

DUPLICATE

THE CITY OF SAN DIEGO

Flat Rate Lease

USO COUNCIL OF SAN DIEGO, INC.

DOCUMENT NO. 00-18203-1
FILED AUG 14 1995
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

SECTION 1: USES	1
1.1 <u>Premises</u>	1
1.2 <u>Uses</u>	1
1.3 <u>Related Council Actions</u>	1
1.4 <u>Quiet Possession</u>	1
1.5 <u>Easements and Reservations</u>	2
1.6 <u>Competent Management</u>	2
1.7 <u>Operation of Facilities</u>	2
1.8 <u>Political Activities</u>	3
1.9 <u>Parking</u>	3
SECTION 2: TERM	3
2.1 <u>Commencement</u>	3
2.2 <u>Holdover</u>	3
2.3 <u>Quitclaim and Surrender of LESSEE'S Interest</u>	3
2.4 <u>Rent Amount</u>	3
SECTION 3: ASSIGNMENT	4
3.1 <u>Time is of Essence; Provisions Binding on Successors</u>	4
3.2 <u>Assignment and Subletting</u>	4
3.3 <u>Defaults and Remedies</u>	5
3.4 <u>Eminent Domain</u>	6
SECTION 4: INSURANCE RISKS/SECURITY	7
4.1 <u>Indemnity</u>	7
4.2 <u>Insurance</u>	7
4.3 <u>Waste, Damage, or Destruction</u>	9
SECTION 5: IMPROVEMENTS/ALTERATIONS/REPAIRS	9
5.1 <u>Acceptance of Premises</u>	9
5.2 <u>Entry and Inspection</u>	10
5.3 <u>Maintenance</u>	10
5.4 <u>Improvements/Alterations</u>	10
5.5 <u>Utilities</u>	11
5.6 <u>Construction Bond</u>	11
5.7 <u>Liens</u>	11
5.8 <u>Taxes</u>	11
5.9 <u>Signs</u>	12
5.10 <u>Ownership of Improvements and Personal Property</u>	12
5.11 <u>Unavoidable Delay</u>	13
5.12 <u>Hazardous/Toxic Waste</u>	13
5.13 <u>Asbestos Disclosure</u>	13
SECTION 6: GENERAL PROVISIONS	14
6.1 <u>Notices</u>	14

6.2	<u>Compliance with Law</u>	14
6.3	<u>CITY Approval</u>	14
6.4	<u>Nondiscrimination</u>	14
6.5	<u>Compliance with CITY'S Equal Opportunity Contracting Program</u>	15
6.6	<u>Partial Invalidity</u>	16
6.7	<u>Legal Fees</u>	16
6.8	<u>Number and Gender</u>	16
6.9	<u>Captions</u>	16
6.10	<u>Entire Understanding</u>	16
6.11	<u>CITY Employee Participation Policy</u>	16
6.12	<u>Drug-free Workplace</u>	17
6.13	<u>Disabled Access Compliance</u>	17
SECTION 7: SPECIAL PROVISIONS		18
7.1	<u>Relocation Payments</u>	18
7.2	<u>Common Areas - Definition</u>	18
7.3	<u>Common Areas - Changes</u>	19
7.4	<u>Operating Expenses</u>	19
SECTION 8: SIGNATURES		22
8.1	<u>Signature Page</u>	22
SECTION 9: EXHIBITS		23
9.1	<u>Legal Description</u>	23
9.2	<u>Parcel Map(s)</u>	24
9.3	<u>Building Plan or Floor Plan(s)</u>	25
9.4	<u>Description and Listing of LESSEE-owned Improvements</u>	27
9.5	<u>Schedule of Days and Hours of Operation</u>	28

**CITY OF SAN DIEGO
FLAT RATE LEASE**

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and USO COUNCIL OF SAN DIEGO, INC. a California corporation, hereinafter called "LESSEE."

SECTION 1: USES

- 1.1 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY that certain real property situated in the City of San Diego, County of San Diego, State of California, described in Exhibit 9.1 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 the operation of recreational facilities, including snack bar service, vending machines, pool tables, automatic game machines and similar recreational type machines, for members of the armed forces, and to provide a place where said persons may meet and congregate in a wholesome environment 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.
- 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.

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 recreational facilities, including snack bar service, vending machines, pool tables, automatic game machines and similar recreational type machines, for members of the armed forces, to provide a place where said persons may meet and congregate in a wholesome environment 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.

- 1.8 Political Activities. The leased premises shall be used exclusively for the purposes specified in Section 1.2, Uses, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.
- 1.9 Parking. CITY shall designate and LESSEE shall be allowed to use fifty percent (50%) of the parking spaces in the subterranean garage for the entire term of this lease and at no cost to LESSEE.

SECTION 2: TERM

- 2.1 Commencement. The term of this agreement shall be 50 years commencing on the first day of the calendar month following execution by the City Manager. "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager.
- 2.2 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect.
- 2.3 Quitclaim and Surrender of LESSEE'S Interest. On execution of this lease, LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the premises. CITY may record such deed only on the expiration or earlier termination of this lease. In the event that CITY requires any subsequent quitclaim deed, LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor.
- 2.4 Rent Amount. The rent is One Dollar (\$1.00) per year receipt of which is hereby acknowledged.

SECTION 3: ASSIGNMENT

- 3.1 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.
- 3.2 Assignment and Subletting. LESSEE shall not assign this lease or any interest therein and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the written consent of the City Manager.

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

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this agreement which are applicable to the rights acquired. The City Manager shall require, as a condition to approval of any sublease of the majority portion of the leasehold or any assignment, that the LESSEE pay additional consideration to CITY, 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.

3.3 Defaults and Remedies.

a. Default. In the event that:

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

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Section 4.4a.(1), hereinabove is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

- b. 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.
- c. 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 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.

3.4 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 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 (i) the value of LESSEE's leasehold interest in the lease premises at the time of the taking and (ii) in tenant improvements, trade, fixtures, structures and installations of LESSEE. CITY shall have no liability

to LESSEE for any award not provided by the condemning authority, unless the condemning authority shall be the CITY.

- e. Transfer. CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.
- f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 4: INSURANCE RISKS/SECURITY

4.1 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, negligence, or willful misconduct of the CITY, its agents, officers, or employees.

4.2 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 One Million Dollars (\$1,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises.

- (2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover 100 percent of the replacement cost.
- 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.

- 4.3 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 4.2, Insurance, hereof.

SECTION 5: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 5.1 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.

- 5.2 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.
- 5.3 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 including replacement of any damaged or broken plate glass windows and doors.
- 5.4 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.

- 5.5 Utilities. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises as referred to in Section 7.5. CITY shall provide separately sub-metered, gas and electric power to the leased premises and LESSEE shall reimburse CITY the actual cost of the gas and electric power consumed, within ten (10) days after an invoice is presented to LESSEE by CITY.
- 5.6 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.
- 5.7 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.
- 5.8 Taxes. LESSEE agrees to pay, before delinquency, its prorata share of all taxes, assessments, and fees assessed or levied upon LESSEE or the premises, 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.

- 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.
- 5.11 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.
- 5.12 Hazardous/Toxic Waste. LESSEE will not allow the installation of additional underground storage tanks or release of hazardous substances in, on, under, or from the premises. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated herein.
- 5.13 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.

5.9 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.

5.10 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.

SECTION 6: GENERAL PROVISIONS

6.1 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.

- 6.2 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.

- 6.3 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.

- 6.4 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.

6.5 Compliance with CITY'S Equal Opportunity Contracting Program.

- a. Equal Opportunity Contracting. LESSEE shall submit to the Project Manager statistical information as requested in the City of San Diego Contract Activity Report indicating the amount of subcontracting provided by firms during the period covered by the report. This information should be accompanied by an invoice from each subconsultant/subcontractor/ vendor/service provider listed in the report.
- b. Equal Employment Opportunity. 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 based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or place of birth.

Upon request by the City of San Diego, LESSEE will submit a current Work Force Report and, if required, an Equal Employment Opportunity Plan which sets forth the actions that LESSEE will take to achieve the CITY'S goals for the employment of African Americans, American Indians, Asians, Filipinos, Latinos, women, and people with disabilities.

Further, LESSEE will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this lease agreement so that such provisions will be binding upon each subcontractor.

- c. Local Business and Employment. LESSEE acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms on 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.

- 6.6 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.
- 6.7 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.
- 6.8 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.
- 6.9 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.
- 6.10 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.

- 6.11 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.

6.12 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 sublessee shall be individually responsible for their own drug-free workplace programs.

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

- a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment,

training, compensation, benefits, discipline, layoffs, and termination of employment.

- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
- c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- d. Where required by law, LESSEE shall comply with CITY'S disabled access requirements by bringing up to code and making accessible any areas of the premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of LESSEE.
- e. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessee shall be individually responsible for their own ADA employment programs.

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

SECTION 7: SPECIAL PROVISIONS

- 7.1 Relocation Payments. LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination or expiration of this lease.
- 7.2 Common Areas - Definition. The term "Common Areas" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Office Building that are provided and designated by the CITY from time to time for the general non-exclusive use of CITY, LESSEE and of other lessees of the Office Building and their respective employees, suppliers, shippers, customers and invitees, including but not limited to common entrances, lobbies, corridors, stairways and stairwells, public restrooms, elevators, escalators, parking areas to the extent not otherwise prohibited by this Lease, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, ramps, driveways, landscaped areas and decorative walls.

7.3 Common Areas - Changes. CITY shall have the right, in CITY's sole discretion, from time to time:

- (a) To make changes to the building interior and exterior and Common Areas, including, without limitation, changes in the location, size, shape, number, and appearance thereof, including but not limited to the lobbies, windows, stairways, air shafts, elevators, escalators, restrooms, driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, decorative walls, landscaped areas and walkways,; provided, however, CITY shall at all times provide the parking facilities required by applicable law;
- (b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;
- (c) To add additional improvements to the Common Areas;
- (d) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Office Building, or any portion thereof;
- (e) To do and perform such other acts and make such other changes in, to or with respect to the Common-Areas and Office Building as CITY may, in the exercise of sound business judgement to be appropriate.

7.4 Operating Expenses. LESSEE shall pay to CITY during the term hereof, LESSEE's Share, of all Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

- (a) "LESSEE's Share" is defined, for purposes of this Lease, is Fifty Three percent (53%) which percentage has been determined by dividing the approximate square footage of the Premises by the total approximate square footage of the rentable space contained in the Office Building.. It is understood and agreed that the square footage figures set forth in the Basic Lease Provisions are approximations which CITY and LESSEE agree are reasonable and shall not be subject to revision except in connection with an actual change in the size of the Premises or a change in the space available for lease in the Office Building;

- (b) "Operating Expenses" is defined, for purposes of this Lease, to include all costs, if any, incurred by CITY in the exercise of its reasonable discretion, for:
- (i) The operation, repair, maintenance, and replacement, in neat, clean, safe, good order and condition, of the Office Building, including but not limited to the following:
 - (aa) The Common Area, including the surfaces, coverings, decorative items, carpets, drapes and window coverings, and including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, stairways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities;
 - (bb) All heating, air conditioning, plumbing, electrical systems, life safety equipment, telecommunication and other equipment used in common by, or for the benefit of, lessees or occupants of the Office Building, including elevators and escalators, LESSEE directories, fire detection systems including sprinkler system maintenance and repair.
 - (ii) Trash disposal, janitorial and security services;
 - (iii) Any other service to be provided by CITY that is elsewhere in this Lease stated to be an "Operating Expense";
 - (iv) The cost of the premiums for the liability and property insurance policies to be maintained by CITY;
 - (v) The cost of water, sewer, gas, electricity, and other publicly mandated services to the Office Building;
 - (vi) Labor, salaries and applicable fringe benefits and costs, materials, supplies and tools, used in maintaining and/or cleaning the Office Building;
 - (vii) Replacing and/or adding improvements mandated by any governmental agency, with respect to the common area and any repairs or removals necessitated thereby amortized over its useful life according to Federal income tax regulations or guidelines for

depreciation thereof (including interest on the unamortized balance as is then reasonable in the judgement of CITY's Auditor;

- (viii) Replacements of equipment or improvements, with respect to the common area that have a useful life for depreciation purposes according to Federal income tax guidelines of five (5) years or less, as amortized over such life.
- (c) Operating Expenses shall not include the costs of replacements of equipment or improvements that have a useful life for Federal income tax purposes in excess of five (5) years unless it is of the type described in paragraph 7.5(b) (viii) in which case their cost shall be included as above provided.
- (d) Operating Expenses shall not include any expenses paid by any LESSEE directly to third parties, or as to which CITY is otherwise reimbursed by any third party, other tenant, or by insurance proceeds.
- (e) LESSEE's Share of Operating Expenses shall be payable by LESSEE within ten (10) days after a reasonably detailed statement of actual expenses is presented to LESSEE by CITY. At CITY's option, however, an amount may be estimated by CITY from time to time of LESSEE's Share of annual Operating Expenses and the same shall be payable monthly or quarterly, as CITY shall designate, during each calendar year of the Lease term. In the event that LESSEE pay CITY's estimate of LESSEE's Share of Operating Expenses as aforesaid, CITY shall deliver to LESSEE within sixty (60) days after the expiration of each calendar year a reasonably detailed statement showing LESSEE's Share of the actual Operating Expenses incurred during the preceding year. If LESSEE's payments under this paragraph during said preceding calendar year exceed LESSEE's Share as indicated on said statement, LESSEE shall be entitled to credit the amount of such overpayment against LESSEE's Share of Operating Expenses next falling due. If LESSEE's payments under this paragraph during said preceding calendar year were less than LESSEE's Share as indicated on said statement, LESSEE shall pay to CITY the amount of the deficiency within ten (10) days after delivery by CITY to LESSEE of said statement.

SECTION 8: SIGNATURES

8.1 Signature Page.

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

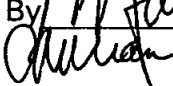
THE CITY OF SAN DIEGO

Date AUG 14 1995

By 
Real Estate Assets Director

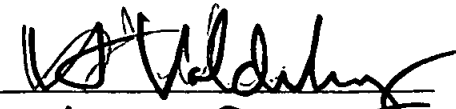
LESSEE: USO COUNCIL OF SAN
DIEGO, INC.,
A California corporation

Date 8/11/95

By 
 Relocation Permit
By _____

APPROVED as to form and legality this 18 day of August, 1995.

JOHN W. WITT, City Attorney

By 
Chief Deputy

RAG:rc
6-29-95
I:\WPO\1995\GERHARDT\LS-USO.WPD

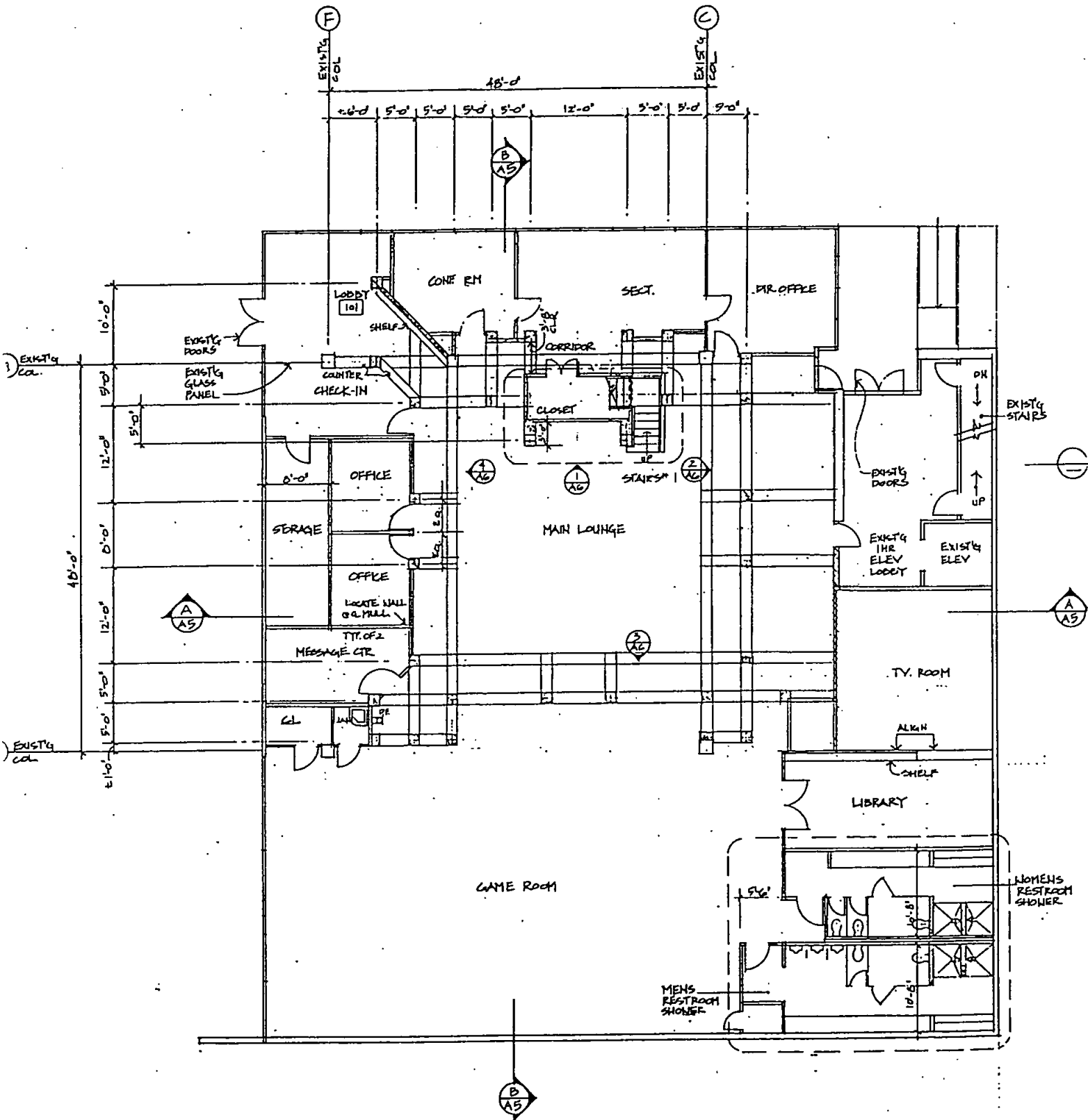
SECTION 9: EXHIBITS

9.1 Legal Description.

The Premises consists of the space between the interior surfaces of the perimeter walls, containing 15,914 rentable square feet, located on the first and second floors of the Office Building (Crabtree Building), containing 29,992 rentable square feet, located at 303 "A" Street, San Diego, California, described as follows:

Lots "A" and "B" in Block 11 of Horton's addition, in the City of San Diego, County of San Diego, State of California, according to map thereof now on file in the Office of County Recorder of San Diego County.

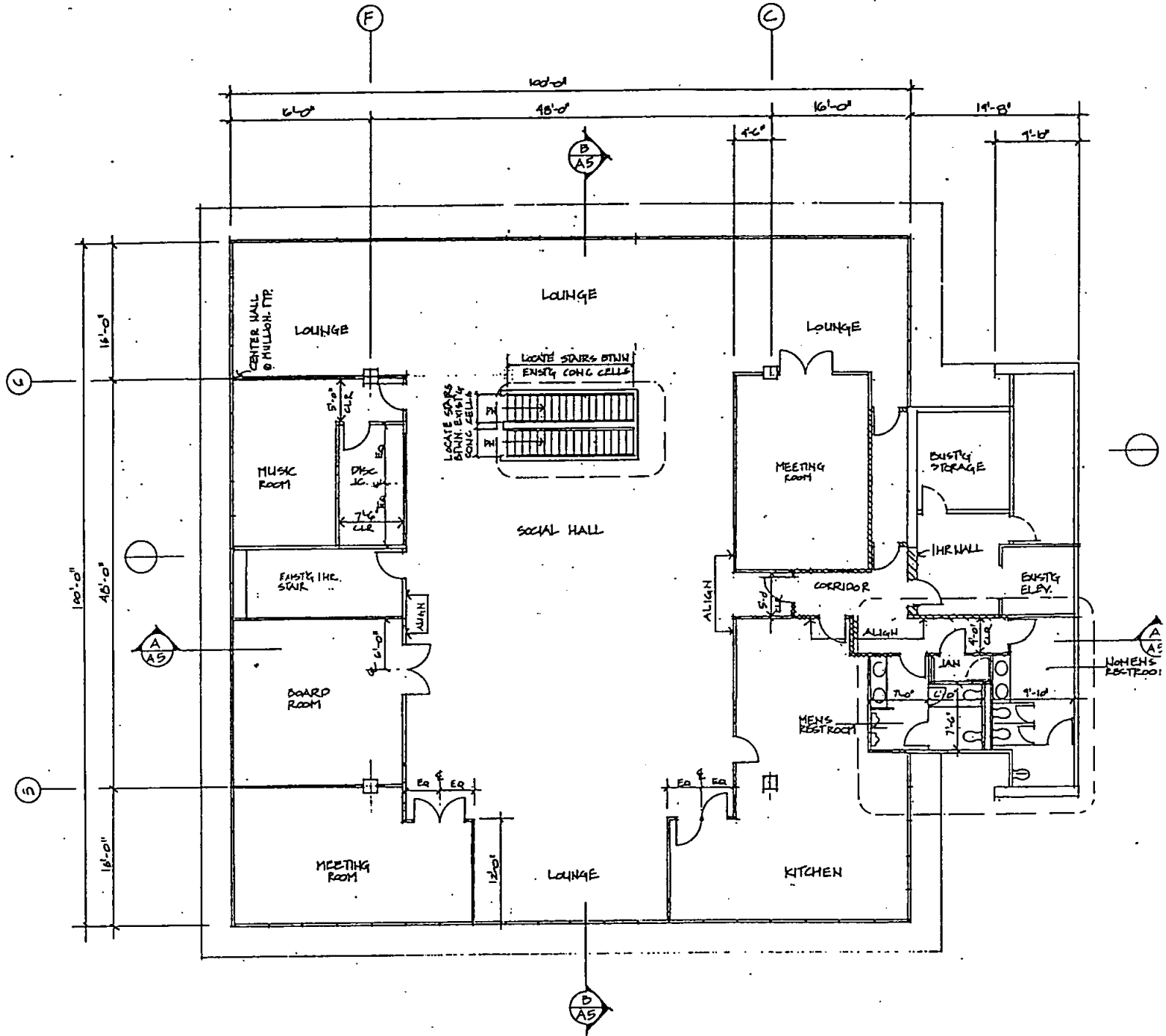
9.3 Building Plan or Floor Plan(s)



FIRST FLOOR PLAN
1/8" = 1'-0"

7900 SP

9.3 Building Plan Floor Plan(s)



○ SECOND FLOOR PLAN
1/8" = 1'-0"

6500 S.F.

9.4 Description and Listing of LESSEE-owned Improvements.

LESSEE will provide a list of these improvements Ninety (90) days after LESSEE occupies the premises.

9.5 Schedule of Days and Hours of Operation.

CITY and LESSEE agree as follows:

- A. Normal hours of operation for the building are 6:00 a.m. to 6:00 p.m. five (5) days a week.
- B. The hours of operation of the leased premises will be from 8:00 a.m. to 12:00 p.m. seven (7) days a week.
- C. If not separately metered, LESSEE shall be responsible for after normal hours, Saturday and Sunday charges for the following utility services:
 - 1. Electricity
 - 2. Gas
 - 3. Water
 - 4. HVAC

LESSEE will be charged at a hourly rate. The hourly rate will be determined ninety (90) days after LESSEE occupies the premises.

(O-96-7)

ORDINANCE NUMBER O- 18203 (NEW SERIES)

ADOPTED ON AUG 14 1995

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A 50-YEAR LEASE AGREEMENT WITH THE USO COUNCIL OF SAN DIEGO, INC. FOR PROPERTY LOCATED AT 303 "A" STREET, SAN DIEGO

WHEREAS, in order for the City to proceed with the Convention Center Expansion, it is necessary to relocate the USO from its existing facility located at 433 East Harbor Drive, to a City-owned facility located at 303 "A" Street in the downtown area; and

WHEREAS, on January 25, 1995, the City purchased the property at 303 "A" Street primarily for the purpose of relocating the USO; and

WHEREAS, the USO and the City have cooperated in the necessary up-grades to the building in connection with the completion of tenant improvements for occupancy by the USO in mid-August 1995; and

WHEREAS, the City proposes to enter into a fifty-year lease agreement with the USO for the first and second floors of the building located at 303 "A" Street, at an annual rental rate of \$1.00 per year; and

WHEREAS, the USO's pro-rata share of prepaid rent refunded by the San Diego Unified Port District for the USO's existing sublease located at 433 Harbor Drive, is \$113,935; and

WHEREAS, the City must execute a quitclaim deed to the San

Diego Unified Port District to terminate the City's lease agreement with the Port District of the property located at 433 Harbor Drive; NOW, THEREFORE,

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

Section 1. That the City Manager is hereby authorized to execute, for and on behalf of The City of San Diego, a 50-year lease agreement with USO COUNCIL OF SAN DIEGO, INC., for lease space located at 303 "A" Street, for the relocation of the USO, at a rental of \$1.00 per year, under the terms and conditions of that lease agreement on file in the office of the City Clerk as Document No. OO- 18203 -1.

Section 2. That the expenditure of an amount not to exceed \$113,935, which represents the USO's pro-rata share of prepaid rent, refunded by the San Diego Unified Port District to the City, for the USO's existing sublease located at 433 Harbor Drive, is hereby authorized and approved.

Section 3. That the City Manager is hereby authorized to execute, for and on behalf of The City of San Diego, a quitclaim deed, a copy of which is on file in the office of the City Clerk as Document No. OO- 18203 -2, causing the remise, release and quitclaim to the San Diego Unified Port District the property at 433 Harbor Drive, as more particularly described in the quitclaim deed.

Section 4. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By



Harold O. Valderhaug
Chief Deputy City Attorney

HOV:ps
07/14/95
Or.Dept:REA
Job:521719
O-96-7
Form=o+t

Passed and adopted by the Council of The City of San Diego on
AUG 14 1995 by the following vote:

YEAS: Mathis, Harvey, Kehoe, Stevens, Warden, Stallings, McCarty, Vargas,
Mayor Golding.

NAYS: None.

NOT PRESENT: None.

AUTHENTICATED BY:

SUSAN GOLDING
Mayor of The City of San Diego, California

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

(Seal)

By: MAYDELL L. PONTECORVO, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. O-18203 (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on
JUL 31 1995 and on AUG 14 1995.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

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

(Seal)

By: Maydell L. Pontecorvo, Deputy