

## **CONSENT TO INGRESS, EGRESS AND PARKING EASEMENT AGREEMENT**

The City of San Diego (CITY), as LESSOR and successor in interest to Union-Breitbard Joint Venture under that certain Agreement to Sublease dated February 7, 1969, as amended and subsequently assigned to

### **TREND FURNITURE OF SAN DIEGO, INC.**

Now called **Trend Furniture of La Mesa Inc., a California Corporation** (LESSEE), filed in the Office of the City Clerk as Document No. C-04674, on March 29, 1993 (UBJV Lease), and as LESSOR under that certain Flat Rate Lease as amended with

### **PIER I IMPORTS (U.S.), INC., a Delaware Corporation**

(LESSEE), filed in the Office of the City Clerk as Document No. RR-280329 on July 13, 1992 (Trend Furniture Lease) (the UBJV Lease and the Trend Furniture Lease are referred to collectively as the Master Leases), hereby consents to that certain Ingress, Egress and Parking Easement Agreement (Agreement) between the above LESSEES dated September 1, 2000. The Agreement shall be subordinate to both Master Leases in all respects. The CITY is hereby merely approving the Agreement and the proposed use, and all terms and conditions of the Master Leases shall control and supersede any inconsistent or contrary provisions in the Agreement. The CITY is not bound by any term or condition in the Agreement which in any way conflicts with or is additional to the provisions of the Master Leases.

In addition, this consent is subject to the following:

**Hold Harmless:** LESSEES shall assume the defense of, indemnify and save harmless the CITY from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from operations conducted on the leased premises or from any act or omission of LESSEES, their agents and invitees; provided, however, LESSEES' duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

**Modification:** Neither this Consent nor the Agreement may be modified, amended or extended without the prior written consent of the CITY. The CITY'S consent will not be unreasonably withheld.

**Notification of CITY:** LESSEES shall provide to the City written notice in advance of any termination of the Agreement.

**Legal Proceeding:** Should a controversy arise relating to the enforcement of any provision of the Agreement, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.

Subordination: This Consent permits an ingress, egress and parking easement of a portion of the CITY owned premises covered by that certain Master Leases between the CITY and LESSEES filed in the office of the City Clerk as Documents No. C-04674, and No. RR-280329. This Consent and the Agreement are subject and subordinate to the covenants and conditions of the Master Leases notwithstanding any provision contrary to or in conflict with the Master Leases.

Dated

11/30/00

THE CITY OF SAN DIEGO

By

[Signature] ~~AGENT~~ PERMISSING PERMIT AGENT  
~~for~~ The City Manager

PIER 1 IMPORTS, (U.S.), INC.

Dated OCTOBER 31, 2000

By

[Signature]

J. Rodney Lawrence

Title Senior Vice President

TREND FURNITURE OF SAN DIEGO, INC.

(Now called Trend Furniture of La Mesa Inc.,  
a California Corporation)

Dated

November 3, 2000

By

[Signature]

Stephen N. Schulman

Title President

APPROVED AS TO FORM AND LEGALITY:

CASEY GWINN, City Attorney

By

[Signature]

Deputy City Attorney

Dated

12/11/00

## INGRESS, EGRESS AND PARKING EASEMENT AGREEMENT

This Ingress, Egress and Parking Easement Agreement ("Agreement") is entered into on September 1, 2000 between Trend Furniture of La Mesa, Inc., a California corporation ("Owner"), with an address of c/o Stephen Schulman, 700 Front Street, Suite 1407, San Diego, California 92101, and Pier 1 Imports (U.S.), Inc., a Delaware Corporation ("Pier 1"), with an address of Attention: Vice President-Real Estate, 301 Commerce Street, Suite 600, Fort Worth, Texas 76102.

### RECITALS

This Agreement is entered into with reference to the following facts:

- A. Owner leases the real property shown on the Site Plan attached hereto as page 1 of **Exhibit A** ("Owner's Property") from the City of San Diego ("Landlord") pursuant to a Lease Agreement dated effective February 7, 1969 and filed on March 29, 1993 as Doc. No. C-04674 with the Office of the City Clerk of San Diego, California ("Owner's Lease"). Owner's Property is commonly known as 3240 Sports Arena Boulevard, San Diego, California 92110, and the legal description of Owner's Property is attached hereto as **Exhibit B**.
- B. Pier 1 leases the real property shown on page 2 of **Exhibit A** ("Pier 1's Property") from Landlord pursuant to a Lease Agreement, as amended, dated effective November 1, 1990 and filed on July 13, 1992 as Doc. No. RR-280329 with the Office of the City Clerk of San Diego, California ("Pier 1's Lease"). Pier 1's Property is commonly known as 3220 Sports Arena Boulevard, San Diego, California 92110, and the legal description of Pier 1's Property is attached hereto as **Exhibit C**.
- C. Owner and Pier 1 desire to grant each other easements for ingress, egress and/or parking over their respective properties.

### AGREEMENT

In consideration of their mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, Owner and Pier 1 hereby agree:

- 1. Recitals and Cooperation. Owner and Pier 1 incorporate the above recitals into this Agreement and affirm such recitals are true and correct. Owner and Pier 1 will reasonably cooperate with each other to effectuate the intents and purposes of this Agreement.
- 2. Effective Date. This Agreement is contingent upon Landlord's written consent and is effective as of the date of Landlord's execution of a Consent to Ingress, Egress and Parking Easement Agreement ("Effective Date").

3. Character and Duration of Agreement. The easement granted in this Agreement is an easement appurtenant and is effective from the Effective Date until one of the following occurs:
- (a) Owner or Pier 1, or their respective employees, agents, contractors or invitees, obstructs the Access Area (defined in Section 9), and the obstructing party does not remedy the obstruction within thirty (30) days after receipt of notice from the non-obstructing party,
  - (b) Owner or Pier 1, or their respective employees, agents, contractors or invitees, violates this Agreement by using areas on Owner's Property or Pier 1's Property outside the Access Area (defined in Section 9), and the violating party does not remedy the violation within thirty (30) days after receipt of notice from the non-violating party,
  - (c) Pier 1's Lease expires or is terminated, or
  - (d) Owner's Lease expires or is terminated.

Owner is not required to exercise any options to extend the term under Owner's Lease. Pier 1 is not required to exercise any options to extend the term under Pier 1's Lease.

4. Governing Law and Construction. This Agreement is governed by the laws of the state in which Pier 1's Property is located, and any legal action to interpret or enforce this Agreement must be instituted in San Diego County in a court of competent jurisdiction. Owner and Pier 1 acknowledge they and, if they so choose, their respective counsel have reviewed and revised this Agreement and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement or any exhibits, attachments and addenda to this Agreement. If any provision of this Agreement is deemed illegal or unenforceable, the balance of this Agreement is deemed unaffected and fully enforceable.
5. Entire Agreement and Modification. This Agreement constitutes the entire agreement between Owner and Pier 1 and supersedes all prior discussions, negotiations and agreements, whether verbal or written. This Agreement may not be modified, except by written agreement executed by Owner and Pier 1.
6. Binding Effect. The easements and covenants set forth in this Agreement (a) run with Owner's Property and Pier 1's Property and (b) are binding on and inure to the benefit of Owner and Pier 1 and their respective successors and assigns.
7. Attorneys' Fees. If Owner or Pier 1 commences an action against the other party arising out of or in connection with this Agreement, the prevailing party is entitled to recover reasonable attorneys' fees and costs incurred in connection with the prosecution or defense of such action.

8. Authority. Owner and Pier 1 represent and warrant to each other the persons and entities signing this Agreement on behalf of Owner and Pier 1 have authority to enter into and execute this Agreement.
9. Grant of Right. Owner and Pier 1 grant each other a nonexclusive easement for ingress and egress of vehicular and pedestrian traffic over and across the drive areas and parking areas of each party's respective property as well as a nonexclusive easement for parking on each party's respective property in the "Access Area" shown on **Exhibit A**.
10. Maintenance. Owner, as to the Access Area on Owner's Property and at Owner's expense, and Pier 1, as to the Access Area on Pier 1's Property and at Pier 1's expense, will maintain the Access Areas located on their respective properties in good order and repair, including without limitation keeping the respective Access Areas free of rubbish and maintaining landscaped areas.
11. Obstructions. Owner and Pier 1 will not obstruct or allow their respective properties to be obstructed, nor will Owner or Pier 1 construct or allow to be constructed any buildings or structures on their respective properties without the consent of the other.
12. Insurance. Owner, as to Owner's Property and at Owner's expense, and Pier 1, as to Pier 1's Property and at Pier 1's expense, will maintain in full force commercial general liability insurance issued by one or more insurance carriers, insuring against liability for injury to or death of persons and loss of or damage to property occurring on their respective properties. The coverage limits of each policy will be a combined single limits for bodily injury and property damage in an amount of at least One Million Dollars (\$1,000,000) per occurrence.
13. Indemnification. Owner and Pier 1 (each an "Indemnitor") will indemnify and defend the other (each an "Indemnatee") from and against all claims, liabilities, demands or causes of action, including all reasonable expenses of Indemnatee incidental thereto, for injury to or death of or damage to personal property of any employee, agent or invitee of Indemnatee arising within Owner's Property or Pier 1's Property and caused by Indemnitor's negligent act or omission or the negligent act or omission of any employee, agent or contractor of Indemnitor.
14. Notices. Any notice, demand, consent or communication required to be given to Owner or Pier 1 under the terms of this Agreement ("notice") is deemed received on receipt or refusal to accept delivery, provided the notice is in writing and mailed by certified mail return receipt requested or sent by overnight courier to the appropriate address listed in the preamble paragraph, or to any other address as Owner or Pier 1 may furnish each other in writing.
15. Directional Signage. Owner may erect directional signage on Owner's Property indicating additional parking on Pier 1's Property. However, such directional signage is subject to Pier 1's reasonable approval.

16. Default. In the event of a default under this Agreement, the non-defaulting party may (a) exercise any rights and remedies it may have at law or in equity and/or (b) terminate this Agreement on notice to the defaulting party, and this Agreement will terminate thirty (30) days after receipt of such notice unless the defaulting party remedies the default within such thirty (30) day period.
17. Exhibits. All exhibits referred to herein are considered a part hereof for all purposes with the same effect as if copied at verbatim herein. The exhibits attached hereto are:

Exhibit A

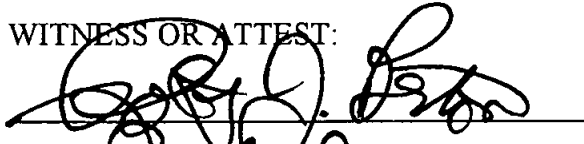
Page 1-Owner's Property Site Plan

Page 2-Pier 1's Property Site Plan

Exhibit B-Owner's Property Legal Description

Exhibit C-Pier 1's Property Legal Description

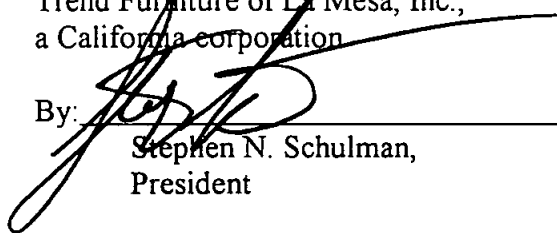
WITNESS OR ATTEST:

  
Date: September 7, 2000

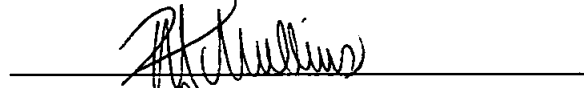
OWNER:

Trend Furniture of La Mesa, Inc.,  
a California corporation

By:

  
Stephen N. Schulman,  
President

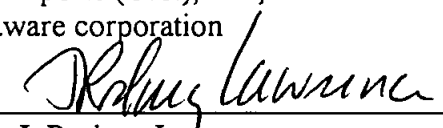
WITNESS OR ATTEST:

  
Date: August 31, 2000

PIER 1:

Pier 1 Imports (U.S.), Inc.,  
a Delaware corporation

By:

  
J. Rodney Lawrence,  
Senior Vice President

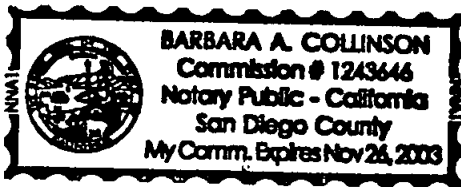
[Acknowledgements on the following page]

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

On 9/7/2000 before me Barbara A. Collinson a Notary Public in and for said State, personally appeared Stephen N. Schulman, President of Trend Furniture of La Mesa, Inc., a California corporation, personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Barbara A. Collinson  
Notary Public

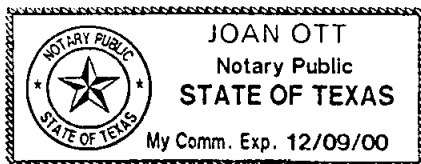
STATE OF TEXAS

COUNTY OF TARRANT

Before me, the undersigned authority, on this day personally appeared J. Rodney Lawrence, Senior Vice President of **Pier 1 Imports (U.S.), Inc.**, a Delaware corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity stated, and as the act and deed of said corporation.

Given under my hand and official seal this 31<sup>st</sup> day of August, 2000.

(SEAL)

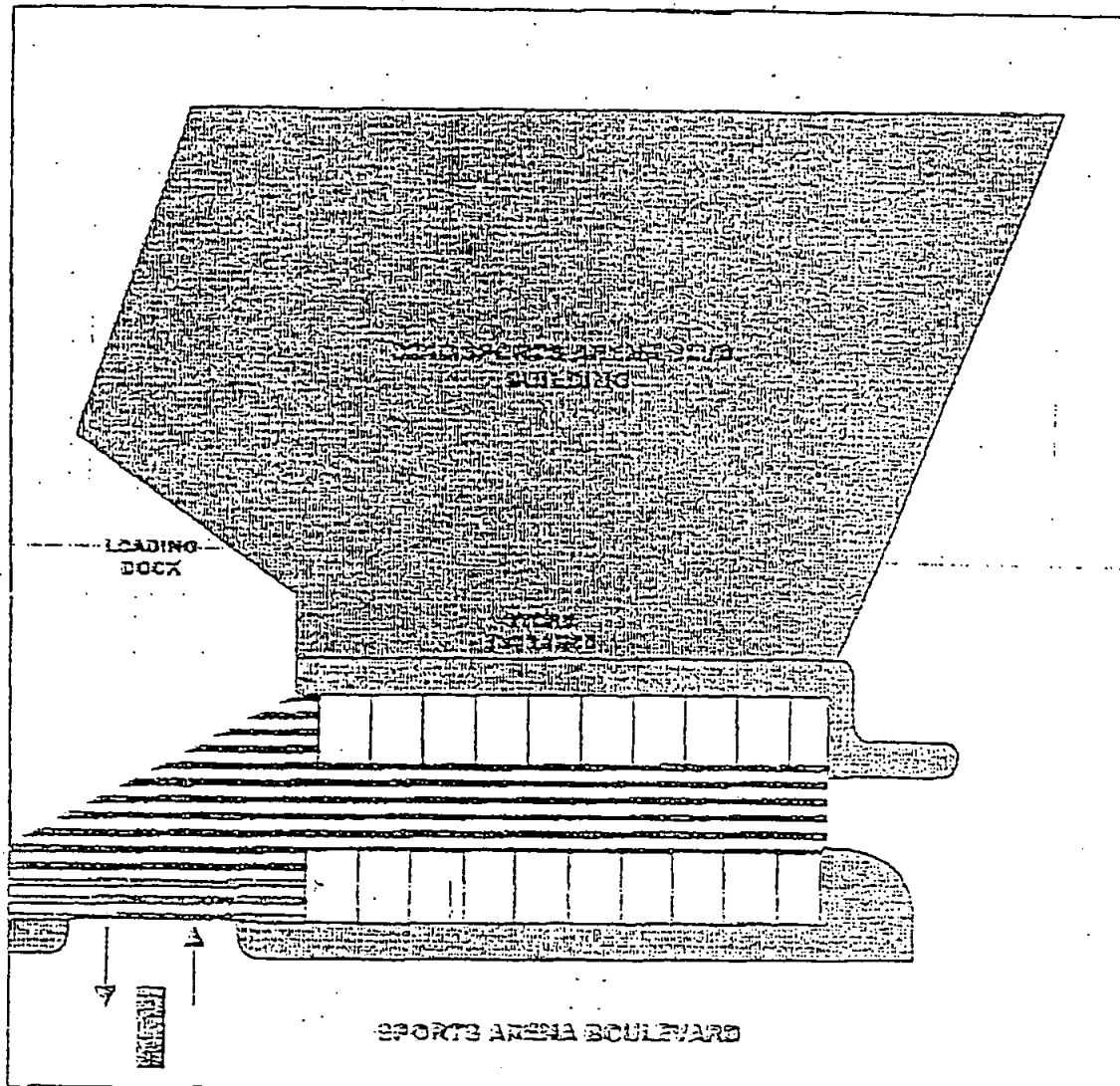


My commission expires: \_\_\_\_\_

Joan Ott  
Notary Public in and for the State of Texas

EXHIBIT A

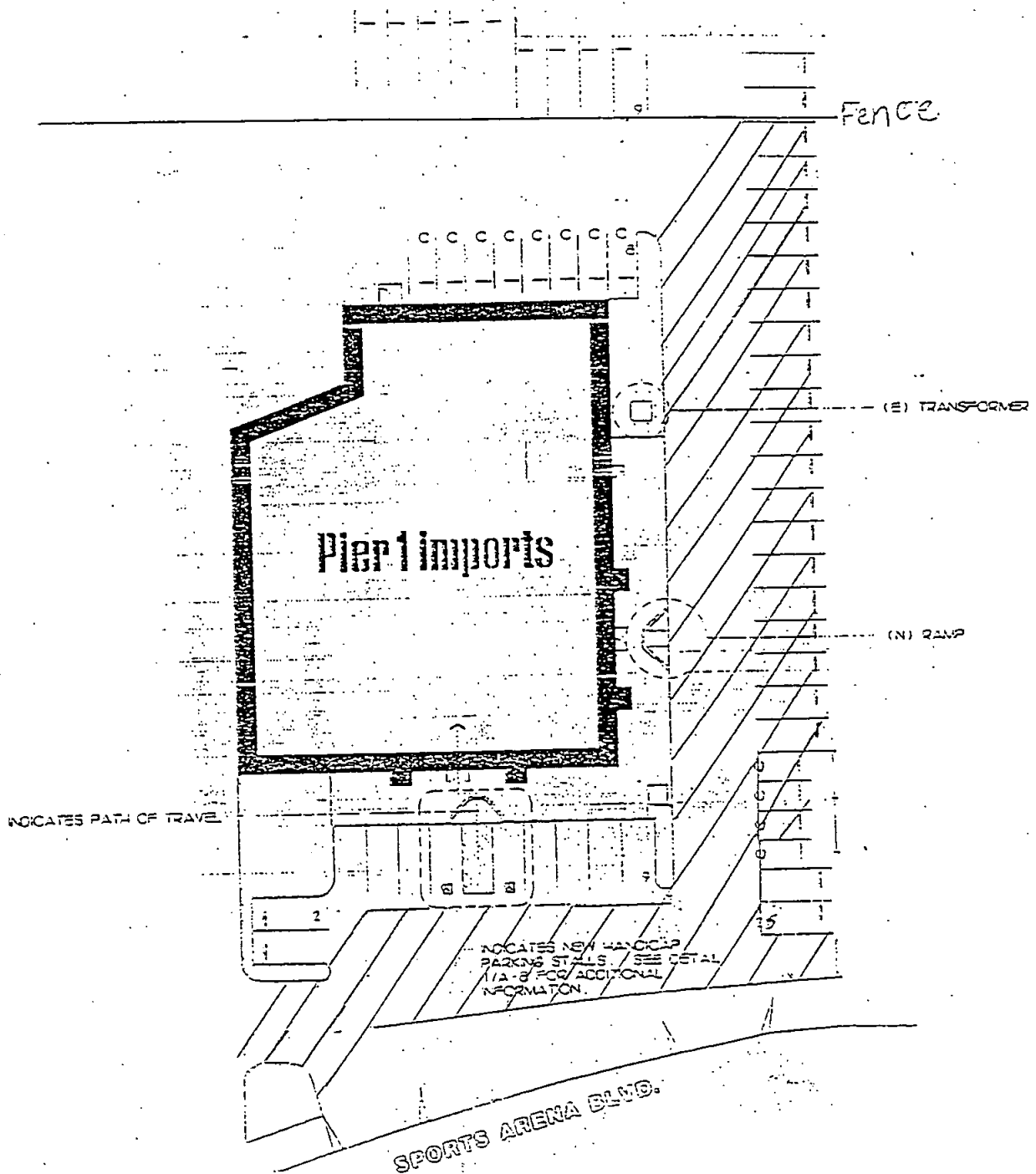
OWNER'S PROPERTY SITE PLAN



===== ACCESS AREA

EXHIBIT A

PIER 1'S PROPERTY SITE PLAN



/// Access Area

## EXHIBIT B

### OWNER'S PROPERTY LEGAL DESCRIPTION

That portion of Pueblo Lots 314 and 337 of the Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State of California, according to the map thereof made by James Pascoe recorded in the office of the county recorder of said county as Miscellaneous Map No. 36, described as follows:

Beginning for reference at a point in the southeasterly line of said lot distant South  $35^{\circ} 56' 45''$  West along said line 7.00 feet from the northeast corner of said lot, said point being also a point in the southwesterly line of Kurtz Street as said Street was widened to 57.00 feet by Ordinance No. 7527 passed and adopted by said City of San Diego July 25, 1957; thence along said southwesterly line North  $53^{\circ} 58' 40''$  West 80.00 feet; thence leaving said southwesterly line South  $35^{\circ} 56' 45''$  West 147.25 feet; thence North  $54^{\circ} 03' 15''$  West 50.00 feet; thence South  $35^{\circ} 56' 45''$  West 93.80 feet; thence North  $75^{\circ} 04' 35''$  West 30.00 feet to the TRUE POINT OF BEGINNING; thence South  $35^{\circ} 56' 45''$  West 182.83 feet to a point in that certain curve in the northerly line of Frontier Street, 115.00 feet wide, having a radius of 1019.93 feet and being concave northeasterly, a radial line of said curve through said point bears North  $18^{\circ} 04' 01''$  East; thence westerly along said curve through a central angle of  $5^{\circ} 59' 16''$  an arc distance of 106.59 feet; thence tangent to said curve along said northerly line North  $77^{\circ} 55' 15''$  West 46.42 feet; thence leaving said northerly line North  $35^{\circ} 56' 45''$  East 185.00 feet; thence South  $75^{\circ} 04' 35''$  East 152.12 feet to the TRUE POINT OF BEGINNING; containing 0.594 acres, more or less.

## EXHIBIT C

### PIER 1'S PROPERTY LEGAL DESCRIPTION

That portion of Pueblo Lot 337 of the Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State of California, according to the map thereof made by James Pascoe recorded in the office of the County Recorder of said county as Miscellaneous Map No. 36, described as follows:

Beginning at a point in the Southeasterly line of said lot distant South 35°56'45" West along said line 7.00 feet from the Northeast corner of said lot, said point being also a point in the Southwesterly line of Kurtz Street as said street was widened to 57.00 feet by Ordinance No. 7527 passed and adopted by said City of San Diego July 25, 1957; thence along said Southwesterly line North 53°58'40" West 80.00 feet; thence leaving said Southwesterly line South 35°56'45" West 147.26 feet; thence North 54°03'15" West 50.00 feet; thence South 35°56'45" West 93.80 feet; thence North 75°04'35" West 30.00 feet; thence South 35°56'45" West 182.83 feet to a point in that certain curve in the Northeasterly line of Sports Arena Boulevard (formerly Frontier Street), 115.00 feet wide, having a radius of 1,019.93 feet and being concave Northeasterly, a radial line of said curve through said point bears North 18°04'01" East; thence Southeasterly along said curve through a central angle of 9°07'51" an arc distance of 162.54 feet to the intersection of said curve with the Southeasterly line of said lot, a radial line of said curve through said intersection bears North 27°11'52" East; thence leaving said Northeasterly line non-tangent to said curve along said Southeasterly line North 35°56'45" East 397.15 feet to the Point of Beginning; containing 1.173 acres, more or less.

DUPLICATE

THE CITY OF SAN DIEGO

and

PIER 1 IMPORTS (U.S.), INC.

FLAT RATE LEASE

DOCUMENT NO.

*RR*-280329

FILED

JUL 13 1992

OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

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## LEASE OUTLINE

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**CITY OF SAN DIEGO  
FLAT RATE LEASE**

THIS LEASE AGREEMENT is executed between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and PIER 1 IMPORTS (U.S.), Inc. , a Delaware Corporation, hereinafter called "LESSEE."

**SECTION 1: USES**

1.01 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, described in Section 9.01 attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises" or "leased premises."

1.02 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of retail sales of merchandise excepting the sale of merchandise which caters or appeals to prurient interests, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

In the event that the premises shall, at any time after the date of this lease, be closed for business for a period of thirty (30) consecutive days or more, other than as a result of a remodeling, or a cause or event of casualty, condemnation or force majeure, or due to LESSEE'S impending subletting of the premises or assigning of its interest in this lease, as permitted hereinafter, then at any time thereafter but prior to any day on which LESSEE shall give notice to CITY that LESSEE shall thereafter reopen the premises for business ("LESSEE'S Notice"), CITY may, at its election, terminate this lease by giving LESSEE notice thereof and this lease shall terminate on the thirtieth (30th) day after the giving of such notice by CITY to the same extent as if said date were the date originally set forth herein for the expiration of this lease. If LESSEE shall give LESSEE'S Notice as aforesaid, LESSEE shall reopen the Premises for business on or before the thirtieth (30th) day after the date of LESSEE'S Notice. Nothing in this lease or otherwise shall require LESSEE to keep the premises open for business at any time after the date of this lease; provided, however, that should the premises be closed for business, LESSEE agrees to reasonably pursue efforts to assign this lease and/or sublet the premises.

1.03 Related Council Actions. By the granting of this lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or

operation of the premises. Discretionary action includes, but is not limited to rezonings, variances, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the leased premises.

- 1.04 Quiet Possession. LESSEE, by 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. CITY represents and warrants to LESSEE that CITY is solely vested with fee simple title to the premises and has full right and lawful authority to lease the premises to LESSEE. If at any time CITY's title or right to receive rent hereunder is disputed, or if there is a change of ownership of CITY'S estate by act of the parties or operation of law, LESSEE may withhold rent thereafter accruing until LESSEE is furnished proof, satisfactory to it, as to the party entitled thereto at which time all outstanding rent due CITY shall be paid by LESSEE within 30 days of LESSEE being provided with said proof.

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 to 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. This right shall be subject to LESSEE'S approval, which shall not be unreasonably withheld.
- c. CITY has the right to enter the premises for the purpose of making repairs to municipal resources and services or developing municipal resources and services upon written notice to LESSEE.

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 and/or reduced utility of the premises resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage and/or reduced utility of the premises as mutually determined by CITY and LESSEE. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

- 1.06 Political Activities. The leased premises shall be used exclusively for the purposes specified in Section 1.02, USES, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual to any public

office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.

1:07 See Insert

SECTION 2: TERM

JRT Rye

2.01 Commencement. The term of this agreement shall commence November 1, 1990, and terminate October 31, 2000. "Lease year" as used in this lease shall mean the 12-month period commencing each November 1 and each successive 12-month period thereafter.

2.02 Right to Extend. Provided that (i) in each instance LESSEE is not in default in payment of monetary obligations pursuant to this lease beyond applicable cure periods, (ii) that CITY desires to continue the specific retail operation in place, and that (iii) CITY and LESSEE are able to mutually agree on the fair market rental value of the premises at the time of extending the term, LESSEE has the right to extend this lease for three additional five-year terms, each subject to all original agreements, considerations, covenants and conditions contained in this lease except for payment of rent and this Section 2.02.

The three additional five-year terms are as follows:

November 1, 2000 through October 31, 2005  
November 1, 2005 through October 31, 2010  
November 1, 2010 through October 31, 2015

If CITY desires for the specific retail operation in place at that time to continue for an additional five (5) year term, CITY shall give LESSEE at least one (1) year's written notice of such desire prior to the scheduled lease termination date. If LESSEE desires to extend the lease term for an additional five (5) year term, provided agreement can be reached as to fair market rent, LESSEE shall give CITY written notice at least eight (8) months prior to the scheduled lease termination date of the lease. If both CITY and LESSEE provide such notice, CITY and LESSEE shall negotiate in good faith in order to agree upon fair market rent. If no agreement is reached by the termination date of this lease, no extension shall occur. Upon agreement of fair market rent, such agreement shall be memorialized by letter addendum to this lease.

2.03 Holdover. Any holding over by LESSEE after expiration or earlier termination of this lease shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or earlier termination of this lease constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, LESSEE will pay 125% of the rent then in effect on a

**INSERT**

Page 3 -

**SECTION 1: USES**

- 1.07 Commercial Access. CITY acknowledges that reasonable public access to the premises from Sports Arena Boulevard is necessary to LESSEE'S commercial operation. CITY agrees, within one (1) year from the date of last signing of this Lease by the CITY and LESSEE to install a u-turn pocket for east bound traffic as shown on the drawing attached hereto as Exhibit 9.03. CITY will pay all costs of such installation.

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monthly basis and either party may terminate the holdover tenancy upon thirty (30) days prior written notice to the other.

- 2.04 Quitclaim and Surrender of LESSEE'S Interest. At expiration of this lease, LESSEE shall execute, acknowledge, and deliver to CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the premises. The premises shall be delivered to CITY upon expiration of the lease term, or earlier termination, free and clear of all liens and encumbrances, except those easements established by the City pursuant to this lease or those approved pursuant to Section 1.05 of this lease and in a decent, safe and sanitary condition, ordinary wear, tear, and casualties excepted.

### SECTION 3: RENT

- 3.01 Time and Place of Payment. Rent is due monthly in advance on or before the first day of each calendar month. All monthly rents will be prorated during the first and final months of any rental period in order to achieve payment on the first day of each calendar month if necessary. Upon signing of this lease by both LESSEE and CITY, rent will be due from November 1, 1990 to the date of signing. Such retroactive rent shall be paid by LESSEE in twelve (12) equal monthly installments beginning on the first day of the calendar month following the execution of this lease by CITY and LESSEE and shall be in addition to the then current monthly rent payments due. Checks should be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 2289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, City Operations Building, 1222 First Avenue, Third Floor, San Diego, California.

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. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

#### 3.02 Rent.

- a. Rent Amount. The monthly rent from November 1, 1990 through October 31, 1995 is Twelve Thousand Seventeen Dollars (\$12,017.00). The monthly rent from November 1, 1995 through October 31, 2000 is Thirteen Thousand Eight Hundred Twenty Dollars (\$13,820.00). The rent may be adjusted during the three additional five-year extended terms by mutual agreement of the CITY and LESSEE as described in Section 2.02 hereof.

- 3.03 Delinquent Rent. If LESSEE fails to pay the rent when due, 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, LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)], which is hereby mutually agreed by the parties hereto 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. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this lease.

**SECTION 4: ASSIGNMENT/ENCUMBRANCE/CITY PARTICIPATION/DEFAULTS AND REMEDIES/EMINENT DOMAIN**

- 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 permitted assigns of the respective parties, jointly and individually.
- 4.02 Assignment and Subletting. LESSEE may assign this lease or any interest therein, and may sublet the premises, or any part thereof, to any Affiliate of Pier 1 Imports (U.S.), Inc. without the prior written consent of CITY and without payment of consideration. For purposes of this lease, "Affiliate" shall mean: a parent of LESSEE; any entity controlled by LESSEE; any entity controlled by LESSEE'S parent; any corporation into which or with which LESSEE has merged or consolidated; any corporation or partnership which acquires all or substantially all of the assets or issued and outstanding shares of capital stock of LESSEE; or any partnership, the majority interest of which shall be owned by the parent of LESSEE. LESSEE shall deliver written notice to CITY of an assignment or sublease to an Affiliate within thirty (30) days of consummation of such a transaction.

LESSEE may assign this lease or any interest therein, and may sublet the premises, or any part thereof to a Qualified Assignee or Sublessee with the prior written consent of CITY, which shall not be unreasonably withheld or delayed. "Qualified Assignee or Sublessee" for the purposes of this lease is defined to mean a non-affiliate assignee or sublessee of equal or greater financial and managerial capability as LESSEE, and in good standing and of good general reputation within the business community, trade or industry, to the reasonable satisfaction of the City Manager. The Qualified Assignee shall assume all rights, duties and obligations of LESSEE under this lease. Effective upon CITY'S consent to an

assignment to a Qualified Assignee, LESSEE shall be released from all further obligations and liability under this lease.

LESSEE may assign this lease or any interest therein, and may sublet the premises, or any part thereof to any person or entity other than an Affiliate, when the proposed assignee or sublessee is not of equal or greater financial and managerial capability as LESSEE, but is believed to be of sufficient financial and managerial capability to successfully operate the business located in the premises, and is in good standing and of good general reputation within the business community, trade, or industry, to the reasonable satisfaction of the City Manager. However, in the case of such assignment, LESSEE shall not be released from its obligations or liability under this lease until the proposed assignee has successfully operated the premises without default under this lease beyond applicable cure periods for two (2) years from the date of assignment.

A consent to assignment, subletting, occupation or use to or by a non-affiliate person or entity shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another non-affiliate person or entity. Any such assignment or subletting without such consent shall be void, and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable, as to the interest of LESSEE, by operation of law other than as set forth pursuant to this Section 4.02, without the written consent of the City Manager.

Notwithstanding the preceding, however, LESSEE may sublet a portion of the premises other than any portion of the building of LESSEE located on the premises to any sublessee upon the written consent of CITY, which shall not be unreasonably withheld so long as any such sublessee is in compliance with all applicable laws and the use restrictions in this lease.

Provided any assignee of CITY assumes in writing all of CITY'S obligations under this lease and so notifies LESSEE, CITY may assign its interest in this lease during the term hereof; provided, however, LESSEE shall make all payments required under this lease to CITY, or its successors in interest, unless and until LESSEE is notified of such assignment, and LESSEE is in no way liable to any assignee for any rentals due hereunder until LESSEE is so notified.

#### 4.03 Encumbrance.

Any encumbrances by LESSEE on the premises or on any future construction of permanent improvements thereon, must first have the approval in writing of City Manager. Such encumbrances shall be for the exclusive purpose of further development of the premises. Provided, however, proceeds from financing or refinancing may be used to reduce LESSEE'S equity so long as there is also substantial benefit to the CITY therefrom. Substantial

benefit shall mean a payment to CITY as described in Section 4.04 of this lease.

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 or under said deed of trust, mortgage or other security instrument as the case may be, shall be invalid with respect to this lease without prior notice thereof to and approval by CITY. Upon prior written 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 condition hereof.

- 4.04 CITY Participation Upon Transfer. Upon a sale, assignment, or subletting of the majority portion of the leasehold estate held by LESSEE to an entity other than an Affiliate ("Transfer"), excluding, however, those particular subleases existing on the date of this Lease, CITY shall be entitled to receive ten percent (10%) of any gain realized therefrom by LESSEE. Gain shall be the amount of the net proceeds or consideration actually received by LESSEE (after paying all of LESSEE'S costs of the Transfer paid or incurred, including but not limited to any real estate commissions, costs to improve and/or renovate the premises, attorney's fees, and relocation expenses paid to an assignee or subtenant) less the greater of the balance or portion of any encumbrance(s) against the leasehold previously approved by CITY and satisfied or discharged in connection with the Transfer or LESSEE'S development costs as of the date of this Lease which the parties agree to be \$200,000.

Upon the creation or refinancing of any encumbrance(s) against the leasehold estate pursuant to Section 4.03 hereof, CITY shall be entitled to receive ten percent (10%) of all net loan proceeds. Net loan proceeds shall be equal to the total loan amount less: all costs of obtaining the financing (including but not limited to any brokerage commission(s) and loan points and fees charged to, or incurred, by LESSEE, attorney's fees, and other cost and expense directly related to obtaining such financing); any proceeds from the financing used for further development of the premises pursuant to Section 6.04 of this lease; and less the greater of the balance or portion of any encumbrance(s) against the leasehold previously approved by CITY and satisfied or

discharged through the financing, or LESSEE'S development costs as of the date of this lease which the parties agree to be \$200,000.

It is intended that the foregoing percentage of consideration to CITY apply to any equity received or taken out of the leasehold by LESSEE.

Prior to CITY'S consent to any assignment or subletting, other than an Affiliate, or to financing or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the above provision along with an acknowledgement from the proposed assignee, sublessee, or financing agency as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the financing, or assignment, subletting, refinancing. Any transfer in violation of the terms and conditions of this Section 4.04 shall be void.

The provisions of this section shall not apply to any assignment for which the City Manager determines that the legal and equitable ownership interest in the leasehold have remained unchanged, such as a change in the legal or fictitious name of the LESSEE without any other change in the equitable or legal title to the leasehold.

#### 4.05 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 if any such default is not curable within thirty (30) days, and LESSEE shall fail to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against it (and such involuntary filing not be set aside within sixty (60) days of notice to LESSEE of such filing) any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt by a court of competent jurisdiction or a bankruptcy court; 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 rights through LESSEE, 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 both with due process of law. Provided, however, in the event that any default described in Section a.(1) Default and Remedies, hereof, 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(s) complained of, and the same mortgagee or beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

b. Remedies. If the mortgagee or beneficiary determines to exercise its right to cure said default(s) through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that the default(s) may be expeditiously corrected:

- (1) CITY may correct said default(s) and charge the costs thereof to the account of 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(s) 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(s) 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. Any reasonable costs incurred by CITY in releasing to a new tenant shall be the

responsibility of the terminated LESSEE, and LESSEE hereby agrees to reimburse CITY for any such costs.

Should the default(s) 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 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, 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 LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees should the above event occur 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 defaulted under this lease beyond applicable cure periods and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce its remedies hereunder, including the right to recover the rent as it becomes due.
- d. Waiver. Any CITY or LESSEE 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 of CITY or LESSEE in order to constitute a valid and binding waiver. CITY or LESSEE 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 as allowed hereunder or for another or later default. 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 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 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.

- e. Should there be any default or breach of this lease on the part of CITY, LESSEE shall give CITY notice thereof, and should the CITY fail to correct the breach or default within thirty (30) days after the notice, LESSEE may deduct the reasonable cost from rentals due or to become due CITY or pursue any other legal or equitable remedy for which it is entitled. If LESSEE has not been reimbursed for its reasonable cost in remedying CITY'S breach or default at the expiration of the term of this lease, or if CITY is indebted to LESSEE because of a breach or default of this lease at the expiration of the term, LESSEE may, at its option, extend this lease on the same terms and conditions then in effect until the costs and indebtedness or are fully paid by application of all rental thereto.
- f. Neither the CITY nor LESSEE shall have any right arising from a failure to perform or remedy against the other unless a default shall have occurred.

Except for defaults arising from a failure to pay rent, no default shall be deemed to have occurred if and so long as LESSEE or CITY, as the case may be, shall be delayed in, or prevented from, curing the underlying failure to perform by force majeure and no default shall be deemed to have occurred if a party disputes in good faith that it is in default and gives notice to that effect to the other party. If notice of default is given to a party and the party contends that it is not in default, that party may bring legal action to determine whether it has failed to perform the obligation underlying the claimed default. No default shall be deemed to have occurred during the pendency of the action or during the pendency of any appeal promptly taken. If it is determined that a party is in default pursuant to a nonappealable final judgment, no remedy may be exercisable with respect to the judgment for a reasonable period after entry of the judgment. If the default is cured within the period, the default shall be forgiven. The period shall be thirty (30) days unless the default, by its nature, cannot be cured within thirty (30) days. If, by its nature, the default cannot be cured within thirty (30) days, the period shall be extended as long as the cure is prosecuted diligently and in good faith.

If a dispute shall arise between the parties as to the performance of any obligation, a party contending that an obligation is the other party's duty may perform the obligation under protest. The performance of an obligation under protest shall not be regarded as voluntary performance. A party which shall have performed an obligation under protest shall have the right to bring suit for the recovery of the cost and expense of performance. If it shall be determined that the other party was required to perform the obligation,

the other party shall reimburse the party that shall have performed the obligation under protest for the cost and expense of performance.

If LESSEE is required to reimburse CITY and an invoice for reimbursement is not paid within thirty (30) days after it is rendered, the amount of the invoice shall be added to the next installment of rent. If CITY is required to reimburse LESSEE and an invoice for reimbursement is not paid within thirty (30) days after it is rendered, the amount of the invoice may be deducted from installments of rent that are due or that will become due.

- 4.06 Eminent Domain. If all or part of the premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE will be as follows:
- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
  - b. In the event of a partial taking, if, in the opinion of CITY and LESSEE, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
  - c. In the event of a partial taking, if, in the opinion of CITY and LESSEE, the remainder of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced by mutual agreement of CITY and LESSEE to reflect the portion of the premises 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 LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE, relocation expenses, loss of good will, and interruption or dislocation of business in the premises. LESSEE shall not be entitled to any bonus value as a result of any determination that LESSEE is paying less than full fair market rent. CITY shall have no liability to LESSEE for any award not provided by the condemning authority unless the award to the CITY includes any or all of the items for which LESSEE is entitled to recover.

- e. Transfer. CITY has the right to transfer 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, this lease shall terminate and LESSEE shall be entitled to recover and retain whatever interest it may have in the fair market value of its leasehold interest in the premises in accordance with this lease in addition to the above items set forth in subsection d.
- 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.

## **SECTION 5: INSURANCE RISKS/SECURITY**

### **5.01 Indemnity, Release and Waiver of Subrogation.**

LESSEE will indemnify CITY against, and hold CITY harmless from all claims, liabilities, demands or causes of action, including all reasonable expenses of the CITY incidental thereto, for injury to or death of any employee, agent or customer of LESSEE arising within or on the premises, and caused by LESSEE'S act or omission or the act or omission of any employee, agent, or customer of LESSEE. The liability of LESSEE to indemnify CITY as hereinabove set forth shall not extend to any matter against which CITY shall be effectively protected by insurance, provided, however, that if any such liability shall exceed the amount of the effective and collectable insurance in question, the said liability of LESSEE shall apply to such excess.

CITY will indemnify the LESSEE against, and hold LESSEE harmless from all claims, liabilities, demands or causes of action, including all reasonable expenses of the LESSEE incidental thereto, for injury to or death of any employee, agent or representative of CITY arising within or on the premises, and caused by CITY'S act or omission or the act or omission of any employee, agent, or representative of CITY. The liability of CITY to indemnify LESSEE as hereinabove set forth shall not extend to any matter against which LESSEE shall be effectively protected by insurance, provided, however, that if any such liability shall exceed the amount of the effective and collectable insurance in question, the said liability of CITY shall apply to such excess.

LESSEE and CITY hereby waive and release each other of and from any and all rights of recovery, claim, action or cause of action against each other, their agents, officers, directors, partners and employees, for any loss or damage that may occur to the premises, or personal property including building contents, by reason of fire or the elements of nature regardless of cause or origin including negligence of CITY or LESSEE and their agents,

officers, directors, partners and employees. Because this paragraph will preclude the assignment of any claim mentioned in it by way of subrogation or otherwise to any insurance company or any other person, each party to this lease agrees immediately to give to each insurance company which has issued to it policies of insurance covering all risk of direct physical loss, written notice of the terms of mutual waivers contained in this paragraph, and to have the insurance policies properly endorsed to prevent the invalidation of such insurance coverage by reason of these waivers. Each party shall provide the other annually with evidence that its policies have been so endorsed.

5.02 Insurance.

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

- (1) Public liability and property damage insurance in the amount of not less than ONE MILLION DOLLARS (\$1,000,000) Combined Single Limit Liability with an occurrence form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by LESSEE or by authorized representatives of LESSEE on or in connection with the use or operation of the premises.
- (2) 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 used in rebuilding or repairing the damaged property as required pursuant to Section 5.03 of this lease. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.03, Encumbrance, 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.

b. LESSEE'S responsibility to maintain said insurance also includes the following:

- (1) Additional Insured. All insurance policies will name CITY as an additional insured, and will not terminate without sixty (60) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a

certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.

- (2) Modification. CITY, in its reasonable discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice provided that other similar retail tenants in the San Diego area are required to carry such insurance. CITY'S requirement shall be reasonably designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain additional fire, and extended coverage insurance for new improvements, in order to meet the requirements of this lease.
- (3) Accident Reports. LESSEE shall use its best efforts to 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 shall 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.
- (4) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, after written request from the CITY, 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(s) 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.
- (5) LESSEE may comply with its insurance obligations under this lease by endorsement to any blanket policy of insurance. Provided LESSEE has a net worth greater than or equal to Fifty Million Dollars (\$50,000,000.00), LESSEE may comply with its general liability insurance, fire, and extended coverage obligations by self-insurance. In no event, however, shall such self-insurance option result in any reduction in CITY'S right to receive "insurance" amounts on proceeds in the same manner and amount which CITY would be entitled if insurance policies were in force as otherwise required above. LESSEE may self-insure in all other instances regardless of net worth.

Notwithstanding the preceding provisions of this Subsection (4), if LESSEE fails or refuses after written notice from CITY

to take out or maintain insurance as required in this lease, or fails to provide the proof of insurance, CITY has the right to exercise its rights under the Default Section of this lease without further notice to LESSEE and CITY shall be entitled to exercise its remedies under this lease in the event of such default.

5.03 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to knowingly 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 CITY. If the leased premises shall be damaged by an event of casualty, 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 CITY'S or LESSEE'S option during the last eighteen (18) months of the lease term, unless LESSEE exercises its option to extend the term of this lease, not rebuild or restore the damage and clear and remove from the leased premises all debris resulting from said damage.

LESSEE shall use for either purpose the insurance proceeds as set forth in Section 5.02, Insurance, hereof. The remaining balance of any insurance proceeds shall be used to repay debt, if any, incurred in connection with construction of further improvements as provided in Section 4.03 above, and then shall be split between LESSEE and CITY as the value of their interests in the leased premises then appear.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the premises caused by an event of casualty shall be commenced by LESSEE within sixty (60) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. LESSEE shall be entitled to an equitable reduction in the rent for such period or periods that said premises are untenable by reason of an event of casualty only if LESSEE does not receive proceeds from any business interruption insurance.

## SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

6.01 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it is satisfied with the condition of the premises. LESSEE agrees it is relying solely on independent inspection, tests, investigations, and observations with respect

to its acceptance of the premises. LESSEE further acknowledges that as of the date of this lease the premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises, and that LESSEE does not hold CITY responsible for any defects in the premises.

- 6.02 Entry and Inspection. CITY reserves and shall always have the right to enter said premises upon reasonable notice to LESSEE for the purpose of viewing and ascertaining the condition of the premises, or to protect its interests in the premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days written notice to LESSEE, to have any reasonably necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said premises in a decent, safe, healthy, and sanitary condition. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.
- 6.03 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises throughout the term. LESSEE will make all repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy, and sanitary condition reasonably satisfactory to CITY and in compliance with all applicable laws.
- 6.04 Improvements/Alterations. No structural improvements, or installations shall be constructed on the premises, and the premises may not be structurally altered by LESSEE without prior written approval by the City Manager, which approval shall not be unreasonably withheld. LESSEE may install interior, nonstructural improvements without need for City Manager approval. This provision shall not relieve LESSEE of any obligation under this lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.
- 6.05 Utilities. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground.
- 6.06 Construction Bond. Whenever there is any construction to be performed on the premises in excess of \$50,000.00, 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 reasonably satisfactory to CITY. The bond shall insure that the construction commenced by or on behalf of LESSEE shall be completed 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.

- 6.07 Liens. LESSEE shall 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 made by LESSEE 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 on behalf of LESSEE, and a lien or notice of lien is filed, LESSEE shall within thirty (30) days of such filing either:

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

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

If any general or special assessment is assessed against the premises, the following shall apply: assessments shall be computed as if CITY had elected to pay the same in installments over the longest period of time allowed by applicable law and only those installments (or partial installments) attributable to installment periods (or partial periods) falling within the term of this lease shall be considered in determining LESSEE'S tax liability.

If at any time during the term of this lease any governmental subdivision shall undertake to create an improvement or special assessment district the proposed boundaries of which include the

premises, LESSEE shall be entitled to appear in any proceeding relating thereto and present its position as to whether the premises should be included or excluded from the proposed improvement or assessment district and as to the degree of benefit to the premises resulting from inclusion. CITY shall promptly advise LESSEE in writing of the receipt of any notice or other information relating to the proposed creation of any such improvement or special assessment district, the boundaries of which include the premises.

To the extent permitted by law, LESSEE or its designees shall have the right to apply to have any assessment for local improvements assessed during the term of this lease payable in annual installments. CITY shall permit any such application to be filed in its name, if necessary or appropriate, and shall execute any and all documents requested by LESSEE to accomplish the foregoing result.

If LESSEE desires to contest any ad valorem assessment or the validity of any tax and gives the CITY written notice of this intention, then LESSEE may contest the assessment or tax without being in default hereunder.

6.09 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices to the exterior of the premises (other than those currently in place) without the prior written consent of CITY, such consent to not be unreasonably withheld. 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.

6.10 Ownership of Improvements and Personal Property.

- a. Any and all improvements, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE shall at lease expiration or earlier termination be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property, free of all liens and claims except as otherwise provided in this lease.
- b. If CITY elects not to assume ownership of all or any of the improvements installed by LESSEE or structures and installations made by LESSEE, CITY shall so notify LESSEE thirty (30) days prior to early termination or One Hundred Eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.

- c. LESSEE owned machines, appliances, equipment, trade fixtures, and other items of personal property shall be removed by LESSEE by the date of the expiration or early termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property, or CITY may, at its option, remove said items at LESSEE'S expense.
- d. If any removal of such personal property or trade fixtures by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
- e. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property or trade fixtures used in the operation of said premises upon expiration or termination of this lease, then CITY shall have the first right to acquire or purchase said personal property or trade fixtures.

6.11 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 rent as required pursuant to this lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.

6.12 Hazardous/Toxic Waste. Neither LESSEE nor CITY will allow the installation of underground storage tanks or release of hazardous substances in, on, under, or from the premises in violation of any law governing environmental matters. For the purposes of this provision, a release shall include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the City Clerk's Office as City Clerk Document 769704.

In the event of any release of a hazardous substance by CITY or by LESSEE in violation of laws governing environmental matters, the party releasing such hazardous substance shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

LESSEE and CITY, each as indemnitor, agree to assume the defense of, indemnify and hold the other party harmless from any and all claims, costs and expenses related to environmental liabilities resulting from indemnitor's operations on the premises in violation of laws governing environmental matters, including, but not limited to, costs of environmental assessments, costs of remediation and removal, any necessary response costs, damage for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If LESSEE or CITY knows or has reasonable cause to believe, that any hazardous substance has been released on or beneath the premises, LESSEE or CITY as the case may be shall give written notice to the other party within ten (10) days of receipt of such knowledge or cause for belief. Provided however, if either party knows, or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, that party shall notify the other party immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger if such danger has been caused by the direct acts of the party. Each party will notify the other immediately of any notice of violation received or initiation of environmental actions or private suits relative to the premises. In addition, neither party shall utilize or sell any hazardous substance on the property in violation of laws governing environmental matters without the prior written consent of the CITY other party.

## **SECTION 7: GENERAL PROVISIONS**

### **7.01 Notices to CITY**

- a. (1) Any notice required or permitted to be given hereunder to CITY shall be in writing and may be served personally or by United States mail, certified, return receipt requested, postage prepaid, addressed to CITY as follows:

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

Any such notice shall be effective upon receipt or upon the first day refusal of receipt occurs.

- (2) Any notice required to be given to LESSEE under the terms of this lease shall be effective upon receipt by LESSEE or refusal to accept delivery, provided such notice is in writing and mailed via certified mail, return receipt

requested, or by overnight courier to the appropriate address listed below:

For Certified Mail via the U.S. Postal Service:

Pier 1 Imports (U.S.), Inc.  
Attention: Director of Real Estate  
P. O. Box 961020  
Fort Worth, TX 76161-0020

For Airborne, Federal Express & other Courier Services:

Pier 1 Imports (U.S.), Inc.  
Attention: Director of Real Estate  
301 Commerce Street, Suite 600  
Fort Worth, Texas 76102

For invoices/statements:

Pier 1 Imports (U.S.), Inc.  
Accounts Payable Department  
P. O. Box 17688  
Forth Worth, Texas 76102-7688

with a copy to the Legal Department at the same address.

- 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. Subject to the provisions of Section 6.12 above, LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, County, State and federal governments at LESSEE'S sole cost and expense. In addition, LESSEE shall 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. This section shall not apply to the CITY'S administrative, as opposed to legislative, regulations. If CITY exercises one or more of its rights pursuant to Section 1.05 above, then with respect to any portion of the premises for which such rights are exercised, the provisions of this Section 7.02 shall not apply to LESSEE with respect to the portion of the premises for which CITY exercises such rights, but shall apply to CITY.

7.03 CITY Approval. The approval or consent of 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 Compliance with Equal Opportunity Contracting Program. LESSEE shall comply with the City's Equal Opportunity and Minority and Women Business Enterprise Contracting Programs, approved by the City Council and filed with the City Clerk as Document RR-262633. LESSEE shall submit a Certificate of Compliance with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable federal and state laws and regulations hereinafter enacted. LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this lease.
- 7.06 Partial Invalidity. If any term, covenant, condition, or provision of this lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.07 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney's fees.
- 7.08 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.09 Captions. The Lease Outline, 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.
- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties, representations, and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this lease.

The failure or refusal of any party to read the lease or other documents, inspect the premises, and obtain legal or other advice

relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this lease will be valid unless it is in writing and signed by all parties.

- 7.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements or leases with consultants, vendors or tenants shall include a condition that the contract, agreement or lease may be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who within the twelve months immediately preceding such employment did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.
- 7.12 Corporate Authority. Each individual executing this lease on behalf of LESSEE and CITY represent and warrant that he/she is duly authorized to execute and deliver this lease on behalf of said entity, in accordance with a duly adopted resolution of the governing body of the entity, in accordance with the bylaws of the entity or in accordance with law as the case may be, and that this lease is binding upon the party in accordance with its terms. LESSEE is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify LESSEE to do business in the state where the premises are situated.
- 7.13 Supersedure. LESSEE and CITY represent and warrant to each other that they are successors in interest to Pier 1 Imports Employees Savings Trust and Union-Breitbard Joint Venture under the Agreement to Sublease dated August 1, 1968 and no other party or entity has any right, title or interest to the leased premises under the Agreement to Sublease other than CITY and LESSEE. It is mutually agreed that this lease, upon execution by both LESSEE and CITY, supersedes and annuls effective November 1, 1990 that certain Agreement to Sublease dated August 1, 1968 between Union-Breitbard Joint Venture and Pier 1 Imports Employees Savings Trust which is hereafter void and of no effect.
- 7.14 Relocation Payments. LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this lease.
- 7.15 Recordation, Short Form. CITY agrees, upon LESSEE'S request, to execute a short form of this lease, entitled Memorandum of lease. LESSEE may record the Memorandum of lease at its expense following the date hereof. The provisions of this lease shall control, however, in regard to any omissions from the Memorandum of Lease, or in respect to any provisions hereof which may be in conflict with the Memorandum of Lease.

- 7.16 Parties Bound. The terms, covenants, agreements, conditions and undertakings contained herein shall be binding upon and shall inure to the benefit of the heirs, successors in interest and assigns of the parties hereto.
- 7.17 No Partnership Formed. CITY does not become a partner of LESSEE in the conduct of its business or otherwise, or a joint venturer or a member of a joint enterprise with LESSEE by virtue of this Lease.
- 7.18 Subordination, Non-Disturbance and Attornment. CITY agrees that before it shall have the right to subject and subordinate this lease to the lien of any loans or mortgages hereafter placed upon CITY'S interest in the premises and upon the lands and buildings of which the premises is a part, CITY shall have first secured for LESSEE'S benefit a written non-disturbance agreement, in the form acceptable to LESSEE, which acceptance will not be unreasonably withheld, and LESSEE will then execute and deliver an instrument subjecting this lease to the lien of any such loan or mortgage.

SECTION 8: SIGNATURES

8.01 Signature Page

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 officer, on the date indicated below to be effective November 1, 1990.

THE CITY OF SAN DIEGO

Date 7/16/92

By Robert Hollins  
Supervising Property Agent  
for the City Manager

LESSEE: PIER 1 IMPORTS (U.S.),  
Inc., a Delaware  
corporation

Date 5/21/1992

By [Signature]  
Title: VP OPERATIONS

APPROVED as to form and legality this 17 day of July, 1992.

JOHN W. WITT, City Attorney

By [Signature]  
Deputy City Attorney

MLG:st(26)  
3-24-92

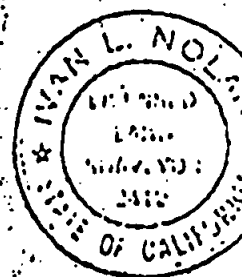
## 9.01 Legal Description

That portion of Pueblo Lot 337 of the Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State of California, according to the map thereof made by James Pascoe recorded in the office of the County Recorder of said county as Miscellaneous Map No. 36, described as follows:

Beginning at a point in the Southeasterly line of said lot distant South 35°56'45" West along said line 7.00 feet from the Northeast corner of said lot, said point being also a point in the Southwesterly line of Kurtz Street as said street was widened to 57.00 feet by Ordinance No. 7527 passed and adopted by said City of San Diego July 25, 1957; thence along said Southwesterly line North 53°58'40" West 80.00 feet; thence leaving said Southwesterly line South 35°56'45" West 147.26 feet; thence North 54°03'15" West 50.00 feet; thence South 35°56'45" West 93.80 feet; thence North 75°04'35" West 30.00 feet; thence South 35°56'45" West 182.83 feet to a point in that certain curve in the Northeasterly line of Sports Arena Boulevard (formerly Frontier Street), 115.00 feet wide, having a radius of 1,019.93 feet and being concave Northeasterly, a radial line of said curve through said point bears North 18°04'01" East; thence Southeasterly along said curve through a central angle of 9°07'51" an arc distance of 162.54 feet to the intersection of said curve with the Southeasterly line of said lot, a radial line of said curve through said intersection bears North 27°11'52" East; thence leaving said Northeasterly line non-tangent to said curve along said Southeasterly line North 35°56'45" East 397.15 feet to the Point of Beginning; containing 1.173 acres, more or less.

SCALE: 1"=100'

KENDRICK, MAURER & SMITH, INC.  
2550 5TH AVENUE  
SAN DIEGO, CALIFORNIA



0-521 21 pipes mar  
L.S. 2112 - Jun

REVISED TO: AUG. 14, 1967

PREPARED BY: Ivan L. Nolan  
IVAN L. NOLAN  
LICENSED LAND SURVEYOR

LA MESA ENGINEERING SERVICES  
4769 SPRING ST. LA MESA, CA 92040  
PH. 469-6194

Zerox Revision by R. Prinz  
6/3/68  
F.B. 219/45

DRWG. B-2 (Sht. 2)  
L.N.E.S. NO. 2759

EXHIBIT B

9.02 Corporate Name

PERR / IMPORTS (U.S.), INC.  
CORPORATE NAME

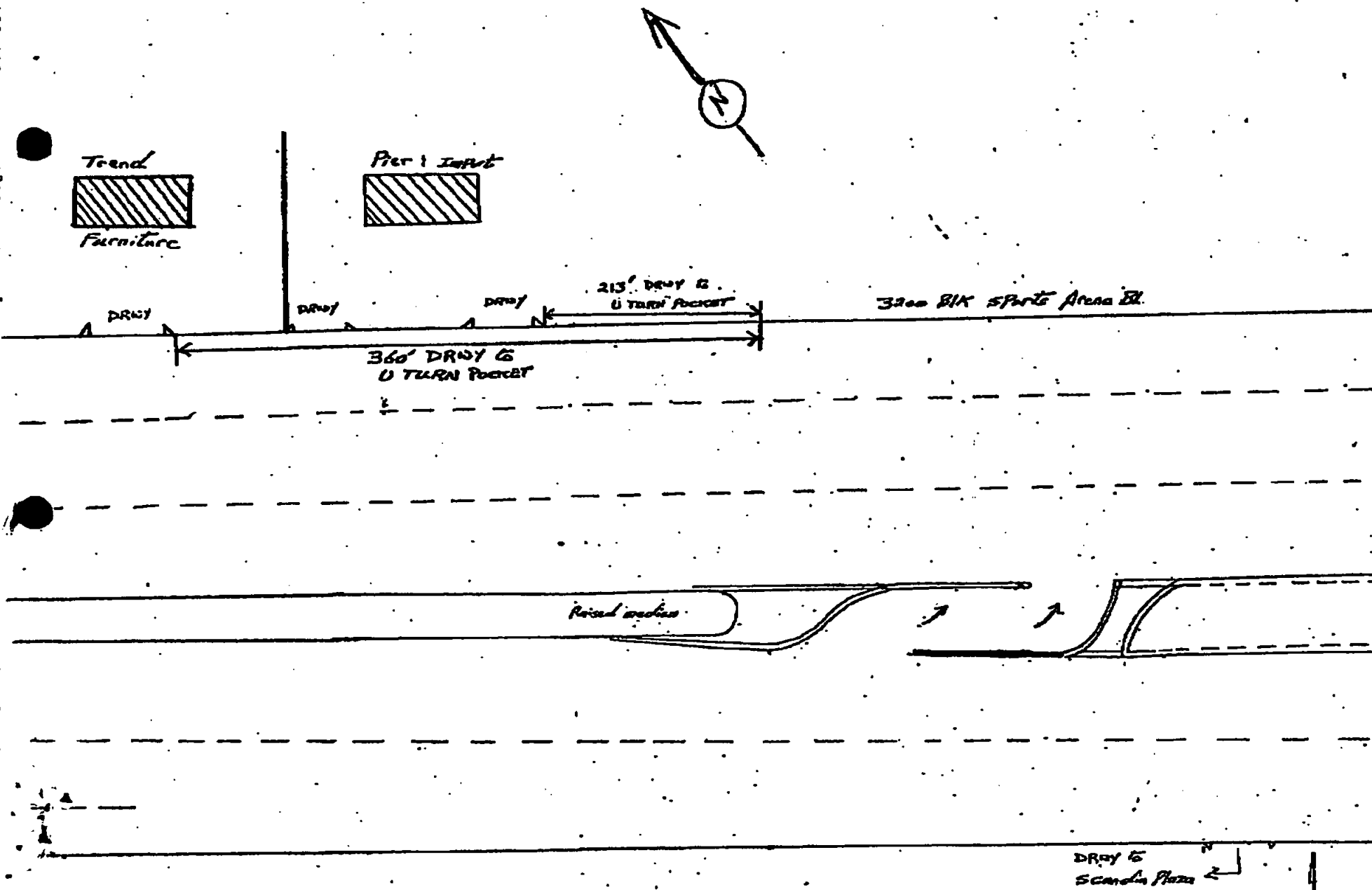
I, MICHAEL A. CARTER, certify that I am the ASSISTANT SECRETARY of the corporation named in the attached agreement; that JAMES R. TURNER, who signed this agreement on behalf of the corporation, was then U.P. - OACM-TEAMS of said corporation; that said agreement was duly signed for and on behalf of said corporation by authority of its governing body, ~~pursuant to a resolution duly adopted by its Board of Directors on \_\_\_\_\_, 19\_\_~~ and is within the scope of its corporate powers; ~~and that set out below are the names of the officers and directors of said corporation.~~

By Michael A. Carter

CORPORATE SEAL

Name MICHAEL A. CARTER  
Title ASSISTANT SECRETARY

Attachment 903



*Marty Mummert*  
51A

(R-92-2155)

RESOLUTION NUMBER R- **280329**

ADOPTED ON JUL 13 1992

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized to execute, for and on behalf of The City of San Diego, a lease agreement with PIER 1 IMPORTS (U.S.) INC., replacing its current sublease agreement for 1.17 acres of property at 3220 Sports Arena Boulevard, with an initial annual rent of \$144,200, with a term ending in 2000, with potential extensions to 2015, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR- **280329**.

APPROVED: JOHN W. WITT, City Attorney

By

  
Harold O. Valderhaug  
Deputy City Attorney

HOV:ps  
06/30/92  
Or.Dept:Prop.  
Job:220485  
R-92-2155  
Form=r-t

RECEIVED  
JUL 20 1992  
PROPERTY DEPT

RECORDED

92 JUL -1 PM 2:08

CITY CLERKS OFFICE  
SAN DIEGO, CA

100-100000

Passed and adopted by the Council of The City of San Diego on JUL 13 1992 by the following vote:

YEAS: WOLFSHEIMER, ROBERTS, HARTLEY, STEVENS, BEHR, MCCARTY, FILNER,

NAYS: NONE.

NOT PRESENT: STALLINGS, MAYOR O'CONNOR.

AUTHENTICATED BY:

**MAUREEN O'CONNOR**

Mayor of The City of San Diego, California

**CHARLES G. ABDELNOUR**

City Clerk of The City of San Diego, California

(SEAL)

By: MARY CEPEDA, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION  
NO. R- 280329, passed and adopted by the Council of The City of San Diego, California  
on JUL 13 1992

**CHARLES G. ABDELNOUR**

City Clerk of The City of San Diego, California

(SEAL)

By: Mary Cepeda, Deputy