

SAN DIEGO CIVIC THEATRE OPERATING AGREEMENT

THIS SAN DIEGO CIVIC THEATRE OPERATING AGREEMENT ("Agreement") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and SAN DIEGO THEATRES, INC., a California nonprofit corporation ("OPERATOR"), to be effective as of **December 1, 2006** (the "Effective Date"), upon execution by the parties and approval by the San Diego City Attorney, as follows:

1. Right to Enter. Subject to the terms and conditions of this Agreement, CITY hereby grants permission to OPERATOR, its employees, agents and contractors to enter upon the following CITY-owned property (collectively, the "Civic Center Facilities") more particularly described in the attached Exhibit A, incorporated herein):
 - a. The Civic Theatre ("Theatre"), located at 1110 Third Avenue, San Diego, California 92101, consisting of a theatre building that includes seating for 2,967 people;
 - b. The San Diego Community Concourse Plaza (the "Plaza Area"), located at 202 "C" Street, San Diego, California 92101, comprising approximately 26,000 square feet of exterior space; and
 - c. The following San Diego Community Concourse ("Concourse") facilities (collectively, the "Concourse Area"):
 - i. Ticketing: Concourse ticketing office, ticketing management office, and the ticketing telephone operations rooms (i.e., Rooms 215 & 216), comprising approximately 1,600 square feet;
 - ii. Concessions Support: Concourse basement concessions support space, comprising approximately 700 square feet; and
 - iii. Equipment Storage: Concourse basement equipment storage area, comprising approximately 1,500 square feet of fenced-off space.
2. Use of Civic Center Facilities. OPERATOR may enter upon and use the Civic Center Facilities solely and exclusively for the purposes designated below. OPERATOR shall continuously occupy and use the Civic Center Facilities throughout the term of this Agreement. OPERATOR'S unauthorized use of the Civic Center Facilities or OPERATOR'S failure to continuously occupy and use the Civic Center Facilities as provided herein shall be a default and subject this Agreement to immediate termination at CITY'S sole option.
 - a. Theatre. OPERATOR shall have exclusive use of the Theatre, non-exclusive use of the Plaza Area, and exclusive use of the Concourse Area for the purpose of

managing, marketing, and operating the Theatre as a public assembly venue for performing arts, entertainment, education, and community, convention, corporate, and civic activities, including the presentation and/or production of public, private, invitational, and ticketed events. Such events may be produced through OPERATOR'S renting or licensing the Civic Center Facilities to individuals, organizations, or corporations, or through OPERATOR'S in-house production. OPERATOR may:

- i. Occupy, control, manage, operate, and market the Theatre as a public assembly venue for performing arts, entertainment, educational, community, convention corporate and civic events, and such events may be public, private, invitational or ticketed;
 - ii. Obtain and hold a license to sell and dispense alcoholic beverages during events held in the Theatre and operate concessions, in connection with events occurring in the Theatre, selling beverages and light refreshments, packaged food items, novelties, and articles primarily related to events held in the Theatre;
 - iii. Promulgate and administer management and operational policies for the Theatre;
 - iv. Retain, hire, and contract with consultants and other professionals or experts that Corporation, in its sole discretion, determines are necessary to perform its obligations herein;
 - v. Enter into licenses, rental agreements, and other contracts or agreements with third parties to use the Theatre, including contracts or agreements for events occurring up to three (3) years beyond the term of this Agreement;
 - vi. Provide other services and charge appropriate fees to users in connection with their use of the Theatre; and
 - vii. Take all other actions and make such other decisions as may be required to perform the services required by this Agreement.
- b. Concessions. OPERATOR may operate a concession in the Theatre and the Plaza Area in conjunction with Theatre events. Such concession may sell to the general public beverages, including alcoholic beverages pursuant to a liquor license, and light refreshments, packaged food items, novelties, and articles primarily related to Theatre events, including without limitation recordings, broadcastings, and related articles and services.
- c. Plaza Area. OPERATOR shall have non-exclusive use of the Plaza Area for unimpeded ingress and egress, for use as an intermission audience gathering area, and for Theatre event-related activities. OPERATOR shall diligently coordinate

with the operator of Golden Hall (i.e., CITY or CITY'S designee, "Golden Hall Operator") regarding event bookings to avoid scheduling conflicts. OPERATOR shall provide Golden Hall Operator a minimum of three (3) months prior written notice of OPERATOR'S Civic Center Facilities event schedule. If OPERATOR and Golden Hall Operator are unable to resolve a scheduling conflict, CITY'S Mayor, or his or her designee ("Mayor"), shall resolve the conflict in his or her sole and absolute discretion, which decision shall be binding upon OPERATOR.

3. Term. The term of this Agreement ("Term") shall be three (3) years, commencing on the Effective Date.
4. Obligations upon Expiration or Termination. Upon expiration or termination of this Agreement, OPERATOR shall surrender possession of the Theatre to CITY on the effective date of termination. The parties shall mutually agree upon an orderly transition to ensure the unobstructed availability of the Theatre for persons or entities who have signed written contracts for its use. The parties shall cooperate in the transition and neither party shall interfere with or impede in any manner the transfer of business records and information to enable the continued operation of the Theatre, or the protection and/or removal of OPERATOR'S personal property (including furniture, fixtures, and equipment, and business records) located in the Theatre.
5. Agreement Fees & Costs. Consideration to CITY for granting this Agreement shall be as follows; provided, however, any prepaid annual charges shall be subject to a pro-rata refund or credit to the account of the payor upon expiration or termination of this Agreement:
 - a. Management & Operation of Theatre. OPERATOR shall manage and operate the Theatre on CITY'S behalf as a public service, without a management fee, and without CITY funding. City shall not be required to pay OPERATOR for the services provided pursuant to this Agreement, nor shall OPERATOR be charged rent for its occupancy and use of the Civic Center Facilities, provided OPERATOR continues to perform the services set forth herein. OPERATOR shall retain the revenue generated from Theatre events and operations and use the same exclusively in connection with managing and operating the Theatre.
 - b. Utilities & Trash Collection Costs. Utilities, including sewer, gas, and electricity used by all CITY-owned buildings in the San Diego Civic Center (the "Civic Center"), of which the Civic Center Facilities is a part, along with trash collection services, are currently billed to CITY. CITY shall pay for all water, sewer, trash collection, gas, and electric service costs for the Civic Center Facilities. OPERATOR shall reimburse CITY for such costs as follows, which the parties agree is OPERATOR'S fair share of such costs:
 - i. Eighteen percent (18%) of Civic Center water and sewer costs;
 - ii. Twelve and Fifteen One-Hundredths percent (12.15%) of Civic Center gas

and electric costs; and

iii. Three Hundred Thirty-Four Dollars (\$334) per month for trash collection services.

c. Central Power Staff & Maintenance Costs.

i. Staffing Salaries. CITY shall reimburse OPERATOR for Eighty-Four and Seven-Tenths percent (84.7%) of the actual cost for salaries, benefits, and related expenses for the staffing of the Central Power Facilities ("Central Power"), located within the basement of the Concourse, which provides power, heating, ventilation, and air conditioning to CITY-owned buildings in the Civic Center, including the Theatre.

ii. Repair & Maintenance. OPERATOR shall pay for all routine repair and maintenance of the Central Power systems. CITY shall reimburse OPERATOR for Eighty-Eight and Seventy-Five One-Hundredths percent (88.75%) of the actual costs of such repair and maintenance, including materials and supplies.

iii. Staffing. CITY shall delineate staffing requirements and may, at its sole option and upon at least one hundred twenty (120) days prior written notice, assume responsibility for Central Power staff and maintenance.

d. Property Insurance Costs. CITY shall obtain and maintain property insurance for fire, property, and extended coverage that includes coverage of the Civic Center Facilities. OPERATOR shall reimburse CITY for its pro-rata share, as determined by the Mayor in his or her sole discretion, of the cost to obtain and maintain such insurance.

e. Event Parking Revenues. CITY shall pay to OPERATOR all Evan V. Jones Parkade ("Parkade") parking revenues solely generated from OPERATOR'S events held in the Civic Center Facilities, net of related costs for public safety and cashier personnel.

f. Public Safety Personnel. OPERATOR shall provide Parkade public safety personnel satisfactory to CITY. CITY may, in its sole discretion, determine staffing levels appropriate for the personal safety of the staff and patrons of the Parkade. CITY shall reimburse OPERATOR for the actual costs for salaries, benefits, and related expenses of such public safety personnel, excluding the costs for such personnel incurred solely for OPERATOR'S event parking for which OPERATOR receives the parking revenues, as provided above. Notwithstanding the foregoing, upon sixty (60) days prior written notice to OPERATOR, CITY may assume OPERATOR'S rights and obligations hereunder related to the provision of Parkade public safety personnel.

- g. Parkade Passes. CITY shall provide to OPERATOR up to sixteen (16) monthly Parkade passes at a discounted rate of Fifty percent (50%) of the regular rate.
 - h. Place of Payments. Payments to CITY shall be made by check 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, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California 92101. Payments to OPERATOR shall be made by check payable to San Diego Theatres, Inc., and mailed to San Diego Theatres, Inc., 1100 Third Avenue, San Diego, California 92101. All invoiced billings shall be due within thirty (30) days after receipt.
6. CITY'S Consent, Discretion. Whenever required under this Agreement, CITY'S consent or approval shall mean the written consent or approval of the Mayor, unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the Mayor's sole and absolute discretion, unless otherwise expressly provided.
7. Maintenance of the Civic Center Facilities. OPERATOR shall, at OPERATOR'S sole cost and expense and to CITY'S satisfaction, maintain the Civic Center Facilities in a decent, safe, healthy and sanitary condition at all times during the Term. Notwithstanding the foregoing, OPERATOR shall only be required to so maintain the Plaza Area in connection with its use thereof. CITY acknowledges that OPERATOR'S obligation under this section shall not include major capital repairs or improvements.
8. Inspection. CITY may, at all times upon prior notice, enter and inspect the Civic Center Facilities; provided, however, such inspection rights shall not include free admission to ticketed events on the Civic Center Facilities.
9. Improvements/Alterations. OPERATOR shall not construct any permanent improvements, structures, or installations on the Civic Center Facilities, and shall not alter the Civic Center Facilities without CITY'S prior written consent. OPERATOR shall not make any major structural or architectural design alterations to approved improvements, structures or installations on the Civic Center Facilities without CITY'S prior written consent, which may not be unreasonably withheld. This provision shall not relieve OPERATOR of any obligation under this Agreement to maintain the Civic Center Facilities in a decent, safe, healthy, and sanitary condition. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the Civic Center Facilities.
10. Ownership of Improvements and Personal Property.
- a. Improvements. Upon expiration or termination of this Agreement, any and all improvements, trade fixtures, structures, and installations or additions to the Civic Center Facilities now existing or constructed on the Civic Center Facilities by OPERATOR shall be deemed to be part of the Civic Center Facilities and shall become CITY'S property free of all liens and claims.

- b. Personal Property. OPERATOR shall remove OPERATOR-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property prior to the expiration of the Term, or as soon as reasonably practicable after a notice of termination, but in no event later than sixty (60) days after such notice of termination. Any such items which OPERATOR fails to remove shall be deemed abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove such items at OPERATOR'S sole cost and expense. If any removal of such personal property by OPERATOR results in damage to the Civic Center Facilities, OPERATOR shall repair all such damage at its sole cost and expense. Notwithstanding the foregoing, if OPERATOR elects to dispose of any of its personal property used in its operations on the Civic Center Facilities, upon expiration or termination of this Agreement, CITY shall have the first right to acquire or purchase such personal property.
- 11. Insurance. On or before the Effective Date, OPERATOR shall deliver to CITY a current certificate of insurance for a Commercial General Liability policy providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of Four Million Dollars (\$4,000,000). OPERATOR may use an umbrella policy in addition to a primary policy to meet the required coverage limits.
 - a. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
 - b. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department upon execution of this Agreement.
 - c. Qualified Insurer(s). All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
 - d. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of OPERATOR and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
 - e. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term of this Agreement, except "course of construction fire insurance" shall

be in force on commencement of all authorized construction on the Civic Center Facilities, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty (30) days prior to the expiration of each insurance policy, OPERATOR shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Agreement.

- f. Modification. To assure protection from and against the kind and extent of risk existing on the Civic Center Facilities, CITY, at its discretion, may require the revision of amounts and coverages at any time during the Term by giving OPERATOR thirty (30) days prior written notice. OPERATOR shall also obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Agreement.
- g. Accident Reports. OPERATOR shall report to CITY any accident causing property damage or injury to persons on the Civic Center Facilities. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- h. Failure to Comply. If OPERATOR fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, CITY may obtain the insurance. OPERATOR shall reimburse CITY for the premiums paid, with interest at the maximum allowable legal rate then in effect in California. CITY shall notify OPERATOR of such payment of premiums within thirty (30) days of payment stating the amount paid, the name(s) of the insurer(s), and the rate of interest. OPERATOR shall pay such reimbursement and interest on the first (1st) day of the month following CITY'S notice. **Notwithstanding any other provision of this Agreement, if OPERATOR fails or refuses to obtain or maintain insurance as required by this Agreement, or fails to provide proof of insurance, CITY may terminate this Agreement immediately upon such breach. Upon such termination, OPERATOR shall immediately cease its use of the Civic Center Facilities and commence and diligently pursue the removal of its property from the Civic Center Facilities.**
- i. All Risk Property Insurance. CITY shall obtain and maintain All Risk Property insurance on all insurable property on the Civic Center Facilities in an amount to cover 100 percent (100%) of the replacement cost. CITY shall deliver to OPERATOR a certificate of such insurance.
- j. Parkade Insurance. During the time OPERATOR is obligated to provide public safety personnel for the Parkade, CITY shall ensure that the operator of the Parkade includes OPERATOR as an additional insured under its policy of Comprehensive General Liability insurance.

12. OPERATOR'S Indemnification Obligation. OPERATOR shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents 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 OPERATOR'S officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Agreement or OPERATOR'S occupancy, use, development, or maintenance of the Civic Center Facilities, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that OPERATOR'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established negligence or willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, CITY shall pay all of the costs related thereto.
13. CITY'S Indemnification Obligation. CITY shall protect, defend, indemnify, and hold OPERATOR, its officers, representatives, agents 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 CITY'S elected officials, officers, employees, agents, or contractors, related to the Civic Center Facilities and which arise from the established negligence or willful misconduct of CITY, its elected officials, officers, representatives, agents and employees, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that CITY'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established negligence or willful misconduct of OPERATOR, its officers, representatives, agents and employees.
14. No Discrimination. OPERATOR shall not 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 OPERATOR'S use of the Civic Center Facilities, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
15. Local Business and Employment. OPERATOR acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. OPERATOR will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Agreement from local residents and firms as opportunities occur. OPERATOR agrees to hire qualified local residents and firms whenever feasible.
16. Drug-free Workplace. OPERATOR 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 Civic Center Facilities and specifying the actions that will be taken against employees for violations of the prohibition; and
 - b. Establish a drug-free awareness program to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. OPERATOR'S policy of maintaining a drug-free workplace;
 - iii. Any available drug counseling, rehabilitation, and employees assistance programs; and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
17. No Nuisance. OPERATOR shall not use the Civic Center Facilities in any manner which, in CITY'S opinion, creates a nuisance or disturbs the quiet enjoyment of persons in and to the surrounding area.
18. No Assignment. OPERATOR shall not assign any rights granted by this Agreement or any interest herein without CITY'S prior written consent. Approval of any such proposed assignment may be withheld in CITY'S sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Agreement.
19. Signs. OPERATOR shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY'S prior written consent. If any such unauthorized item is found on the Civic Center Facilities, OPERATOR shall remove the item at its expense within 24 hours notice by CITY, or CITY may thereafter remove the item at OPERATOR'S cost. No exterior signs shall be displayed without CITY'S prior written consent, except those marquee signs that currently exist on the Concourse and the Theatre's entry level, and banners that are hung on the Theatre's exterior to promote events occurring in the Theatre or related to OPERATOR'S business activities exclusively related to the Theatre.
20. Encumbrances. OPERATOR shall keep the Civic Center Facilities free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Agreement or OPERATOR'S occupancy, use, development, or maintenance of the Civic Center Facilities. OPERATOR shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Civic Center Facilities, including without limitation OPERATOR'S failure or the failure of any contractor or subcontractor hired by OPERATOR to pay any person or persons referred to

in Section 3181 of the California Civil Code or other applicable sections thereof.

21. Compliance with Laws. OPERATOR shall, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities now in effect or which may hereafter be in effect, which pertain to AGREEMENTTE'S occupancy, use, development, and maintenance of the Civic Center Facilities.
22. Disabled Access Compliance. CITY, as owner of the Theatre, shall be responsible for structural compliance of the Civic Center Facilities in accordance with the Americans with Disabilities Act and Title 24 of the California Code of Regulations (Building Code) as defined in Section 18910 of the California Health and Safety Code, and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities. CITY shall indemnify, hold harmless and defend OPERATOR against any claims or causes of action related to physical compliance of the Civic Center Facilities pertaining to ADA or Title 24. OPERATOR shall be responsible for compliance of non-structural accommodations and services related to the use of the Civic Center Facilities.
23. Taxes. PERMTTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon OPERATOR by reason of the business or other OPERATOR activities related to the Civic Center Facilities, including any licenses or Agreements. OPERATOR acknowledges that this Agreement may create a possessory interest subject to property taxation, and that OPERATOR may be subject to the payment of taxes levied on that interest. OPERATOR shall pay all such possessory interest taxes. OPERATOR'S payment for taxes, fees, and assessments shall not reduce any payment due CITY under this Agreement.
24. Asbestos Disclosure. Portions of the structural components of the Civic Center Facilities contain asbestos. OPERATOR acknowledges receipt of notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. OPERATOR shall disclose to the appropriate parties the existence of asbestos on the Civic Center Facilities, as required by Health and Safety Code Section 25915. CITY shall protect, defend, indemnify and hold OPERATOR harmless from any loss or claim which may result from the existence of asbestos on the Civic Center Facilities, provided, however, that CITY'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 OPERATOR, its officers, representatives, agents, contractors and employees.
25. Asbestos. Asbestos removal, management, or containment shall be conducted in accordance with all applicable laws and as approved by CITY. CITY reserves the right to inspect any improvements, alterations, or repairs to the Civic Center Facilities made by OPERATOR. CITY may, at its discretion, station supervisory personnel at the work site to ensure that OPERATOR'S obligations under this section are fulfilled. Each party shall coordinate with the other any improvement, alteration, or repair, and, except in the event of an emergency, the party responsible for such work shall provide written notice to the other

party at least fifteen (15) days prior to commencing the work.

26. Hazardous Substances. OPERATOR shall not allow the installation or release of hazardous substances in, on, under, or from the Civic Center Facilities. OPERATOR and OPERATOR'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Civic Center Facilities without CITY'S prior written consent. 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 of California'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 into this Agreement.
- a. Remediation. If any release of a hazardous substance occurs, OPERATOR shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.
 - b. Indemnity. OPERATOR shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from OPERATOR'S occupancy, use, development, or maintenance of the Civic Center Facilities, 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.
 - c. Notice of Release. If OPERATOR knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Civic Center Facilities, OPERATOR shall give written notice to CITY within three (3) days of receipt of the knowledge or cause for belief. If OPERATOR knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, OPERATOR shall notify CITY immediately upon receipt of such knowledge or belief and shall take all actions necessary to alleviate the danger. OPERATOR shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Civic Center Facilities.
 - d. Environmental Assessment. Upon reasonable cause to believe that OPERATOR'S occupancy, use, development, or maintenance of the Civic Center Facilities ("OPERATOR'S Operations"), resulted in any hazardous substance being released on or beneath the Civic Center Facilities, CITY may cause an environmental assessment of the Civic Center Facilities to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil

Engineer. The environmental assessment shall be obtained at OPERATOR'S sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by OPERATOR'S Operations on, in, or under the Civic Center Facilities, and in what quantities. If any such hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the 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. OPERATOR shall cause, or if OPERATOR fails to do so within a reasonable period of time, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and OPERATOR shall pay all costs and expenses therefor.

- e. Sewer Line. CITY acknowledges that sewage leakage has occurred and may occur in the future at the connection of the sewer line from the Theatre to the main sewer line under "C" Street due to deterioration of the line. CITY shall use its best efforts to provide a quarterly clean-out and a semi-annual photographic inspection of the line, subject to available funding. City shall be solely responsible and liable for this condition and any and all claims, costs and expenses related to environmental liabilities directly resulting from this condition, excepting those claims, costs and expenses directly resulting from the established active negligence, sole negligence, or sole willful misconduct of OPERATOR, its officers, representatives, agents, contractors and employees.

27. Waiver.

- a. CITY'S failure to insist upon the strict performance of any of OPERATOR'S obligations under this Agreement, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Civic Center Facilities is CITY-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Agreement or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
- b. OPERATOR'S failure to insist upon the strict performance of any of CITY'S obligations directly related to health, safety, or the public welfare under this Agreement, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Civic Center Facilities is CITY-owned and held in trust for the benefit of CITY'S citizens. OPERATOR'S failure to discover a breach of any obligation of this Agreement directly related to health, safety, or the public welfare, or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but OPERATOR may at any and all times require the cure of any such breach.

28. Survival. Any obligation which accrues under this Agreement prior to its expiration or termination shall survive such expiration or termination.
29. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them and pertaining to this Agreement and OPERATOR'S occupancy, use, development, and maintenance of the Civic Center Facilities. Any modification, alteration, or amendment of this Agreement shall be in writing and signed by all the parties hereto.
30. Legal Proceedings. If either party commences legal proceedings to enforce or interpret any right or obligation under this Agreement, the prevailing party shall be entitled to an award of costs related thereto, including without limitation reasonable attorney fees and court costs.
31. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to CITY or OPERATOR, respectively, as follows:

THE CITY OF SAN DIEGO
Real Estate Assets Department
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101

SAN DIEGO THEATRES, INC.
Attention: President/Chief Operating Officer
1100 Third Avenue
San Diego, California 92101

32. Governmental Approvals. By entering into this Agreement, neither CITY nor CITY'S City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to OPERATOR'S occupancy, use, development, or maintenance of the Civic Center Facilities. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental approvals which may be required for OPERATOR'S occupancy, use, development, or maintenance of the Civic Center Facilities.

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33. Authority to Contract. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

Date: 11/28/06

THE CITY OF SAN DIEGO, a California municipal corporation

BY: [Signature]
Name: J. F. Baswick
Title: DIRECTOR: READ

Date: 11/20/06

SAN DIEGO THEATRES, INC., a California nonprofit corporation

BY: [Signature]
Name: Donald M Telford
Title: President + COO

BY: _____
Name: _____
Title: _____

APPROVED AS TO FORM AND LEGALITY:

Date: 11/29/06

MICHAEL J. AGUIRRE, City Attorney
BY: [Signature]
Name: Brock Ladewig
Title: CHIEF DEPUTY CITY ATTORNEY

EXHIBIT A

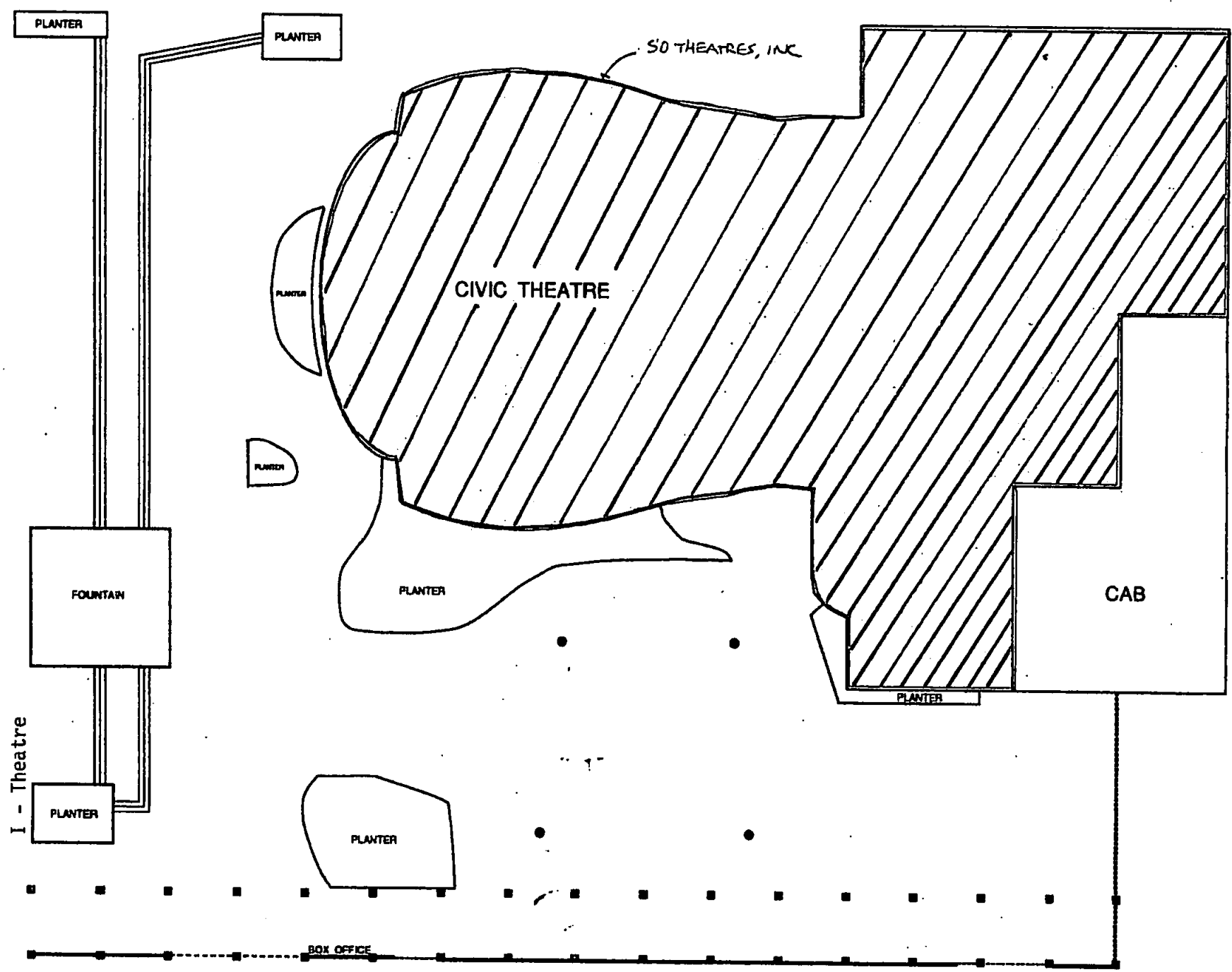
I – Theatre

II – Plaza Area

III – Concourse Area (First Floor Ticketing)

IV – Concourse Area (Second Floor Ticketing)

V – Concourse Area (Concessions Support & Equipment Storage)

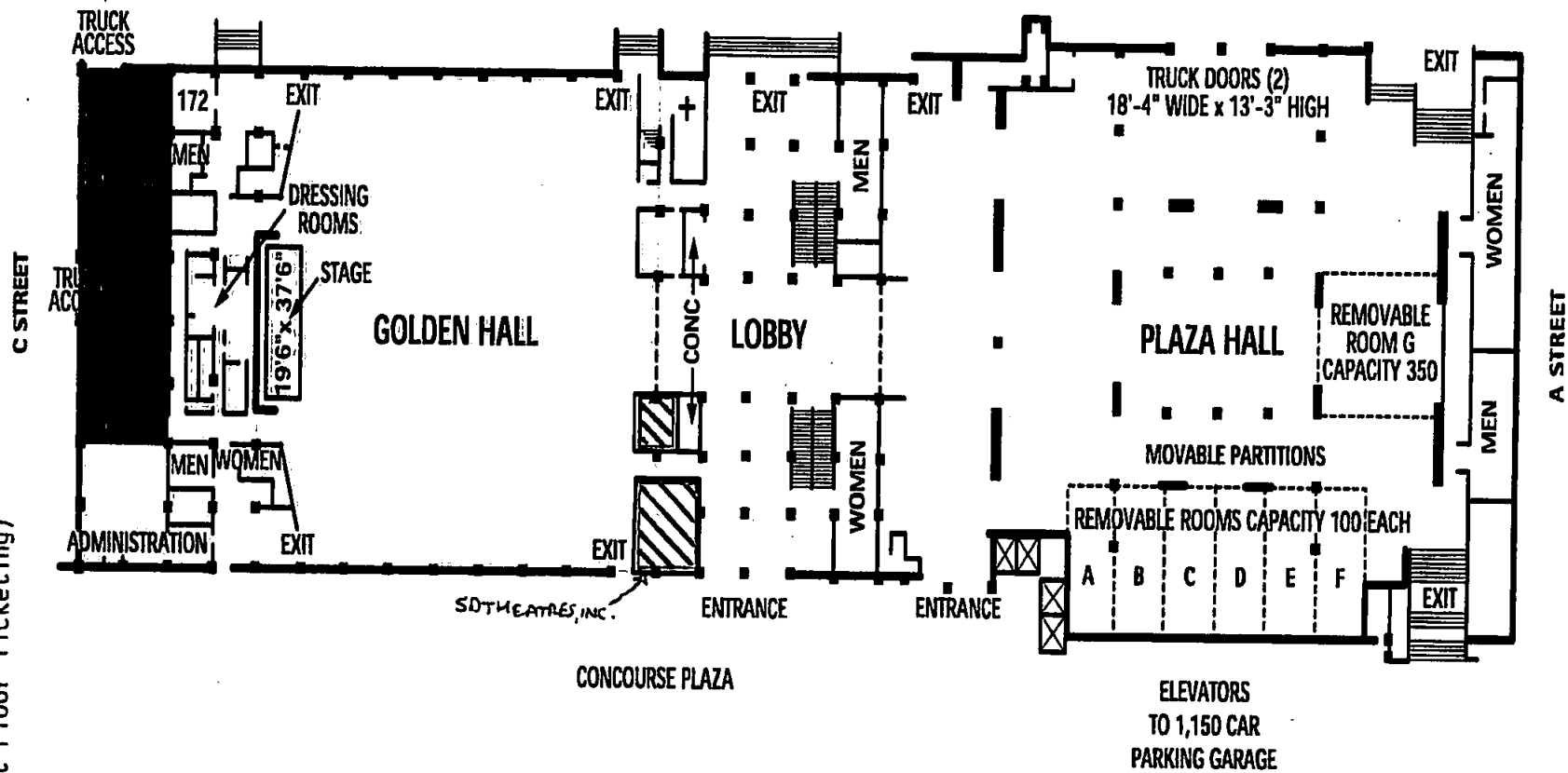


II - Plaza Area

26,000 sq.ft.

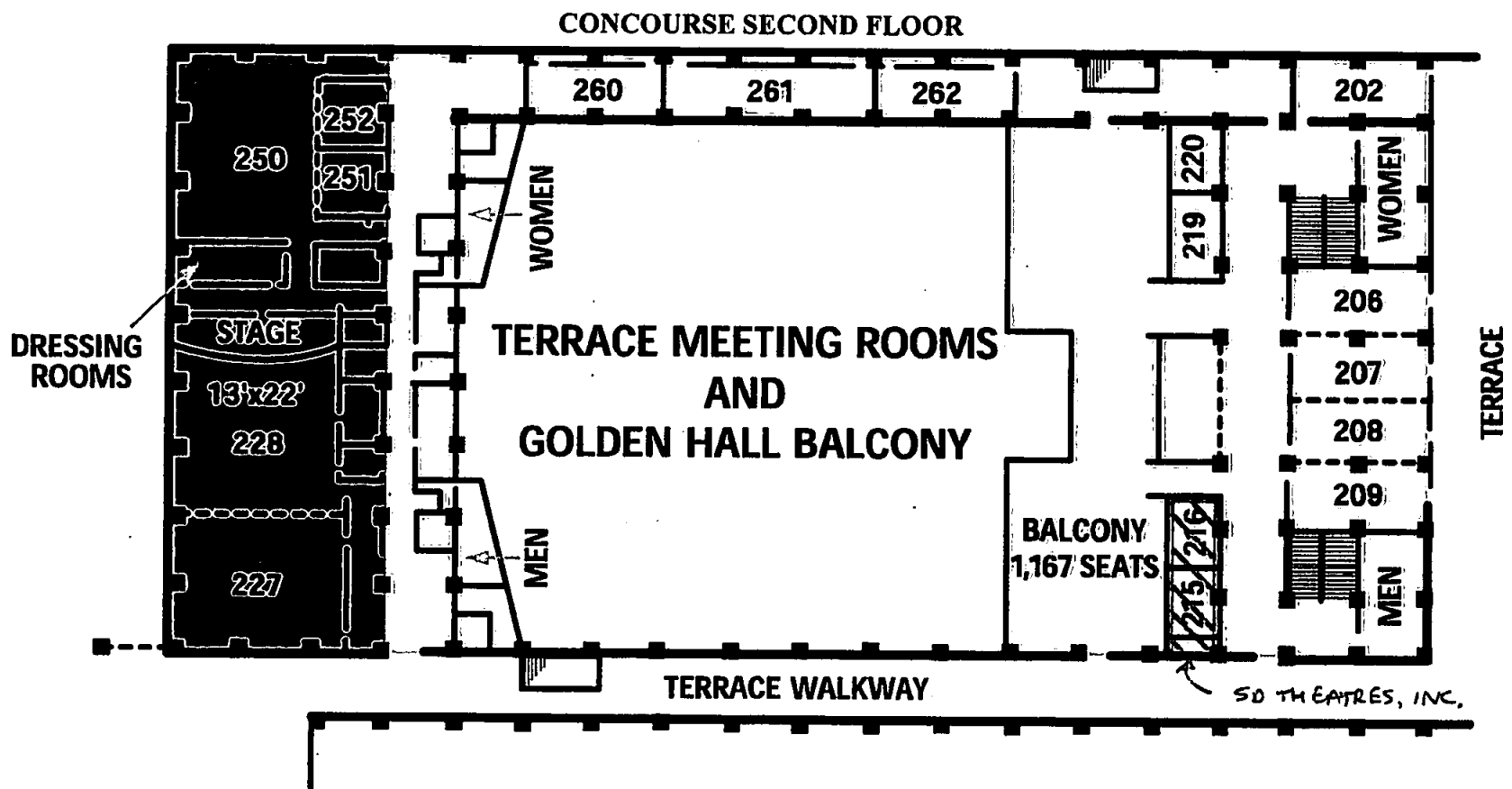


III - Concourse Area (First Floor Ticketing)

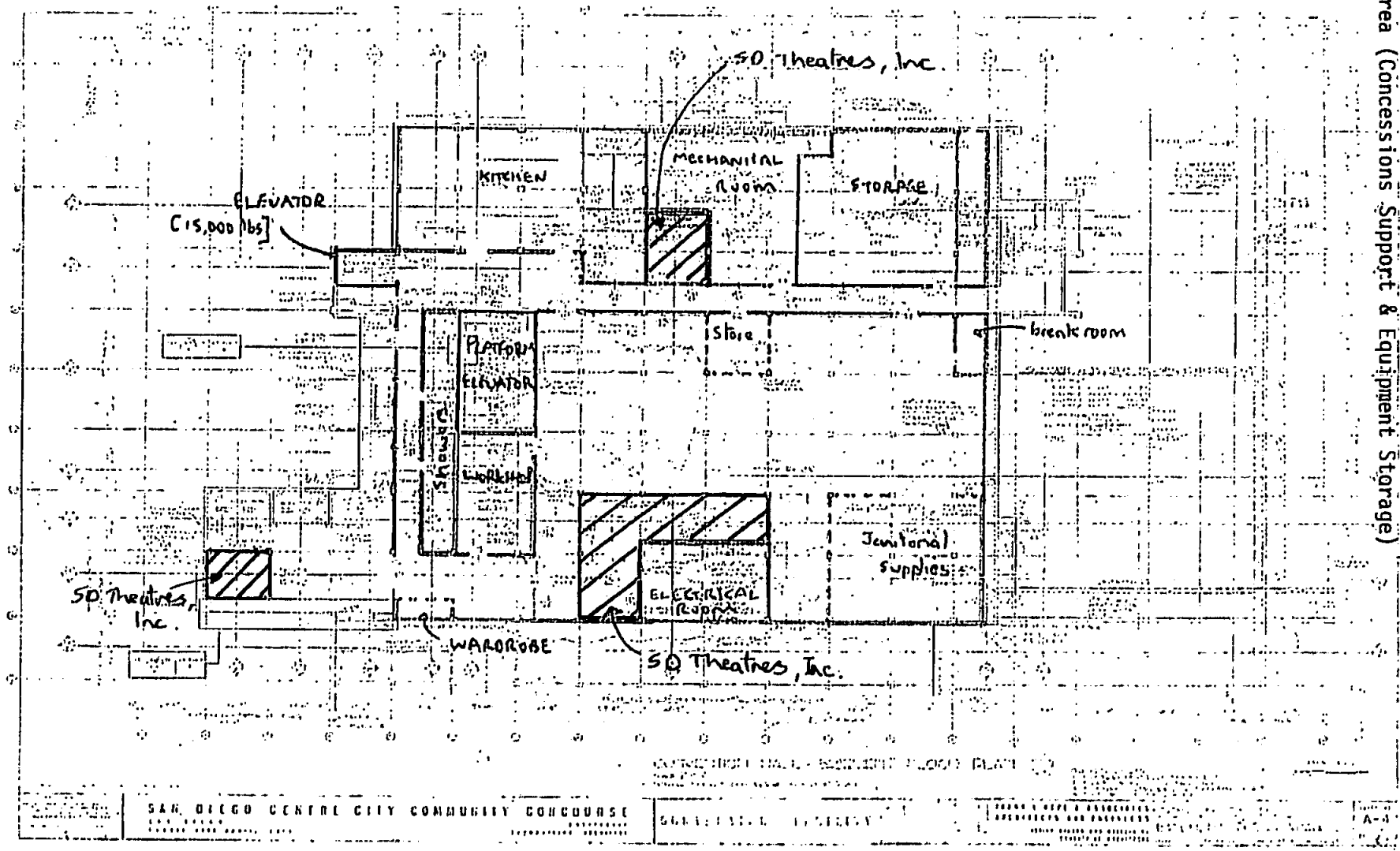


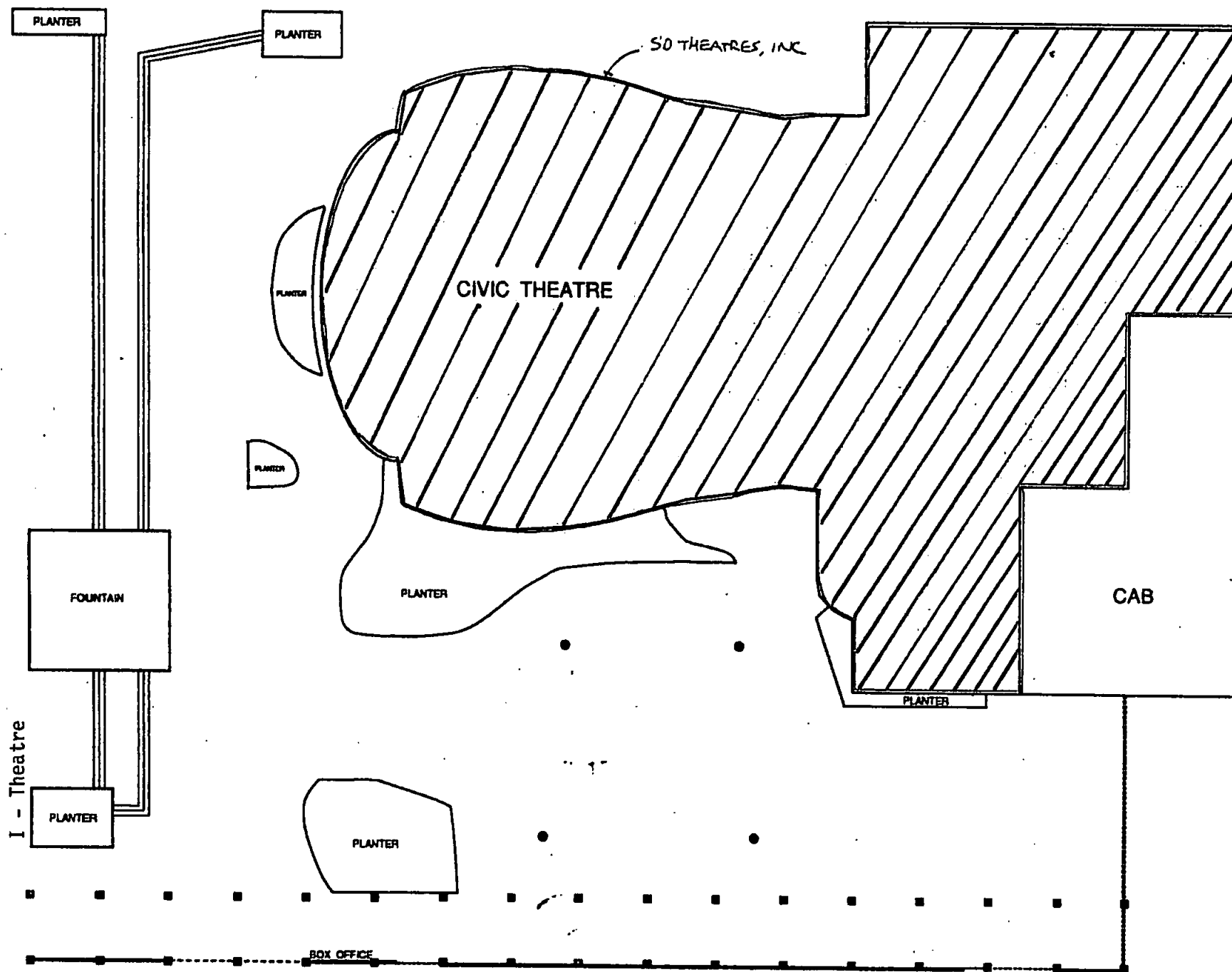
CONCOURSE FIRST FLOOR

IV - Concourse Area (Second Floor Ticketing)



CONCOURSE BASEMENT



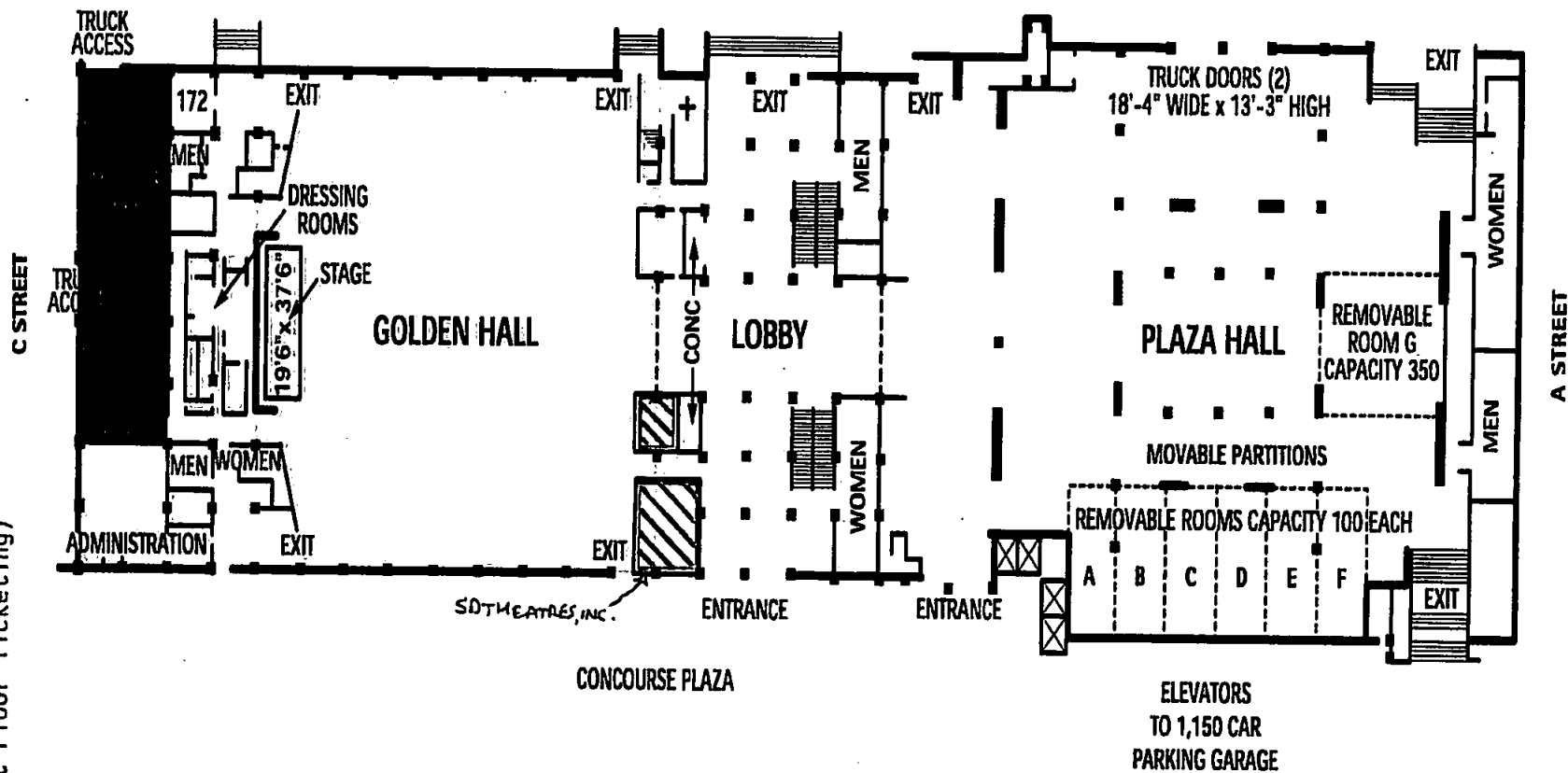


II - Plaza Area

26,000 sq.ft.

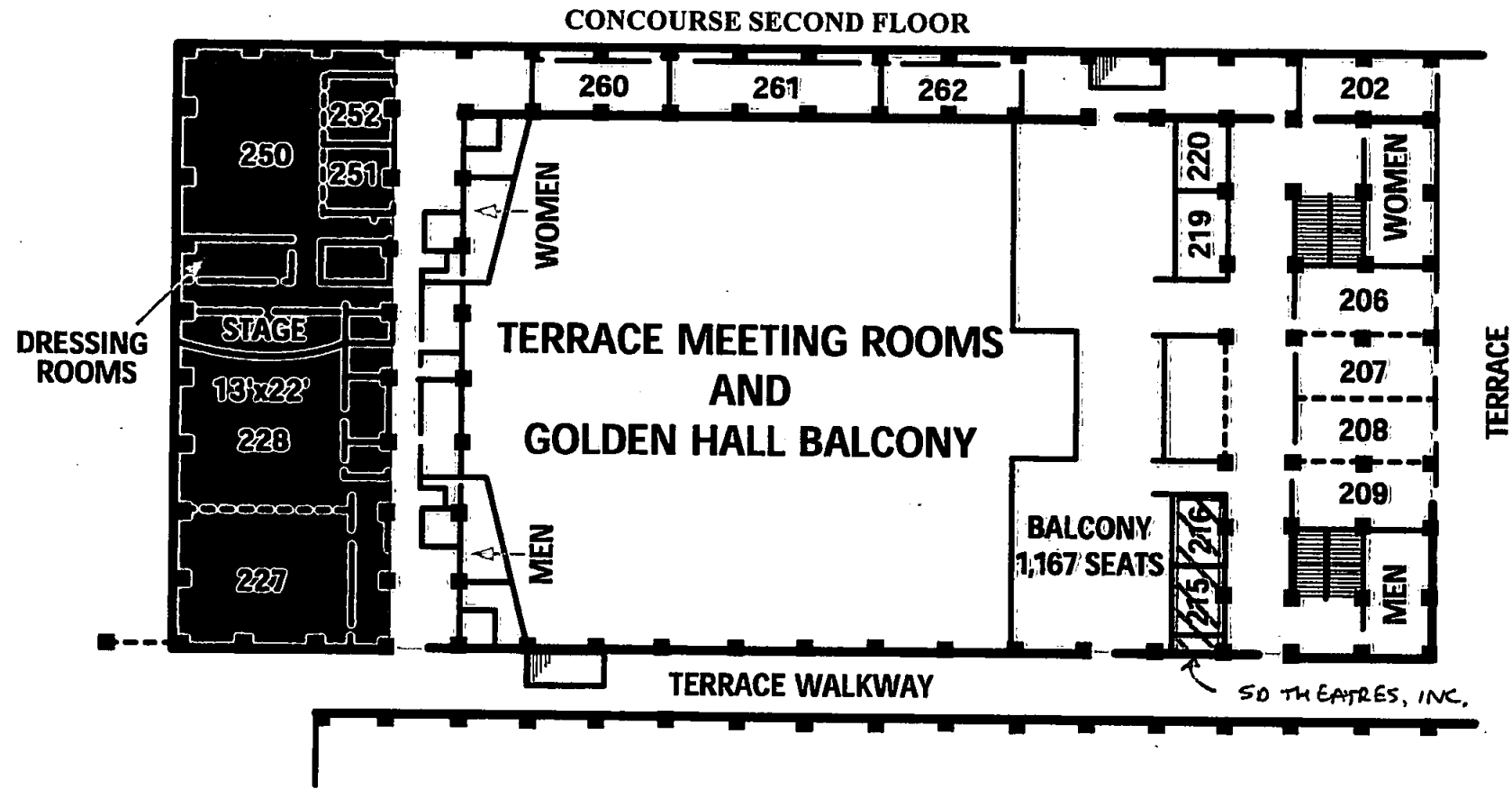


III - Concourse Area (First Floor Ticketing)



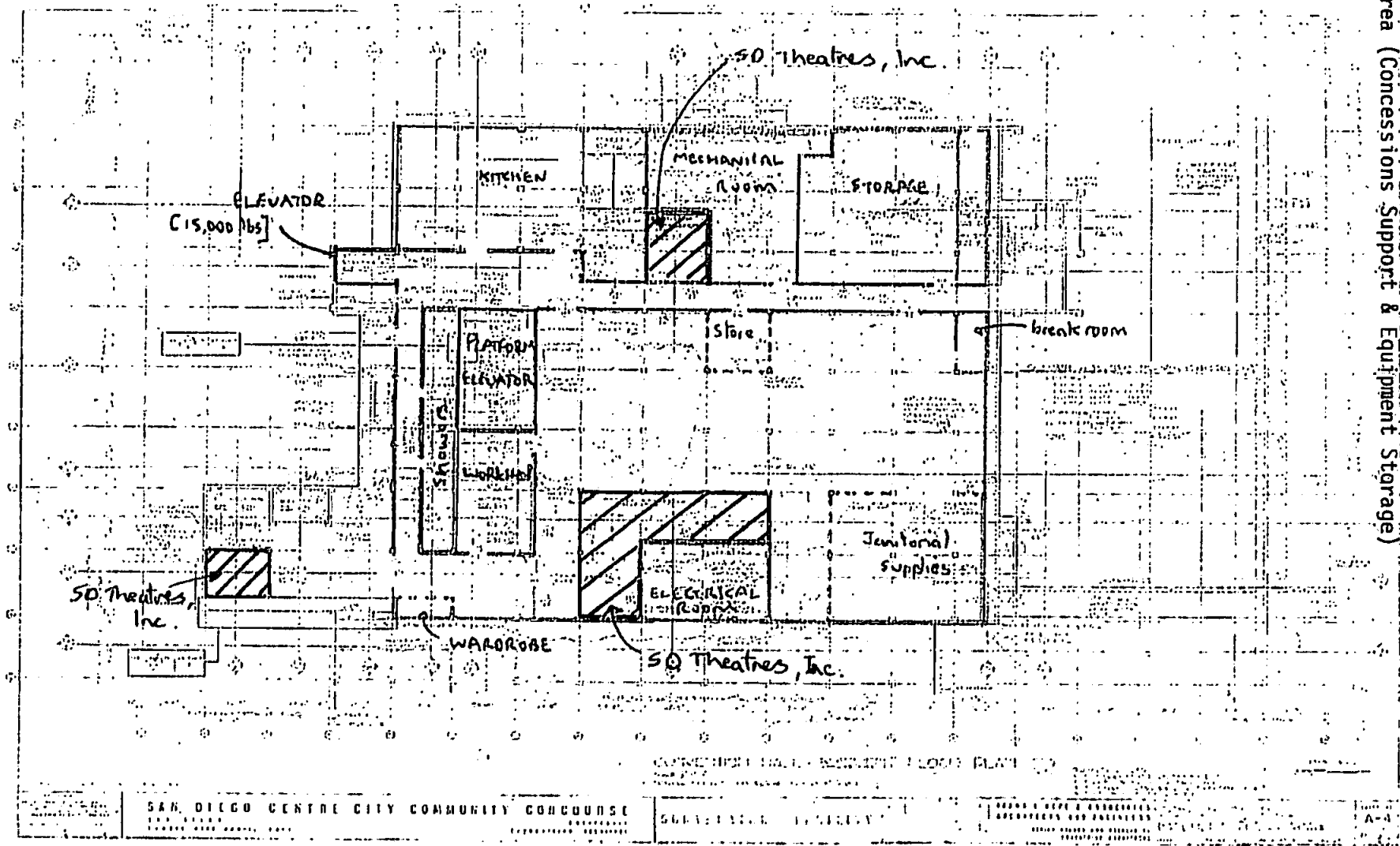
CONCOURSE FIRST FLOOR

IV - Concourse Area (Second Floor Ticketing)



* V - Concourse Area (Concessions Support & Equipment Storage)

CONCOURSE BASEMENT



SECOND AMENDED AND RESTATED MANAGEMENT
AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND
SAN DIEGO CONVENTION CENTER CORPORATION, INC.

THIS SECOND AMENDED AND RESTATED AGREEMENT ("Agreement") is entered into by and between THE CITY OF SAN DIEGO, a municipal corporation (the "City"), and the SAN DIEGO CONVENTION CENTER CORPORATION, INC., a California nonprofit corporation ("Corporation"). This Agreement shall be effective on the date it is approved by resolution of the San Diego City Council.

RECITALS

WHEREAS, on June 12, 1985, the City and the San Diego Unified Port District (the "District") entered into an Agreement for the City's management, operation, maintenance and promotion of a convention center to be constructed by the District on its land (City of San Diego Document No. 00-18425 No. OO-18425, Convention Center Management Agreement Between San Diego Unified Port District and the City of San Diego, dated June 12, 1985 and filed with the City Clerk's Office on May 13, 1985);

WHEREAS, Corporation was formed under the California Nonprofit Corporation Law to manage and operate public assembly facilities, including the San Diego Convention Center ("Center");

WHEREAS, the City and Corporation executed an Agreement for operation and maintenance of the Center on January 25, 1985 (City of San Diego Document No. R- 261419-3, Agreement Between the City of San Diego and San Diego Convention Center Corporation, Inc.

to Provide Operating and Maintenance Services for the San Diego Convention Center, filed with the City Clerk's Office on August 20, 1984), and subsequently executed a First Amended Agreement for the operation and maintenance of the Center on May 21, 1990 (City of San Diego Document No. R-275740, First Amended Agreement Between the City of San Diego and San Diego Convention Center Corporation, Inc., to Provide Operating and Maintenance Services for the San Diego Convention Center, filed with the City Clerk's Office on May 21, 1990); and,

WHEREAS, the Parties subsequently amended said First Amended Agreement by executing a Second Amendment to Agreement, on August 3, 1992 (City of San Diego Document No. R-280554 -2 filed with the City Clerk's Office on August 11, 1992) to amend a covenant to avoid unauthorized costs, and on November 15, 1993 executed a Third Amendment to Agreement Between the City of San Diego and San Diego Convention Center Corporation, Inc., to Provide Operating and Maintenance Services for the San Diego Convention Center and the Convention and Performing Arts Center, (City of San Diego Document No. R-283012-2, filed with the City Clerk's Office on November 15, 1993) to provide for operation and maintenance of the Convention and Performing Arts Center, consisting of the Civic Theater, Golden Hall, Plaza Hall and the Meeting Rooms therein ("CPAC Facilities") and the exterior Terrace/Plaza (the "Plaza"), and contract administration for the Evan Jones Parking Garage and the Harcourt Brace Jovanovich Building Parking Garage ("Parking Facilities"); and,

WHEREAS, the City and the District have entered into a 1998 Convention Center Management Agreement Between the San Diego Unified Port District and the City of San Diego, filed with the City Clerk's Office on March 5, 1996 (City of San Diego Document No. ')

OO-18721) as amended to provide for the management, operation and maintenance of the Center and the expansion of the Center (the "Port-City Agreement"); and,

WHEREAS, City has determined that the best interests of its inhabitants will be served by an arrangement under which a corporation, the directors of which are responsible citizens of the Greater San Diego area, assumes responsibility for the development and formulation of policy for the marketing, operation, and maintenance of Convention Center, CPAC Facilities and Parking Facilities subject to whatever arrangements the City may make with other organizations.

WHEREAS, Corporation is a corporation formed under the California Nonprofit Corporation Law, and City is the only entity with any interest in the assets of Corporation upon its winding up and dissolution. As of the date of this Agreement, Corporation's Board of Directors consist of seven (7) persons of distinguished stature in the Greater San Diego area who, through their effort and effective community leadership, have expressed their interest in securing for said area the most effective, efficient, and productive use of Convention Center. The organic corporate documents of corporation secure to City the power to continue to elect and to retain individuals of such dedication and effectiveness on Corporation's Board of Directors.

WHEREAS, the City desires to continue to contract with Corporation to manage and operate the Center, CPAC Facilities and Parking Facilities, and other facilities, and the Parties desire to amend the terms of the Agreement pursuant to which Corporation provides these services;

NOW, THEREFORE, in consideration of the recitals and the mutual obligations of the Parties hereto as hereinafter expressed, City and Corporation agree as follows:

DEFINITIONS

Section 1.01 Approved Budget

"Approved Budget" means that budget which, following submission by Corporation of the Proposed Budget, City, in its discretion, approves for the Corporation for the respective fiscal year.

Section 1.02 Approved Transfer of Appropriations

"Approved Transfer of Appropriations" means that budget which City, in its unlimited discretion, approves for Corporation following the submission to it of any proposed transfer of appropriations.

Section 1.03 Operating Reserve

"Operating Reserve" means a reserve of funds set aside for 1) emergency operating expenses; 2) acquisition of capital equipment; and 3) leasehold improvements.

Section 1.04 Proposed Budget

"Proposed Budget" means a budget prepared and adopted by Corporation detailing the estimated revenues and expenditures of Corporation during any fiscal year. It shall be prepared in such form as City may require.

In addition to anything else which Corporation may deem pertinent, the proposed budget shall contain:

(a) Corporation's recommendations regarding the steps which must be taken in order to provide for the marketing, maintenance, operation, expansion and improvement of Convention Center, CPAC, or Parking Facilities;

(b) Corporation's estimate of the costs which may reasonably be expected to result from the adoption of any or all of Corporation's recommendations pursuant to clause (i) of this section; and

(c) A statement of the means (including operating revenues) which Corporation suggests be used in paying for the cost of adopting any or all of Corporation's recommendations pursuant to clause (i) of this section.

Section 1.05 Revised Budget

"Revised Budget" means any City approved revision to the Approved Budget.

Section 1.06 Savings

"Savings" means the difference between actual revenues, including the City's annual operating subsidy, and actual expenses, including encumbrances, and any Council approved carry-overs.

Section 1.07 Statement of Revenues and Expenses

"Statement of Revenues and Expenses" means an exact accounting, prepared in accordance with the accounting procedures employed in formulating the Proposed Convention Center Budget, of all the revenues and expenses of the Corporation during any fiscal year.

Section 1.08 Term

This Agreement shall become effective on the day of execution and continue in effect until terminated by either City or Corporation.

Either Party may terminate this Agreement by providing the other Party a written Notice to Terminate this Agreement ninety (90) days from the date of receipt of said notice.

II

COVENANTS OF CORPORATION

Section 2.01 Covenant to Perform Services

On the effective date of this Agreement and thereafter throughout its term, Corporation covenants that it shall, without any charge or fee whatsoever to City for such service,

(a) Have the exclusive authority to manage and operate the Center, during the term of this Agreement, including but not limited to the authority to:

- (i) Employ, supervise, terminate all staff
- (ii) Promulgate and administer management and operational policies

- (iii) Retain, hire and contract with consultants, and other professionals or experts that Corporation, in its sole discretion, determines are necessary to perform its management and operational duties
- (iv) Acquire and dispose of property by any lawful means
- (v) Enter into licenses and other Agreements with third parties for the use of the Center
- (vi) Provide other services and charge appropriate fees to users of the Center, in connection with the use of the Center
- (vii) Take all other actions and make such other decisions as may be required to perform the services required by this Agreement

(b) Maintenance. Corporation shall maintain, clean, paint and provide custodial services for the Center, the furniture, fixtures and equipment ("FFE") contained therein and all additions to, and replacements of the FFE, in accordance with Section 8 (b) of the Port-City Agreement.

(c) Use its best efforts to continuously use, manage, market, operate, maintain, and promote the Center effectively in such a manner as to enhance the occupancy of hotels through the attraction of major conventions and trade shows.

(d) Promotion. Corporation shall have the primary responsibility for promoting the Center for use by conventions, trade shows, consumer shows, and any other appropriate event.

(e) Improvements, Alterations. Corporation may, at its own expense, construct and install any additions, improvements or alterations to or in the Center necessary or desirable for the use of the Center, provided however that any alterations which cost more than \$150,000.00 or

which alter the Center's exterior or affect its structural integrity shall be subject to the District's approval. Additions to the FFE are not "additions, improvements or alterations" within the meaning of this section.

(f) In the performance of its duties hereunder, Corporation shall be an independent contractor and not an agent of City. Subject to the provisions of State of California laws regarding public records, all reports, studies, findings, data, and information obtained or prepared by or at the direction of Corporation shall be the property of the Corporation, shall be confidential, and shall not be made available to any individual or organization except in connection with performance of the services required by this Agreement or in accordance with the prior written approval of City.

(g) Coordinate activities and appearances before City and Port agencies as may be necessary.

(h) Supervise and administer the day-to-day inspection and maintenance of those Center facilities and equipment that are the responsibility of City as provided in the Port-City Agreement.

Section 2.03 Management and Operation of CPAC Facilities, and Parking Facilities

(a) CPAC Services

Corporation shall, without any charge or fee whatsoever to City, provide the same services for the CPAC Facilities as those set forth in Section 2.01 of this Agreement except as otherwise provided herein.

Further, Corporation shall have the exclusive right to administer the City's contracts with a private operator(s) for the Parking Facilities, provided however that any proposed changes in operation and policies of the Parking Facilities shall be approved by the City Manager.

(b) Maintenance of CPAC Facilities: Security for Parking Facilities. Corporation shall maintain, clean, paint and provide custodial services for the interior of the CPAC Facilities. Corporation shall ~~provide security services~~ for the Parking Facilities. The City shall maintain, clean, paint and provide custodial services for the exterior of the CPAC Facilities, the Plaza and the Parking Facilities.

(c) Improvements. Alterations. Corporation may, at its own expense, construct and install any additions, improvements or alterations to or in the CPAC Facilities necessary or desirable for the use of the facilities.

(d) Water, Sewer, Gas and Electricity Costs

The Parties acknowledge the City currently is billed for water, sewer, gas and electricity used by all buildings in the Charles M. Dail Civic Center Complex ("Complex"), which includes the CPAC Facilities. City shall pay for all water and sewer service costs for the CPAC Facilities and Corporation shall reimburse City for the CPAC Facilities actual expenses, but not to exceed 40% of City's actual cost for water and sewer service to the Complex. City shall pay for all gas and electricity service costs for the CPAC Facilities and Corporation shall reimburse City for CPAC Facilities actual expenses, but not to exceed 27% of City's actual gas and electric costs for the Complex.

(e) Contract Administration for Parking Facilities

In consideration of Corporation's administration of the City's contracts for operation of the Parking Facilities, Corporation shall be entitled to receive a portion of revenues generated by the Parking Facilities as follows: (1) not less than 20% of daytime transient parking; and (2) 100% of night and weekend parking;.

Additionally, City shall pay Corporation \$4,000 per month for administration of the City's contracts for operation of the Parking Facilities, less the actual cost for cashiers provided by the City at Corporation's request for any special event at the CPAC Facilities. City shall pay Corporation the actual cost for salaries and related expenses for personnel providing security in the Parking Facilities.

Section 2.04 Rights and Obligations of Corporation

(a) Adoption and Submission of Annual Budget and Request for City Funds. Annually Corporation shall prepare and adopt a fiscal year budget, and submit its Proposed Budget to the City for review by the City Council, in accordance with the budget process timetable established by the City Manager. The Proposed Budget submitted by Corporation shall include a Statement of Revenues and Expenses for the fiscal year; and supporting documentation of Corporation's plans for performance of its responsibilities in this Agreement. The Proposed Budget shall be prepared in such form or format as the City may require. In addition to the Statement of Revenue and Expenses, Corporation shall project and request an allocation of City funds in an amount sufficient to ensure its ability to perform its obligations herein.

(b) Establishment and Funding of Operating Reserves. Corporation shall establish Operating Reserves, which shall be funded with Savings from each fiscal year up to a maximum of \$3.6 million. The remaining Savings shall be paid to the City. The Operating Reserves shall be retained in Corporation's operating bank account and Corporation shall maintain separate accounting records for the use of said funds. If the cumulative balance of the Operating Reserves exceeds \$3.6 million the excess shall be paid to the City, notwithstanding the amount of Savings for that fiscal year. One Million Five Hundred Thousand Dollars (\$1,500,000) of the cumulative balance of the Operating Reserves may be used for furniture, fixtures and equipment in the expansion of the Center as requested by the City Manager.

(c) Use of Operating Reserves and Allocation of Designated Reserves. Corporation shall use the Operating Reserves for emergency operating expenditures related to capital equipment and improvement, and acquisition and maintenance of capital equipment or leasehold improvements. Corporation's Board of Directors may, at any time during any fiscal year, approve the use of Operating Reserve funds for the purposes set forth herein.

(d) Management and/or Operation of Non-City Owned Facilities. The Corporation may lease, manage and/or operate the Copley Symphony Hall and any other non-City owned public assembly facilities, provided that: (1) prior to entering into any agreement to lease, manage, or operate such facilities, the Corporation presents such agreement to the City Manager for approval; (2) the agreement contains a provision under which the Corporation and the other party(ies) indemnify and hold the City harmless from all liability, in accordance with the provisions of this Agreement; (3) the agreement provides adequate insurance for liabilities arising from the management and operation of the facilities, and the City is named as an additional insured, in

accordance with the provisions of this Agreement; (4) the Corporation ensures that the revenue and expenses generated from the performance of the agreement are accounted for separate from the revenue and expenses associated with the management and operation of the Center and other City owned facilities; (5) the performance of the agreement does not impact the level of operating subsidy provided to the Corporation by the City for the management and operation of the Center and other City owned facilities; and (6) the performance of the agreement does not effect the levels of services at the Center, or CPAC and Parking facilities.

Section 2.05 Covenant to Prepare and Submit a Proposed Budget

(a) Corporation covenants that it shall prepare and submit a Proposed Budget to City from time to time as determined by the City Manager.

(b) In implementing the covenant expressed in subsection (a) of this section, Corporation covenants that it shall, from time to time, but not less than once in each fiscal year, hold a public meeting of its Board of Directors. Said public meeting(s) shall be held at a place convenient to the general public, and Corporation shall make every effort through news media and otherwise to advise the general public of said meeting(s). This meeting(s) shall be for the purpose of hearing members of the public who desire to be heard concerning any aspect of the Corporation's business including, but not limited to, the maintenance, operation, expansion and improvement of CPAC Facilities, Parking Facilities or other Corporation facilities.

(c) At any time during any fiscal year, City or Corporation may propose a Revised Budget based upon any change in conditions or circumstances which may have occurred during any fiscal year and if proposed by Corporation, the City Council shall consider such Revised

Budget within sixty (60) days of submission by Corporation. In the event of approval of the Revised Budget by the City Council, the Approved Budget for any fiscal year shall be considered to have been amended by the Revised Budget.

Section 2.06. Affirmative Action Equal Opportunity Program

Corporation covenants that it shall develop and implement an equal opportunity program for Corporation employment and all corporation contractors and sub-contractors that meets or exceeds equal opportunity provisions then standard for the City.

Section 2.07. Covenant to Avoid Unauthorized Costs

Corporation covenants that it shall not incur any cost or expense which exceeds the Approved Budget, except to the extent that revenue generated by Corporation exceeds the Approved Budget by an amount equal to or greater than such cost or expense. Any such expenses not approved by the City Manager may be debited against subsequent City allocations.

Section 2.08 Covenant to Render an Accounting and Furnish Financial Reports

(a) Corporation covenants that it shall maintain accurate and complete accounting records and systems utilizing the standard classification of accounts, and using generally accepted accounting standards.

(b) On or before the 15th day of each month, Corporation shall prepare and shall file with City an income and expense statement showing results of operations for the preceding month. All books and records shall be open to inspection to City or its representatives.

(c) Corporation covenants that within one hundred eighty (180) days after the close of each fiscal year of Corporation, it shall submit to City a Statement of Revenues and Expenses of such fiscal year and shall furnish to City detailed certified reports of an audit based on an examination in accordance with generally accepted auditing standards, prepared by an independent auditing firm acceptable to City, covering the operations of Corporation for such fiscal year and showing the revenues and expenses for such period.

(d) If at the end of any fiscal year of Corporation, the accumulated total of Operating Reserves exceeds \$3.6 million Corporation shall, no later than ninety (90) days after the close of such fiscal year, pay over such excess to City.

(e) Corporation covenants that it will allow City officials complete access to all personnel, and operational and financial records and data pertaining to the services provided pursuant to this Agreement.

Section 2.09 Covenant to Obtain Public Liability and Property Damage Insurance

(a) Corporation covenants that it will obtain and at all times during the term maintain in force policies of insurance providing protection against public liability, real property damage and Corporation owned personal property damage arising from the possession, operation and maintenance of the Center which shall contain coverage and be in amounts as required under the Port-City Agreement and under the Convention Center Facility Lease as may be approved by the City Manager of City from time to time. Corporation covenants that it will name City, Convention Center Expansion Financing Authority, BNY Western Trust Company, and San Diego Unified Port District as additional insureds or as loss payees under such policies of public liability, real

property damage and Corporation owned personal property damage insurance as required in the Port-City Agreement or Convention Center Facility Lease and "as its interest may appear."

(b) Corporation covenants that it will contract with the underwriter that no policy of public liability, real property damage and Corporation owned personal property damage insurance obtained by Corporation pursuant to the terms of this section shall be terminated or amended without sixty (60) days' prior written notice to City.

(c) Corporation covenants that it will provide City with copies of all policies of public liability, real property damage and Corporation owned personal property damage insurance obtained pursuant to the terms of this section, and that such copies shall be certified by the underwriter as true and correct copies of Corporation's policies with such underwriter.

(d) It is the intent of the Parties to this Agreement that Corporation at all times maintain in force public liability, real property damage and Corporation owned personal property damage insurance sufficient to protect the Parties from any foreseeable liability for injury to persons or damage to property growing out of Corporation's activities and operations.

(e) Said insurance may be evidenced by a policy or policies covering the Corporation as required by this Agreement or by endorsement to bring the same within a blanket policy or policies held by the City covering other properties in which the City has an interest or obligation to insure, provided the policy or policies have a location aggregate provision.

Section 2.10 CPAC Insurance

(a) The City shall obtain and maintain coverage for fire, property and extended coverage for the CPAC Facilities. Corporation shall reimburse the City for a prorata share of the

actual cost of this insurance, based upon the ratio of the square footage of CPAC Facilities to the square footage of all City owned properties insured under the policy or property insurance program, or as dictated by the City's insurance carrier.

(b) Corporation shall include coverage for the CPAC Facilities under its Commercial General Liability Insurance Policy and shall defend and indemnify and name the City as an additional insured in accordance with the First Amended Agreement. Additionally, Corporation shall provide similar coverage and indemnification for those areas of the Plaza being used pursuant to an Agreement between Corporation and a licensee.

(c) Except for those events where Corporation provides coverage pursuant to paragraph (b) above, City shall provide commercial general liability coverage for claims or causes of action for bodily injury, death, or property damage occurring in or upon all exterior areas of the CPAC Facilities (including but not limited to stairs, walkways, sidewalks and the Plaza), and the Parking Facilities, and shall name and afford Corporation defense and indemnification as a named additional insured. If City contracts management and operation of the Parking Facilities to a third Party, and requires said contractor to provide commercial general liability insurance, City shall also require said contractor to name and afford Corporation defense and indemnification as a named additional insured under said policy.

(d) The Parties acknowledge and agree that certain portions of the CPAC Facilities are accessible to and used by employees and invitees of the City, including but not limited to the loading docks, showers, and underground tunnel walkways between buildings. Corporation agrees that City shall have the right to continue this use; provided, however, City shall provide and maintain commercial general liability and worker's compensation coverage, by self-insurance

or otherwise, extending to such jointly used areas and shall indemnify and hold Corporation harmless and immediately defend Corporation against any claims or causes of actions filed by any City employee or invitee for injury sustained in, on or about the jointly used CPAC Facilities.

Section 2.11 Indemnification

(a) Mutual Indemnification. Except as provided in Section (b) below, each Party shall indemnify and hold harmless the other Party, its agents, employees, representatives and subcontractors, and defend against all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from the performance of their respective duties and obligations specified herein, caused by the negligence, omission or wilful act of the Party, its agents, employees, representatives and subcontractors.

(b) Liabilities and Obligations in Port-City Agreement. It is understood and agreed by the Parties that the obligations and liabilities of the City under the terms and conditions of the Port City Agreement, and any subsequent amendments thereto, are the sole obligations and liabilities of the City, except to the extent such obligation or liability is expressly delegated to and assumed by Corporation in this Agreement. Except as to those obligations undertaken by the Corporation pursuant to the terms of this Agreement, the City shall indemnify, hold harmless, and defend Corporation, its agents, employees, representatives and subcontractors, from and against all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from the performance of its obligations and liabilities in the Port-City Agreement.

Section 2.12 Faithful Performance Bond

Corporation shall purchase a Faithful Performance Bond insuring itself and City against loss in the amount of at least One Hundred Thousand Dollars (\$100,000) per employee in a form approved by City.

Section 2.13 Access to Premises

Corporation covenants that City and its designees shall have the right to enter the Convention Center during reasonable business hours (and in emergencies at all times).

- (a) to inspect the same, and
- (b) for any purpose connected with City's rights or obligations hereunder.

Section 2.14 Covenant to Abide by the Provisions of the Management Agreement Between City and Port

Corporation covenants that it will not recommend or take any action which would conflict with any provisions of the Port-City Agreement.

COVENANTS OF CITY

Section 3.01 Covenant to Consider Proposed Budget

City covenants that it shall act promptly in considering the Proposed Budget and shall take action deemed appropriate with regard thereto. Any action taken as aforesaid shall be the Approved Budget for the respective fiscal year of Corporation.

Section 3.02 Covenants to Disburse Funds

(a) The funds allocated by the City to the Corporation for any fiscal year shall be paid to the Corporation on a reimbursement basis within five (5) working days of the Corporation's request for funding accompanied by a Statement of Revenues and Expenses for the proceeding month.

(b) The City shall disburse to the Corporation funding for Operating Reserves in accordance with Section 2.04(b) no later than ninety (90) days after the close of such fiscal year.

(c) The City may disburse to the Corporation one twelfth (1/12) of funds allocated by the City to Corporation for any fiscal year as working capital.

Section 3.03 Covenant to Consult with Corporation

City covenants that it shall refer to Corporation all matters involving City's participation in providing for Center, CPAC Facilities, Parking Facilities and other City owned facilities, marketing, maintenance and operation and that the advice and recommendations of Corporation will be considered by City in formulating its policies concerning such matters.

Section 3.04 Liability of Corporation Directors

No member of the Board of Directors of Corporation shall be liable for any act or omission of Corporation except with regard to fraudulent or criminally prosecutable acts of any such member in connection with such act or omission of Corporation.

Section 3.05 Indemnification of Directors

(a) To the fullest extent that Corporation would itself be permitted by law, and to the extent that the insurance and other resources available to Corporation are inadequate, City shall indemnify members of the Board of Directors including former directors, against all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred by them in connection with any threatened, pending or completed action or proceeding, whether civil or administrative. Expenses shall include, without limitation, attorney's fees and any expenses of establishing a right to indemnification.

(b) City shall, where indemnification is warranted as provided above, advance expenses incurred by a director in defending any such proceeding, before final disposition thereof,

on receipt by City of an undertaking on behalf of that director that the advance expenses so advanced will be repaid unless it is ultimately determined that the director is entitled to be indemnified by City for those expenses.

Section 3.06 Reimbursement of Corporation for Central Power Staff and Maintenance

(a) City shall reimburse Corporation for 66% of the actual cost for salaries and related expenses for the staffing of Central Power, which provides power, heating, ventilation and air conditioning to CPAC Facilities and City operated buildings. The City Manager and Corporation's Executive Vice President/General Manager shall enter into an Operating Memorandum which delineates and sets forth the staffing responsibilities.

(b) Corporation shall be responsible for the routine repair and maintenance of the Central Power systems. City shall reimburse Corporation for 75% of actual cost, including supplies and materials.

Section 3.07 Facility Modifications For Asbestos Removal Abatement: ADA Compliance

City, as owner of the CPAC Facilities, shall comply with all applicable laws regulating the use of the property including, but not limited to, the responsibility and liability for asbestos removal and/or abatement; and compliance with the Americans With Disabilities Act of 1990 (ADA) requirements. Corporation does not assume the duties or liabilities of the City for asbestos removal and/or abatement and compliance with the ADA. City shall indemnify, hold harmless and defend Corporation against any claims or causes of action arising out of the presence of asbestos or City's failure to remove or abate asbestos or comply with ADA. Any proposed modifications to

the CPAC Facilities that may involve disturbance of asbestos materials shall be subject to the approval of the City Manager.

Section 3.08 Capital Improvements Replacement: Unknown Liabilities

City shall be responsible and liable for replacement of all major capital improvements and equipment in the CPAC Facilities, including but not limited to: roof, plumbing, electrical, HVAC, and elevators. City shall be solely responsible any unknown liabilities or defects related to the CPAC Facilities, not discoverable by Corporation through reasonable inspection or inquiry, which the City knew or should have known and failed to disclose.

Section 3.09 Corporation's Other Contractual Obligations

For any Corporation contract to manage or operate facilities which has received City Manager approval, the City shall take no action which would result in a breach of said contract.

IV

GENERAL PROVISIONS

Section 4.01 Law Governing this Agreement

This Agreement is entered into in California and is to be governed by the laws of this State.

Section 4.02 Headings

Article and section headings contained in this Agreement are included for convenience and ease in understanding this document. The Parties hereto intend that the terms of this Agreement, exclusive of such headings, be liberally construed to effect its purpose. Except insofar as they indicate an entirely contradictory construction not intended by the Parties, article and section headings are not to be considered in construing the terms of this Agreement.

Section 4.03 Counterparts

This Agreement may be executed in any number of copies, all of which, whether taken severally or collectively, shall be treated as a single original of this Agreement.

Section 4.04 Waivers

Failure of either Party to object to any default or to any other act or omission of the other which is in violation of the terms of this Agreement shall not be deemed to be a waiver of the right to object to any subsequent default, act or omission, whether similar or dissimilar.

Section 4.05 Notice

(a) Any notice or request for approval to be served under the terms of this Agreement shall be deemed to have been sufficiently given when sent by certified registered mail, postage prepaid addressed to: The City of San Diego, City Administration Building, 202 "C" Street, San Diego, California 92101; addressed to President and Chief Operating Officer, San Diego

Convention Center Corp. 11 West Harbor Drive, San Diego, California 92101-7899, or at any other reasonable place designated by Corporation.

(b) Notice or request for approval served pursuant to the terms of subsection (a) of this section shall be deemed received forty-eight (48) hours after the time such notice is deposited in the United States mail.

Section 4.06 Existence of Collateral Agreements

Unless amended by the Parties in a document executed with equal formality as this Agreement, this Agreement states the entire understanding of the Parties, and they have entered into no collateral contracts, agreements, warranties or understandings.

Section 4.07 Assignment

Corporation shall not assign this agreement or any rights accruing hereunder without the prior written consent of City, except that Corporation shall have the right to retain, hire and contract with third parties to perform operational services required of Corporation herein provided Corporation retains supervisory responsibility and liability to the City for such performance. The City's consent to any one assignment shall not be considered to be a waiver of City's right to consent to any subsequent assignment.

Section 4.08 Force Majeure.

The obligation of any Party to perform any acts hereunder shall be suspended during the period such performance is prevented by acts of God; war; riot; invasion; fire; accident; or

government interference, regulation, appropriation, or rationing; or, by inability to secure goods because of the foregoing conditions.

Section 4.09 Singular, Plural, and Gender.

As used herein, the singular shall include the plural and the masculine shall include the feminine or neuter.

Section 4.10 Attorneys' Fees.

If legal action, including arbitration or action for declaratory relief is brought by either Party to enforce any provisions of this Agreement, the prevailing Party shall be entitled to an award of reasonable attorneys' fees against the other Party; which fees may be set in the same action or a separate action brought for that purpose.

Section 4.11 Termination

(a) Any breach by Corporation of the terms, conditions or covenants of Corporation herein contained shall be grounds for immediate termination of this Agreement by City provided that City may, in its sole discretion, waive any breach and demand performance by Corporation in accordance with the terms of this Agreement.

(b) The foregoing remedy of City is in addition to and not exclusive of any other remedy recognized by law.

(c) Notwithstanding any other provision of this Agreement, City may terminate this Agreement at any time after giving ninety (90) days' prior written notice.

Section 4.12 Notice of Cancellation for Change in Use and Termination for CPAC Facilities

(a) City agrees that it will not change the use of the CPAC Facilities from convention and meeting facilities unless notice of said change is given to Corporation in writing no less than five (5) years prior to the effective date of said change.

(b) Corporation shall have the right to terminate the provisions of this Agreement, and obligations therein related to management and operation of the CPAC Facilities, by giving notice without terminating the entire Agreement.

Section 4.13 Partial Invalidation

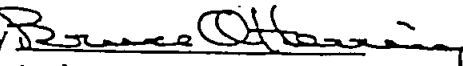
If any term or provision of this Agreement shall be declared to be illegal, void or unenforceable by a court of competent jurisdiction, the remaining provisions or terms shall not be affected but shall remain in full force and effect.

IN WITNESS WHEREOF, this first amended Agreement is executed by The City of San Diego, acting by and through its City Manager, pursuant to Resolution No. R- 290663.

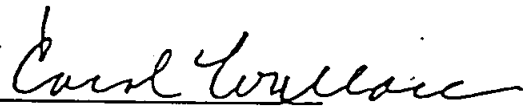
authorizing such execution, and the President and Secretary of Corporation are executing this Agreement pursuant to a duly adopted resolution of its Board of Directors.

Dated this 8th day of September, 1998.

THE CITY OF SAN DIEGO

By 
Assistant to the City Manager

SAN DIEGO CONVENTION
CENTER CORPORATION

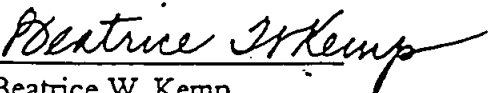
By 
President

By 
Secretary

WE HEREBY APPROVE the form and legality of the foregoing Agreement this 17TH
day of SEPTEMBER, 1998.

CASEY GWINN, City Attorney

By  for
Deborah L. Berger
Deputy City Attorney

By 
Beatrice W. Kemp
General Counsel, San Diego
Convention Center Corporation

DLB:pev
8/28/98