

ORIGINAL

DOCUMENT NO. 745002

FILED OCT 1 1973

PERMIT

PROPERTY DEPARTMENT
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

This Permit, executed this 31st day of AUGUST, 1973, by and between THE CITY OF SAN DIEGO (CITY) and the STATE OF CALIFORNIA, DEPARTMENT OF PARKS AND RECREATION (PERMITTEE).

A. DEMISE: Subject to all covenants and conditions hereinafter set out, CITY hereby grants a permit to PERMITTEE, and PERMITTEE accepts a permit from CITY for the purpose of operating and maintaining a free public parking lot for visitors to the Old Town San Diego State Historic Park on that portion of Block 463 of Old San Diego Subdivision as outlined in red on the attached exhibit "A", hereinafter called "premises".

B. COVENANTS AND CONDITIONS:

1. CONSIDERATION: As consideration for the permit, PERMITTEE agrees to operate for the purpose provided herein, maintain the premises and all appurtenances thereto, and make all necessary repairs to the premises at no cost to CITY, subject to availability of funds.
2. EFFECTIVE DATE: This permit shall become effective 30 days after execution by PERMITTEE.
3. TERM: This permit is issued for a primary term of one (1) year commencing with the effective date hereof and will automatically be extended from year to year upon expiration of said primary term. However, this Permit may be terminated at any time by either party upon sixty (60) days prior written notice.
4. DEFAULT: CITY may terminate this permit in the event that PERMITTEE does not comply with the purpose herein or upon failure of PERMITTEE to perform any provision contained herein. Upon said termination, PERMITTEE shall leave the premises in as good a condition as that which existed prior to granting this permit.
5. ASSIGNMENT AND SUBLETTING: PERMITTEE shall not assign this permit or sublet the premises or any part thereof without the prior written consent of City Manager of CITY.
6. WAIVER: The failure of either party to insist upon strict performance of any covenant or condition of this permit in one or more instances shall not be construed as a waiver of any such covenant or condition and the same shall remain in full force.
7. UTILITIES: PERMITTEE shall order, provide and pay for all utility services and connections to the premises at no cost to CITY.
8. HOLD HARMLESS: PERMITTEE shall indemnify, hold harmless, and defend CITY, its officers, agents and employees against any and all claims arising from PERMITTEE'S use of the premises under this permit, insofar

as it may legally do so and subject to the availability of funds, except for liability arising out of the negligence of CITY, its officers, agents, and employees.

THE CITY OF SAN DIEGO

DATE July 3, 1973

BY [Signature]
ASSISTANT TO THE CITY MANAGER

STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION

DATE AUG 3 1973

BY [Signature]
CHIEF DEPUTY DIRECTOR

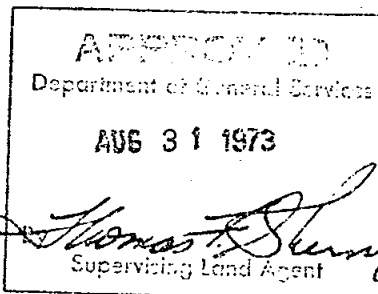
BY _____

APPROVED as to form and legality this 9 day of July, 1973.

JOHN W. WITT, City Attorney

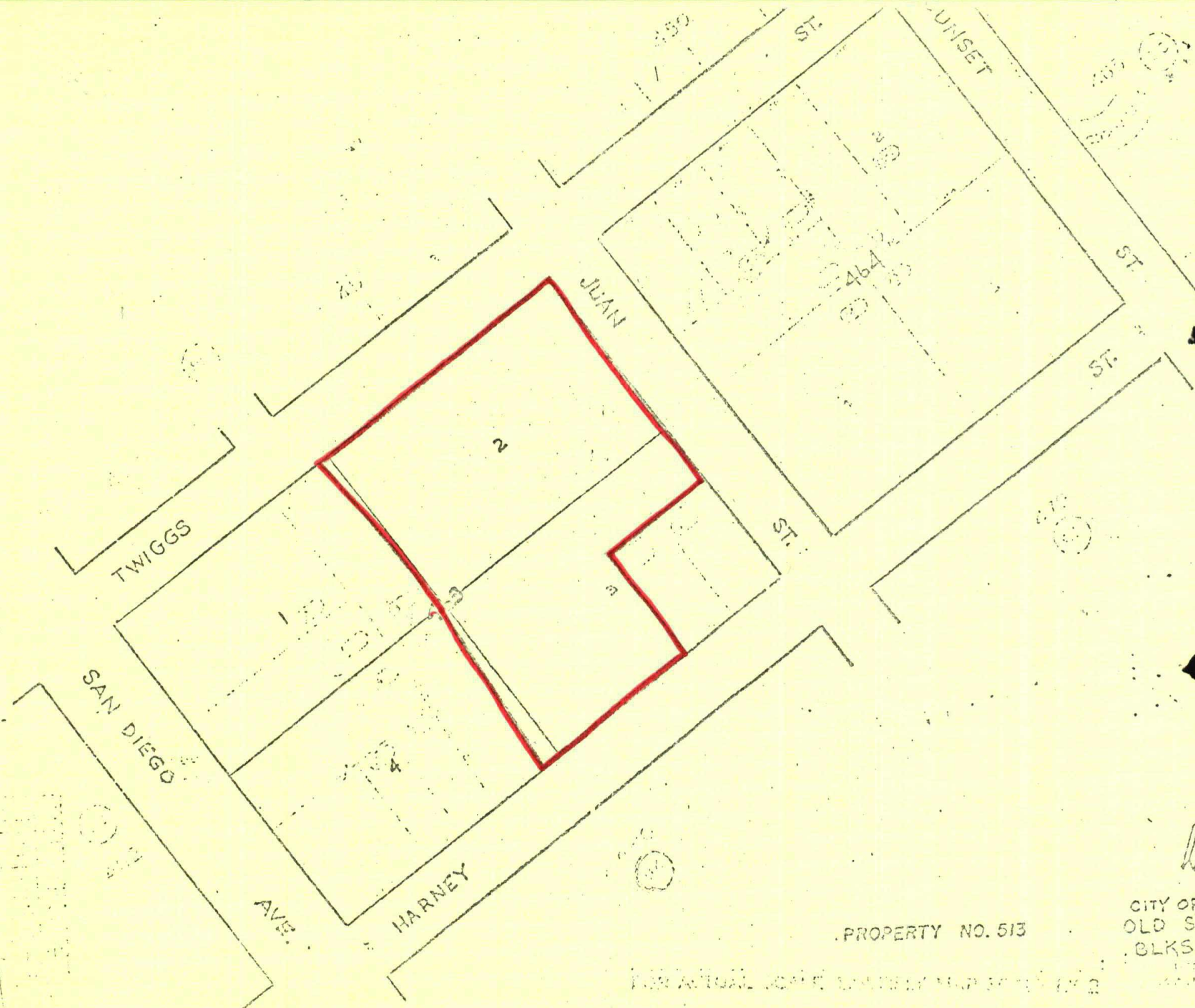
BY [Signature]
DEPUTY

EJS:am
5-10-73



657

2167100



PROPERTY NO. 513

FOR ACTUAL LOC. UNDER MAP OF 1912

CITY OF SAN D
OLD SAN D
BLKS 403,



RECEIVED

JUL - 9 1973

PROPERTY DEPT.

Prop 3a
Schmidt

RESOLUTION No. 208300

Adopted on JUL 3 1973

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

That the City Manager be and he is hereby authorized and empowered to execute for and on behalf of said City an agreement with the STATE OF CALIFORNIA, DEPARTMENT OF PARKS AND RECREATION, for use of a City-owned parking lot adjacent to the Old Town San Diego State Historic Park, under the terms and conditions set forth in the form of agreement on file in the office of the City Clerk as Document No. 743969.

APPROVED: JOHN W. WITT, City Attorney

By *H. Valderhaug*
Harold Valderhaug, Deputy

rp/6-25-73
Job 9722
SCHMIDT

COPY

PROPERTY DEPARTMENT

DOCUMENT NO. 761412

I N D E X

FILED

OCT 7 1977

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

FLAT RATE LEASE

<u>SECTION</u>		<u>PAGE</u>
I.	<u>DEMISED PREMISES</u>	1
	A. PERMITTED USE	1
	B. OBLIGATION TO DILIGENTLY USE	1
	C. RELATED COUNCIL ACTIONS	1
II.	<u>TERM OF AGREEMENT</u>	1
	A. COMMENCEMENT AND TERMINATION	1
III.	A. <u>CONSIDERATION</u>	2
	B. INSPECTION OF RECORDS	2
	C. DEVELOPMENT AS ADDITIONAL CONSIDERATION	2
IV.	<u>COVENANTS AND CONDITIONS</u>	3
	A. CITY COVENANTS	3
	1. Quiet Possession	3
	2. Right to Assign and Sublet	3
	B. LESSEE COVENANTS	4
	3. Affirmative Action	4
	4. Compliance With Law	5
	5. Construction/Alterations	5
	6. Development	6
	7. Indemnity	6
	8. Insurance	7
	9. Labor and Materialmen's Bond	8
	10. Legal Proceedings	8

SECTIONPAGE

IV.	11. Maintenance	8
	12. Nondiscrimination	9
	13. Utility Costs	9
	14. Waste, Damage or Destruction	9
C.	RESTRICTIVE CONDITIONS	9
	15. Administration and Notices	9
	16. City Approval and Consent	10
	17. Eminent Domain	10
	18. Entry and Inspection	11
	19. Holding Over	11
	20. Merger	11
	21. Oral Representation	11
	22. Ownership of Improvements	11
	23. Remedies of City	12
	24. Reservation of City Rights	15
	25. Time is of the Essence	15
	26. Waiver	16
	27. Signs	16
	28. Option to Purchase	16

LEASE AGREEMENT

FLAT RATE LEASE

Approved by Council Resolution

No. _____ dated _____

THIS LEASE AGREEMENT is executed by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY" and THE COUNTY OF SAN DIEGO, a political subdivision of the State of California, hereinafter called "LESSEE".

I. DEMISED PREMISES. CITY hereby leases to LESSEE AND LESSEE leases from CITY all of that certain real property described as a portion of Block 463, Old San Diego, containing approximately 13,940 square feet of vacant land, in the City of San Diego, County of San Diego, State of California, delineated on Exhibit "A" attached hereto and by this reference made a part of this agreement. Said real property is hereinafter called "premises".

A. PERMITTED USE. Said premises are leased to LESSEE only for the purposes of construction, operation and maintenance of a public parking facility and for such other related or incidental purposes as may first be approved in writing by the CITY and for no other purpose.

B. OBLIGATION TO DILIGENTLY USE. LESSEE covenants to use said premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof.

C. RELATED COUNCIL ACTIONS. By the granting of this lease, the City Council of The City of San Diego is not obligating itself with regard to any other discretionary action relating to development or operation of said premises. Such discretionary action includes, but is not limited to, rezonings, variances, environmental clearances or any other governmental agency approvals which are required.

II. TERM OF AGREEMENT.

A. COMMENCEMENT AND TERMINATION. The term of this agreement shall be fifteen (15) years commencing on the date of execution hereof by CITY.

III. CONSIDERATION.

- A. Consideration for the granting of this lease shall be the maintenance by lessee of the leased premises.
- B. Inspection Of Records. Whenever CITY desires to inspect the records and accounts of LESSEE in order to determine LESSEE'S compliance with the terms of this agreement, CITY shall have the right at all reasonable times to inspect any records pertinent to the subject under study. LESSEE agrees to cooperate in such inspection and to make the pertinent records available to CITY at LESSEE'S place of business in the City of San Diego.
- C. Development As Additional Consideration. LESSEE agrees as additional consideration to develop the leased premises in accordance with the City-approved Development Plan described in Section IV, B 6, Development of this agreement.

IV. COVENANTS AND CONDITIONS.

A. CITY COVENANTS.

1. Quiet Possession. LESSEE, performing the covenants and agreements herein, shall and may at all times peaceably and quietly have, hold and enjoy the said premises for the term hereof. If CITY for any reason whatsoever cannot deliver possession of the said premises to LESSEE at the commencement of said term as hereinabove specified, this lease shall not be void or voidable, and in such case the term herein specified shall commence upon the date of delivery of possession of the said premises which delivery shall not unreasonably be withheld; in the event LESSEE is dispossessed through action of a title superior to CITY'S, then, this lease shall be void and of no effect; and in either case CITY shall not be liable to LESSEE for any loss or damage resulting therefrom, except as provided in Section IV C 17 hereof.
2. Right to Assign and Sublet. When in the opinion of the City Manager, and subject to the approval of the City Council whenever required, if it is deemed consistent with the best interests of the CITY, LESSEE may assign this lease or any interest therein and may sublease any portion thereof to an assignee or sublessee who has, in the opinion of City Manager, the financial capability and overall competence to successfully operate the assigned or subleased premises. The consent of the City Manager and/or City Council will not be unreasonably withheld. This lease and any interest herein shall not be assignable by operation of law without the written consent of the City Manager. Any or all of the following actions will be considered trafficking in the leasehold which is not a permitted activity under this contract and will be considered as contrary to the CITY'S best interests:
 - a. Assignment or subleasing by LESSEE for a consideration in excess of a reasonable return on the actual value of the LESSEE'S installed improvements and/or services rendered.
 - b. Subleasing of the primary function of the lease or subleasing of a major portion of the leasehold.

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

B. LESSEE COVENANTS.

3. Affirmative Action. LESSEE agrees to take affirmative action to improve employment opportunities of minorities and women. When applicable, LESSEE agrees to abide by the Affirmative Action Program for Lessees as it now exists or is hereafter amended. A copy of the program, effective as of the date of this agreement, is on file in the Office of the City Clerk as Document No. 746205 and by this reference is incorporated herein. Minorities are presently defined as Mexican-American, Black, Filipino, American Indian and Asian/Oriental. The goal of this program shall be the attainment of the employment of minorities and women in all areas of employment in a total percentage of employment approximately equal to the total level of minority and women employment as established by the CITY for its Affirmative Action Program each year.

4. Compliance with Law. LESSEE agrees, at its sole cost and expense, to comply and secure compliance with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the said premises, or the operations conducted thereon, and to faithfully observe and secure compliance with, in the use of the premises all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force. The judgment of any court of competent jurisdiction, or the admission of LESSEE or any sublessee or permittee in any action or proceeding against them, or any of them, whether CITY be a party thereto or not, that LESSEE, sublessee or permittee has violated any such ordinance or statute in the use of the premises shall be conclusive of that fact as between CITY and LESSEE.
5. Construction/Alterations. LESSEE agrees not to construct or install any buildings or structures on said premises or otherwise improve or alter said premises in any manner except in accordance with plans and specifications previously submitted to the City Manager and approved by him in writing. LESSEE shall not make any major structural or architectural design alterations to approved buildings, structures or improvements installed on said premises except in accordance with plans and specifications previously approved in writing by the City Manager. This provision shall not limit or set aside any obligation of LESSEE under this lease to maintain said premises in 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 any improvements or alterations to said premises or to assume any expense therefor.

6. Development. 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. To the extent applicable to the proposed development, said plan shows the design, materials of construction, elevations and colors of all structures, the plot plan of all structures and above-ground improvements, the uses of all facilities, the schedule of development, the estimated construction costs and financing plan and such other factors as are necessary or desirable in the opinion of the City Manager. 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.
7. Indemnity. LESSEE agrees that CITY, its agents, officers and employees, shall not be liable for any claims, liabilities, penalties, fines or for any damage to the goods, properties or effects of LESSEE, its sublessees or representatives, agents, employees, guests, licensees, invitees, patrons or clientele or of any other person whomsoever, nor for personal injuries to, or deaths of any persons, whether caused by or resulting from any acts or omission of LESSEE or its sublessees in or about the lease premises, or any act or omission of any person or from any defect in any part of the leased premises or from any other cause or reason whatsoever. LESSEE agrees to indemnify and save free and harmless CITY and its authorized agents, officers, and employees against any of the foregoing liabilities and any costs and expenses incurred by CITY on account of any claim or claims therefor.

8. Insurance. On the effective date of this lease, LESSEE shall include said leased property in its program of self-insurance whereby CITY and LESSEE shall be insured against loss from liability imposed by law for damages on account of bodily injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever, resulting directly or indirectly from any act or activities of LESSEE, LESSEE'S sublessees, or any person acting for LESSEE or under LESSEE'S control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from acts or activities of LESSEE, LESSEE'S sublessees, or any person acting for LESSEE or under LESSEE'S control or direction. In the event of cancellation of LESSEE'S self-insurance program, LESSEE shall give CITY thirty (30) days written notice prior to such cancellation, and shall secure liability insurance in the amount of \$500,000 COMBINED SINGLE LIMIT LIABILITY from a commercial insurance company which is acceptable to CITY with a written obligation on the part of the insurance company to notify CITY in writing at least 15 days prior to cancellation or limiting of said insurance policy in any manner.

If the operation under this agreement results in an increased or decreased risk in the opinion of the City Manager, then the minimum limits hereinabove designated shall be changed accordingly upon request by the City Manager. Provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which LESSEE may be held responsible for the payment of damages to persons or property resulting from LESSEE'S activities, the activities of LESSEE'S sublessees or the activities of any person or persons for which LESSEE is otherwise responsible.

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

9. Labor and Materialmen's Bond. LESSEE agrees to save CITY free and harmless, indemnify it against all claims for labor and materials in connection with improvements, repairs or alterations to the leased premises, and the cost of defending against such claims, including reasonable attorney's fees. In the event that improvements, repairs or alterations are constructed on the leased premises by other than the CITY, and a lien is filed, LESSEE agrees to file with CITY within five days a bond sufficient to pay in full all claims of all persons seeking relief under the lien. The bond shall be acknowledged by LESSEE as principal and by a corporation satisfactory to CITY licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety.
10. Legal Proceedings. LESSEE agrees that should it become necessary for CITY to commence legal proceedings to collect rent, recover possession, or enforce any other provision of this lease, the prevailing party will be entitled to legal costs in connection therewith, including reasonable attorney's fees as determined by the court. The parties agree that the law of the State of California shall be used in interpreting this lease agreement and will determine all rights and obligations hereunder. Personal service either within or without the State of California shall be sufficient to give personal jurisdiction to any court in which an action is filed for litigation of rights under this lease agreement.
11. Maintenance. LESSEE agrees to assume full responsibility for the operation and maintenance of said premises throughout the term hereof without expense to CITY unless otherwise specified herein, and to perform all repairs and replacements necessary to maintain and preserve said premises in a decent, safe, healthy and sanitary condition in a manner satisfactory to CITY and in compliance with all applicable laws. LESSEE agrees that CITY shall not be required to perform any maintenance, repairs or services or to assume any expense not specifically assumed herein in connection with said premises and LESSEE hereby waives all rights to make repairs or to cause any work to be performed at the expense of CITY as provided for in Sections 1941 and 1942 of the California Civil Code.

12. 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, physical handicap or medical condition 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.
13. Utility Costs. LESSEE agrees to order, obtain and pay for all utilities and service and installation charges in connection therewith. All utilities installed by LESSEE shall be installed underground.
14. 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 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 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.

LESSEE agrees that preliminary steps toward performing repairs, restoration or replacement of the premises shall be commenced by LESSEE within thirty 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.

C. RESTRICTIVE CONDITIONS

15. Administration and Notices. Control and administration of this lease is under the jurisdiction of the City Manager of CITY as to CITY'S interest herein and any communication relative to the terms or conditions or any changes thereto or any notice or notices provided for by this lease or by

law to be given or served upon CITY may be given or served by registered letter deposited in the United States mails, postage prepaid, and addressed to the City Manager, Attention Property Director, City Administration Building, 202 "C" Street, San Diego, California 92101. This lease shall be administered on behalf of LESSEE by the Director, Department of Real Property, Community Services Agency, County of San Diego. Any notice or notices provided for by this lease or by law to be given or served upon LESSEE, may be given or served by depositing in the United States mails, postage prepaid, a letter addressed to Director, Department of Real Property, Community Services Agency, Building 2, 5555 Overland Avenue, San Diego, California 92123 or at such other address designated in writing by LESSEE, or may be personally served upon LESSEE or any person hereafter authorized in writing to receive such notice. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the principals of the parties so served upon personal service or forty-eight hours after mailing in the manner required herein.

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

17. Eminent Domain. In the event the leased premises or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, then the interests of CITY and LESSEE (or Beneficiary or Mortgagee if there is a Trust Deed or Mortgage then in effect), in the award and the effect of the taking upon this lease agreement shall be as follows:

a. In the event of such taking of only a part of the leased premises, leaving the remainder of said premises in such location and in such form shape and size as to be used effectively and practicably in the opinion of CITY for the conduct thereon of the operations permitted hereunder, this lease shall terminate and end as to the portion of the leased premises so taken as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the leased premises not so taken and from and after such date the contract rent, or in the event there is a minimum rent specified herein, then the minimum rental required by this lease to be paid by LESSEE to CITY shall be reduced in the proportion to which the value of the leased premises so taken bears to the total value of the demised premises; provided, however, CITY shall have the right, with the consent of LESSEE, to substitute like adjacent property and maintain the rent schedule without diminution.

- b. In the event of the taking of only a part of the leased premises, leaving the remainder of said premises in such location, or in such form, shape or reduced size as to render the same not effectively and practicably usable, in the opinion of CITY, for the conduct thereon of the operations permitted hereunder, this lease and all right, title and interest thereunder shall cease on the date title to said premises or the portion thereof so taken vests in the condemning authority.
 - c. In the event the entire leased premises are so taken, this lease and all of the right, title and interest thereunder shall cease on the date title to said premises so taken vests in the condemning authority.
 - d. In the event of any taking under Subparagraphs a, b, or c, hereinabove, the only portion of any award of compensation which shall be paid to LESSEE shall be the fair market value of LESSEE'S interest in the improvements placed upon that portion of the leased premises which are taken by the condemning agency. It is the intention of this provision that LESSEE shall not in any condemnation receive any bonus or penalty by reason of LESSEE'S contractual rights in connection with the property condemned.
 - e. Notwithstanding the foregoing provisions of this section, CITY may, in its discretion and without affecting the validity and existence of this lease, transfer the CITY'S interests in said premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. In the event of such transfer by CITY, LESSEE shall retain whatever rights it may have to recover from the said authority the fair market value of LESSEE'S interest in the improvements taken by the authority and which LESSEE has placed upon the leased premises in accordance with the provisions of this lease.
18. Entry and Inspection. CITY reserves and shall always have the right to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its 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 days written notice to LESSEE, to have any necessary maintenance work done for and 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. Further, if at any time the CITY determines that said premises are not in a decent, safe, healthy and sanitary condition, CITY may at its sole option, without additional notice, require

LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy and sanitary. Said bond shall be in an amount adequate in the opinion of the CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.

19. Holding Over. The occupancy of the demised premises after the expiration of the term of this agreement shall be construed to be a tenancy from month to month, and all other terms and conditions of this agreement shall continue in full force and effect.
20. Merger. The voluntary or other surrender of this lease by LESSEE, or a mutual cancellation thereof, shall not work a merger and shall, at the option of CITY, terminate all or any existing subleases or subtenancies or may, at the option of CITY, operate as an assignment to it of any or all such subleases or subtenancies.
21. Oral Representation. It is specifically understood and agreed hereby that this lease contains the complete expression of the whole agreement between the parties hereto, and that there are no promises, representations, agreements, warranties or inducements, either expressed orally or implied by the said parties, except as are fully set forth herein; and further, that this lease cannot be enlarged, modified or changed in any respect except by written agreement duly executed by and between the said parties.
22. Ownership of Improvements. All improvements, except personal property which have been installed by LESSEE in accordance with the provisions of this agreement, shall at the option of CITY become the property of CITY upon expiration or sooner termination of this agreement, except as provided in Section IV C 17 hereof. LESSEE shall have the right to remove from the demised premises only that personal property at any time prior to the expiration or earlier termination of the agreement. LESSEE'S removal of any such personal property shall be at LESSEE'S own expense and shall be conditioned upon LESSEE'S repairing any damage to the remaining improvements and upon LESSEE leaving the demised premises in good order and condition. In the event LESSEE does not so remove said personal property prior to the expiration of this agreement, CITY may remove, sell or destroy the same at

the expense of LESSEE, and if the proceeds of the sale are not adequate, LESSEE shall promptly pay to CITY its reasonable cost of any such removal, sale or destruction together with the reasonable cost of repair of damages to CITY'S property resulting from such removal, sale or destruction. At the option of CITY, any personal property not removed by LESSEE may be deemed abandoned and may be removed and sold by CITY and all income received by CITY therefrom shall be the property of CITY exclusively.

23. Remedies of City.

a. Default by Lessee. In the event that:

- (1) LESSEE shall default in the performance or fulfillment of any covenant or condition herein required to be performed or fulfilled by LESSEE and shall fail to cure said default within thirty days following the service on LESSEE of a written notice from CITY specifying the default complained of; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against him 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 in or to the said premises or in or to further possession thereof and CITY may thereupon enter and take possession of said premises and expel LESSEE and all persons so claiming rights thereto. Provided, however, in the event that any default described in Part a, (1) of this section is not curable within thirty (30) days after the service of a written notice upon LESSEE, CITY shall not terminate this lease pursuant to said default if LESSEE immediately commences to cure said default and diligently pursues such cure to completion.

- b. City Recourse. If the mortgagee or beneficiary shall be required to perfect its right to cure said default or defaults through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that such default or defaults may be expeditiously corrected:
- (1) CITY may correct or cause to be corrected said default or defaults and charge the costs therefor (including costs incurred by CITY in enforcing this provision) to the account of the LESSEE, which charge shall be due and payable on the date that the rent is next due after presentation by CITY of a statement of all or part of said costs.
 - (2) CITY may correct or cause to be corrected said default or defaults and may pay the costs thereof (including costs incurred by CITY in enforcing this provision) from the proceeds of any insurance fund held by CITY and LESSEE or by CITY and mortgagee or beneficiary or CITY may use said funds of any faithful performance or cash bond on deposit with CITY or CITY may call on the bonding agent to correct said default or defaults or to pay the costs of such correction performed by or at the direction of CITY.
- 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 LESSEE'S right to possession, and CITY may enforce all its rights and remedies under said lease, including, but not limited to, the right to recover the rent as it becomes due under the lease. For purposes of this section, the following do not constitute a termination of LESSEE'S right to possession:
- (1) Acts by CITY of maintenance, or preservation, or efforts to relet the property.
 - (2) The appointment of a receiver upon initiative of CITY to protect the CITY'S interest under the lease.

- d. Damages which CITY may recover in the event of default under this lease include the worth, at the time of award, of the amount by which the unpaid rent for the balance of the term after the date of award, or for any shorter period of time specified in this lease, exceeds the amount of such rental loss for the same period that the LESSEE proves could be reasonably avoided. The remedies provided by this section are not exclusive and shall be cumulative to all other rights and remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which CITY may be entitled.

24. Reservation of City Rights. CITY hereby reserves all rights, title and interest in any and all gas, oil, minerals and water beneath said leased premises. CITY shall have the right to enter said leased premises for the purpose of making repairs to or developing municipal services. CITY hereby reserves the right to grant and use such easements or establish and use such rights of way over, under, along and across said leased premises for utilities, thoroughfares, or access as it may deem advisable for the public good. Provided, however, CITY shall not unreasonably interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements of LESSEE located on the leased premises resulting from CITY'S exercising the rights retained in this paragraph. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to the rights reserved herein.
25. Time is of the Essence. Time is of the essence of each and all of the terms and provisions of this lease and this lease shall inure to the benefit of and be binding upon the parties hereto and any successor of LESSEE as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements in this lease shall extend to and bind any assigns of sublessees of LESSEE.

26. Waiver. The waiver by CITY of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained. Failure on the part of CITY to require or exact full and complete compliance with any of the covenants, conditions or agreements of this lease shall not be construed as in any manner changing the terms hereof and shall not prevent CITY from enforcing any provision hereof.
27. Signs. No exterior signs of any kind shall be installed on the premises without prior written approval of the City Manager.
28. Option to Purchase. As part of the consideration for this lease, LESSEE shall have the option to purchase all of the leased premises at any time during the first five (5) years of the term hereof upon the following conditions:
- (a) Said option shall be deemed exercised upon receipt by CITY of written notice thereof from LESSEE;
 - (b) The purchase price which LESSEE shall pay CITY for said premises shall be the fair market value thereof determined by an independent fee appraiser mutually selected by CITY and LESSEE, from a roster of real estate appraisers whose qualifications have been previously accepted by the City Council of City. Such selection shall be made within a reasonable time not exceeding sixty (60) days following LESSEE'S exercise of said option and the cost of the appraisal shall be equally shared by CITY and LESSEE. The date of value of said appraisal shall be the date of exercise of this option by LESSEE.
 - (c) Escrow and title insurance costs shall be apportioned according to the prevailing practice in San Diego County at the time the option is exercised;
 - (d) Within sixty (60) days after receipt by CITY of said appraisal, CITY shall convey to LESSEE, by sufficient deed deposited in escrow, title to said premises, subject to all encumbrances, conditions and restrictions, recorded and unrecorded, as may then exist against said premises. LESSEE agrees to pay into said escrow for the benefit of CITY concurrently with the deposit of said deed by CITY, the purchase price as determined by said appraisal.
 - (e) Upon the exercise of said option, this lease agreement shall remain in full force and effect until the close of escrow conveying said premises to LESSEE.

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

CITY OF SAN DIEGO

Date APR 6 1977

BY [Signature]
ASSISTANT TO THE City Manager

Approved and/or authorized by the Board
of Supervisors of the County of San Diego

AUG 30 1977 #28

Date [Signature]

Clerk of the Board of Supervisors

Date _____

COUNTY OF SAN DIEGO

BY Porter A. Cremans
Clerk of the Board of Supervisors

BY _____

APPROVED as to form and legality this 22 day of April, 1977.

JOHN W. WITT, City Attorney

BY [Signature]
Deputy

JH/fs
12/8/76
COUNTY OF SAN DIEGO

~~CITY~~

COPY

PROPERTY DEPARTMENT

STATE CAL / DEPT OF PAR / 1

I N D E X

FLAT RATE LEASE

DOCUMENT NO. 761412

FILED OCT 7 1977

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

<u>SECTION</u>		<u>PAGE</u>
I.	<u>DEMISED PREMISES</u>	1
	A. PERMIT	1
	B. OBLIGATIONS	1
	C. RELATED	1
II.	<u>TERM OF AGREEMENT</u>	1
	A. COMMENCEMENT AND TERMINATION	1
III.	A. CONSIDERATION	2
	B. INSPECTION OF RECORDS	2
	C. DEVELOPMENT AS ADDITIONAL CONSIDERATION	2
IV.	<u>COVENANTS AND CONDITIONS</u>	3
	A. CITY COVENANTS	3
	1. Quiet Possession	3
	2. Right to Assign and Sublet	3
	B. LESSEE COVENANTS	4
	3. Affirmative Action	4
	4. Compliance With Law	5
	5. Construction/Alterations	5
	6. Development	6
	7. Indemnity	6
	8. Insurance	7
	9. Labor and Materialmen's Bond	8
	10. Legal Proceedings	8

8-6-02
Old Town
PARKING
STATE PRS SE

SECTIONPAGE

IV.	11. Maintenance	8
	12. Nondiscrimination	9
	13. Utility Costs	9
	14. Waste, Damage or Destruction	9
C.	RESTRICTIVE CONDITIONS	9
	15. Administration and Notices	9
	16. City Approval and Consent	10
	17. Eminent Domain	10
	18. Entry and Inspection	11
	19. Holding Over	11
	20. Merger	11
	21. Oral Representation	11
	22. Ownership of Improvements	11
	23. Remedies of City	12
	24. Reservation of City Rights	15
	25. Time is of the Essence	15
	26. Waiver	16
	27. Signs	16
	28. Option to Purchase	16

LEASE AGREEMENT

FLAT RATE LEASE

Approved by Council Resolution

No. _____ dated _____

THIS LEASE AGREEMENT is executed by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY" and THE COUNTY OF SAN DIEGO, a political subdivision of the State of California, hereinafter called "LESSEE".

I. DEMISED PREMISES. CITY hereby leases to LESSEE AND LESSEE leases from CITY all of that certain real property described as a portion of Block 463, Old San Diego, containing approximately 13,940 square feet of vacant land, in the City of San Diego, County of San Diego, State of California, delineated on Exhibit "A" attached hereto and by this reference made a part of this agreement. Said real property is hereinafter called "premises".

A. PERMITTED USE. Said premises are leased to LESSEE only for the purposes of construction, operation and maintenance of a public parking facility and for such other related or incidental purposes as may first be approved in writing by the CITY and for no other purpose.

B. OBLIGATION TO DILIGENTLY USE. LESSEE covenants to use said premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof.

C. RELATED COUNCIL ACTIONS. By the granting of this lease, the City Council of The City of San Diego is not obligating itself with regard to any other discretionary action relating to development or operation of said premises. Such discretionary action includes, but is not limited to, rezonings, variances, environmental clearances or any other governmental agency approvals which are required.

II. TERM OF AGREEMENT.

A. COMMENCEMENT AND TERMINATION. The term of this agreement shall be fifteen (15) years commencing on the date of execution hereof by CITY.

III. CONSIDERATION.

- A. Consideration for the granting of this lease shall be the maintenance by lessee of the leased premises.
 - B. Inspection Of Records. Whenever CITY desires to inspect the records and accounts of LESSEE in order to determine LESSEE'S compliance with the terms of this agreement, CITY shall have the right at all reasonable times to inspect any records pertinent to the subject under study. LESSEE agrees to cooperate in such inspection and to make the pertinent records available to CITY at LESSEE'S place of business in the City of San Diego.
 - C. Development As Additional Consideration. LESSEE agrees as additional consideration to develop the leased premises in accordance with the City-approved Development Plan described in Section IV, B 6, Development of this agreement.
-

IV. COVENANTS AND CONDITIONS.

A. CITY COVENANTS.

1. Quiet Possession. LESSEE, performing the covenants and agreements herein, shall and may at all times peaceably and quietly have, hold and enjoy the said premises for the term hereof. If CITY for any reason whatsoever cannot deliver possession of the said premises to LESSEE at the commencement of said term as hereinabove specified, this lease shall not be void or voidable, and in such case the term herein specified shall commence upon the date of delivery of possession of the said premises which delivery shall not unreasonably be withheld; in the event LESSEE is dispossessed through action of a title superior to CITY'S, then, this lease shall be void and of no effect; and in either case CITY shall not be liable to LESSEE for any loss or damage resulting therefrom, except as provided in Section IV C 17 hereof.
2. Right to Assign and Sublet. When in the opinion of the City Manager, and subject to the approval of the City Council whenever required, if it is deemed consistent with the best interests of the CITY, LESSEE may assign this lease or any interest therein and may sublease any portion thereof to an assignee or sublessee who has, in the opinion of City Manager, the financial capability and overall competence to successfully operate the assigned or subleased premises. The consent of the City Manager and/or City Council will not be unreasonably withheld. This lease and any interest herein shall not be assignable by operation of law without the written consent of the City Manager. Any or all of the following actions will be considered trafficking in the leasehold which is not a permitted activity under this contract and will be considered as contrary to the CITY'S best interests:
 - a. Assignment or subleasing by LESSEE for a consideration in excess of a reasonable return on the actual value of the LESSEE'S installed improvements and/or services rendered.
 - b. Subleasing of the primary function of the lease or subleasing of a major portion of the leasehold.

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

B. LESSEE COVENANTS.

3. Affirmative Action. LESSEE agrees to take affirmative action to improve employment opportunities of minorities and women. When applicable, LESSEE agrees to abide by the Affirmative Action Program for Lessees as it now exists or is hereafter amended. A copy of the program, effective as of the date of this agreement, is on file in the Office of the City Clerk as Document No. 746205 and by this reference is incorporated herein. Minorities are presently defined as Mexican-American, Black, Filipino, American Indian and Asian/Oriental. The goal of this program shall be the attainment of the employment of minorities and women in all areas of employment in a total percentage of employment approximately equal to the total level of minority and women employment as established by the CITY for its Affirmative Action Program each year.

4. Compliance with Law. LESSEE agrees, at its sole cost and expense, to comply and secure compliance with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the said premises, or the operations conducted thereon, and to faithfully observe and secure compliance with, in the use of the premises all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force. The judgment of any court of competent jurisdiction, or the admission of LESSEE or any sublessee or permittee in any action or proceeding against them, or any of them, whether CITY be a party thereto or not, that LESSEE, sublessee or permittee has violated any such ordinance or statute in the use of the premises shall be conclusive of that fact as between CITY and LESSEE.

5. Construction/Alterations. LESSEE agrees not to construct or install any buildings or structures on said premises or otherwise improve or alter said premises in any manner except in accordance with plans and specifications previously submitted to the City Manager and approved by him in writing. LESSEE shall not make any major structural or architectural design alterations to approved buildings, structures or improvements installed on said premises except in accordance with plans and specifications previously approved in writing by the City Manager. This provision shall not limit or set aside any obligation of LESSEE under this lease to maintain said premises in 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 any improvements or alterations to said premises or to assume any expense therefor.

6. Development. 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. To the extent applicable to the proposed development, said plan shows the design, materials of construction, elevations and colors of all structures, the plot plan of all structures and above-ground improvements, the uses of all facilities, the schedule of development, the estimated construction costs and financing plan and such other factors as are necessary or desirable in the opinion of the City Manager. 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.
7. Indemnity. LESSEE agrees that CITY, its agents, officers and employees, shall not be liable for any claims, liabilities, penalties, fines or for any damage to the goods, properties or effects of LESSEE, its sublessees or representatives, agents, employees, guests, licensees, invitees, patrons or clientele or of any other person whomsoever, nor for personal injuries to, or deaths of any persons, whether caused by or resulting from any acts or omission of LESSEE or its sublessees in or about the lease premises, or any act or omission of any person or from any defect in any part of the leased premises or from any other cause or reason whatsoever. LESSEE agrees to indemnify and save free and harmless CITY and its authorized agents, officers, and employees against any of the foregoing liabilities and any costs and expenses incurred by CITY on account of any claim or claims therefor.

8. Insurance. On the effective date of this lease, LESSEE shall include said leased property in its program of self-insurance whereby CITY and LESSEE shall be insured against loss from liability imposed by law for damages on account of bodily injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever, resulting directly or indirectly from any act or activities of LESSEE, LESSEE'S sublessees, or any person acting for LESSEE or under LESSEE'S control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from acts or activities of LESSEE, LESSEE'S sublessees, or any person acting for LESSEE or under LESSEE'S control or direction. In the event of cancellation of LESSEE'S self-insurance program, LESSEE shall give CITY thirty (30) days written notice prior to such cancellation, and shall secure liability insurance in the amount of \$500,000 COMBINED SINGLE LIMIT LIABILITY from a commercial insurance company which is acceptable to CITY with a written obligation on the part of the insurance company to notify CITY in writing at least 15 days prior to cancellation or limiting of said insurance policy in any manner.

If the operation under this agreement results in an increased or decreased risk in the opinion of the City Manager, then the minimum limits hereinabove designated shall be changed accordingly upon request by the City Manager. Provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which LESSEE may be held responsible for the payment of damages to persons or property resulting from LESSEE'S activities, the activities of LESSEE'S sublessees or the activities of any person or persons for which LESSEE is otherwise responsible.

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

9. Labor and Materialmen's Bond. LESSEE agrees to save CITY free and harmless, indemnify it against all claims for labor and materials in connection with improvements, repairs or alterations to the leased premises, and the cost of defending against such claims, including reasonable attorney's fees. In the event that improvements, repairs or alterations are constructed on the leased premises by other than the CITY, and a lien is filed, LESSEE agrees to file with CITY within five days a bond sufficient to pay in full all claims of all persons seeking relief under the lien. The bond shall be acknowledged by LESSEE as principal and by a corporation satisfactory to CITY licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety.
10. Legal Proceedings. LESSEE agrees that should it become necessary for CITY to commence legal proceedings to collect rent, recover possession, or enforce any other provision of this lease, the prevailing party will be entitled to legal costs in connection therewith, including reasonable attorney's fees as determined by the court. The parties agree that the law of the State of California shall be used in interpreting this lease agreement and will determine all rights and obligations hereunder. Personal service either within or without the State of California shall be sufficient to give personal jurisdiction to any court in which an action is filed for litigation of rights under this lease agreement.
11. Maintenance. LESSEE agrees to assume full responsibility for the operation and maintenance of said premises throughout the term hereof without expense to CITY unless otherwise specified herein, and to perform all repairs and replacements necessary to maintain and preserve said premises in a decent, safe, healthy and sanitary condition in a manner satisfactory to CITY and in compliance with all applicable laws. LESSEE agrees that CITY shall not be required to perform any maintenance, repairs or services or to assume any expense not specifically assumed herein in connection with said premises and LESSEE hereby waives all rights to make repairs or to cause any work to be performed at the expense of CITY as provided for in Sections 1941 and 1942 of the California Civil Code.

12. 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, physical handicap or medical condition 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.
13. Utility Costs. LESSEE agrees to order, obtain and pay for all utilities and service and installation charges in connection therewith. All utilities installed by LESSEE shall be installed underground.
14. 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 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 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.

LESSEE agrees that preliminary steps toward performing repairs, restoration or replacement of the premises shall be commenced by LESSEE within thirty 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.

C. RESTRICTIVE CONDITIONS

15. Administration and Notices. Control and administration of this lease is under the jurisdiction of the City Manager of CITY as to CITY'S interest herein and any communication relative to the terms or conditions or any changes thereto or any notice or notices provided for by this lease or by

law to be given or served upon CITY may be given or served by registered letter deposited in the United States mails, postage prepaid, and addressed to the City Manager, Attention Property Director, City Administration Building, 202 "C" Street, San Diego, California 92101. This lease shall be administered on behalf of LESSEE by the Director, Department of Real Property, Community Services Agency, County of San Diego. Any notice or notices provided for by this lease or by law to be given or served upon LESSEE, may be given or served by depositing in the United States mails, postage prepaid, a letter addressed to Director, Department of Real Property, Community Services Agency, Building 2, 5555 Overland Avenue, San Diego, California 92123 or at such other address designated in writing by LESSEE, or may be personally served upon LESSEE or any person hereafter authorized in writing to receive such notice. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the principals of the parties so served upon personal service or forty-eight hours after mailing in the manner required herein.

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

17. Eminent Domain. In the event the leased premises or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, then the interests of CITY and LESSEE (or Beneficiary or Mortgagee if there is a Trust Deed or Mortgage then in effect), in the award and the effect of the taking upon this lease agreement shall be as follows:

a. In the event of such taking of only a part of the leased premises, leaving the remainder of said premises in such location and in such form shape and size as to be used effectively and practicably in the opinion of CITY for the conduct thereon of the operations permitted hereunder, this lease shall terminate and end as to the portion of the leased premises so taken as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the leased premises not so taken and from and after such date the contract rent, or in the event there is a minimum rent specified herein, then the minimum rental required by this lease to be paid by LESSEE to CITY shall be reduced in the proportion to which the value of the leased premises so taken bears to the total value of the demised premises; provided, however, CITY shall have the right, with the consent of LESSEE, to substitute like adjacent property and maintain the rent schedule without diminution.

- b. In the event of the taking of only a part of the leased premises, leaving the remainder of said premises in such location, or in such form, shape or reduced size as to render the same not effectively and practicably usable, in the opinion of CITY, for the conduct thereon of the operations permitted hereunder, this lease and all right, title and interest thereunder shall cease on the date title to said premises or the portion thereof so taken vests in the condemning authority.
 - c. In the event the entire leased premises are so taken, this lease and all of the right, title and interest thereunder shall cease on the date title to said premises so taken vests in the condemning authority.
 - d. In the event of any taking under Subparagraphs a, b, or c, hereinabove, the only portion of any award of compensation which shall be paid to LESSEE shall be the fair market value of LESSEE'S interest in the improvements placed upon that portion of the leased premises which are taken by the condemning agency. It is the intention of this provision that LESSEE shall not in any condemnation receive any bonus or penalty by reason of LESSEE'S contractual rights in connection with the property condemned.
 - e. Notwithstanding the foregoing provisions of this section, CITY may, in its discretion and without affecting the validity and existence of this lease, transfer the CITY'S interests in said premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. In the event of such transfer by CITY, LESSEE shall retain whatever rights it may have to recover from the said authority the fair market value of LESSEE'S interest in the improvements taken by the authority and which LESSEE has placed upon the leased premises in accordance with the provisions of this lease.
18. Entry and Inspection. CITY reserves and shall always have the right to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its 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 days written notice to LESSEE, to have any necessary maintenance work done for and 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. Further, if at any time the CITY determines that said premises are not in a decent, safe, healthy and sanitary condition, CITY may at its sole option, without additional notice, require

LESSEE to furnish with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy and sanitary. Said bond shall be in an amount adequate in the opinion of the CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.

19. Holding Over. The occupancy of the demised premises after the expiration of the term of this agreement shall be construed to be a tenancy from month to month, and all other terms and conditions of this agreement shall continue in full force and effect.
20. Merger. The voluntary or other surrender of this lease by LESSEE, or a mutual cancellation thereof, shall not work a merger and shall, at the option of CITY, terminate all or any existing subleases or subtenancies or may, at the option of CITY, operate as an assignment to it of any or all such subleases or subtenancies.
21. Oral Representation. It is specifically understood and agreed hereby that this lease contains the complete expression of the whole agreement between the parties hereto, and that there are no promises, representations, agreements, warranties or inducements, either expressed orally or implied by the said parties, except as are fully set forth herein; and further, that this lease cannot be enlarged, modified or changed in any respect except by written agreement duly executed by and between the said parties.
22. Ownership of Improvements. All improvements, except personal property which have been installed by LESSEE in accordance with the provisions of this agreement, shall at the option of CITY become the property of CITY upon expiration or sooner termination of this agreement, except as provided in Section IV C 17 hereof. LESSEE shall have the right to remove from the demised premises only that personal property at any time prior to the expiration or earlier termination of the agreement. LESSEE'S removal of any such personal property shall be at LESSEE'S own expense and shall be conditioned upon LESSEE'S repairing any damage to the remaining improvements and upon LESSEE leaving the demised premises in good order and condition. In the event LESSEE does not so remove said personal property prior to the expiration of this agreement, CITY may remove, sell or destroy the same at

the expense of LESSEE, and if the proceeds of the sale are not adequate, LESSEE shall promptly pay to CITY its reasonable cost of any such removal, sale or destruction together with the reasonable cost of repair of damages to CITY'S property resulting from such removal, sale or destruction. At the option of CITY, any personal property not removed by LESSEE may be deemed abandoned and may be removed and sold by CITY and all income received by CITY therefrom shall be the property of CITY exclusively.

23. Remedies of City.

a. Default by Lessee. In the event that:

- (1) LESSEE shall default in the performance or fulfillment of any covenant or condition herein required to be performed or fulfilled by LESSEE and shall fail to cure said default within thirty days following the service on LESSEE of a written notice from CITY specifying the default complained of; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against him 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 in or to the said premises or in or to further possession thereof and CITY may thereupon enter and take possession of said premises and expel LESSEE and all persons so claiming rights thereto. Provided, however, in the event that any default described in Part a, (1) of this section is not curable within thirty (30) days after the service of a written notice upon LESSEE, CITY shall not terminate this lease pursuant to said default if LESSEE immediately commences to cure said default and diligently pursues such cure to completion.

b. City Recourse. If the mortgagee or beneficiary shall be required to perfect its right to cure said default or defaults through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that such default or defaults may be expeditiously corrected:

- (1) CITY may correct or cause to be corrected said default or defaults and charge the costs therefor (including costs incurred by CITY in enforcing this provision) to the account of the LESSEE, which charge shall be due and payable on the date that the rent is next due after presentation by CITY of a statement of all or part of said costs.
- (2) CITY may correct or cause to be corrected said default or defaults and may pay the costs thereof (including costs incurred by CITY in enforcing this provision) from the proceeds of any insurance fund held by CITY and LESSEE or by CITY and mortgagee or beneficiary or CITY may use said funds of any faithful performance or cash bond on deposit with CITY or CITY may call on the bonding agent to correct said default or defaults or to pay the costs of such correction performed by or at the direction of CITY.

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 LESSEE'S right to possession, and CITY may enforce all its rights and remedies under said lease, including, but not limited to, the right to recover the rent as it becomes due under the lease. For purposes of this section, the following do not constitute a termination of LESSEE'S right to possession:

- (1) Acts by CITY of maintenance, or preservation, or efforts to relet the property.
- (2) The appointment of a receiver upon initiative of CITY to protect the CITY'S interest under the lease.

- d. Damages which CITY may recover in the event of default under this lease include the worth, at the time of award, of the amount by which the unpaid rent for the balance of the term after the date of award, or for any shorter period of time specified in this lease, exceeds the amount of such rental loss for the same period that the LESSEE proves could be reasonably avoided. The remedies provided by this section are not exclusive and shall be cumulative to all other rights and remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which CITY may be entitled.

24. Reservation of City Rights. CITY hereby reserves all rights, title and interest in any and all gas, oil, minerals and water beneath said leased premises. CITY shall have the right to enter said leased premises for the purpose of making repairs to or developing municipal services. CITY hereby reserves the right to grant and use such easements or establish and use such rights of way over, under, along and across said leased premises for utilities, thoroughfares, or access as it may deem advisable for the public good. Provided, however, CITY shall not unreasonably interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements of LESSEE located on the leased premises resulting from CITY'S exercising the rights retained in this paragraph. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to the rights reserved herein.

25. Time is of the Essence. Time is of the essence of each and all of the terms and provisions of this lease and this lease shall inure to the benefit of and be binding upon the parties hereto and any successor of LESSEE as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements in this lease shall extend to and bind any assigns of sublessees of LESSEE.

26. Waiver. The waiver by CITY of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained. Failure on the part of CITY to require or exact full and complete compliance with any of the covenants, conditions or agreements of this lease shall not be construed as in any manner changing the terms hereof and shall not prevent CITY from enforcing any provision hereof.
27. Signs. No exterior signs of any kind shall be installed on the premises without prior written approval of the City Manager.
28. Option to Purchase. As part of the consideration for this lease, LESSEE shall have the option to purchase all of the leased premises at any time during the first five (5) years of the term hereof upon the following conditions:
- (a) Said option shall be deemed exercised upon receipt by CITY of written notice thereof from LESSEE;
 - (b) The purchase price which LESSEE shall pay CITY for said premises shall be the fair market value thereof determined by an independent fee appraiser mutually selected by CITY and LESSEE, from a roster of real estate appraisers whose qualifications have been previously accepted by the City Council of City. Such selection shall be made within a reasonable time not exceeding sixty (60) days following LESSEE'S exercise of said option and the cost of the appraisal shall be equally shared by CITY and LESSEE. The date of value of said appraisal shall be the date of exercise of this option by LESSEE.
 - (c) Escrow and title insurance costs shall be apportioned according to the prevailing practice in San Diego County at the time the option is exercised;
 - (d) Within sixty (60) days after receipt by CITY of said appraisal, CITY shall convey to LESSEE, by sufficient deed deposited in escrow, title to said premises, subject to all encumbrances, conditions and restrictions, recorded and unrecorded, as may then exist against said premises. LESSEE agrees to pay into said escrow for the benefit of CITY concurrently with the deposit of said deed by CITY, the purchase price as determined by said appraisal.
 - (e) Upon the exercise of said option, this lease agreement shall remain in full force and effect until the close of escrow conveying said premises to LESSEE.

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

CITY OF SAN DIEGO

Date APR 6 1977

BY [Signature]
ASSISTANT TO THE City Manager

Approved and/or authorized by the Board
of Supervisors of the County of San Diego

MUG 30 1977 #28

Date [Signature]

Clerk of the Board of Supervisors

Date _____

COUNTY OF SAN DIEGO

BY [Signature]

Clerk of the Board of Supervisors

BY _____

APPROVED as to form and legality this 22 day of April, 1977.

JOHN W. WITT, City Attorney

BY [Signature]

Deputy

JH/fs
12/8/76
COUNTY OF SAN DIEGO

PROPERTY DEPARTMENT

DOCUMENT NO. 759471

FILED JUN 2 1977

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

FIRST AMENDMENT TO PERMIT AGREEMENT

This agreement, executed this 16th day of April, 1977,
by and between THE CITY OF SAN DIEGO, a municipal corporation
(CITY) and the STATE OF CALIFORNIA, DEPARTMENT OF PARKS AND
RECREATION (PERMITTEE):

WHEREAS, by Permit Agreement executed July 3, 1973, filed as
Document No. 745002, in the Office of the City Clerk, CITY rented
to PERMITTEE certain real property located in a portion of Block
463, Old San Diego, more particularly described in said Permit
Agreement; and

WHEREAS, the parties hereto now desire to amend said Permit
Agreement in the manner herein set forth;

NOW, THEREFORE, CITY AND PERMITTEE HEREBY AGREE:

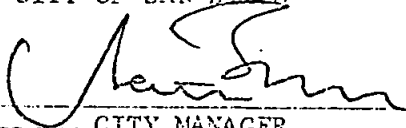
Exhibit "A" of said agreement is hereby
deleted and Exhibit "A" attached hereto
is hereby substituted therefor.

This First Amendment to Permit Agreement shall be effective upon the date of execution by the City Manager.

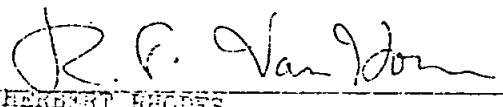
Nothing herein is intended to alter or amend any other covenant or condition of said Permit Agreement.

THE CITY OF SAN DIEGO

DATE APR 6 1977

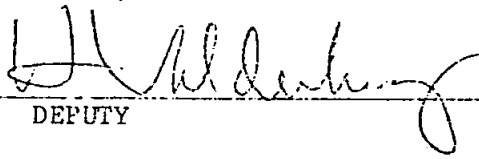
BY 
ASSISTANT TO THE CITY MANAGER

STATE OF CALIFORNIA, DEPARTMENT OF
PARKS AND RECREATION

BY 
HERBERT RHODES
Director

APPROVED as to form and legality this 22 day of April, 1977

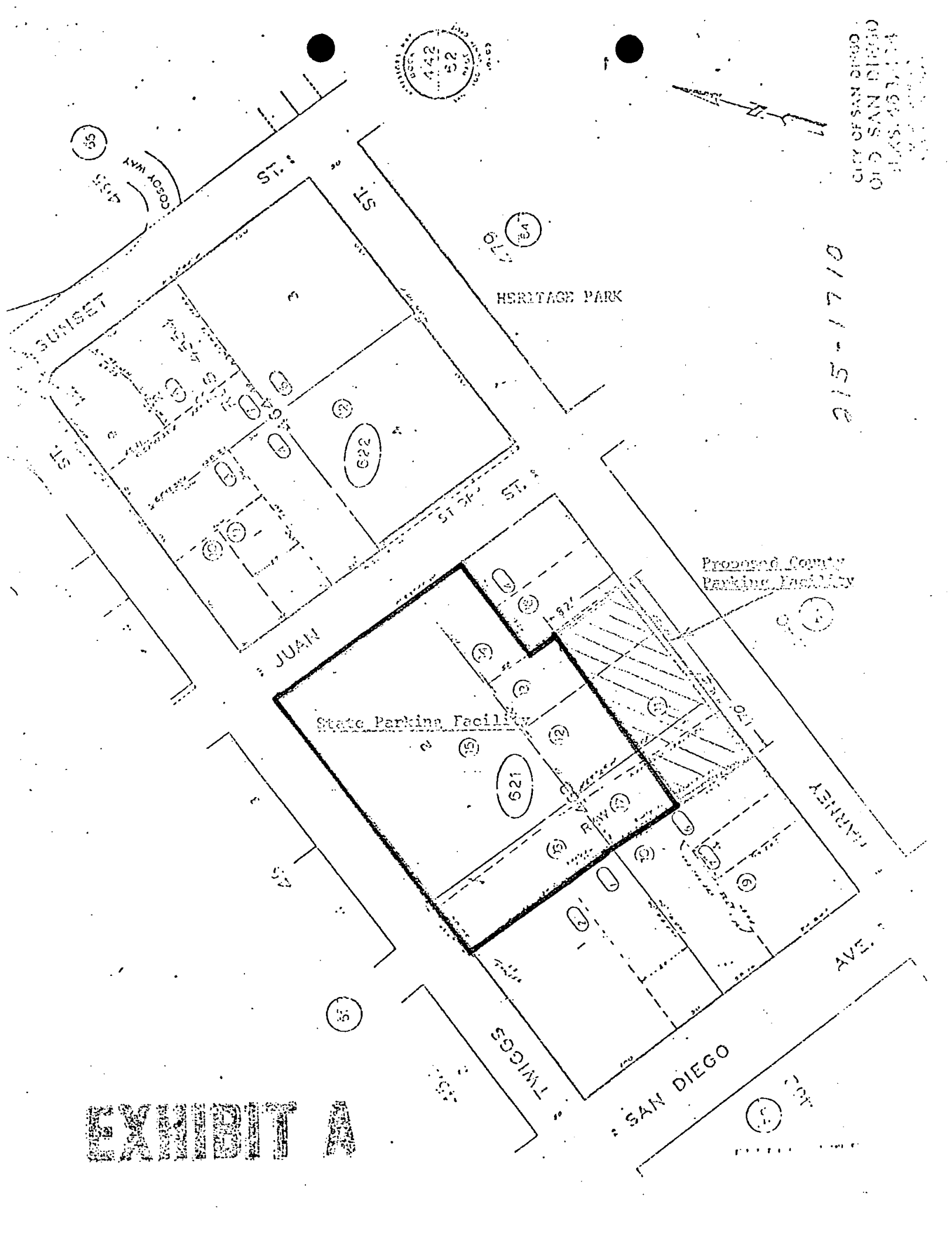
JOHN W. WITT, CITY ATTORNEY

BY 
DEPUTY

218120

01715

SECRET



COPY

SECOND AMENDMENT TO
PERMIT AGREEMENT

THIS SECOND AMENDMENT TO PERMIT AGREEMENT is executed by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY" and "THE STATE OF CALIFORNIA, DEPARTMENT OF PARK AND RECREATION," hereinafter called "PERMITTEE."

WHEREAS, CITY and PERMITTEE heretofore entered into a "Permit Agreement" executed by CITY on April 6, 1977, a copy of which is on file in the Office of the City Clerk as Document 758936.

WHEREAS, CITY and PERMITTEE intend to amend said Permit Agreement as set forth below.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, CITY and PERMITTEE agree as follows:

A. Exhibit "A" of said Agreement is hereby deleted and Exhibit "A" attached hereto is hereby substituted therefor.

B. The following sections are hereby added to the agreement:

9. Political Activities. The permit area shall be used exclusively for the purposes specified in Section 1, Uses, hereof. The permit area 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.
10. Acceptance of Premises. By signing this agreement, Permittee 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. Permittee agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this agreement. Permittee further acknowledges that the premises are in the condition called for by this agreement, that CITY has performed all work with respect to the premises, and that Permittee does not hold CITY responsible for any defects in the premises.
11. Improvements/Alterations. No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by Permittee without prior written approval by the City Manager. Further, Permittee 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 and that such approval shall not be unreasonably withheld. This provision shall not relieve Permittee 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

DOCUMENT NO. **88-281591**
FILED **MAR 1 8 1993**
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

COPY

obligated by this agreement to make or assume any expense for any improvements or alterations.

12. Signs. Permittee 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 CITY. If any such unauthorized item is found on the premises, Permittee agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at Permittee's cost.
13. Hazardous/Toxic Waste. Permittee will not allow the installation of underground storage tanks or release of hazardous substances in, on, or under or from the premises. 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, Permittee shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

Permittee agrees to assume the defense of, indemnify and hold the CITY harmless from any and all claims, costs and expenses related to environmental liabilities resulting from Permittee's operations on the premises, 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.

14. Equal Opportunity. The State of California further agrees to monitor any and all contractors, subcontractors, independent contractors and employees for compliance with Equal Opportunity and nondiscrimination requirements and to hold CITY harmless from any and all liability, claims, damages, or injuries to any person in connection with any acts or omissions rising therefrom.

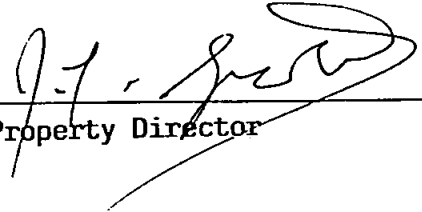
Except as modified herein, all other terms and conditions of the Permit Agreement shall remain in full force and effect.

This Second Amendment to Permit Agreement shall be effective on the first day of the calendar month following execution by the City Manager.

THE CITY OF SAN DIEGO

Date MAR 15 1993

By


Property Director

STATE OF CALIFORNIA, Department of Park & Recreation

Date

Oct. 27, 1992

By


Edward T. Auman

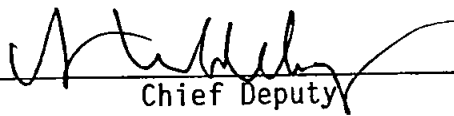
Date

By

APPROVED AS TO FORM AND LEGALITY THIS 22 DAY OF March, 1993,

JOHN W. WITT, City Attorney

BY


Chief Deputy

CEBK:st(3)
10/12/92

21303

[illegible]

1st CONDM
OLD TOWN VILLAS
DOC 80-352326
(SEE SHT. 2)

MM 40 - OLD SAN DIEGO

1) Situs: FELSPAR ST, SAN DIEGO CA 92109
APN: 415-603-18-00 Rec Date: 08/01/1968 Total Value: \$655,000
County: SAN DIEGO, CA Sale Price: FULL Imprv Value: \$55,000
Use: COMMERCIAL (NEC) Document #: Land Value: \$600,000
Card #: Zoning: R-2 1st TD Amt: Lot Width: 325 Depth:
Map/Grid: 1247-H6 Old Map: 52-A4 Rooms: Bedrms: Lot Area: 24,829
Phone: 415/821-6425 Stories: Full Baths: Half: Bldg/Liv Area:
Owners: TAYLOR VERNON E Yr Built/Eff:
OBRIEN ERMA T Pool:
Mail: PO BOX 37000; SAN FRANCISCO CA 94137-0001 B900 C/O TAX DEPT #10067-6R

Sept 4 lunch

need staff present -

415-601 thru 603

415-60

1"=100'



SAN DIEGO COUNTY
ASSESSOR'S MAP
BOOK 415 PAGE 60 MAPPED FOR ASSESSMENT PURPOSES ONLY

54

54

54

54

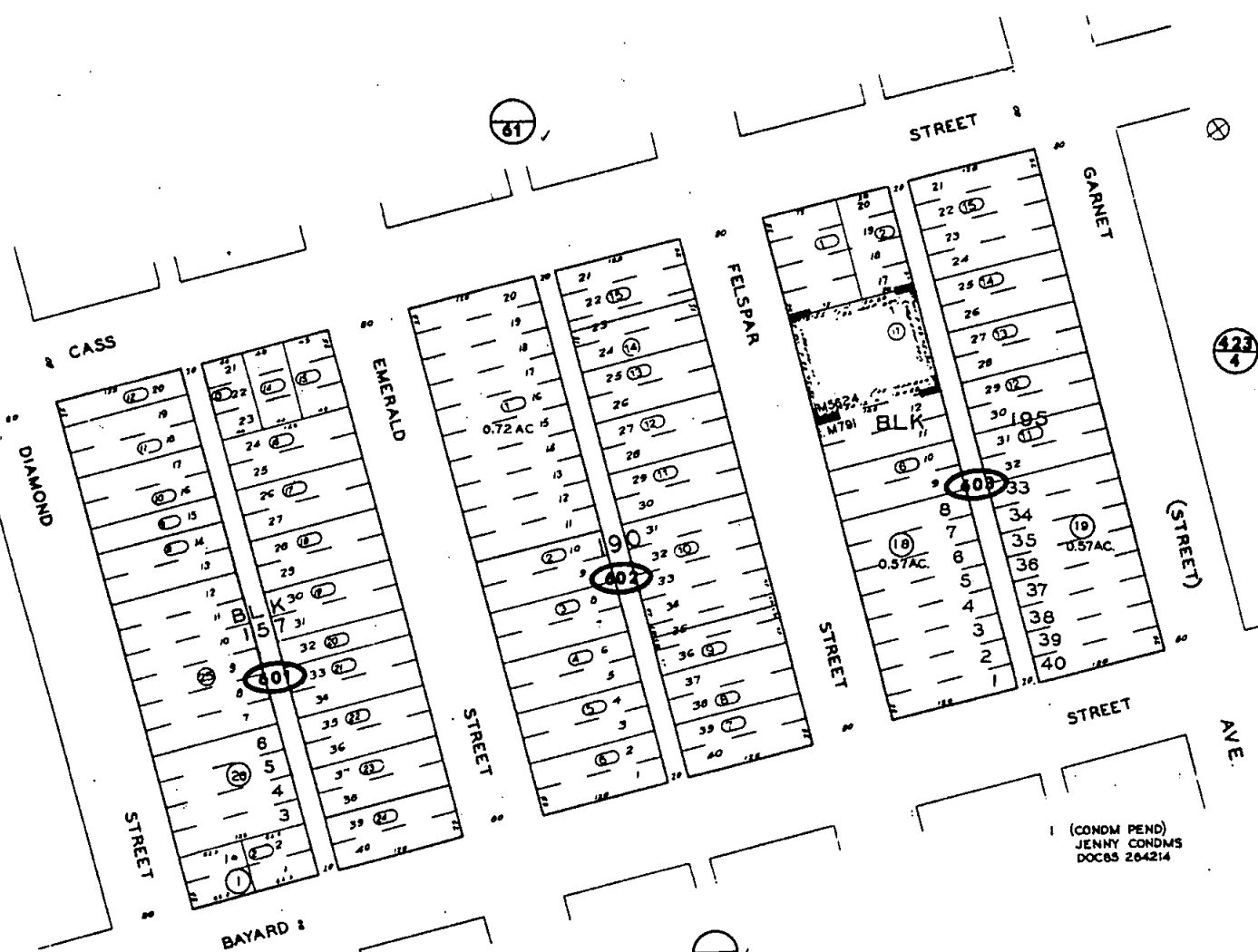
54

54

54

54

54



423

59

11/13/85

CHANGES			
BLK	OLD	NEW	CUT
601	5-7	25	691605
603	5/16	17	72 538
601	3/4	26	78 3346
603	1/2	18	80 2524

(CONDM PEND)
JENNY CONDOMS
DOC85 264214

MAP 5624 - VINES SUB
MAP 791 - PACIFIC BEACH AMENDED MAP - BLKS 157, 190 & 195

SECOND AMENDMENT TO PERMIT AGREEMENT

This agreement is executed by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and the STATE OF CALIFORNIA, DEPARTMENT OF PARKS AND RECREATION, hereinafter called "PERMITTEE."

WHEREAS, by Permit Agreement executed July 3, 1973, filed as Document No. 745002 in the Office of the City Clerk, CITY rented to PERMITTEE certain real property located in a portion of Block 463, Old San Diego, as more particularly described in said Permit Agreement, and which Permit Agreement was amended by that certain agreement filed in said Office of the City Clerk as Document No. 759471; and

WHEREAS, the parties hereto now desire to further amend said Permit Agreement in the manner herein set forth;

NOW, THEREFORE, CITY and PERMITTEE hereby agree:

- I. The word free is hereby deleted from Section A., DEMISE.
- II. Section B.1., CONSIDERATION, is hereby deleted in its entirety and the following is substituted therefor:

"1. CONSIDERATION. PERMITTEE shall operate, maintain, and repair the premises to the reasonable satisfaction of the City Manager and at no cost to CITY. As additional consideration, PERMITTEE shall pay CITY fifty percent (50%) of all gross income from fees charged to park on the premises. Payments are due monthly in arrears on or before the last day of the calendar month following the calendar month in which the gross income was earned. Payments postmarked one to 15 days past the due date will be subject to a five percent (5%) late charge; an additional five percent (5%) late charge will apply if 16 or more days past due. PERMITTEE shall maintain complete and accurate financial records of the income derived from the premises and agrees to make such records available to CITY auditors at all reasonable times."

- III. Section B.8., HOLD HARMLESS, is hereby deleted in its entirety and the following is substituted therefor:

"8. INSURANCE AND HOLD HARMLESS. PERMITTEE certifies that it is self-insured against public liability and property damage claims. PERMITTEE agrees to defend, indemnify, protect, and hold CITY and its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE'S employees, agents, or officers, which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of PERMITTEE and its agents, officers, or employees in performing the work or services herein and all expenses of investigating and defending against same; provided, however, that PERMITTEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the CITY, its agents, officers, or employees."

IV. This Second Amendment to Permit Agreement shall be effective upon the first day of the calendar month following execution hereof by CITY.

V. Nothing herein is intended to amend any other covenant or condition of said Permit Agreement.

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

THE CITY OF SAN DIEGO

Date _____

By _____
Deputy City Manager

STATE OF CALIFORNIA,
DEPARTMENT OF PARKS AND
RECREATION

Date _____

By _____

APPROVED as to form and legality this _____ day of _____, 1991.

By _____
Deputy City Attorney

PTC:mr(2)