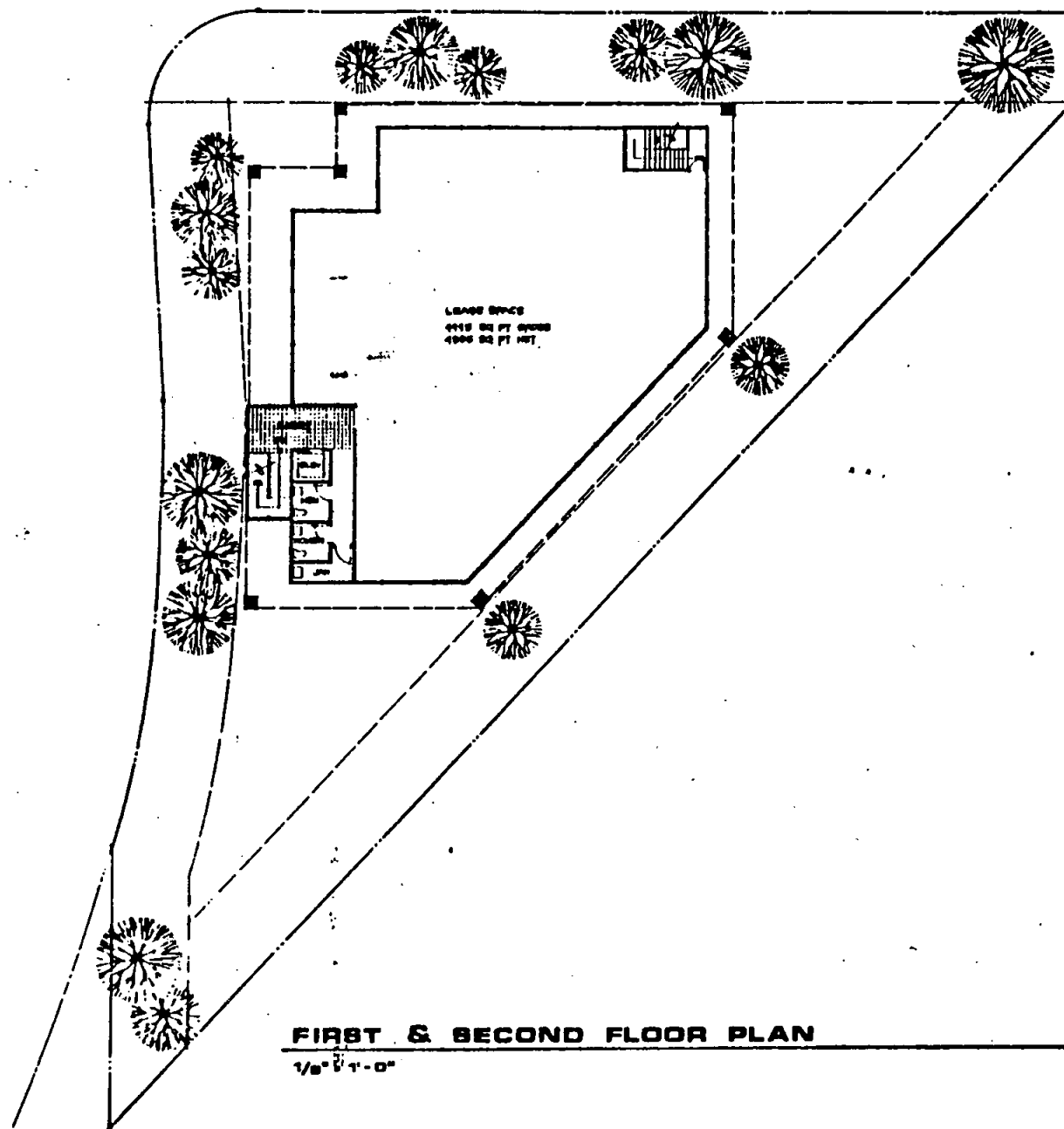
**DONALD - R.
GOLDMAN &
ASSOCIATES**

ARCHITECTS AIA
3604 FOURTH AVE
SAN DIEGO 92103

OFFICE BUILDING FOR:
**TECOLOTE
ASSOCIATES**
SAN DIEGO, CA.

DATE: 08/85
DRAWN:

344



DEVELOPMENT TEAM

ARCHITECT: Donald R. Goldman & Associates, AIA
3604 Fourth Avenue
San Diego, CA 92103

PROJECT
ESTIMATOR: Bruce McDonald
3512 Russell Street
San Diego, CA 92106

ATTORNEYS: Gray, Cary, Ames & Frye
Richard A. Burt and
J. Terence O'Malley
525 Union Bank Building, Suite 2100
San Diego, CA 92101

LENDER: La Jolla Bank & Trust Co.
1205 Prospect Street
La Jolla, CA 92037

GENERAL
CONTRACTOR: Suto, Inc.
2356 Moore Street, Suite 200
San Diego, CA 92110

APPLICANT AND
DEVELOPER: Tecolote Associates
Paul T. Sparrow, Managing General Partner

CONTACT
PERSON: Paul T. Sparrow - (619) 295-9545

Sheet 4 of 4