



THE CITY OF SAN DIEGO

CITY OF SAN DIEGO	
REAL ESTATE ASSETS DEPT.	
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☐	DEPUTY MANAGER
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☐	ORIGINATOR

March 19, 2007

Kimberly Layton
Starlight Theatre
P.O. Box 3519
San Diego, CA 92163-1519

Dear Ms. Layton:

This is to acknowledge receipt of your letter dated July 29, 2005, exercising the option to extend the term of your lease, City Clerk Document RR-252959, as amended, until October 31, 2030. The City further acknowledges that you have satisfied the requirements of Section II.C., Option to Renew, of your lease.

Sincerely,

James F. Barwick
Real Estate Assests Director

JFB/nb

cc: Mauro Garcia, Park & Recreation Deputy Director

File: Lease -- SD Civic Light Opera Assoc., Inc.

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Real Estate Assets

1200 Third Avenue, Suite 1700, MS 51A • San Diego, CA 92101-4199
Tel (619) 236-6020 Fax (619) 236-6706



STARLIGHT

T H E A T R E
I n B a l b o r a P a r k

Brian Wells, Managing Artistic Director

Friday, July 29, 2005

**From: Starlight Theatre
2005 Pan American Plaza
San Diego, CA 92101**

**Mailing address:
P.O. Box 3519
San Diego, CA 92163**

Re: Renewing of Lease

To Whom It May Concern:

The San Diego Civic Light Opera Association, dba: Starlight Theatre, would like to exercise the rights to extend its lease for the facility, Starlight Bowl, located at 2005 Pan American Plaza for the next 25 years.

Sincerely,

**Kimberley Layton
Board President
Starlight Theatre**

**P.O. Box 3519 · San Diego, CA 92163-1519
619.544.7827 Box Office · 619.544.7800 Administration · 619.544.7832 Fax**

COPY

I N D E X

LEASE AGREEMENT WITH SAN DIEGO
CIVIC LIGHT OPERA ASSOCIATION, INC.

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DOCUMENT NO. 78-252959

FILED

OCT 28 1980

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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LEASE AGREEMENT

THIS LEASE AGREEMENT is executed by and between THE CITY OF SAN DIEGO, a municipal corporation in the County of San Diego, State of California, hereinafter called "City," and the SAN DIEGO CIVIC LIGHT OPERA ASSOCIATION, INC. ("STARLIGHT"), a California nonprofit corporation, hereinafter called "Lessee."

I. LEASED PREMISES.

City hereby leases to Lessee, and Lessee leases from City, those certain premises together with all appurtenances thereto (hereinafter called the "leased premises"), situated in the City of San Diego, County of San Diego, State of California, more particularly described as follows:

Those certain buildings and improvements situated in Balboa Park, in the City of San Diego, generally known as "The Starlight Bowl" or the "Balboa Bowl," Box Office, offices, costume rooms, shops and appurtenant adjacent service buildings, together with the non-exclusive right to use contiguous walks and lawn areas for City Manager approved outdoor productions, all as shown on attached drawing hereby designated as Exhibit A.

A. Permitted Use. Said premises are leased to Lessee for the sole purpose of preparation and presentation of dramatic and musical performances, and similar performances and other presentations of an entertainment or civic nature, and matters incidental thereto, including, but not expressly limited to: (1) the right to charge admission therefor (2) the right to operate a box office and administrative office

facilities, and (3) the right to sell nonalcoholic beverages, tobacco, food, confections, novelties and publications during any public performance.

B. Obligation of Diligent Use. Lessee covenants to use the leased premises for the above-specified purpose and to diligently pursue said purpose throughout the term hereof.

II. TERM OF AGREEMENT

A. Term. The term of this Agreement shall be twenty-five (25) years commencing on November 1, 1980, 1980, and ending on November 1, , 2005.

B. Renegotiation Intervals. The provisions of this lease shall be subject to renegotiation every five (5) years during the term of this lease, including any extensions thereof. These renegotiation opportunities shall be referred to as "renegotiation intervals." Renegotiation shall be initiated upon written notice given by City or Lessee to the other not less than one (1) year prior to the particular renegotiation interval. Renegotiation shall be directed toward effecting alterations in the terms and conditions of this lease to reflect any significant changes which occurred during the preceding interim period.

C. Option to Renew. City hereby grants to Lessee an option to renew this lease for an additional period of twenty-five (25) years upon the expiration of the term of

this lease. Said renewal shall be made on the same terms, covenants, and conditions as expressed herein and subject to the same exceptions and reservations as herein contained.

This option shall be exercised only by written notice, duly given and delivered in accordance with paragraph 8 of Section IV.C, setting forth Lessee's election to exercise said option. Said notice of Lessee's exercise of this option to renew shall be given no more than one hundred eighty (180) days and no less than ninety (90) days prior to the expiration of the term hereof.

III. CONSIDERATION

A. Theatrical Performances. In consideration for the granting of this lease, Lessee shall conduct a minimum of 24 theatrical performances annually, including but not limited to the regular summer season.

If Lessee fails to produce or present the minimum number of theatrical performances during any one-year period of the term hereof and after completion of improvements as required hereinbelow, the City may, at the Council's sole discretion, terminate this Agreement.

Lessee and Lessor are both desirous that the facility be used at times other than in the summer. Both acknowledge, though, that weather conditions may prevent year-round use. Lessee agrees to use its best efforts to

promote activity in the facility in addition to Lessee's regular summer season; however, Lessee shall incur no penalties whatsoever under this Lease in the event that such activity fails to materialize.

B. Improvement of Facility. As additional consideration for the execution of this lease, Lessee agrees to undertake at its own cost and expense a long-range building program in substantial accord with the outline attached as Exhibit B.

1. Lessee will expend not less than \$350,000 for capital improvements over the first ten-year period of the lease. At the first renegotiation interval^{*} provided for at paragraph II.B, Lessee will specify those projects listed on Exhibit B which it is financially capable of undertaking in years 11-15 of the lease. At the second renegotiation interval Lessee will specify those projects which it is financially capable of undertaking in years 16-20. At the third renegotiation interval, Lessee will specify those projects which it is financially capable of undertaking in years 21-25.

2. The provisions of paragraph IV-B-9 of this Agreement regarding Performance Bonds shall apply to any construction undertaken by Lessee.

3. The anticipated completion dates as set forth in Exhibit B are subject to reasonable delays

caused by material and labor shortages, strikes or other labor disputes, governmental actions, war, riot, insurrection, rebellion, act of God, fire, flood, storm, earthquake, or any and all causes beyond the reasonable control of Lessee or its contractors.

4. All plans and specifications shall be submitted to the City Manager for review and approval in writing, provided, however, that such approval shall not be unreasonably withheld.

5. At all times during the term of this Agreement the facility shall be and will remain the absolute property of the City.

C. Maintenance of Facility. Lessee agrees to assume responsibility for the operation of said premises, routine maintenance of the interior of the building and janitorial maintenance of the leased premises excluding those adjacent areas for which the Lessee has the non-exclusive right to use, throughout the term hereof without expense to City unless otherwise set forth herein, as specified in Exhibit C attached hereto.

Lessee further agrees to perform all minor repairs and replacements necessary to such maintenance and to preserve said premises in a decent, safe, healthy and sanitary condition in a manner satisfactory to City and in compliance with all applicable laws. City agrees to

perform basic building maintenance on permanent features, such as interior walls and ceilings, excluding painting thereof, exterior walls, roofs, floors and external structures, including major structural, electrical, heating maintenance, and major repairs and replacements necessary to preserve said premises in a decent, safe, healthy and sanitary condition and in compliance with all applicable laws. City shall maintain and preserve the existing lawns, shrubbery and landscaping of premises without expense to Lessee. Lessee agrees that City shall not be required to perform any maintenance, repairs or services or to assume any expense not specifically assumed herein in connection with said premises.

Lessee further agrees to and shall use ordinary care for the preservation in safety and in good condition of the leased premises and the buildings constructed thereto and shall, on expiration of the term hereof, surrender the same to City in good condition, reasonable wear and tear excepted.

D. Student and Senior Citizen Discounts. At all times Lessee shall maintain in effect a ticket discount program for students and senior citizens.

IV. COVENANTS AND CONDITIONS.

A. Covenants by City.

1. Quiet Possession. City expressly agrees that Lessee, upon fulfilling its obligations and

performing all of the covenants and agreements, shall and may, at all times during the term hereof, peaceably and quietly have, hold and enjoy the leased premises.

2. Right to Assign and Sublet. Lessee shall not assign this lease, or any interest therein, and shall not sublet the leased premises, or any part thereof, or any right or privilege appurtenant thereto, nor allow any other person (the agents, officers and employees of City excepted) to occupy or use the leased premises, except as consistent with the purpose of this Agreement, without the express, prior written consent of the City Council, subject to the provisions of paragraph 3 below. A consent to one assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any such subsequent assignment or subletting without such consent shall be void, and shall, at the option of the 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 prior written consent of the City Council.

3. Renting of Facility. Lessee may rent the facility on certain specific occasions to any

corporations or organizations for purposes consistent with this lease, provided that the rental received for such occasions, less related operating costs, shall be used for the maintenance and improvement of the Starlight Bowl or related facilities.

Any such rental must first receive the approval of the City Manager or his designee, which approval shall not be unreasonably withheld.

Any schedule of rental rates and policies promulgated by Lessee must receive the written approval of the City Manager or his designee, which approval shall not be unreasonably withheld.

City shall have the right to use the facility free of any rental charge for four events annually, provided that no single event will exceed a 48-hour period; and, provided that the scheduling of the City's events shall be subject to Lessee's performance and rehearsal schedule and prior reserved dates.

B. Covenants by Lessee.

1. Irrevocable Dedication. Lessee is not organized nor shall it be operated, for pecuniary gains, profits, or dividends to its members and is organized solely for nonprofit purposes. The property, assets, profits, and net income of Lessee, irrevocably dedicated to charitable purposes and not part of the profits or net income

of Lessee, shall ever inure to the benefit of any director, officer or member or to the benefit of any private shareholder or individual. On the dissolution or winding up of Lessee, its assets remaining after payment of, or provision for payment of, all debts and liabilities of Lessee shall be distributed to a nonprofit fund, foundation, or corporation that is organized and operated exclusively for charitable purposes and that has established its tax-exempt status under the Internal Revenue Code and the California Revenue and Taxation Code.

2. Use of Proceeds. Lessee agrees that all income and proceeds received by Lessee from the operation of the leased premises shall be utilized within the leased premises for purposes of the continued operation, maintenance and improvement of the leased premises and for purposes incidental thereto. Certification of Lessee's compliance with the requirements of this section shall be specifically set forth in Lessee's audited financial statements as provided for in Section IV.B, paragraph 4, hereof.

3. Performances.

a. No more than ninety (90) percent of the total seats available for any performance

presented by Lessee may be sold on a season ticket basis.

b. Lessee shall provide to City annually schedules of performances and ticket prices to be given at the annual Summer Season as soon as said schedules have been set.

4. Annual Report. On or before July 1, 1981 of each year of this Agreement, Lessee shall submit to the City Manager an audited financial report for the previous fiscal year of Lessee. Said financial report shall include an operating statement and a report of net worth, and shall be in a form satisfactory to City. The first report shall be submitted on July 1, 1981. The final report shall be within one hundred twenty (120) days of the expiration date of this Agreement, and shall cover the period between the last report and the said expiration date.

5. Compliance with Law. The Lessee agrees to and shall, at its sole cost and expense, comply and secure compliance with all the requirements of all municipal, state, county and federal authorities now in force, or which may hereafter be in force, pertaining to the said premises, or the operations conducted thereon, and shall faithfully observe, and secure observance with, in the use of the premises, all municipal ordinances and state and federal

statutes now in force or which may hereafter be in force. The judgment of any court of competent jurisdiction, or the admission of Lessee or any sublessee or permittee in any action or proceeding against them or any of them, whether the City be a party thereto or not, that the Lessee, sublessee or permittee has violated any such ordinance or statute in the use of the premises shall be conclusive of that fact as between City and Lessee. This paragraph shall not modify the obligations of either party under paragraph III-C of this Agreement.

6. Affirmative Action. Lessee agrees to and shall take affirmative action to improve employment opportunities of minorities and women. When applicable, Lessee agrees to abide by the Affirmative Action Program for Lessees as it now or hereafter exists. A copy of the program, effective as the date of this Agreement, is on file in the office of the City Clerk and by this reference is incorporated herein. Minorities are presently defined as Mexican-American, Black, Filipino, American Indian and Asian/Oriental. The goal of this program shall be the attainment of the employment of minorities and women in all areas of employment in a total percentage of employment approximately equal to the total level of minority and women employment as established by the City for its Affirmative Action Program each year.

7. Nondiscrimination. Lessee agrees to and shall not discriminate in any manner against any person or persons on account of race, martial status, sex, religious creed, color, ancestry, national origin, physical handicap or medical condition in Lessee's use of the premises, including, but not limited to, the providing of goods, services, facilities, privileges, advantages and accommodations and the obtaining and holding of employment.

8. Insurance.

a. Risks. The Lessee agrees to and shall not use, or permit the leased premises, or any part thereof, to be used, in any manner or for any purpose, other than the purpose set forth above. Unless included within the said purpose or necessarily incident thereto, no use shall be made or permitted to be made of the leased premises, nor acts done, which will increase the existing rate of insurance upon the building or buildings, belonging to City located on the leased premises or cause a cancellation of any insurance policy covering said building or buildings, or any part thereof, nor shall any article which may be prohibited by the standard form of fire insurance policy be or be permitted to be kept, held, stored, used, or sold in or about the leased premises. The Lessee shall, at

its sole cost and expense, comply with any and all requirements, pertaining to the leased premises, of any premises or cause a cancellation of any insurance policy covering said building or buildings, or any part thereof, nor shall any article which may be prohibited by the standard form of fire insurance policy be or be permitted to be kept, held, stored, used, or sold in or about the leased premises. The Lessee shall, at its sole cost and expense, comply with any and all requirements, pertaining to the leased premises, of any insurance organization or company, necessary for the continued maintenance of reasonable fire, public liability, and property damage insurance, covering said buildings and appurtenance.

If the operation under this Agreement results in an increased (or decreased) risk in the opinion of the City Manager, then Lessee agrees that the minimum limits hereinafter designated shall be changed accordingly upon request by the City Manager.

b. Public Liability and Property Damage Insurance. During the entire term of this lease, Lessee agrees to take out and maintain public liability insurance which names City as an additional insured with an insurance carrier

satisfactory to City to protect against loss from liability imposed by law for damages on account of bodily injury, including death resulting therefrom, suffered or alleged to be suffered by any person or persons, whatsoever, resulting directly or indirectly from any act of activities of Lessee or any person acting for Lessee or under Lessee's control or direction, and also to protect against loss or liability imposed by law for damages to any property of any person caused directly or indirectly by or from acts or activities of Lessee or any person acting for Lessee or under Lessee's control or direction. Provided, however, that this provision shall not apply to any claims arising out of or resulting from sole acts or sole

① admissions of City. Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this lease in the amount of not less than one million dollars (\$1,000,000) combined single limit. Provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Lessee may be held responsible for the payment of damages to persons or property resulting from its activities or the activities of any person or persons for which it is otherwise responsible.

Lessee shall, on or before the effective date of this lease, deliver to the City Manager of City, a policy of bodily injury and property damage liability insurance issued by a company licensed in the State of California to transact such business, indicating that Lessee has bodily injury and property damage liability insurance as required in this paragraph, and indicating that the policy has been endorsed or does otherwise cover the contractual liability imposed by this Agreement, and that the insurance company shall notify the City Manager if said policy be terminated or limited in any manner prior to the termination date specified in the policy.

c. Fire. The leased premises shall be insured for fire loss by inclusion within the City's umbrella fire policy for all City buildings. All contents not covered by City policy shall be insured by Lessee.

City and Lessee and anyone claiming through or under them by way of subrogation, waiver any right of action that it may later acquire against the other of the parties to this Agreement for loss or damage to its property or to property in which it may have an interest, where such loss is caused by fire

and arises out of or in connection with the leased premises.

9. Indemnification. City, its agents, officers and employees, shall not be held liable for any claims, liabilities, penalties, fines or for any damage to the goods, properties or effects of Lessee or any of the Lessee's representatives, agents, employees, guests, licensees, invitees, patrons or clientele or of any other persons whatsoever, nor for personal injuries to, or deaths of them, or any of them, whether caused by or resulting from any acts or omission of Lessee in or upon the leased premises, or any act or omission of any person or from any defect in any part of the leased premises or from any other cause or reason whatsoever. Lessee further agrees to indemnify and save free and harmless City and its authorized agents, officers, and employees against any of the foregoing liabilities and any costs and expenses incurred by City on account of any claim or claims therefor.

During the term of this lease, Lessee agrees to defend in the name of, and on behalf of, City all claims or suits for damages and all fixed costs and interest on all such legal proceedings and pay all sums which City may become liable to pay as damages imposed upon it by law arising out of

accidental bodily injury or death suffered, or alleged to have been suffered, by any person while within or upon the premises described in this lease. Lessee further agrees to pay all sums which City may become liable to pay as damages imposed upon it by law resulting from accidental injury to, or destruction of, property not owned, leased, occupied or used by, or in the care, custody or control of, Lessee or of City or of any employee of Lessee or City, subject to the following conditions: (a) this Agreement shall not apply to any injury or death caused by any employee of City; and (b) City shall not voluntarily assume any liability or incur any expenses or settle any claims without the prior written consent of Lessee.

10. Performance Bond. Prior to commencement of any work by Lessee that could constitute the basis for a mechanic's lien on the premises and before any building materials are delivered to the premises, Lessee shall furnish City with a bond by a responsible surety company licensed to do business in California, in a form satisfactory to Lessor, in an amount to the estimated cost of the work to be done. Said bond shall remain in effect until the cost of the entire work shall have been fully paid and the building insured as hereinafter provided. The bond shall secure completion by Lessee, or, on default, by the surety,

of all work free from any and all liens of contractors, subcontractors, materialmen, laborers, or others, and should defend and indemnify Lessor against any loss, cost, damage or liability in any manner arising out of or connected with said work. In lieu of said bond, Lessee may deposit cash with the City or in a Federal or State of California bank or savings and loan association in the name of the City, but with interest reserved to Lessee, on terms and conditions approved by the City Attorney.

11. Removal of Improvements. City agrees that all trade fixtures common to the theatre industry installed by Lessee in accordance with the provisions herein provided, shall be and remain the property of Lessee, and Lessee agrees that all improvements of a permanent nature, including any revolving stage, seating, heating system, air conditioning plant, and plumbing shall be and remain the property of City. Lessee shall have the right to remove, at Lessee's expense, such fixtures and improvements belonging to Lessee, prior to expiration or sooner termination of this Agreement, at Lessee's own expense, provided that any damage to City's property or improvements shall be repaired and the premises left in good order and condition. In the event Lessee does not so remove said fixtures and improvements prior to the expiration of this Agreement, City may remove, or

sell, or destroy, the same at the expense of Lessee, and Lessee shall pay to City the reasonable cost of any such removal, sale or destruction, together with the reasonable cost of repair of damages to City's property or improvements resulting from such removal, sale or destruction. At the option of the City, any property, real or personal, not so removed by Lessee may be deemed abandoned.

12. Waste, Damage or Destruction of Premises.

Lessee shall give prompt notice to City of any damage to the leased premises within ten (10) days of such damage occurring. Lessee shall not commit or suffer to be committed any waste or injury, or any public or private nuisance. Lessee shall keep the premises clean and clear of refuse and obstructions; and shall dispose of all garbage, trash and rubbish in a manner satisfactory to City. City shall provide regular trash pick-up service at the minimum service level.

If the leased premises are damaged in whole or in part by any cause, excluding fire or other insured risk, so as to render the premises untenable or unfit for the use or purpose for which the same are hereby let and said damages are repairable within a reasonable time in the opinion of the City Manager, City may elect to repair said damages to as to restore said premises to a condition which is tenable and fit for the said uses and purposes.

In the event City elects to make such repairs, Lessee shall have the option of either terminating this lease or paying to the City within a reasonable time the full cost of the repairs, in which case this lease shall remain in full force and effect. In the event that City does not so elect and Lessee does not so elect to make such repairs on its own, or in the event of a total destruction of the leased premises, either City or Lessee may terminate this lease, provided the destruction, partial or total, has not arisen as a result of the negligence of the terminating party, its agents, employees or any person or persons acting for it or under its control. Nothing contained herein is to be construed as obligating City to repair, replace or renew any glass whatsoever or any fixtures, equipment, improvements or property belonging to Lessee which may have been damaged as a result directly or indirectly of any of such damage or for any other cause whatsoever.

In the event the leased premises are completely damaged by fire or any other insured risk, such that the premises cannot be used by Lessee for the purposes contemplated by this lease for a period in excess of 12 months, Lessee and City shall have the option of terminating this lease. In the event that Lessee does not elect to terminate the lease, City shall be obligated to apply the proceeds of any such

insurance to the repair or reconstruction of the leased premises. In the event that Lessee does elect to terminate the lease, City shall be obligated to reimburse Lessee from the proceeds of any such insurance the cost of all improvements which Lessee has made to the facility, less depreciation.

In the event of partial destruction of the premises by fire or other insured risk, this lease shall remain in full force and effect and neither party shall have the option to terminate. City shall be obligated to apply the proceeds of any such insurance to the repair or reconstruction of the leased premises. In the event excess proceeds are available, City shall provide Lessee with sufficient cash funds from those proceeds to produce its annual season at another appropriate venue.

13. Disputes. The Lessee agrees to refer all ^{questions} ~~disputes~~ as to the interpretation of this lease, or the rights and duties of the parties hereto, to the City Manager. Nothing herein contained shall be considered to be in derogation of any rights whatsoever which either party hereto has, or shall have, under any applicable charters, laws, ordinances, regulations, or judicial or administrative decisions or rulings of the State of California or the City of San Diego.

14. Taxes. Lessee recognizes and understands that this lease may create a possessory interest subject to property taxation and that the Lessee may be subject to the payment of property taxes levied on such interest. As further consideration for the execution of this lease, Lessee agrees to pay and discharge, before delinquency, all taxes, assessments and fees assessed or levied upon the Lessee or the leased premises during the term of this lease.

15. Utilities. Except for such installations of utilities as City herein expressly agrees to provide, Lessee shall order, obtain and pay for all utilities and service and installation charges in connection therewith. All utilities installed by Lessee shall be installed underground.

16. Surrender of Facility. Lessee agrees to and shall use ordinary care for the preservation in safety and in good condition of the leased premises and the buildings constructed thereon, and shall, on expiration or sooner termination of the term hereof, surrender the same to City in good condition, wear and tear excepted.

C. Restrictive Conditions.

1. Entry and Inspection. City reserves and shall always have the right to enter the leased 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 for and at the expense of Lessee and Lessee hereby agrees to pay within thirty (30) days of receipt of an invoice from City any and all costs incurred by City in having such necessary maintenance work done in order to keep said premises in a decent, safe, healthy, and sanitary condition. Further, if at any time the City determines that said premises are not in a decent, safe, healthy and sanitary condition, City may, at its sole option, without additional notice, require Lessee to file with City a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy and sanitary. Said bond shall be in an amount adequate in the opinion of the City to correct the said unsatisfactory conditions. Lessee shall pay the cost of said bond. Alternatively, Lessee may deposit any other form of security as approved by the City Attorney's office. The rights in this section shall not create any obligations on City or increase obligations elsewhere in this lease imposed on City. This paragraph shall not modify the obligations of either party under paragraph II-C of this Agreement.

2. Reservation for City Use. City hereby reserves all rights, title and interest in any and all gas, oil, minerals and water, upon or beneath said leased premises. City shall have the right to enter said leased premises for purpose of drilling, operating and maintaining such installations as are necessary or desirable for the development of said gas, oil, mineral and water rights or for making repairs to or developing the municipal services of the City; provided, however, that Lessee's use of the premises shall not be substantially interfered with or interrupted. City hereby reserves the right to grant and use such easements or establish and use such rights of way over, under, along and across said leased premises for utilities, thoroughfares, or access as it may deem advisable for the public good.

3. Time is of the Essence. Time is of the essence of each and every term and provision of this lease and this lease shall inure to the benefit of and be binding upon the parties hereto and any successors of Lessee as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements in this lease shall extend to and bind any assigns or sublessees of Lessee.

4. Waiver. The waiver by City of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of consideration hereunder by City shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this lease, nor shall any failure on the part of City to require or exact full and complete compliance with any of the covenants, conditions or agreements of this lease be construed as in any manner changing the terms hereof or to stop City from enforcing the full provisions hereof, nor shall the terms of this lease be changed or altered in any manner whatsoever other than by written agreement of the City and Lessee.

5. Merger. The voluntary or other surrender of this lease by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of City, terminate all or any existing subleases or substenancies, or may, at the option of the City, operate as an assignment to it of any or all such subleases or substenancies.

6. Remedies of City. In the event (a) that Lessee shall default in the performance of fulfillment of any covenant or condition herein contained on its

part to be performed or fulfilled and shall fail to cure such default within ninety (90) days following the service on it of a written notice from City specifying the default or defaults complained of and the date on which its rights hereunder will be terminated as hereinafter provided if such default or defaults is or are not cured, or (b) that Lessee shall file a voluntary petition in bankruptcy, or (c) that Lessee shall be adjudicated a bankrupt, or (d) that Lessee shall make a general assignment for the benefit of creditors, then and in either or any of the said events, City may, at its option, without further notice or demand upon Lessee or upon any person or persons claiming by, through or under Lessee, immediately cancel and terminate this lease and terminate each, every and all of the rights of Lessee and of any and all persons claiming by, through or under Lessee in or to the leased premises and in or to the further possession thereof and may thereupon enter into and upon the leased premises and repossess the same and expel Lessee, any and all persons claiming by, through or under Lessee. The rights and remedies of City as hereinabove set forth are cumulative only and shall in no wise be deemed to limit any of the other provisions of this lease or otherwise to deny to City any right or remedy at law or in equity which City may have or assert against

Lessee under any law in effect at the date hereof or which may hereafter be enacted or become effective, it being the intent hereof that the rights and remedies of City, as hereinabove set forth, shall supplement or be in addition to or in aid of the other provisions of this lease and of any right or remedy at law or in equity which City may have against said Lessee.

7. Holding Over. The occupancy of the leased premises after the expiration of the term of this Agreement shall be construed to be a tenancy from month to month, and all other terms and conditions of this Agreement shall continue in full force and effect.

8. Administration and Notice. Control and administration of this lease is under the jurisdiction of the City Manager of The City of San Diego and any communication relative to the terms or conditions or any changes thereto or any notice or notices provided for by this lease or by law to be given or served upon City may be given or served by letter deposited in the United States mails, postage prepaid, and addressed to the City Manager, City of San Diego, Attention: Property Director, 202 "C" Street, San Diego, California 92101, or at such other address as the City Manager, in writing, specifies. Any notice or notices provided for by this

lease or by law to be given or served upon Lessee may be given or served by depositing in the United States mails, postage prepaid, a letter addressed to said Lessee whose address is P.O. Box 2407, San Diego, California 92112, or may be personally served upon said Lessee (or any one of them), or any person hereafter authorized by Lessee to receive such notice. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the principals of the parties so served upon personal service or 48 hours after mailing in the manner required herein.

IN WITNESS WHEREOF, this Lease Agreement is executed by The City of San Diego, acting by and through its City Manager, pursuant to Resolution No. 16-252959, authorizing such execution, and the Lessee has caused this Lease Agreement to be executed and its corporate name and seal to be affixed by the proper officers.

Dated this 27th day of October, 1980.

THE CITY OF SAN DIEGO

APPROVED as to form and legality this 29th day of October, 1980.

JOHN W. WITT
City Attorney

By Janis Sammartino Gardner
Janis Sammartino Gardner
Deputy City Attorney

By Leanne M. Balde
ASSISTANT TO THE City Manager

SAN DIEGO CIVIC LIGHT OPERA
ASSOCIATION, INC.

By Amy C. Krulak
Amy C. Krulak, President

By Edwin A. Wathen
Secretary

EXHIBIT "B"

1. Chair seating throughout Bowl.
2. Stage housing
 - a. Fly gallery
 - b. Overhead or sliding door across front
 - c. Steel arch across front of stage over orchestra pit
3. New stage floor, with turntables
4. Concrete floor under stage area
5. Electrical supply lines and lighting equipment
6. Sound system
7. Dressing rooms, storage rooms, work rooms
8. Box office
9. Curved wall at top entrance
10. Restrooms at lower level
11. Exits at lower level
12. Driveway to rear of bowl
13. Building at rear of bowl
 - a. Parking
 - b. Shop and set storage
 - c. Rehearsal rooms
 - d. Administrative offices

EXHIBIT "C"

MAINTENANCE/REPAIRS
LEASED/OCCUPANCY PERMIT FACILITIES

<u>SYSTEM/AREA</u>	<u>CITY RESPONSIBILITY</u>	<u>TENANT RESPONSIBILITY</u>
Electrical - Lighting & Power	Wiring, conduit, breakers, light fixtures (as a complete item), neon lighting.	Replace - lamps, switches, switch/outlet plates, outlets, fixture lenses, and all exterior lighting.
Emergency Electrical System	Repair of parts and/or system wiring/conduit, etc. Periodic operational check-out.	Preventive Maintenance.
Heating, & Ventil- ation, including Solar System, Pumps and Boilers.	All except filter/strainer changes and daily/weekly operational checks.	Clean/replace filters, broken glass, cleaning of solar panel glass, daily/ weekly operational checks.
Plumbing, Sewer, Water	Broken pipe, valves within system, clear sewer <u>outside</u> building perimeter.	Clean sewer within building perimeter, repair/mainten- ance of valves & faucets & trim at service points, i.e. angle stops, flushometers, toilet valves & seats, lavatory faucets, traps, hosebibs.
Painting	Exterior	Interior, touch-up after vandalism.
Doors/Hardware	All but loose screws/bolts.	Loose screws/bolts
Windows/Glass in Doors	Glass in doors	All replacement/repair windows & glass in windows.
Security	Repair doors	Board-up when needed, repair/maintain electrical alarm system.
Floor covering	None	Repair all - tile, carpet, etc.
Displays	Approval of hook-up of electrical & Water (Bldgs) and structural (Engineering & Development).	All installation and operation.
Pest Control	Termites & bees	All other pests.

RESOLUTION No. R- 252959

(R-81-594)

Adopted on OCT 27 1980

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

That the City Manager be, and he is hereby authorized and empowered to execute, for and on behalf of said City, a Lease Agreement with San Diego Civic Light Opera Association, Inc., to operate, maintain and improve the Starlight Bowl in Balboa Park, said lease agreement is on file in the office of the City Clerk as Document No. R-252959.

APPROVED: JOHN W. WITT, City Attorney

By Janis Sammartino Gardner
Janis Sammartino Gardner
Deputy City Attorney

JSG:lco:274

9/25/80

Or.Dept.:Pk&Rec.

Passed and adopted by the Council of The City of San Diego
on OCT 27 1980, by the following vote:

YEAS: Mitchell, Cleator, Lowery, Williams, Gotch, Killea, and Mayor Wilson.

NAYS: None.

NOT PRESENT: Schnaubelt and Stirling.

AUTHENTICATED BY:

PETE WILSON
Mayor of The City of San Diego, California.

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

(SEAL)

By RITA ANDREWS, Deputy.

I HEREBY CERTIFY that the above and foregoing is a full,
true and correct copy of RESOLUTION NO. K- 252959
passed and adopted by the Council of The City of San Diego,
California, on OCT 27 1980.

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

(SEAL)

By Rita Andrews, Deputy.