

COPY

THE CITY OF SAN DIEGO

HOUSE OF HOSPITALITY ASSOCIATION, INC.

Nonprofit Lease

DOCUMENT NO RR-289141

FILED SEP 08 1997

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

LEASE OUTLINE

SECTION 1: USES	1
1.1 <u>Premises</u>	1
1.2 <u>Uses</u>	1
1.3 <u>Related Council Actions</u>	3
1.4 <u>Quiet Possession</u>	3
1.5 <u>Easements and Reservations</u>	3
1.6 <u>Competent Management</u>	4
1.7 <u>Operation of Facilities</u>	4
1.8 <u>Rates and Charges</u>	4
1.9 <u>CITY Use</u>	4
1.10 <u>Political Activities</u>	4
1.11 <u>Public Use</u>	4
1.12 <u>Parking</u>	5
SECTION 2: TERM	5
2.1 <u>Commencement</u>	5
2.2 <u>Holdover</u>	5
2.3 <u>Surrender of Premises</u>	6
SECTION 3: RENT	6
3.1 <u>Time and Place of Payment</u>	6
3.2 <u>Rent</u>	6
3.3 <u>Payment Procedure</u>	10
3.4 <u>Gross Income</u>	11
3.5 <u>Inspection of Records</u>	12
3.6 <u>Delinquent Rent and Audit Fees</u>	14
3.7 <u>Unauthorized Use Charge</u>	15
3.8 <u>Reserve Account</u>	15
SECTION 4: ASSIGNMENT	15
4.1 <u>Time is of Essence; Provisions Binding on Successors</u>	15
4.2 <u>Assignment and Subletting</u>	15
4.3 <u>Encumbrance</u>	16
4.4 <u>Defaults and Remedies</u>	17
4.5 <u>Eminent Domain</u>	19

SECTION 5: INSURANCE RISKS/SECURITY	20
5.1 <u>Indemnity</u>	20
5.2 <u>Insurance</u>	20
5.3 <u>Waste, Damage, or Destruction</u>	22
 SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS	22
6.1 <u>Acceptance of Premises</u>	22
6.2 <u>Entry and Inspection</u>	23
6.3 <u>Maintenance</u>	23
6.4 <u>Improvements/Alterations</u>	24
6.5 <u>Utilities</u>	24
6.6 <u>Construction Bond</u>	24
6.7 <u>Liens</u>	24
6.8 <u>Taxes</u>	25
6.9 <u>Signs</u>	25
6.10 <u>Ownership of Improvements and Personal Property</u>	25
6.11 <u>Unavoidable Delay</u>	26
6.12 <u>Hazardous/Toxic Waste</u>	26
 SECTION 7: GENERAL PROVISIONS	28
7.1 <u>Notices</u>	28
7.2 <u>Compliance with Law</u>	28
7.3 <u>CITY Approval</u>	28
7.4 <u>Nondiscrimination</u>	29
7.5 <u>Compliance with CITY'S Equal Opportunity Contracting Program</u>	29
7.6 <u>Partial Invalidity</u>	30
7.7 <u>Legal Fees</u>	30
7.8 <u>Number and Gender</u>	30
7.9 <u>Captions</u>	30
7.10 <u>Entire Understanding</u>	30
7.11 <u>CITY Employee Participation Policy</u>	31
7.12 <u>Drug-free Workplace</u>	31
7.13 <u>Disabled Access Compliance</u>	32
7.14 <u>Corporate Authority</u>	32
7.15 <u>Standard of Employees</u>	33
7.16 <u>Supersedure</u>	33
7.17 <u>Plastic Food Containers</u>	33

SECTION 9: EXHIBITS	36
9.1 <u>Leased Premises - Exhibit "A"</u>	36
9.2 <u>Garden Terraces - Exhibit "B"</u>	39
9.3 <u>Public Access to Certain Public Catering Areas - Exhibit "C"</u>	40
9.4 <u>Maintenance Responsibilities - Exhibit "D"</u>	41
9.5 <u>Description and Listing of CITY-owned Personal Property</u> . . .	42
9.6 <u>Corporate Name</u>	44
9.7 <u>Schedule of Days and Hours of Operation</u>	45
9.8 <u>Schedule of Rates and Charges</u>	46

**CITY OF SAN DIEGO
NONPROFIT LEASE**

THIS LEASE AGREEMENT is executed between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and the HOUSE OF HOSPITALITY ASSOCIATION, INC., a California nonprofit corporation, hereinafter called "LESSEE."

SECTION 1: USES

- 1.1 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 as the House of Hospitality building, 1549 El Prado, Balboa Park, and shown on Exhibit "A" attached hereto and by this reference made part of this agreement. The premises shall also include the Upper Dining Terrace shown on the attached Exhibit "B". Said real property is hereinafter called the "premises" or "leased premises."
- 1.2 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of operating and maintaining the premises on a preferential but nonexclusive basis as a social, cultural, and educational center for the reception of the citizens of San Diego and visitors, with the right to distribute and/or sell tourist information regarding Balboa Park and San Diego, and the right to operate a full-service restaurant and catering business limited primarily to customers in Balboa Park, 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. The term "full-service restaurant", as used herein, shall mean a restaurant that serves breakfast, lunch, and dinner meals that are served by a waiter or waitress at the customer's table. In no event shall "full-service restaurant" include a fast-food establishment. Catering services provided to customers outside Balboa Park ("offsite catering") shall be limited to twenty-five percent (25%) of the catering activities undertaken by LESSEE, as evidenced by the ratio of gross revenues generated by offsite catering to the total revenues from all catering activities. LESSEE shall maintain written records that report revenues from Balboa Park and offsite catering activities that conform to generally

accepted accounting principles, with such records available for CITY'S inspection upon CITY giving reasonable advance notice to LESSEE. LESSEE shall have exclusive rights to restaurant and catering operations only in the leased premises and adjacent grounds outside the leased premises, which grounds consist of the Middle and Lower Garden Terraces as shown on the attached Exhibit "B". Except for catering rights to the Lower and Middle Garden Terraces, LESSEE'S exclusive rights to provide goods and services in Balboa Park shall not extend beyond the leased premises.

Those areas of the leased premises and grounds designated on the attached Exhibit "B" as "public catering areas" shall be available to LESSEE for LESSEE'S primary use. LESSEE may reserve and rent out these public catering areas for meetings, banquets, weddings, and similar functions requesting full, partial, or no food and/or beverage service.

In addition to the foregoing, LESSEE'S subtenants may hold self-hosted functions in their respective subleased premises, at which they provide their own food and beverages. CITY, at no charge from LESSEE, may host functions related to CITY business in public catering areas at which CITY provides its own food and beverages. Such functions are to be scheduled so as not to conflict with other events catered by LESSEE.

Notwithstanding the foregoing, at no time shall a catering service, other than that provided by LESSEE, cater food or beverages anywhere in the building without written permission from LESSEE.

Notwithstanding the foregoing, LESSEE'S use of those public catering areas identified as Courtyard, South Balcony, and Middle and Lower Garden Terraces on the attached Exhibit "B" shall be subject to additional conditions and restrictions to ensure reasonable public access, as enumerated in the attached Exhibit "C".

The use of the premises for any unauthorized purpose shall constitute a substantial default and subject this lease to termination at the sole option of the CITY.

LESSEE covenants and agrees to use the premises throughout the term hereof for the above-specified purposes and to diligently conduct the business thereon to produce the most gross income that can be reasonably expected. Failure to continuously use the premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY. All income from LESSEE'S

operations shall be utilized solely and exclusively for operating and maintaining the premises.

1.3 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.

1.4 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold, and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises.

1.5 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.
- c. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY exercising the rights reserved in this

section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

- 1.6 Competent Management. Throughout the term of this lease agreement, LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a social, cultural, and educational center and related activities in a fiscally responsible manner.
- 1.7 Operation of Facilities. A regular schedule of days and hours of operation shall be established by LESSEE to best serve the public as set forth in Section 9.7, Schedule of Days and Hours of Operation, hereof. Any changes in this schedule shall be subject to the prior written approval of the City Manager or his authorized representative. LESSEE shall diligently and in a creditable manner furnish services to the public in conformity with all applicable rules and regulations of the City of San Diego.
- 1.8 Rates and Charges. All charges for merchandise and services or facilities on said premises shall be in accordance with the schedule set forth in Section 9.8, Schedule of Rates and Charges, hereof. Any changes in said schedule are subject to prior written approval by the City Manager or his authorized representative.
- 1.9 CITY Use. The premises shall be available to CITY for civic events and special programs, free of charge, except where LESSEE has scheduled events or programs. After every CITY use, the premises shall be left in the same condition found, and LESSEE shall not be required to incur any additional costs by reason of CITY use.
- 1.10 Political Activities. The leased premises shall be used exclusively for the purposes specified in Section 1.2, 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.
- 1.11 Public Use. The general public shall not be wholly or permanently excluded from any portion of the premises. LESSEE may develop reasonable restrictions for the facility use provided they are consistent

with the rights of the general public and are designed to allow LESSEE to use the premises for the purposes specified herein. LESSEE agrees that all activities conducted on the premises will be as stated in Section 1.2, Uses, hereof.

LESSEE shall, at all times during the lease term, maintain a CITY-approved sign identifying the property as City-owned and available for public use consistent with the terms of this lease. The sign shall be installed by LESSEE at a location agreeable to CITY.

- 1.12 Parking. City recognizes LESSEE'S desire for parking for its restaurant customers, and CITY will use its best efforts to designate a public parking lot in Balboa Park for LESSEE'S restaurant customers' non-exclusive use. Throughout the term of this lease, the Park and Recreation Department of CITY shall issue LESSEE a right-of-entry permit at no charge designating a public parking lot in Balboa Park from which LESSEE can operate valet parking or shuttle service to and from the restaurant. LESSEE understands that it may not reserve parking spaces and that availability of parking spaces is not guaranteed. Upon prior notice to LESSEE, the Park and Recreation Department may designate a different public parking lot in Balboa Park, and the choice of parking lot shall be determined in the sole and absolute discretion of the department. Any restaurant parking and directional signs used by LESSEE shall be portable and set up and removed each day. The size, design, and placement of signs shall be subject to prior approval by the Park and Recreation Department.

SECTION 2: TERM

- 2.1 Commencement. The term of this agreement shall be twenty-one (21) years commencing on the first day of the calendar month following execution by the City Manager. "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager.
- 2.2 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable

increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.

- 2.3 Surrender of Premises. At termination of this lease for any reason, 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 free and clear of all liens and encumbrances and in a decent, safe, and sanitary condition.

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

SECTION 3: RENT

- 3.1 Time and Place of Payment. All rents required herein must 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 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.

3.2 Rent.

- a. Flat Rate Rent. The rent for the first two (2) years following the effective date of this lease is One Thousand Dollars (\$1,000) per month with no percentage rent.
- b. Minimum Rent. The annual minimum rent established for the third, fourth, and fifth years following the effective date of this lease is Eighteen Thousand Dollars (\$18,000), which is Fifteen Hundred Dollars (\$1,500) on a monthly installment basis. However, CITY and

LESSEE may mutually agree upon a lower or higher annual minimum rent after reviewing LESSEE'S income statements for the first two (2) years of this lease. In the absence of agreement, the annual minimum rent for years three, four, and five shall be Eighteen Thousand Dollars (\$18,000), or CITY and/or LESSEE may elect to submit the matter to appraisal using the procedure for percentage rent set forth in Section 3.2f below.

If the minimum rent is greater than the percentage rent on a calendar month basis, then 1/12 of the annual minimum rent is required to be paid for that month. Minimum rents are to be paid in monthly installments on or before the day of the calendar month when percentage rents are due pursuant to Section 3.3, Payment Procedure, hereof.

Provided, however, in the event that the combined total percentage rent payments and monthly installments of the minimum rent during any lease year equal or exceed the required annual minimum rent for that year, then for the balance of such year, LESSEE shall discontinue paying monthly installments of the minimum rent and shall continue paying only percentage rents until the beginning of the ensuing lease year. Provided further, if in any lease year, minimum rents paid plus percentage rents paid exceed the annual minimum rent and also exceed the rent which would have been paid if the percentage rent had been paid on total gross income, the excess over the total rent owed shall be credited against the next payable rent as it becomes due. It is the intent of this provision that LESSEE shall pay monthly installments of the annual minimum rent as a guarantee against the percentage rent requirement and that the greater of the two requirements, minimum or percentage, whichever occurs throughout the term, shall prevail on an annual basis.

- c. Minimum Rent Adjustment. Effective at the beginning of the first day of the sixth lease year of this lease and at the beginning of each two and one-half year period thereafter during the term, and at such other times, if any, that CITY and LESSEE may mutually agree upon, the annual minimum rent shall be eighty percent (80%) of the annual average of actual rents paid or accrued during the two (2) years preceding the adjustment date. Said annual minimum rent shall then be divided by twelve (12) to establish the new monthly minimum rent. It is recognized that such adjustments shall be calculated by CITY upon completion of payments due for the preceding rental period in order to determine the amount of the adjustment to be

effective on the dates stated herein. Until such calculations are completed, LESSEE shall continue paying monthly minimum rents at the prior rate. Any additional rents determined by the adjustment to be due for the months previously paid at the prior rate shall be paid to CITY within thirty (30) days following written notice.

- d. Percentage Rents. Commencing with the third year of this lease, percentage rents will be calculated on a calendar month basis and will consist of the following percentage(s) of the gross income resulting from the use of the premises:

<u>Percentage(s)</u>	<u>Business Activities</u>
Six Percent (6%)	Of all authorized activities.

However, CITY and LESSEE may mutually agree upon a lower or higher percentage rent after reviewing LESSEE'S income statements for the first two (2) years of this lease. In the absence of agreement, the percentage rent for years three, four, and five shall be six percent (6%), or CITY and/or LESSEE may elect to submit the matter to appraisal as set forth in Section 3.2f below. The City Manager, in his sole discretion, may approve another percentage rate or flat rate of rent for each other incidental service or operation supplementary to the permitted use(s) set forth under Section 1.2, Uses, hereof as may be approved in writing by the City Manager prior to commencement of such other service(s) or operation(s). Provided, however, any activity conducted on the premises without prior approval by the City Manager shall be subject to the requirements of Section 3.7, Unauthorized Use Charge, hereof.

- e. Percentage Rate Adjustment. At least six (6) months prior to the end of the fifth year of the term of this agreement and at least six (6) months prior to the end of each five-year period thereafter, and at such other times, if any, that CITY and LESSEE may mutually agree upon, the parties hereto, by mutual consent or through appraisal as hereinafter set forth, will adjust the percentage rate(s) of LESSEE'S gross income to be paid CITY effective upon the first day of the succeeding five-year or other mutually agreed upon period. Said adjustment will be made to the degree necessary to provide a fair rental to CITY as determined by the City Manager and LESSEE, taking into consideration the criteria set forth in Section 3.2f. below. In the event that such adjustment is not made by mutual consent prior to two (2) months before the end of said

five-year or other mutually agreed upon period, then the parties hereto will refer the matter to appraisal under the terms hereinafter set forth.

- f. Percentage Rate Appraisal. In the event the parties do not agree upon the amount of adjustment to said percentage rate(s) as provided for in the previous section, then the adjustment shall be determined by a qualified professional independent real estate appraiser selected by mutual consent of the parties to this agreement from the list of appraisers approved by CITY. CITY and LESSEE agree to equally share the cost of the mutually selected appraiser. In the event the parties do not reach agreement as to selection of a mutually acceptable appraiser, then CITY and LESSEE shall each select a qualified professional independent real estate appraiser who in turn will select a third qualified professional independent real estate appraiser, which third appraiser will be employed to set the percentage rates to be applied to LESSEE'S percentage rate adjustment. In the event a mutually acceptable third appraiser is not agreed upon between the two selected appraisers within ten (10) days, then the third appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his or her individual capacity, upon application by either CITY or LESSEE with prior notice thereof to the other party. Said third appraiser shall complete the assignment within sixty (60) days of appointment. Each party shall pay the cost of its own selected appraiser, and both CITY and LESSEE agree to equally share the cost of the third mutually selected or court-appointed appraiser. CITY and LESSEE agree to accept and be bound by the percentage rate(s) determined by the appraiser selected or appointed to complete the assignment.

In establishing the percentage rate(s) for the items under controversy, the appraiser shall consider CITY'S property as a fee simple absolute estate, and as vacant and available for a full lease term equal to the initial full term of lease on the open market for the authorized purposes of this lease at the commencement of the rental period under review. The appraiser will be guided by prevailing market percentage rates for similar operations primarily within the Southern California area, if available. In the event the appraisal is not completed in time to permit the percentage adjustment to be made upon the applicable commencement of the five-year or other mutually agreed upon period, LESSEE agrees to continue to pay rent in accordance with the then-existing lease rate(s), and the

adjustment, when determined, will be retroactive to said effective date of rental adjustment as hereinabove established. Any deficiency shall be paid by LESSEE to CITY within sixty (60) days after determination of the new percentage rate(s). Notwithstanding the foregoing, the City Manager, in his sole discretion, may determine that no percentage rate adjustment is necessary and waive the requirement for the appraisal process for any specific adjustment period.

3.3 Payment Procedure. Commencing with the third year of this lease, on or before the last day of the calendar month following the calendar month in which the gross income subject to rents was earned, LESSEE shall provide CITY with a correct statement together with a payment of rent on all applicable gross receipts in a form selected by CITY. The statement will be signed by LESSEE or its authorized agent attesting to the accuracy thereof, which shall be legally binding upon LESSEE. Each statement will indicate or include:

- a. One-twelfth of the annual minimum rent until the full annual rent is achieved in any lease year.
- b. Total gross receipts for the subject month, itemized as to business categories for which separate percentage rents are established. A gross receipts breakdown of each business conducted on the premises must be included when a reported category shows gross income to be from more than one business operation.
- c. The percentage rental due CITY, computed and totaled.
- d. The accumulated total of all rents previously paid for the current lease year.
- e. Payment in the greater of the two following amounts:

One-twelfth of the annual minimum rent or the total percentage rent due CITY computed as described in this section.

Any rents due CITY from sublease activities or operations will begin with the earliest of the following dates (whether or not prior approval was given by CITY as required by this lease and whether or not a separate percentage rent was established by CITY):

- (1) Sublease commencement date.

(2) Physical occupancy date.

(3) Earliest activity date (i.e., sale of goods, solicitation of business, construction or alterations, etc.).

3.4 Gross Income. "Gross income" or "gross receipts", as used in this lease, shall include all income resulting from occupancy of the leased premises from whatever source derived whether received or to become due. Provided, however, gross income shall not include federal, state, or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by LESSEE in computing gross income. Gross income shall not include refunds for goods returned for resale on the premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of LESSEE. The percentage rent shall be calculated and paid by LESSEE on the basis of said gross income whether the income is received by LESSEE or by any sublessee, permittee or licensee, or their agents, and all gross income received by any sublessee, permittee, licensee, or other party as a result of occupancy of said premises or the operation thereof shall be regarded as gross income of LESSEE for the purpose of calculating the percentage rent hereunder required to be paid by LESSEE to CITY, except as may be otherwise specified by or pursuant to this lease. In addition, gross income shall not include the following:

- a. Sales to LESSEE'S employees of uniforms, T-shirts, hats, etc., for which LESSEE receives no profit but is reimbursed a reasonable carrying charge.
- b. Promotional items for which LESSEE receives no payment or any other consideration whatsoever.
- c. The exchange of merchandise between restaurants and other operations of LESSEE where such exchanges are made solely for the convenient operation of LESSEE'S entire business and not for the purpose of consummating a sale which has been made at, in, on, or from the premises or for the purpose of depriving CITY of the benefit of a sale which otherwise would have been made at, in, on, or from the premises.

- d. The amount of any discounts, allowances, credits, refunds, or exchanges when such discounts, etc., are normal or typical to a restaurant operation (or approved in advance by the City Manager).
- e. Sales of trade fixtures, bulk sales of stock-in-trade, or operating equipment after use thereof in the conduct of LESSEE'S business in the premises.
- f. Proceeds of casualty insurance claims.
- g. All sums and credits received in settlement of claims for loss or damage to merchandise.

3.5 Inspection of Records

- a. Records. LESSEE shall, at all times during the lease term, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, or other documents as necessary to allow CITY to easily determine the total gross income.

Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day.

In the event of admission charges or rentals, LESSEE shall issue serially numbered tickets for each such admission or rental and shall keep an adequate record of such tickets, as well as a record of unissued tickets.

All retail sales and charges may be recorded by a system other than cash registers or other comparable devices provided such system is approved by CITY.

- b. Financial Statements. Within sixty (60) days after the end of each lease year as previously established herein, LESSEE will, at its

expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of rents paid CITY for the year are classified according to the categories of business established for any percentage rental and for any other business conducted on or from the premises. Said statement shall be signed by LESSEE or its authorized agent attesting to the accuracy thereof, which shall be legally binding upon LESSEE.

- c. Right to Inspect. All LESSEE'S books of account, records, and supporting documentation, as described under Section 3.5a. hereinabove, will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. Said books and records shall be maintained separate from all other accounts not relating to the leased premises. The CITY, at its discretion, shall have the right to inspect and audit the business of LESSEE, its agents, sublessees, concessionaires, and licensees operating on and in connection with the premises as necessary and appropriate for CITY to determine the amounts of rent due CITY in compliance with the requirements of this lease.

At CITY'S request, LESSEE shall promptly provide, at LESSEE'S expense, any necessary data to enable CITY to fully comply with all requirements of the state or federal government for lease information or reports concerning the premises. Such data will include, if required, a detailed breakdown of LESSEE'S receipts and expenses.

- d. Audit Cost. The full cost of CITY'S audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case LESSEE hereby agrees to pay CITY'S cost of audit(s):
- (1) The audit(s) reveal an underpayment of more than five percent (5%) or more than \$10,000, whichever is less, between the rent due as reported and paid by LESSEE pursuant to this lease and rent due as determined by the audit(s); or
 - (2) LESSEE has failed to maintain complete and true books, records, accounts, and supporting source documents in strict accordance with this section hereof.

LESSEE shall pay any deficiency determined by the audit(s) plus interest on such amount as defined in Section 3.6, Delinquent Rent and Audit Fees, hereof, within thirty (30) days of notice thereof by CITY. CITY will credit any overpayment against incoming rents.

Any overpayment determined after the end of this lease will be refunded by CITY within thirty (30) days of confirmation by the City Manager of the audit(s) findings.

- e. Default. LESSEE'S failure to keep complete and accurate records by means of double-entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with covenants of this lease, a breach of this lease and cause for termination.
- f. Annual Budget. LESSEE shall submit to the City Manager by April 1 of each year copies of documents evidencing the proposed programs and financial status of LESSEE for the upcoming fiscal year commencing July 1. Without limiting the generality of the foregoing, such documents shall include (i) a copy of LESSEE'S proposed programs, and (ii) a copy of a detailed operating budget showing expected sources of revenue and the nature of all proposed expenditures, including compensation for the director and staff of LESSEE. LESSEE specifically agrees that the City Manager shall have the sole and absolute discretion to approve, in writing, such annual budget.

- 3.6 Delinquent Rent and Audit Fees. 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. Notwithstanding the foregoing, in no event shall the charge for late payments of rent be less than Twenty-five Dollars (\$25).

In the event CITY audit(s), if applicable, discloses that the rent for the audited period(s) has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit(s) plus ten percent (10%) per year on the amount by which said rent was underpaid, in addition to the unpaid rents as shown to be due CITY, as compensation to CITY for administrative costs and loss of interest as previously described herein. In the event CITY audit(s) discloses that the unpaid rent is less than five percent (5%) of the total rent, and should LESSEE fail to pay said unpaid rent within thirty (30) days after written notice from CITY, an additional fee of ten percent (10%) of said unpaid amount shall be added to the unpaid amount to compensate CITY for costs and losses due to such nonpayment. LESSEE agrees to pay such amounts and further agrees that the specific late

charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. 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.

- 3.7 Unauthorized Use Charge. LESSEE shall pay CITY twenty percent (20%) of the gross receipts for any service or use that is not permitted by this lease. This payment is subject to the due date provided in this lease for rental payments and the provision for delinquent rent. The existence of the twenty percent (20%) charge in this clause and the payment of this charge or any part of it, does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the leased premises.
- 3.8 Reserve Account. Any income received by LESSEE from lease operations over and above operating expenses, as set forth in LESSEE'S annual budget required in Section 3.5f. hereof, shall be deposited into a reserve account and utilized by LESSEE, as needed, for capital improvements to the leased premises.

SECTION 4: ASSIGNMENT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants, and conditions of this lease, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 4.2 Assignment and Subletting. LESSEE shall not assign this lease or any interest therein and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the written consent of the City Manager.

"Assignment" for the purposes of this clause shall include any transfer of any ownership interest in this lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners, or principals.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this agreement which are applicable to the rights acquired. The City Manager shall require, as a condition to approval of any sublease of the majority portion of the leasehold or any assignment, that this lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have an interest in this lease as a sublessee or assignee. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

Upon the effective date of this lease, CITY hereby assigns its interest to LESSEE in that certain lease option agreement executed on September 9, 1996, with Lumen Ventures, Ltd., City Clerk Document 00-18342, for the restaurant and catering operation in the leased premises.

- 4.3 Encumbrance. The City Manager shall have the sole and absolute discretion to approve, disapprove, or condition any proposed encumbrances, including but not limited to amending the lease to provide then-current rents and provisions. Such encumbrances shall be for the exclusive purpose of development of the premises.

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, 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.

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 or entity in the opinion of CITY. Any deed of trust, mortgage, or other security instrument shall be subject to all of the terms, covenants, and conditions of this lease and shall not be deemed to amend or alter any of the terms, covenants, or conditions hereof. Pursuant to City Charter Section 225, the City Manager must

review and approve every person or entity which will have a financial interest in this lease. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

4.4 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 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 rights through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Section 4.4a.(1), hereinabove 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 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 of Lender. 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 to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.
- c. Abandonment by LESSEE. Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.
- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. 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, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after

such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

4.5 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 (or beneficiary or mortgagee) will be as follows:

- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. In the event of a partial taking, if, in the opinion of CITY, the remaining part 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 minimum rent shall be equitably reduced 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. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- 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, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.
- 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

5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold the CITY, 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 LESSEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the leasehold or the work and operations to be performed under this agreement, and all expenses of investigating and defending against same; provided, however, that LESSEE'S 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.

5.2 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, including liquor liability coverage, in the amount of not less than One Million Dollars (\$1,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises.

(2) Fire legal insurance coverage on all insurable property on the premises in the amount of not less than Two Hundred Fifty Thousand Dollars (\$250,000). Subtenants of LESSEE shall also each carry fire legal insurance coverage in the amount of not less than \$250,000 on their respective subleased 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, protect CITY against any legal costs in defending claims, 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.

All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. 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, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- (3) Accident Reports. LESSEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the premises. This report 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, 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.

Notwithstanding the preceding provisions of this Subsection (4), if LESSEE fails or refuses to take out or maintain insurance as required in this lease or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to

LESSEE, and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.3 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 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 any cause which puts the premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage; or, at CITY'S option, LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, hereof.

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

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this lease. LESSEE further acknowledges that 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, whether apparent or latent, in the premises, including the presence of any hazardous wastes.

6.2 Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, 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 (10) days' written notice to LESSEE, to have any 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. Further, if at any time 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 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.

6.3 Maintenance. LESSEE and CITY agree that responsibility for maintenance of the premises shall be performed by LESSEE or CITY in conformance with Exhibit "D" hereto, which is by this reference incorporated herein. All repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy, and sanitary condition shall be performed in an expeditious manner as needed, and in compliance with all applicable laws. With regard to CITY'S obligations for maintenance, the City Manager shall propose in the CITY'S annual budget that funds be made available for anticipated repairs and maintenance responsibilities. However, failure by the City Manager to propose adequate funds or failure by the City Council to approve a budget with funds adequate to perform such maintenance and repair responsibilities shall not constitute a default under this lease, and CITY shall not be responsible for any damage or liability which may result or be alleged to result from failure to provide such adequate funds. When CITY is informed of maintenance or repair requirements by LESSEE, the City Manager shall use his or her good faith efforts to request, if necessary, that the City Council authorize the expenditure of funds to perform such maintenance or repairs. As provided for above, however, failure by CITY to provide funding in any particular fiscal year, or at the request of the City Manager, shall not result in any liability for alleged or actual damages on the part of CITY.

- 6.4 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. 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.
- 6.5 Utilities. Except as hereinafter provided, LESSEE agrees to order, obtain, and pay for all utilities necessary for operation of the premises. All utilities will be installed underground if required by CITY. CITY shall provide reasonable amounts of water for use on the leased premises, except LESSEE shall pay for water to the restaurant space. The City Manager shall have sole and absolute discretion to determine what constitutes a "reasonable amount" for purposes of this paragraph.
- 6.6 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.
- 6.7 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 on or to the premises and the costs of defending against such claims, including reasonable attorney's fees.

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

- a. take all actions necessary to record a valid release of lien, or
 - b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.
- 6.8 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.
- 6.9 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.
- 6.10 Ownership of Improvements and Personal Property.
- a. Any and all improvements, trade fixtures, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE shall at lease expiration or termination be deemed to be part of the premises and shall become, at CITY'S option, 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 improvements, trade fixtures, structures, and installations, CITY shall so notify LESSEE thirty (30) days prior to 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 on or before lease expiration or termination. 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 (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense. CITY-owned personal property as of the effective date of this lease is listed in Section 9.5 hereof.
 - d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
 - e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.
 - f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property 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.
- 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 rental 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. LESSEE will not allow the installation of additional underground storage tanks or release of hazardous substances in, on, 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 Office of the City Clerk as Document 769704-1 and by this reference is incorporated herein.

In the event of any release of a hazardous substance, LESSEE 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 agrees to assume the defense of, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S operations on the premises, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the premises, LESSEE shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if LESSEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the premises. In addition, LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of CITY.

At any time within the twelve (12) months before the expiration or earlier termination of this lease, LESSEE, at CITY'S sole option, shall cause an environmental assessment of the premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Said environmental assessment shall be obtained at the sole cost and expense of LESSEE and shall establish what, if any, hazardous substances exist on, in, or under the premises, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then said environmental assessment

shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. LESSEE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

SECTION 7: GENERAL PROVISIONS

7.1 Notices

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

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

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

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

- 7.2 **Compliance with Law.** 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.

- 7.3 **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.

7.4 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability 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.

7.5 Compliance with CITY'S Equal Opportunity Contracting Program.

- a. Equal Opportunity Contracting. LESSEE acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. LESSEE and all of its subcontractors are individually responsible to abide by its contents.

LESSEE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment on any basis prohibited by law.

LESSEE submitted and CITY acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that LESSEE will take to achieve the CITY'S commitment to equal employment opportunities.

LESSEE agrees to insert the foregoing provisions in all subcontracts for any work covered by this lease agreement so that such provisions will be binding upon each subcontractor. LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by the CITY'S Equal Opportunity Contracting Program staff.

- b. Local Business and Employment. LESSEE acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. LESSEE will, to the extent legally possible, solicit applications for

employment, and bids and proposals for subcontracts, for work associated with this lease agreement from local residents and firms as opportunities occur. LESSEE agrees to hire qualified local residents and firms whenever feasible.

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 agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.

- 7.6 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.
- 7.7 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 attorneys' fees.
- 7.8 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.
- 7.9 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. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. 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 LESSEES shall include a condition that the contract, agreement, or lease may, at the sole option of CITY, 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 Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The LESSEE'S policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs.
 - (4) The penalties that may be imposed upon employees' for drug abuse violations.
- c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

7.13 Disabled Access Compliance. LESSEE agrees to comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE'S compliance shall include but not necessarily be limited to the following:

- a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
- c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- d. Where required by law, LESSEE shall comply with CITY'S disabled access requirements by bringing up to code and making accessible any areas of the premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of LESSEE.
- e. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this lease.

7.14 Corporate Authority. Each individual executing this lease on behalf of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this lease is binding upon the corporation in accordance with its terms, and that 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.

7.15 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.

7.16 Supersedure. It is mutually agreed that this lease, upon commencement, supersedes and annuls that certain operating agreement executed on June 12, 1985, with the House of Hospitality Association, Inc., City Clerk Document RR-263321, which is hereafter void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under such agreement.

7.17 Plastic Food Containers.

- a. LESSEE shall not, after the effective date of this lease, provide to its customers any prepared food in polystyrene foam food packaging, nor shall LESSEE obtain or keep any polystyrene foam food packaging of a type, design, and condition suited for providing prepared food to its customers for consumption off the leased premises.
- b. LESSEE'S food packaging for prepared food to be consumed on the premises or for takeout food shall be biodegradable, and LESSEE shall provide upon demand evidence in the form of paid invoices to indicate the purchase of biodegradable containers in amounts sufficient to indicate compliance with this section. LESSEE'S food packaging for prepared food to be consumed off the premises shall be biodegradable unless LESSEE demonstrates to the satisfaction of CITY that biodegradable food packaging materials are not available for purchase in the quantities required by LESSEE. In the event that biodegradable food packaging materials are not available for purchase in the quantities required by LESSEE, LESSEE may limit its use of such packaging to the amount actually available.
- c. For purposes of this lease, the following definitions are applicable:
 - (1) "Prepared food" means foods or beverages which are prepared on the leased premises by cooking, chopping, slicing, mixing, freezing or squeezing, and which require no further preparation to be consumed.

- (2) "Food packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws and lids which are not intended for reuse, on or in which any foods or beverages are placed or packaged on the leased premises.
- (3) "Takeout food" means prepared foods or beverages requiring no further preparation to be consumed and which are purchased in order to be consumed off the leased premises.

SECTION 8: SIGNATURES

8.1 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 officers.

THE CITY OF SAN DIEGO

Date SEP081997

By Robert J. Collins
Robert J. Collins, Manager
Real Estate Assets Department

LESSEE: HOUSE OF HOSPITALITY
ASSOCIATION, INC.

Date 7/22/97

By _____
Roger L. Conlee, President

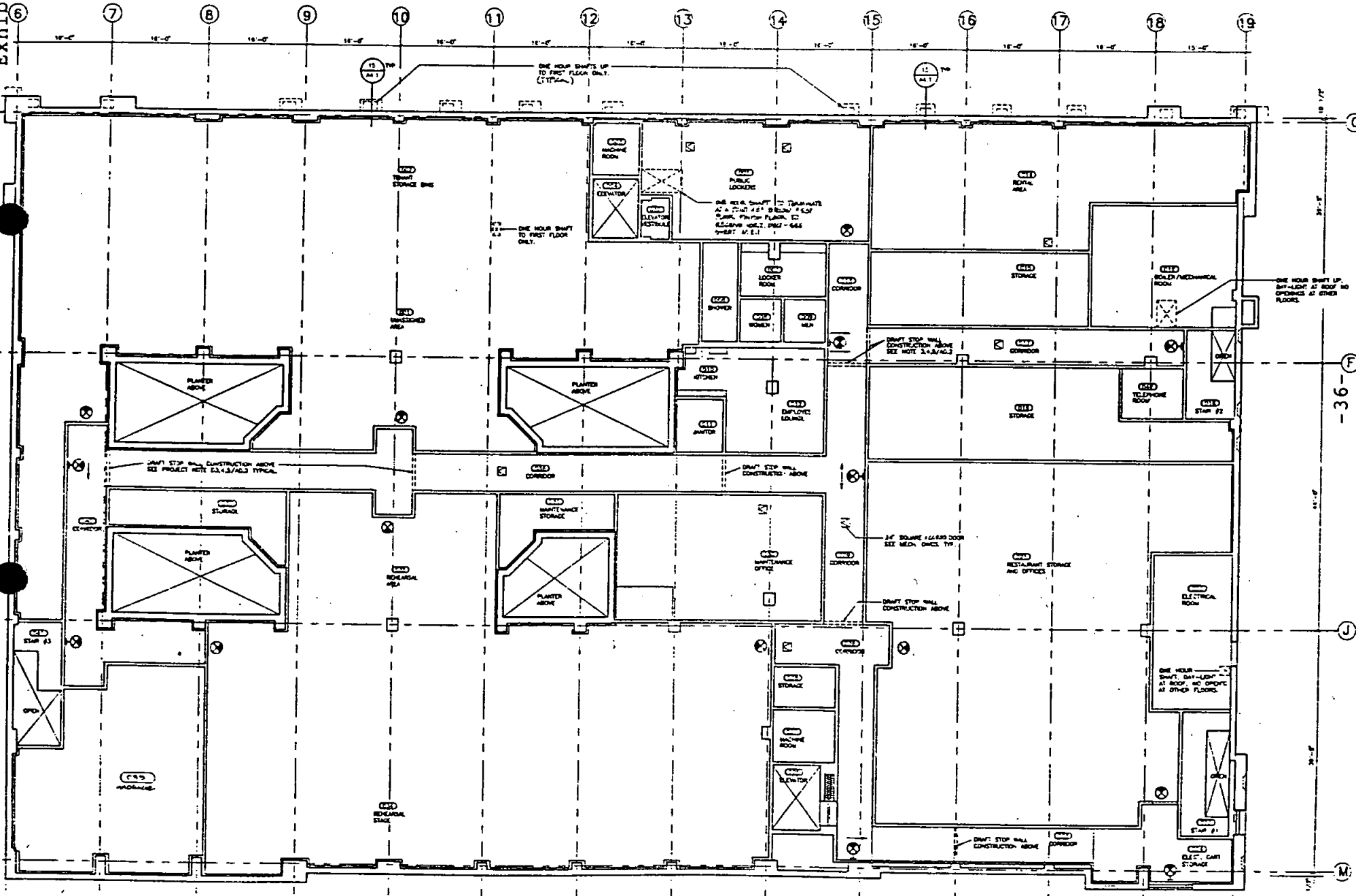
By Roger L. Conlee

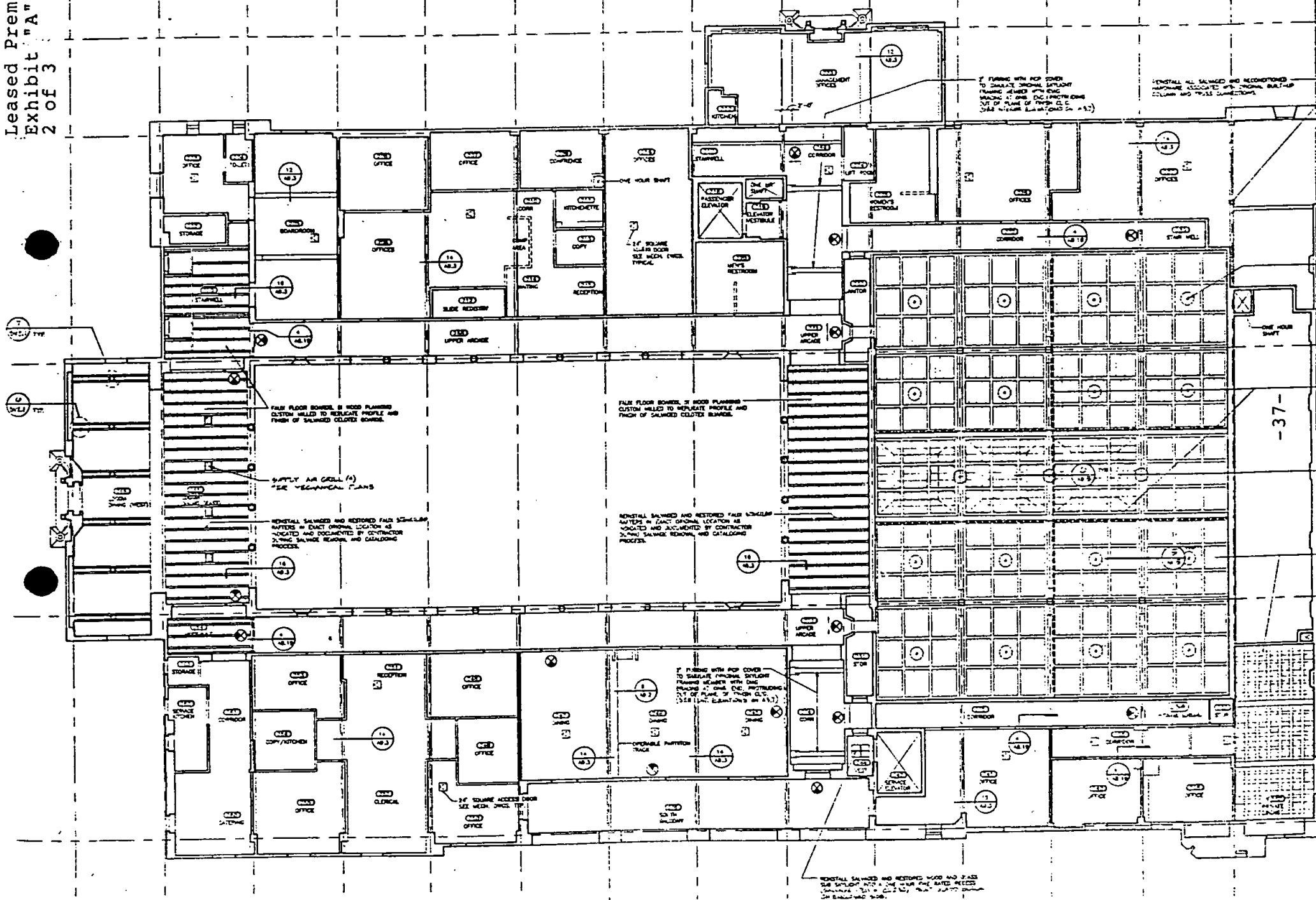
APPROVED as to form and legality this 16th day of September, 1997.

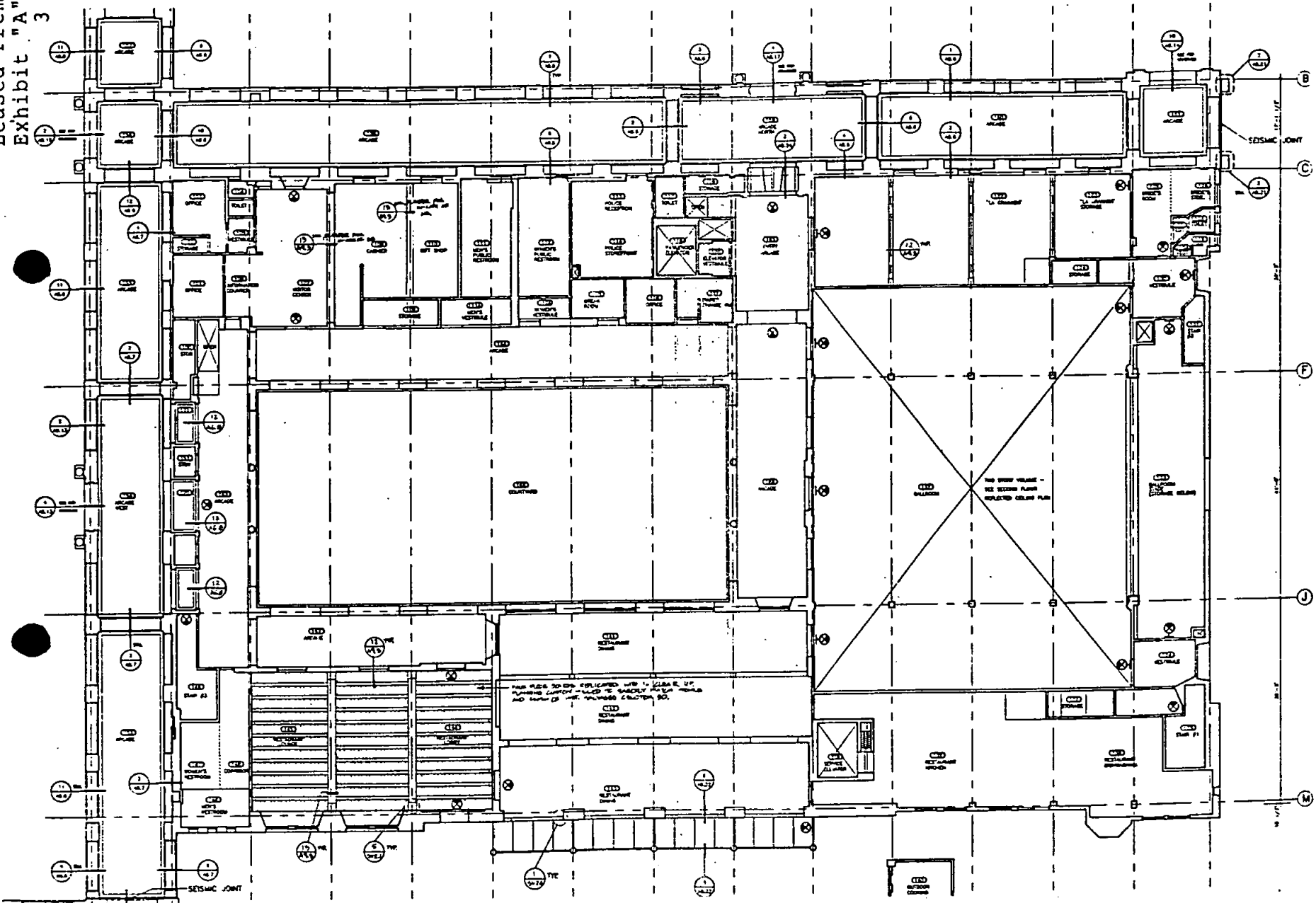
CASEY GWINN, City Attorney

By [Signature]
Deputy City Attorney

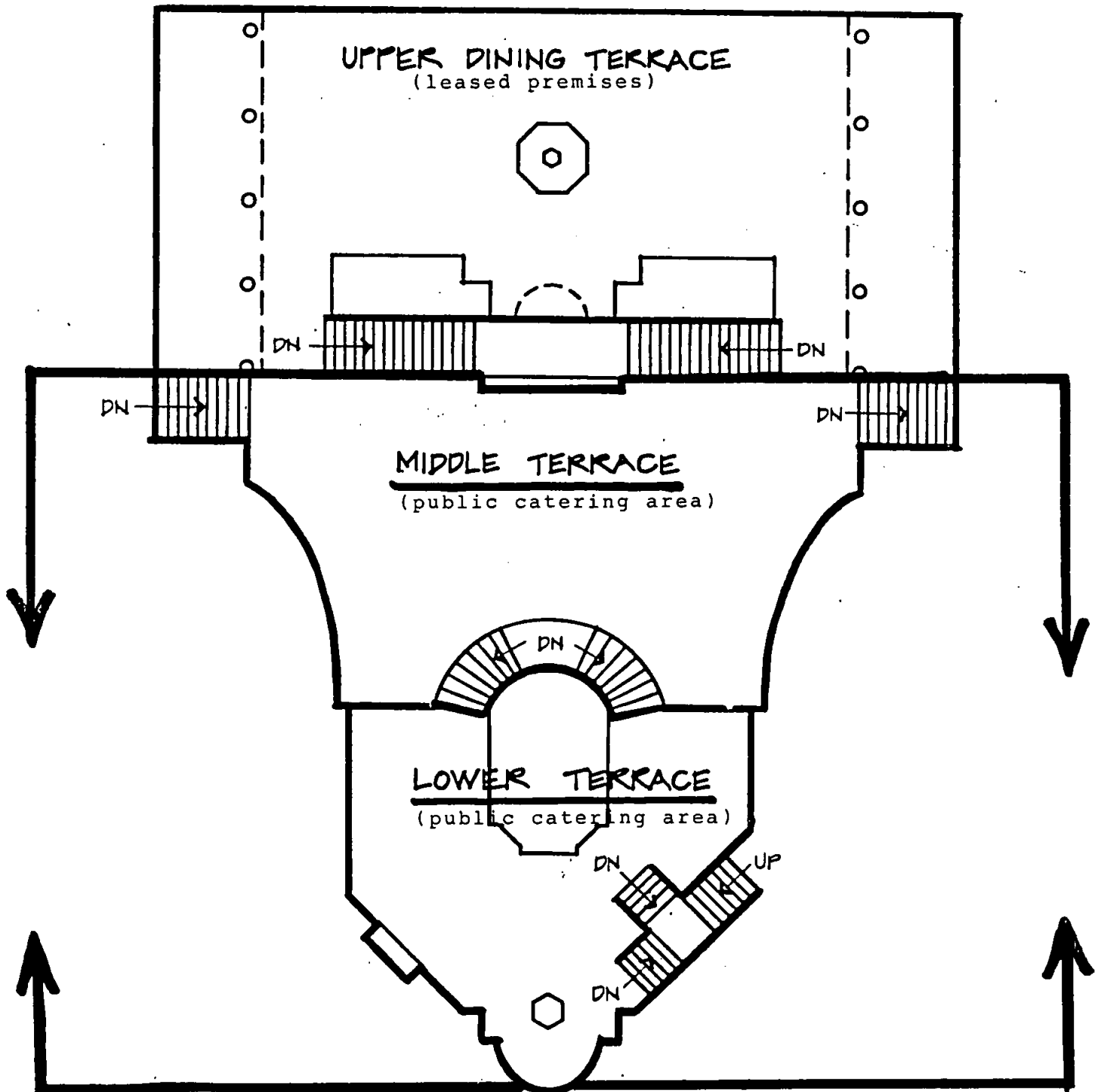
PTC/vms
07/11/97
I:\WP01\1997\CRAWFORD\LS-HOUSE.WPD







RESTAURANT



HOUSE OF HOSPITALITY
TERRACES



**PUBLIC ACCESS TO CERTAIN PUBLIC
CATERING AREAS**

Courtyard

The main interior courtyard, as shown on the attached Exhibit "B", shall be open to public use during normal hours of building operation. LESSEE may rent out this area for meetings and catering after hours of operation when the building is closed.

South Balcony

The south balcony, as shown on the attached Exhibit "B", shall be open to public use when not being rented out by LESSEE for meetings and catering.

Middle and Lower Garden Terraces

The middle and lower garden terraces, as shown on the attached Exhibit "B", are part of the House of Hospitality grounds and may be rented out by LESSEE in the same manner as the public catering areas defined in this lease. However, the middle and lower garden terraces shall be open to public use when not being rented out by LESSEE for meetings and catering. LESSEE does not need a special permit from CITY to use these garden terraces. LESSEE understands and agrees that it is important that all Balboa Park tenants adhere to a "good neighbor policy." Therefore, LESSEE will use its best efforts to coordinate scheduling with the City Park & Recreation Department, in order to avoid any use of these garden terraces that may disrupt events held at the Organ Pavilion and surrounding areas. CITY expects that reconstruction of the garden terraces will be completed by the scheduled reopen date of the House of Hospitality.

9.4 Maintenance Responsibilities - Exhibit "D".

System/Area	CITY'S Responsibilities	LESSEE'S Responsibilities
Fire Suppression System	All maintenance of fire suppression system, sprinkler systems, and/or other permanently installed systems in the building. Conduct inspection of all equipment not less than annually.	Check and observe daily. Report problems to CITY. Maintain all portable and/or temporary systems, extinguishers, hoses and nozzles, sensors and alarms, etc.
Alarms	None.	Observe. Maintain and repair all sensors, alarms, wiring, etc., for security and fire alarm systems, including heat, smoke, motion, intrusion, etc.
Security	Exterior building envelope, including exterior locks, emergency boarding up and repair of doors and windows.	All other security including lock installation and maintenance.
Displays and Additions	Approval of hookups and modifications of all types.	All installation, removal, and maintenance.
Elevators/Dumbwaiters	None.	All maintenance. Obtain and maintain permits, inspections, etc.
Floors/Floor Coverings	None.	All maintenance.
Windows/Glass	All glass in permanent windows and doors.	All glass in temporary partitions, displays, etc. All tinting film on windows.
Doors, Walls, Ceilings, Roof and Metal Shades	All permanent exterior items.	All interior items and additions or modifications to existing equipment, structures, systems, displays, temporary installations, and window coverings (film, shades, blinds, drapes).
Plumbing/Electrical/HVAC	None.	All maintenance.
Custodial	None.	All, including providing paper products, soap, light bulbs and tubes. Cleaning of courtyard and areas adjacent to building.
Vandalism	All CITY-owned items and permanent exterior structures, including windows.	All interior structures, temporary installations, collections, equipment, and displays owned by LESSEE.
Paint	All exterior painting and interior historical treatments.	All other interior painting.
Middle and Lower Garden Terraces	Maintenance from public use.	Maintenance from LESSEE'S catering activities.
Landscaping	All maintenance.	None.

The above division of maintenance responsibilities notwithstanding, CITY'S obligation to perform maintenance of the premises is limited to availability of funds pursuant to Section 6.3 hereof.

HOUSE OF HOSPITALITY
HISTORIC RECONSTRUCTION

Description and Listing of
PROPERTY-owned Personal Property
1 of 2

HISTORIC FURNISHINGS TO BE SALVAGED AND RE-INSTALLED

<u>OBJECT</u>	<u>SURVEY NUMBER*</u>
1. Two (2) Table Lamps @ Maint. Office and Lounge	D110 & D175
2. Eleanor Roosevelt Table @ Starlight Offices	
3. Vestment Chest & Cabinet (2 pieces) Lounge	D174
4. Spanish End Table @ Lounge	D176
5. Spanish Table, Medium Height @ Lounge	D177
6. Trestle Table @ Lounge	D178
7. Large Dining Table @ Starlight Offices	D290
8. Refectory Table @ North Loggia	D154
9. Refectory Table @ Auditorium	D81
10. Library Table @ La Granada	D90
11. Baby Grand Piano & Bench (Brown) Auditorium Stage	D202
12. Upright Piano (Brown) @ La Sala	D253
13. Baby Grand Piano & Bench @ La Granada (Antique White)	D91
14. Baby Grand Piano (& Bench) (Black) @ West Loggia	D109
15. (deleted)	
16. (deleted)	
17. Brass Bowl @ Catering Offices	D264
18. Four (4) Copper Vessels @ Visitor's Center	D282
19. (deleted)	
20. Pair of Tin Vase Plaques @ Visitor's Center	D275
21. French Frame Mirror @ Visitor's Center	D276
22. (deleted)	

* House of Hospitality Architectural Survey of Interior Features, September 26, 1991.

HISTORIC FURNISHINGS TO BE SALVAGED AND RE-INSTALLED

<u>OBJECT</u>	<u>SURVEY NUMBER</u>
23. Two (2) Arm Chairs @ Visitor's Center	D277
24. Two (2) Wood Chairs @ West Loggia	D94
25. Two (2) Arm Chairs (Orange) @ North Loggia	D152
26. Many Wood Benches At Perimeter Arcades	None
27. Two (2) Spanish Wood Benches @ East Loggia	D21
28. (deleted)	D22
29. (deleted)	D23
30. Two Wood Sideboard Cabinets @ West Loggia	D93
31. Spare Doors In East Tower Storage	D350-D354
32. Copper Serving Tray @ North Loggia Pantry	D158
33. Monstrin Table Lamp	
34. 1913 Cast Concrete House of Hospitality Plaque	

9.6 Corporate Name.

House of Hospitality Association, Inc.

CORPORATE NAME

I, CAROLYN WAGGONER, certify that I am the
SECRETARY of the corporation named in the attached
agreement; that ROGER L. CONLEE, who signed this agreement on behalf
of the corporation, was then PRESIDENT 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 JULY 8, 19 97, 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 Carolyn Waggoner

CORPORATE SEAL

Name ROGER L. CONLEE
Title PRESIDENT

Name MARTIN H. STEINLEY
Title VICE PRESIDENT

Name CAROLYN WAGGONER
Title SECRETARY

Name DIANE HUCKABEE
Title TREASURER

9.7 Schedule of Days and Hours of Operation

Open seven days per week from 6:30 a.m. to midnight or later if functions such as catered banquets or wedding parties continue past midnight.

Closed on Thanksgiving, Christmas, New Year's Day, and Easter.

ITEM	ITEM NUMBER	COUNT	SALES AMT.	
PASSPORTS			19.00	
TROLLEY TICKETS - ADULT			20.00	
TROLLEY TICKETS - CHILDREN			8.00	
GUIDES			0.93	
BOOKS				
BEST TRAVEL ACTIVITY BOOK			3.95	
BUSINESS TRAVELER			9.95	
CALIFORNIA			14.95	
CALIFORNIA			19.95	
CALIFORNIA			11.95	
CALIFORNIA - 5 LANGUAGES			11.95	
CALIFORNIA MISSIONS			5.00	
CAMPERS GUIDE			3.50	
DISCOVERY ATLAS			4.95	
DISCOVER SAN DIEGO			3.50	
FAMILY WORLD ATLAS			11.95	
GEOGRAPHY TRIVIA/COOL PLACES			3.95	
KIDS US ROAD ATLAS			3.95	
LAKES AND RIVERS			3.95	
LANGUAGE BOOKS			9.95	
MUSEUM MANIA			8.95	
RENAISSANCE TRAVELER			4.95	
ROMANCE OF BALBOA PARK			10.95	
SAN DIEGAN			1.95	
SAN DIEGO			12.95	
SAN DIEGO & VICINITY			12.95	
SAN DIEGO AEROSPACE			10.00	
SAN DIEGO BEAUTIFUL			2.95	
SAN DIEGO CALENDAR			5.99	
SO. CALIF. EASY FINDER			4.95	
SAN DIEGO EASY FINDER			4.95	
SAN DIEGO ON A GALLON OF GAS			13.95	
SAN DIEGO ON BICYCLE			12.95	
SAN DIEGO ON FOOT			12.95	
SPANISH OF MEXICO			5.95	
VINTAGE BOOKS			0.99	
FILM & CAMERA				
100-24 FILM			6.00	
100-36 FILM			7.50	

200-24 FILM			7.00	
200-36 FILM			8.50	
400-24 FILM			7.50	
FLASH CAMERA			18.50	
FUN SAVER CAMERA			12.00	
VIDEO			19.95	
FOOD & DRINK				
ALOE GATOR SPF15			2.75	
ALOE GATOR SPF35			3.95	
ALOE GATOR SPF40			4.95	
ANDES MINTS			0.10	
BANDAIDS			0.05	
BEER NUTS			0.50	
BUBBLE GUM			0.05	
BUTTERFINGER			0.65	
CERTS - PEPPERMINT			0.50	
CERTS - SPEARMINT			0.50	
CHIPS			0.75	
COLD REMEDIES			0.50	
COOKIES			0.60	
COUGH DROP - CHERRY			0.30	
CRACKERS			0.30	
DOUBLEMINT GUM			0.25	
EX - BUBBLE GUM			0.45	
EX - PEPPERMINT GUM			0.50	
EX - SPEARMINT GUM			0.50	
GHIRADELLI CHOCOLATES			0.25	
GRANOLA BARS			0.65	
GUMMY BEARS			0.50	
HERSHEYS			0.65	
JOLLY RANCHERS			0.05	
JUICY FRUIT			0.25	
KLEENEX			0.40	
LA VOSGUNNE			1.60	
LIFESAVERS			0.50	
LIP ICE			2.19	
M & MS			0.65	
OLD FASHIONED STICK CANDY			0.10	
PAIN KILLERS			0.30	
ROLAIDS			0.50	
SNICKERS			0.65	
SOFT DRINKS			0.75	
PEPSI/DIET PEPSI			0.75	
COKE/DIET COKE/7UP/DIET 7UP/SLICE			0.75	
ROOT BEER			0.75	
SNAPPLE DRINKS			0.75	

3 5

- 48 -

Schedule of Rates and Charges
4 of 5

[illegible]

INVENTORY

Schedule of Rates and Charges
5 5

GLASSES			5.95	
GOP PINS			3.95	
HOT PLATES			5.95	
KEY CHAINS			2.00	
KEY CHAINS			1.50	
KEY CHAINS			2.99	
KEY CHAINS			3.75	
MAGNETS - FRAMED BOTTLE OPENER			1.99	
MAGNETS - PICTORAL			1.99	
MATTED PRINTS - LARGE			9.95	
MATTED PRINTS - SMALL			5.95	
MUGS - EARTHENWARE			6.95	
MUGS - EARTHENWARE TALL			7.95	
MUGS - SD			5.95	
MUGS - SD GOLD			3.50	
MUGS - SD MAP & BALLOON			4.50	
MUGS - SD WHALE			4.95	
MUGS - SAILBOAT			5.95	
MUGS - TALL			7.95	
NAME MAGNETS			2.50	
PENS			2.00	
PENS			0.75	
PENS			2.50	
PEN - BALBOA PARK			2.99	
PEN - REPUBLICAN			5.00	
PIN - POLICE			5.00	
PLACEMATS			2.00	
PLAYING CARDS			2.95	
POSTCARDS			0.50	
POSTCARDS			0.20	
POT HOLDERS			2.50	
PUZZELS			13.98	
SALT & PEPPER SHAKERS			5.95	
SCHOONER			8.95	
SHOT GLASSES			2.99	
SHOT GLASSES			2.95	
SHAMU GLITTER			2.95	
SPOONS			3.97	
SPOONS - PEWTER			5.49	
SUNGLASSES			4.99	
SURFER WATER TOY			6.49	
SQUEEZERS			4.50	
THIMBLE			3.97	
THIMBLE			2.00	
UNMATTED PRINTS - SMALL			0.50	
UNMATTED PRINTS - LARGE			2.95	
YATO 8 PACK			8.50	
YATO CARDS			1.25	

Passed and adopted by the Council of San Diego on

SEP 08 1997

by the following vote:

YEAS: MATHIS, WEAR, KEHOE, STEVENS, WARDEN, STALLINGS,

MCCARTY, MAYOR GOLDING.

NAYS: NONE.

NOT PRESENT: VARGAS.

AUTHENTICATED BY:

SUSAN GOLDING

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(Seal)

By: Lori A. Witzel, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. R- 289141, passed and adopted by the Council of The City of San Diego, California on **SEP 08 1997**.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: Lori A. Witzel, Deputy

RESOLUTION NUMBER R- **289141**

(R-98-195)

ADOPTED ON **SEP 08 1997**

WHEREAS, the nonprofit House of Hospitality Association has operated the House of Hospitality building in Balboa Park since the 1920s which is used for a restaurant, offices, tourist information, receptions, meetings, and a social and cultural center for San Diego citizens and visitors; and

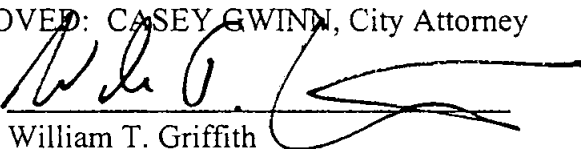
WHEREAS, the current agreement with the Association has been on a year-to-year basis at \$200 monthly rent since 1990 pending reconstruction of the building which is expected to open to the public in September 1997 and feature a new restaurant, offices for approved nonprofit subtenants, and a police storefront; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager be and is hereby authorized to execute a 21-year Nonprofit Lease with House of Hospitality Association, Inc., a California nonprofit corporation, for the House of Hospitality building in Balboa Park at an initial monthly rental of \$1,000 which will be adjusted in two years, as more particularly described in said lease agreement on file in the office of the City Clerk as Document

No. RR- **289141**

APPROVED: CASEY GWINN, City Attorney

By


William T. Griffith
Deputy City Attorney

WTG:cdk
08/18/97
Or.Dept:REA
JOB:220325
R-98-195