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THE CITY OF SAN DIEGO

DOWNTOWN JOHNNY BROWN'S, INC.

Percentage Lease

DOCUMENT NO.

RR 296518

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MAY 21 2002

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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**CITY OF SAN DIEGO
PERCENTAGE LEASE**

THIS LEASE AGREEMENT is executed between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and DOWNTOWN JOHNNY BROWN'S, INC., a California 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 in Exhibit "A," attached hereto and by this reference made part of this agreement. 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 a café-style restaurant and bar, in accordance with the General Development Plan referenced in Section 6.12 hereof, 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 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.
- 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 restaurant/bar 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 9.5, 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.

SECTION 2: TERM

2.1 Commencement. The term of this agreement shall be ten (10) years commencing on the first day of the calendar month following execution by the City Manager, ("Lease Term") subject to LESSEE'S right to extend as provided in Section 2.3 Right to Extend. "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 Right to Extend Provided that LESSEE is not in default of this Lease, LESSEE has the right to extend the Lease Term for one (1) 5-year period, subject to all original agreements, considerations, covenants, and conditions, except that the rent shall be adjusted in the following manner: Percentage Rent of seven percent (7%) for Food, Beverage and Alcohol.

To exercise the right to extend, LESSEE must give CITY one hundred eighty (180) days prior written notice before the date on which the original Lease Term expires.

2.4 Redevelopment of Premises. CITY may terminate this agreement with one hundred eighty (180) days prior written notice after the tenth Lease Year if CITY requires use of the Premises in conjunction with a redevelopment of the Civic Center/Community Concourse or a related project. If CITY terminates this agreement, LESSEE acknowledges that CITY will not be liable to LESSEE for any alleged damages, relocation payments, or other compensation as a result of the termination.

2.5 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 122289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, 1200 Third Avenue, Suite 100, First Floor, San Diego, California 92101.

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

- a. Minimum Rent. The annual minimum rent established for the first three (3) Lease Years following the effective date of this lease is Thirty Seven Thousand Three Hundred Twenty Dollars (\$37,320), which is Three Thousand One Hundred Ten Dollars (\$3,110) on a monthly installment basis:

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.

- b. Minimum Rent Adjustment. Effective at the beginning of the first day of the fourth Lease Year of this lease and at the beginning of each two and one-half year period thereafter during the Lease Term, 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. IN NO EVENT SHALL ANY SUCH MINIMUM RENT ADJUSTMENT RESULT IN A DECREASE IN THE MINIMUM RENT REQUIREMENT IN EFFECT IMMEDIATELY PRIOR TO THE ADJUSTMENT DATE.

- c. Percentage Rents. Percentage rents will be calculated on a calendar month basis and will consist of the following percentages of the gross income resulting from the use of the Premises:

Percentages

Business Activities

Five and one-half Percent (5.5%)

Food, Beverage, Alcohol

Thirty Percent (30%)

Of Net Lottery Ticket Sale
Commissions

Twenty-five Percent (25%)

Of commissions or any other compensation paid to LESSEE or sublessees for the right to install or operate coin-operated vending, game, or service machines or devices on the Premises, including telephones, or 10% of the gross income from any such coin-operated machines or devices owned, rented or leased by LESSEE or sublessees for use on the Premises.

Ten Percent (10%)

Of all other authorized activities

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 3.6, Unauthorized Use Charge, hereof.

- d. Percentage Rent Adjustment. The percentage rent for the food, beverage and alcohol category shall be adjusted as follows, including the extension period:

<u>Lease Years</u>	<u>Percentage Rent</u>
1 - 2	5.5%
3 - 5	6.5%
6 - 10	6.75%
11 - 15	7.0%

- 3.2 Rent Credit. LESSEE shall be entitled to a one-time rent credit for repairs to the roof of the Premises paid for by LESSEE. The actual amount of the rent credit shall be based on the lowest of three bids to be obtained by LESSEE and approved by the City Manager. CITY shall, at the sole discretion of the City Manager, have the right to repair the roof if the cost to CITY would be less than the lowest bid obtained by LESSEE. If CITY does not exercise its right to repair the roof, LESSEE shall complete the repairs within eighteen (18) months of the effective date of the Lease. No rent credit shall be given for repairs made subsequent to this date.
- 3.3 Payment Procedure. 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:
- One-twelfth of the annual minimum rent until the full annual rent is achieved in any Lease Year.
 - 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.
 - The percentage rental due CITY, computed and totaled.
 - The accumulated total of all rents previously paid for the current Lease Year.
 - 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.

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 shall 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 3.5, 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..

- 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.

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 prior 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 the LESSEE pay additional consideration to CITY, as set forth in Section 4.7, Additional Consideration to CITY, hereof, commencing on the effective date of such

proposed sublease of the majority portion of the leasehold or assignment, and may further require 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 and have sufficient financing and expertise to assume the obligations of LESSEE.

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

Any subsequent encumbrances on the Premises or on any permanent improvements thereon must first have the approval in writing of the City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the Premises. Provided, however, after the Premises are fully developed in accordance with said Development Plan to the satisfaction of the City Manager, proceeds from refinancing or from such subsequent encumbrances may be used to reduce LESSEE'S equity so long as LESSEE pays additional consideration to CITY as set forth in Section 4.7, Additional Consideration to CITY, hereof, and further that LESSEE understands and specifically agrees that the City Manager shall have the sole and absolute discretion to approve, disapprove, or condition any such proposed subsequent encumbrance, including but not limited to amending the lease to provide then-current rents and provisions.

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. Defaults. Each of the following shall constitute an event of default under this lease:

- (1) LESSEE fails to make any payment required under this lease when due;
- (2) LESSEE defaults in the performance of any covenant or condition required by this lease, other than those requiring payment to CITY, to be performed by LESSEE and fails to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default, other than those requiring payment to CITY, is not curable within thirty (30) days, and LESSEE fails to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion;
- (3) LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
- (4) LESSEE is adjudicated a bankrupt;
- (5) LESSEE makes a general assignment for the benefit of creditors;

b. Remedies.

- (1) Upon default by LESSEE, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, a written Three (3) Day Notice to Pay or Quit, or CITY may terminate the lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premise or to possession thereof, and CITY may enter and take possession of the premise (provided, however, in the event that any default described in Section 4.4.a Defaults, hereof, is not curable within thirty (30) days after notice to LESSEE, CITY will not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion), and may recover from LESSEE the sum of:

- (2) the worth at the time of award of any unpaid rent that had been due at the time of termination;
- (3) the worth at the time of award of the amount by which (a) the unpaid rent that would have been earned after termination until the time of award exceeds (b) the amount of rental loss, if any, as LESSEE affirmatively proves could have been reasonably avoided;
- (4) the worth at the time of award of the amount by which (a) the unpaid rent for the balance of the term after the time of award exceeds (b) the amount of rental loss, if any as LESSEE affirmatively proves could be reasonably avoided;
- (5) any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE'S failure to perform LESSEE'S obligations or that, in the ordinary course of things, would be likely to result; and
- (6) all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses (1) and (2) of this Section, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (3) of this Section, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this Section the term "rent" shall include Base Rent, Percentage Rent and any other payments required by LESSEE.

- c. If there is a deed of trust or mortgage on the leasehold interest, CITY will give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary will 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 (30) day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

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

- (1) CITY may correct the default(s) and charge the costs thereof to the account of LESSEE, which charge will be due and payable on the date

that the rent is next due after presentation by CITY to LESSEE and mortgagee or beneficiary of a statement of said costs.

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

Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, will 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 will 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.

- d. 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.
- e. 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.

- 4.6 Partnership Liability. Each general partner of LESSEE shall jointly and severally perform and be responsible for each and every term, covenant, and condition, and each general partner is jointly and severally liable for performance under this lease.

- 4.7 Additional Consideration to CITY. LESSEE acknowledges that CITY expends considerable sums for maintenance of areas adjacent to the Premises LESSEE further acknowledges that the expenditure of such funds enhances the value of the Premises LESSEE and CITY agree that the exact amount of such enhancement is impossible to ascertain. However, CITY desires to be reimbursed to a reasonable extent in consideration for the continued maintenance of adjacent areas. Therefore, LESSEE and CITY agree that in the event of an assignment, in the event of a subletting of the majority portion of the Premises, or in the event of a refinancing creating an encumbrance against the Premises after the improvements identified in Section 9.3 have been completed, pursuant to the Development Plan as described in Section 6.12, LESSEE shall pay to CITY five percent (5%) of the gross amount paid to LESSEE in connection with an approved assignment of the lease, five percent (5%) of any amount paid LESSEE in consideration of a sublease of all or a majority portion of the Premises or five percent (5%) of the amount of any increased loan or encumbrance against the property over and above the amount of the then existing balance(s) of the existing encumbrance(s). The amount upon which the five percent (5%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of noncash consideration, including but not limited to stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY'S consent to any assignment, majority subletting, or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this paragraph, together with an acknowledgment from the proposed assignee, sublessee, or refinancing agency as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction, be it an assignment, a sublease, or a refinancing. Any assignment, subletting, or refinancing in violation of the terms and conditions of this paragraph shall be void. The provisions of this paragraph shall not apply to:

- a. An assignment or transfer of a beneficial interest in the Premises resulting from devise, bequest, intestate succession, or by operation of law for the benefit of the spouse or descendants (i) of LESSEE (if an individual) or (ii)

of LESSEE'S principal owner or chief executive officer (if LESSEE is other than an individual);

- b. Such other assignment for which the City Manager determines that the legal and equitable ownership interests in the Premises have remained unchanged, such as a change in the legal or fictitious name of the LESSEE without any other change in the equity in beneficial use of, or legal title to, the Premises as an asset or the income produced thereby.

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 in the amount of not less than Two Million Dollars (\$2,000,000) Combined Single Limit Liability, including Liquor 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, extended coverage, and vandalism insurance policy on all insurable property on the Premises in an amount to cover one hundred percent (100%) of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.3, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case

for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the Premises.

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

- (1) Additional Insured. All insurance policies will name CITY as an additional insured, 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 agrees to assume full responsibility and cost for the operation and maintenance of the Premises throughout the term. LESSEE will make all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with the Development Plan described in Section 6.12, Development Plan, hereof and with all applicable laws.
- 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. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges to include acquiring any necessary easements in connection with the development and operation of the Leased Premises. All utilities will be installed underground.
- 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 one hundred percent (100%) 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 shall not 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 shall remove the item at its expense within twenty-four (24) hours notice 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.
 - 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 Development Plan. LESSEE agrees to develop the Leased Premises in accordance with the General Development Plan approved by the City Manager and filed in the Office of the City Clerk which plan is hereby incorporated by this reference. The general contents and provisions of the Development Plan are described in Section 9.3, hereof. LESSEE further agrees to expend a minimum of

One Hundred Twenty Five Thousand Dollars (\$125,000) in capital improvements to complete the items referenced in Section 9.3, General Development Plan. Furniture, trade fixtures, equipment and other personal property not affixed to the Premises shall not be included as part of LESSEE'S capital improvement costs. The City Manager, in his sole discretion, shall have the authority to authorize changes to the plan, including a reduction of the minimum expenditures provided that the basic concept as outlined in Section 9.3 may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk. LESSEE shall submit to CITY within eighteen (18) months of lease execution a complete listing of improvement expenditures accompanied by bonafide receipts from suppliers and contractors for approval by the City Manager.

- 6.13 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 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.

- 6.14 Failure to Meet Development Schedule. If LESSEE fails to complete the improvements listed in Section 9.3 General Development Plan, of this agreement within eighteen (18) months from the effective date of this agreement, it is specifically agreed by LESSEE and CITY that CITY will be entitled to liquidated damages in the amount of Seventy Five Dollars (\$75.00) for every day of failure to meet the schedule of development until completion of development. If the improvements are not completed within eighteen (18) months following the date specified for completion, CITY, at its option, may terminate this lease. The City Manager, in his sole discretion, may approve an extension to the development schedule of up to six (6) months without further City Council approval.
- 6.15 Asbestos Disclosure. CITY discloses to LESSEE that portions of the structural components of the Premises may contain asbestos. LESSEE acknowledges having received notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. LESSEE shall disclose the existence of asbestos on the Leased Premises, as required by Health and Safety Code Section 25915. LESSEE agrees to indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the Leased Premises.
- 6.16 Water Quality - Best Management Practices and Stormwater Pollution Prevention Plan. CITY and LESSEE are committed to the implementation of programs to manage activities on the Leased Premises in a manner which aids in the protection of San Diego's precious water resources. LESSEE shall comply with the Best Management Practices ("BMP") including the Stormwater Pollution Prevention Plan ("SWPPS") approved by CITY's Stormwater Management Program.

LESSEE shall submit for review and approval by City Manager or its designee, within ninety (90) days of the execution of this Lease, BMP and SWPPS that will control erosion and reduce the amount of pollutants and other sediments discharged from the Leased Premises. The BMP and SWPPS will be reviewed periodically by CITY. Upon written notice from the City Manager requesting an update of the BMP, LESSEE shall submit updated BMP and SWPPS for City Manager review and approval within ninety (90) days of receipt of notice. LESSEE shall implement any necessary changes to the BMP and SWPPS as a result of any review by CITY to ensure compliance with any changes in laws or regulations.

When the BMP and SWPPS have been developed and implemented by the LESSEE, it is crucial that the practices be enforced and maintained. It is LESSEE's responsibility to inform employees, contractors, subcontractors, agents and vendors of the BMP and SWPPS.

The BMP and SWPPS will be incorporated into this Lease as Section 9.7 BMP and SWPPS.

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 Director
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, provided, however, that any amendment to this lease shall require City Council approval.
- 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 Title 24 of the California Code of Regulations (Building Code) as defined in California Health and Safety Code (Title 24), 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, to the extent required under the applicable law.
- 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, to the extent required under the applicable law.
- c. LESSEE shall post a statement addressing the requirements of subsections 1. and 2. above 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.

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 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the Leased Premises in a creditable manner.
- 7.15 Supersedure. It is mutually agreed that this lease, upon execution, supersedes and annuls that certain lease executed on the 2nd day of March, 1981, with City of San Diego and Dick Chiang and Jackson Chiang, Document 253702, as assigned, 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.
- 7.16 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.

- 7.17 Relocation Payments. LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this lease.
- 7.18 Survival. All obligations and liabilities of the parties to this lease that accrue prior to the expiration of termination of this lease shall survive the expiration or termination of this lease.

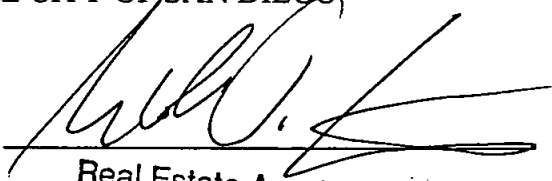
SECTION 8: SIGNATURES

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.

Date _____

THE CITY OF SAN DIEGO

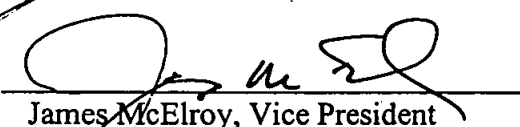
By 
Real Estate Assets Director

LESSEE: DOWNTOWN JOHNNY
BROWN'S, INC.

Date 3/08/02

By 
John Brown, President

Date 3/08/02

By 
James McElroy, Vice President

APPROVED as to form and legality this 29th day of May, 2002.

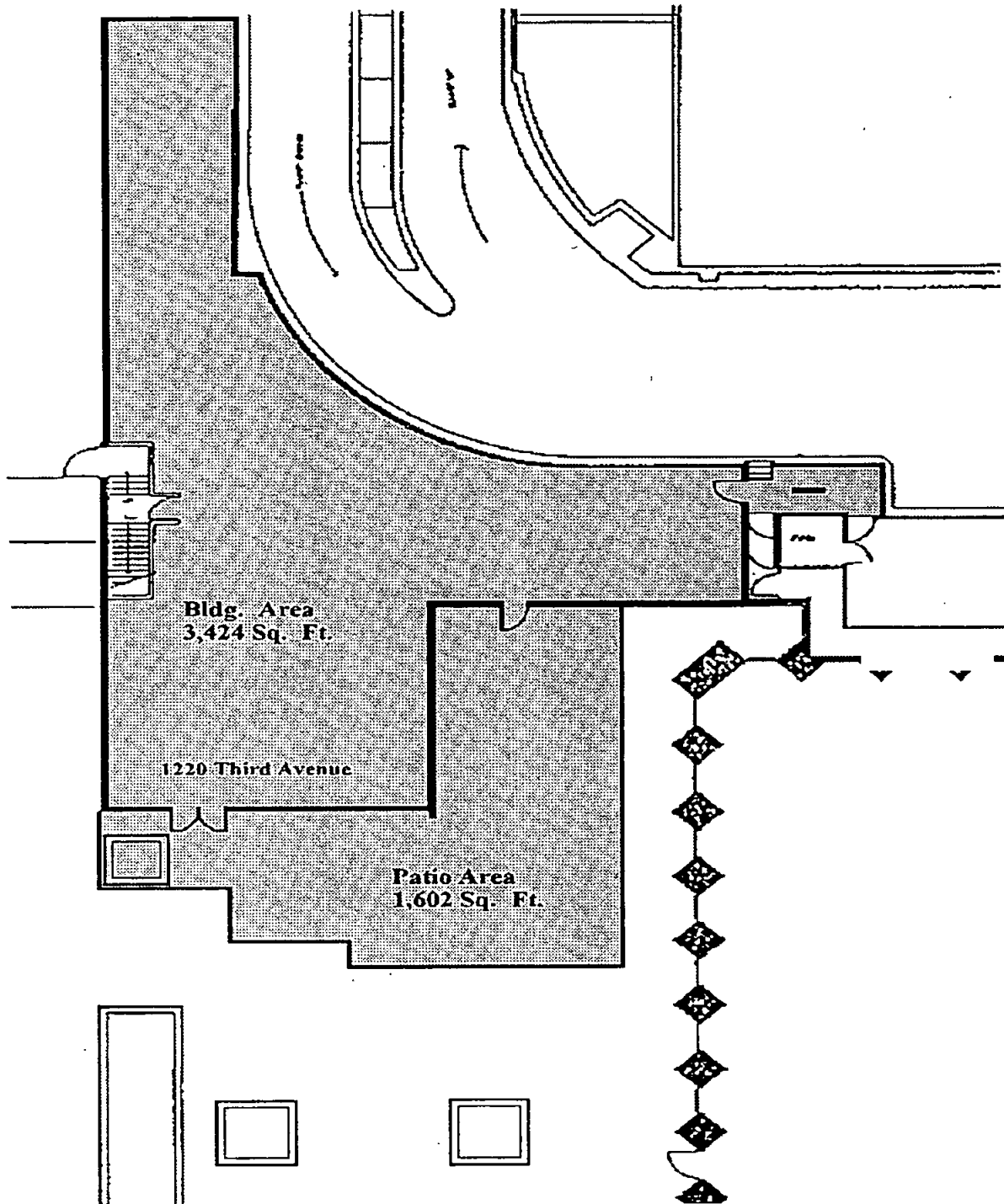
CASEY GWINN, CITY ATTORNEY

By 
Deputy City Attorney

CEH/csn-j
03/01/02
I:\WPO\2001\HARGETT\LEASE-DOWNTOWN JOHNNY BROWN'S.wpd

SECTION 9: EXHIBITS

9.1 Building Plan or Floor Plan(s) - Exhibit "A"



9.2

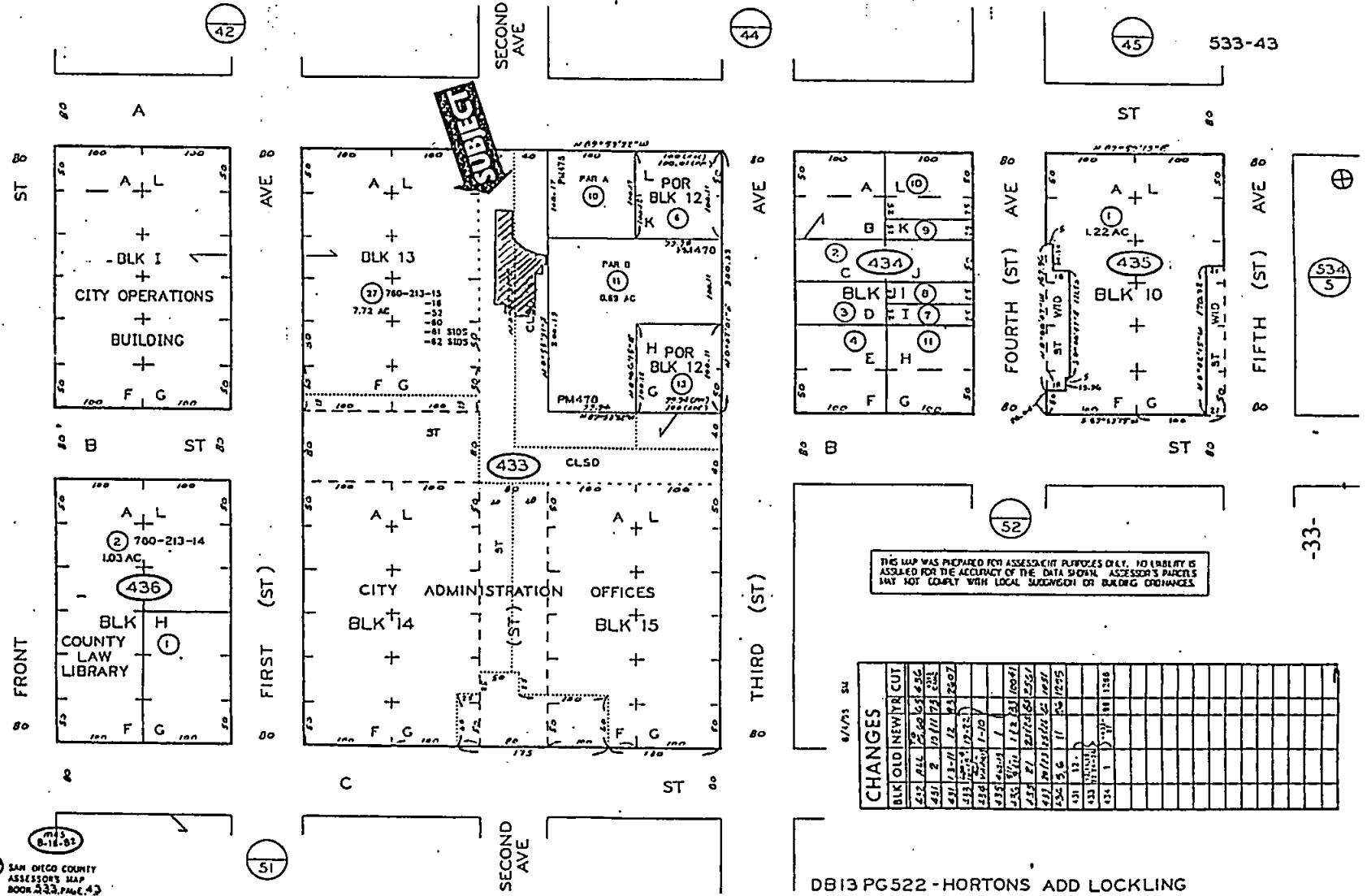
Parcel Map(s).

08

533-43/433-43
4-15-81

41

SAN DIEGO COUNTY
ASSESSOR'S MAP
BOOK 333, PAGE 43



DB13 PG522 - HORTONS ADD LOCKLING

-33-

9.3 General Development Plan

As required by Section 6.12 of the above lease, the following General Development Plan is agreed to by CITY and LESSEE as material consideration for this lease.

Improvement Items	Estimated Cost	Estimated Completion Date
New ADA Compliant Restrooms	\$22,000	January, 2002
Signage/New Awnings	\$27,000	March, 2002
Expand and Remodel Patio		June, 2002
- Patio fence with tempered glass wind screen	\$ 7,500	"
- Gas heaters	\$ 4,500	"
- Security shutters	\$ 4,800	"
Dining Room Remodel	\$15,000	June, 2002
Aloha Point of Sale - Computerized order & revenue system	\$27,000	September, 2002
New H.V.A.C. System	<u>\$16,000</u>	November, 2002
Estimated Total Expenditure:	\$138,800	

Other improvements to include new tables and chairs, painting of store front.

9.4 Schedule of Days and Hours of Operation.

Seven days a week

11:00 a.m. - 2:00 a.m. daily (will close on selected holidays)

9.5 Marketing Plan.

1. Monday - Friday Lunch and Happy Hour

Provide quality food and beverage at affordable prices to the work force in the surrounding area. To be served in an efficient manner during peak periods. This will include some changes and additions to the current menu. Johnny Brown's has always been known as a place for great food, served quickly. With the continued growth of the downtown business district, this quality food and service will become more desirable. We plan to increase name recognition in the downtown area. Increased signage on Third Avenue and A Street alone will increase walk-by traffic to the restaurant.

2. Weekend and Evenings

Provide same quality food and service for theatregoers and convention and trade show attendees. With standing room only crowds on Opera or Broadway San Diego show nights, the addition of more patio space and increased signage will create an opportunity for increased profits and sales. With this comes the possibility of more advertising in conjunction with these organizations, as well as the San Diego Concourse, and local hotels catering to these groups. The update of our restrooms and storefront, along with the other additions listed, will continue to make Johnny Brown's the people's choice before and after the shows.

3. Focus on Providing a Neighborhood Pub

To accommodate the rapidly increasing downtown residential community, Johnny Brown's draws a crowd from the many businesses and professionals downtown. Many of these professionals either live downtown, or will soon. Many in this new demographic of professionals will be looking for a neighborhood pub to call their own. Johnny Brown's is a perfect, casual restaurant for meeting friends and family. We believe a general "facelift" of the restaurant (new ADA bathrooms, bigger patio, new awning, etc.) will increase the attractability of Johnny Brown's. Also, a continued and perhaps more involved relationship with local hotels and their employees will give Johnny Brown's increased out-of-town draw.

4. Increase Sports Bar Customer Count

Johnny Brown's is already known as *the* spot to watch the big game. With the increasing downtown residential community, we will bring even more of a sports oriented crowd in with the addition of more televisions and Direct Dish Sports packages. The addition this past year of the NFL package has proven a success. Adding more packages such as baseball and basketball can only increase sales and profits further. To advertise these new additions, we plan to focus not only on the increasing residential population downtown, but the hotel and visitor crowd as well. By creating a relationship with local hotels, as well as continuing to foster our

current relationship with many hotels, we plan to bring in more of the out of town guest looking to watch their local team. In the future, with the addition of the downtown ballpark, Johnny Brown's has the opportunity to become a place for meeting friends before and after the game. Sports bar patrons represent a great potential for increased sales.

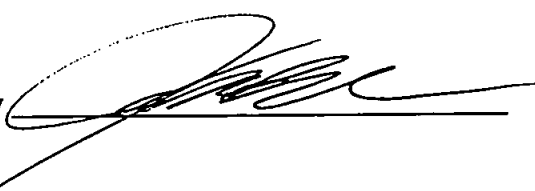
4. Web Site Advertising

All of these ideas and improvements will be advertised using the official Johnny Brown's website. Plans to increase the usefulness of our website include weekly updates, the addition of new keywords and links (i.e. links with the Opera or Broadway San Diego), and increased signage with the web address.

9.6 Corporate Name.

DOWNTOWN JOHNNY BROWN'S
CORPORATE NAME

I, John M. Brown, certify that I am the
President of the corporation named in the attached agreement;
that James E. McElroy, who signed this agreement on behalf of the corporation, was
then Vice-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 MARCH 8, ²⁰⁰²~~19~~, and is within the
scope of its corporate powers; and that set out below are the names of the officers and directors
of said corporation.

By 

CORPORATE SEAL

Name

J. E. McElroy Vice President

Title

Name

John M. Brown President

Title

Name

Timothy J. Brown SECRETARY/CFO

Title

Name

Title

9.7 BMP and SWPPS

RESOLUTION NUMBER R- 296518

ADOPTED ON MAY 21 2002

A RESOLUTION APPROVING TEN-YEAR LEASE OF CITY-
OWNED PROPERTY LOCATED AT 1220 THIRD AVENUE
TO DOWNTOWN JOHNNY BROWN'S, INC.

WHEREAS, City owns property at 1220 Third Avenue, San Diego, California [the
Property] which consists of commercial space currently operated as a restaurant by Downtown
Johnny Brown's, Inc.; and

WHEREAS, pursuant to Land Use and Housing approval of exclusive negotiations on
February 23, 2000, the City Manager has negotiated a lease of the Property to Downtown Johnny
~~Brown's, Inc., to continue restaurant operations on the Property for ten years, with a five-year~~
extension option; and

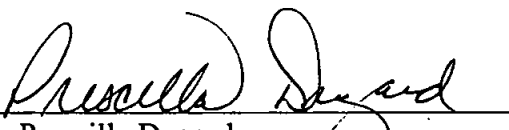
WHEREAS, the fair market value of the Property is estimated by City Manager staff to
be \$375,000; and

WHEREAS, the City Manager has negotiated percentage rent for the lease to begin at
5.5% and escalate to 7% in year 10, which rental rate is considered by City Manager to be fair
market rent based upon comparable restaurant leases in the downtown area; NOW,
THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is
authorized to execute, for and on behalf of the City of San Diego, a ten-year lease agreement
with one five-year option with Downtown Johnny Brown's, Inc., a 3,434 square-foot building

area, 1,602 square-foot patio area 1220 Third Avenue, in the San Diego Concourse, San Diego, for a term of ten years with one five-year option to extend at an initial annual rent of \$46,750 (5.5% of gross income), which has been confirmed by the City's Valuation Division as fair market rent, and under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR- 296518.

APPROVED: CASEY GWINN, City Attorney

By 
Prescilla Dugard
Deputy City Attorney

PD:cdk

05/07/02

Or.Dept:REA

R-2002-1520

Form=leaser.frm

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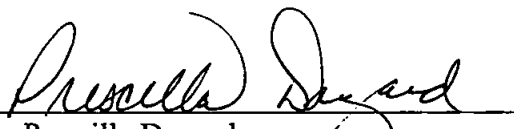
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APPROVED: CASEY GWINN, City Attorney

By 
Prescilla Dugard
Deputy City Attorney

PD:cdk

05/07/02

Or.Dept:REA

R-2002-1520

Form=leaser.frm

Passed and adopted by the Council of the City of San Diego on May 21, 2002 by the following vote:

YEAS: PETERS, WEAR, ATKINS, STEVENS, MAIENSCHIN, FRYE, MADAFFER, INZUNZA, MAYOR MURPHY.

NAYS: NONE.

NOT PRESENT: NONE.

AUTHENTICATED BY:

DICK MURPHY

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

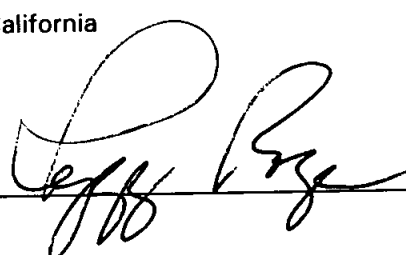
By: PEGGY ROGERS Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION No. R- 296518 passed and adopted by the Council of The City of San
Diego, California on May 21, 2002.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By:  Deputy

ARTICLES OF INCORPORATION
OF
DOWNTOWN JOHNNY BROWN'S, INC.

ENDORSED - FILED
In the Office of the Secretary of State
of the State of California
MAR 07 2001

BILL JONES, Secretary of State

I.

The name of this corporation is DOWNTOWN JOHNNY BROWN'S, INC.

II.

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business, or the practice of a profession permitted to be incorporation by the California Corporations Code.

III.

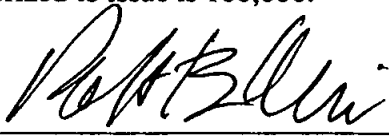
The name and address in the State of California of this corporation's initial Agent for Service of Process is:

Robert B. Martin
1150 Silverado Street
La Jolla, California 92037

IV.

The corporation is authorized to issue only one class of shares of stock, and the total number of shares which this corporation is authorized to issue is 100,000.

Dated: 3/7/01


Robert B. Martin
Incorporator



STOCK TRANSFER LEDGER

[illegible]

ANNUAL SUMMARY OF TRANSACTIONS

NAME OF ENTITY _____ Fiscal Year Ended _____

1. COMPENSATION OF DIRECTORS/MANAGERS:

<u>NAME</u>	<u>COMPENSATION</u>	<u>EFFECTIVE DATE</u>
-------------	---------------------	-----------------------

2. SALARY COMPENSATION OF OFFICERS:

<u>OFFICE</u>	<u>NAME</u>	<u>COMPENSATION</u>	<u>EFFECTIVE DATE</u>
---------------	-------------	---------------------	-----------------------

President:
Vice President:
Secretary:
Chief Financial
Officer/Treasurer:

3. BONUSES OF OFFICERS/MANAGERS:

<u>NAME</u>	<u>AMOUNT</u>	<u>DATE PAID OR TO BE PAID</u>
-------------	---------------	--------------------------------

4. LOANS TO [FROM] SHAREHOLDER/MEMBERS:

<u>LENDER</u>	<u>BORROWER</u>	<u>AMOUNT</u>	<u>ANNUAL % RATE</u>	<u>DATE MADE</u>	<u>TERM</u>	<u>PROM. NOTE* YES / NO</u>
---------------	-----------------	---------------	--------------------------	------------------	-------------	---------------------------------

*5. COMMERCIAL LOANS/LINES OF CREDIT MADE/OPENED: No _____ Yes _____

*6. EMPLOYEE BENEFIT PLAN CONTRIBUTIONS MADE: No _____ Yes _____

*7. MAJOR PURCHASES OF ASSETS
OTHER THAN REAL PROPERTY: No _____ Yes _____

*8. MAJOR LEASES OF ASSETS
OTHER THAN REAL PROPERTY: No _____ Yes _____

*9. PURCHASE OF REAL PROPERTY: No _____ Yes _____

*10. LEASES OF REAL PROPERTY: No _____ Yes _____

*11. NEW BANK ACCOUNTS OPENED: No _____ Yes _____

*12. ADDITIONAL ACTIONS
TO BE APPROVED IN ANNUAL MINUTES: No _____ Yes _____

* Attach either copies of documents supporting the transaction or summary of information so appropriate resolution may be prepared.

MINUTES OF ORGANIZATIONAL MEETING

OF

DOWNTOWN JOHNNY BROWN'S, INC.

A California corporation

The Incorporator(s) named in the Articles of Incorporation of the above named corporation held a meeting at the time, on the day and at the place set forth hereinbelow for the purpose of completing the organization of said corporation:

TIME: 2:00 PM

DATE: March 14, 2001

PLACE: 1150 Silverado Street, La Jolla CA

Present at said meeting were the following person(s):

JOHN BROWN

ROBERT MARTIN

TODD WESSELMAN

The following named persons acted as Temporary Chairman and Temporary Secretary of the meeting:

Temporary Chairman: John Brown

Temporary Secretary: Todd Wesselman

The Chairman stated that the original Articles of Incorporation had been filed in the Office of the California Secretary of State on March 8, 2001. The Chairman presented to the meeting a certified copy of said Articles of Incorporation showing filing as stated and the Secretary was directed to insert

said copy in the Book of Minutes of the corporation.

The matter of the adoption of Bylaws for the regulation of the corporation was next considered. The Chairman presented to the meeting a form of Bylaws and recommended that the same be adopted as Bylaws of the corporation. On motion duly made, seconded and carried, the following resolutions were adopted:

WHEREAS, Bylaws for the regulation of the affairs of this corporation have not yet been adopted; and

WHEREAS, there has been presented to this meeting a form of Bylaws for the regulation of the affairs of this corporation; and

WHEREAS, it is deemed to be in the best interests of this corporation and its shareholders that said Bylaws be adopted as and for the Bylaws of this corporation; and

WHEREAS, the undersigned Incorporator(s) is/are empowered pursuant to Section 210 of the California Corporations Code to adopt Bylaws of the corporation;

NOW, THEREFORE, BE IT RESOLVED, that the Bylaws presented to this meeting be and the same hereby are adopted as and for the Bylaws of this corporation.

RESOLVED FURTHER, that the Secretary of this corporation be, and hereby is, authorized and directed to execute a certificate of the adoption of said Bylaws and to insert said Bylaws as so certified in the Book of Minutes of this corporation and to see that a copy of said Bylaws, similarly certified, is kept at the principal office for the transaction of business of this corporation, in accordance with Section 213 of the California Corporations Code.

The Chairman presented for the approval of the meeting a proposed seal of the corporation consisting of two (2) concentric circles with the words: Downtown Johnny Brown's, Inc.

All of said persons being present, each accepted his or her respective directorship. Thereafter, on motion duly made, seconded and unanimously carried, John Brown was elected to preside as chairman for the balance of the meeting and Todd Wesselman was elected to preside as secretary for the balance of the meeting.

The meeting then proceeded to the election of a President, a Vice-President, a Secretary and a Chief Financial Officer. The following were duly elected to the offices indicated after the names of each:

JOHN BROWN.....President

JAMES E. McELROY.....Vice-President

TODD WESSELMAN.....Secretary

TODD WESSELMAN.....Chief Financial Officer

Each officer so elected being present, accepted his or her respective office.

The chairman then presented to the meeting a proposed form of share certificate for use by the corporation. On motion duly made, seconded and unanimously carried, said form of share certificate was approved and adopted and the Secretary was instructed to insert a copy thereof in the Book of Minutes immediately following the Minutes of the meeting.

and the words and figures "INCORPORATED, March 8, 2001
, CALIFORNIA", in the form and figures as follows:

On motion duly made, seconded and carried, the
following resolution was adopted:

RESOLVED, that the corporate seal in the
form, words, and figures presented to this meeting
be and the same hereby is adopted as the seal of
this corporation.

The meeting then proceeded to the election of
directors of the corporation. The Chairman stated that the
Bylaws of the corporation provide that the authorized number
of directors of the corporation shall be two (2) until
changed by an amendment to said Bylaws and that pursuant
to the authority granted to the Incorporator(s) of the
corporation under Section 210 of the California Corporations
Code, said Incorporator(s) is/are empowered to elect the first
directors of the corporation. Accordingly, the Incorporator(s),
in the exercise of said power and authority, duly elected to the
Board of Directors of the corporation the following persons:

JOHN BROWN

JAMES E. McELROY

The Chairman suggested that the Directors consider authorizing the issuance and sale of shares of the corporation set forth below to the following persons, in the amounts and for the consideration indicated, so long as the criteria set forth in Corporations Code Section 25102(f)(2) are met:

<u>NAME</u>	<u>NO. SHARES</u>	<u>CONSIDERATION</u>
JOHN BROWN	1,000	services
JAMES E. McELROY	1,000	services

On motion duly made, seconded, and unanimously carried, the following resolutions were adopted:

WHEREAS, this corporation is authorized to issue an aggregate of 100,000 shares of its capital stock; and

WHEREAS, the Board of Directors of this corporation believes it to be in the best interests of the corporation to offer and sell a total of 2,000 shares thereof in a single combined transaction and to qualify said offer and sale for exemption from the qualification requirement of Section 25110 of the Corporations Code, pursuant to the limited offering exemption of Section 25102(f) of that Code; and

WHEREAS, such offer and sale has been, and will be, made, respectively, in accordance with the requirements, limitations and other provisions of Section 25102(f) of the Corporations Code; and

WHEREAS, contractual commitments have been received from the persons named above to purchase the number of shares of this corporation's capital stock, for the consideration stated; and

WHEREAS, the Board believes it to be in the best interests of the corporation to accept each of said offer;

NOW, THEREFORE, BE IT RESOLVED, that any officer of this corporation be and hereby is authorized and directed, on behalf of this corporation, to prepare or cause to be prepared, executed and filed, with the California Commissioner of Corporations, a Notice of Transaction pursuant to Corporations Code Section 25102(f) and applicable administrative rules.

RESOLVED, FURTHER, that the value per share for purposes of this issuance shall be fixed at \$ no par and

RESOLVED, FURTHER, that the President, or the Vice President, and the Secretary or the Assistant Secretary be and they hereby are authorized and directed to sell and issue shares of stock of this corporation as provided in these resolutions.

RESOLVED, FURTHER, that the Officers of this corporation be and they hereby are authorized and directed to execute all documents and to take such action as they may deem necessary or advisable to carry out and perform the purpose to these resolutions.

The Chairman next recommended that the Board consider the advisability of the corporation making an election under Section 1362 of the Internal Revenue Code to become a "S Corporation", in accordance with the provisions of Subchapter S of the Internal Revenue Code of 1986, as amended, and California Revenue and Tax Code Section 23801. The Chairman explained that such election permits, in general, the profits and losses of the corporation to be passed through directly to the shareholders of the corporation, with the corporation, except under special circumstances, to be a non-taxable entity for federal purposes and taxable for state purposes at the tax rate stated in California Revenue and Tax Code Section 23802. He further explained that such election would not necessarily be a permanent action; but, rather, could be revoked by the corporation at such subsequent time as deemed to be in the best interests of the shareholders, subject to the written consent of such revocation by shareholders holding more than 50% of the corporation's outstanding stock on the day on which such revocation is made. Following discussion of the matter, upon motion duly made and seconded, the following resolutions were unanimously adopted:

WHEREAS, this corporation is a domestic corporation, not a member of an affiliated group of corporations within the definition of Section 1504(a) of the Internal Revenue Code of 1986, as amended (the "Code"), nor an otherwise ineligible corporation, as defined in Sections 1361(b)(2) and (c)(6) of the Code; and

WHEREAS, this corporation does not have more than 75 shareholders, all of whom are either (1) individuals, (2) decedent's estates, (3) bankrupt's estates, or (4) trusts described in Section 1361 of the Code, and none of whom are non-resident aliens or foreign trusts; and

WHEREAS, when shares of this corporation have been sold and issued pursuant to the foregoing resolutions, this corporation will have only one class of capital stock which is issued and outstanding; and

WHEREAS, it is deemed to be in the best interests of this corporation and its shareholders that the corporation make an election under Subchapter S of the Internal Revenue Code and under California Revenue and Tax Code Section 23801 to be taxed hereafter as a S Corporation pursuant to the provisions thereof;

NOW, THEREFORE, BE IT RESOLVED, that this corporation hereby elects, in accordance with the provisions of Section 1362 (a) of the Internal revenue Code of 1986, as amended and the provisions of California Revenue and Tax Code Section 23801 to be taxed as a S Corporation; and

RESOLVED FURTHER, that any officer of this corporation be, and hereby is, authorized, directed and empowered on behalf of this corporation, and in its name, to execute and file with the Internal Revenue Service and the Franchise Tax Board an appropriate election on such form, instrument or document, and amendments thereto, as shall constitute an election by this corporation to be taxed under Subchapter S of the Internal Revenue Code of 1986, as amended, and California Revenue and Tax Code Section 23801 and to do or cause to be done any and all other acts and things as such officer may, in his or her discretion, deem necessary or appropriate to carry out the purposes of the foregoing resolution, including, without limiting the generality thereof, securing the written consent to such election by each of the shareholders of this corporation.

After some discussion, the location of the principal office of the corporation for the transaction of the business of the corporation was fixed pursuant to the following resolution unanimously adopted, upon motion duly made and seconded:

RESOLVED, that the location of the principal office for the transaction of the business of this corporation, until changed by subsequent resolution of this Board, shall be as follows:

1220 3rd Avenue
San Diego, CA 92101

To provide for a depository for the funds of the corporation and to authorize certain officers to deal with the corporate funds, the following resolutions were duly adopted:

RESOLVED, that all funds of this corporation be deposited with such commercial bank or depository as the President or Vice President of this corporation shall determine; and

RESOLVED FURTHER, that any officer of this corporation shall be authorized to endorse checks, drafts, or other evidences of indebtedness made payable to the order of this corporation, but only for the purpose of deposits; and

RESOLVED FURTHER, that all checks, drafts, and other instruments obligating this corporation to pay money shall be signed on behalf of this corporation by the following officers thereof:

JOHN BROWN

TODD WESSELMAN

JAMES E. McELROY

In order to provide for the payment of the expenses of incorporation and organization of the corporation, on motion duly made, seconded, and unanimously carried, the following resolution was adopted:

RESOLVED, that the President, or Vice President and the Chief Financial Officer of this corporation be, and they hereby are, authorized and directed to pay the expenses of the incorporation and organization of this corporation.

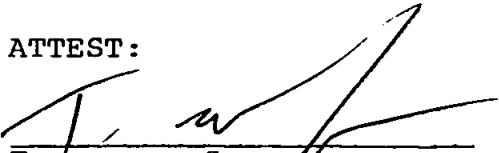
The Chairman then suggested that the Directors consider the proposal of

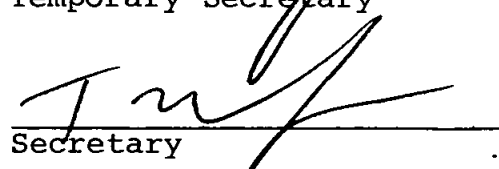
Said proposal is as follows:

On motion duly made, seconded and unanimously carried, the following resolution was adopted:

There being no further business to come before the meeting, upon motion duly made, seconded and unanimously carried, the meeting was adjourned.

ATTEST:


Temporary Secretary


Secretary


Temporary Chairman


President and Chairman

Incorporator

Incorporator

Incorporator



THE CITY OF SAN DIEGO

EQUAL OPPORTUNITY CONTRACTING PROGRAM

1010 SECOND AVENUE • SUITE 500 • SAN DIEGO, CA 92101
(619) 533-4464 • FAX: 533-4474

WORK FORCE REPORT

The objective of the Equal Employment Opportunity Program is to ensure that contractors doing business with the City, or receiving funds from the City, will not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship.

NO OTHER FORMS WILL BE ACCEPTED

CONTRACTOR IDENTIFICATION

Type of Contractor: ☐ Construction ☐ Vendor/Supplier ☐ Financial Institution ☒ Lessee/Lessor
☐ Consultant ☐ Grant Recipient ☐ Insurance Company ☐ Other

Name of Company: DOWNTOWN JOHNNY BROWN'S

AKA/DBA: _____

Address (Corporate Headquarters, where applicable): 1220 3RD AV

City SD County SD State CA Zip 92101

Telephone Number: (619) 232-8414 FAX Number: (619) 232-6530

Name of Company CEO: JOHN BROWN

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: _____

City _____ County _____ State _____ Zip _____

Telephone Number: () _____ FAX Number: () _____

Type of Business: RESTAURANT/BAR Type of License: _____

The Company has appointed: TODD WESSERMAN

as its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate, and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: SAME

Telephone Number: () _____ FAX Number: () _____

For Firm's: ☐ San Diego Work Force and/or ☐ Managing Office Work Force

I, the undersigned representative of

DOWNTOWN JOHNNY BROWN'S
(Firm Name)

SAN DIEGO

(County)

CA

(State)

hereby certify that information provided herein is true and correct. This document was executed on this day of

3/15

192002

(Authorized Signature)

TODD WESSERMAN

(Print Authorized Signature Name)

EQUAL OPPORTUNITY AGREEMENT

NON-DISCRIMINATION CLAUSE: Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Contractor shall ensure that its subcontractors comply with the City of San Diego's Equal Employment Opportunity Program.

EQUAL EMPLOYMENT OPPORTUNITY (EEO): Contractor has received, read, understands and agrees to be bound by the City of San Diego *Municipal Code*, Chapter II, Article 2, Division 27 (Equal Employment Opportunity Program) provided with the proposal package.

Contractor has submitted either a *Work Force Report* or an *Equal Employment Opportunity Plan* as required by Section 22.2705 of the City of San Diego *Municipal Code*.

City and Contractor agree that compliance with EEO provisions will be implemented, monitored, and reviewed by the City's Equal Opportunity Contracting Program (EOCP) staff.

EQUAL OPPORTUNITY CONTRACTING: Contractor has received, read, understands and agrees to be bound by the Equal Opportunity Contracting Program requirements described in the proposal package.

If requested, Contractor shall submit the *Outreach and Teaming Survey*. Contractor agrees to provide updated reports as requested by the City.

Contractor agrees to insert equal opportunity compliance language in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor.

Project Name: _____ Bid No.: _____

Company Name: Downtown Joanny Brown's Date: 3/15/02

Authorized Signature

TODD WESSERMAN
Print Authorized Signature Name

NAME OF FIRM:

DOWNTOWN JOHNNY BROWNS

DATE: 3/15/02

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force.

Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- | | |
|--|--|
| (1) African-American, Black | (5) Filipino |
| (2) Latino, Hispanic, Mexican-American, Puerto Rican | (6) Caucasian |
| (3) Asian, Pacific Islander | (7) Other Ethnicities; not falling into other groups |
| (4) American Indian, Eskimo | |

OCCUPATIONAL CATEGORY	(1) African-American		(2) Latino		(3) Asian		(4) American Indian		(5) Filipino		(6) Caucasian		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Executive, Administrative, Managerial			1	2							4			
Professional Specially		1	4	4							4	2		
Engineers/Architects														
Technicians and Related Support														
Sales														
Administrative Support/Clerical														
Services														
Precision Production, Craft and Repair														
Machine Operators, Assemblers, Inspectors														
Transportation and Material Moving														
Handlers, Equipment Cleaners, Helpers and Nonconstruction Laborers*														

*Construction labors and other field employees are not to be included on this page

TOTALS EACH COLUMN		1	5	6							8	2		
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GRAND TOTAL ALL EMPLOYEES

22

INDICATE BY GENDER AND ETHNICITY THE NUMBER OF ABOVE EMPLOYEES WHO ARE DISABLED:

DISABLED														
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NON-PROFIT ORGANIZATIONS ONLY:

BOARD OF DIRECTORS														
VOLUNTEERS														
ARTISTS														