



Law Offices of Will R. Wright

(619) 233-4945

1842 31st Street
San Diego, CA. 92102-1108

Bar No. 119032

March 5, 2000

Mr. Vladimir Balotsky
Property Agent
Asset Management * Real Estate Assets
The City of San Diego
1200 Third Avenue, Suite 1700, MS 51A
San Diego, CA 92101

RECEIVED
CITY OF SAN DIEGO
00 MAR - 7 PM 1:25
REAL ESTATE ASSETS DEPT.

Re: Rental Agreement between City of San Diego and George Gutierrez

Enclosure: (1) Proposed Exhibit B to said Rental Agreement

Dear Mr. Balotsky:

On behalf of both myself and Mr. Gutierrez, let me express our appreciation for your courteous cooperation and understanding in finalizing the above referenced Rental Agreement between the City of San Diego and Mr. George Gutierrez. I also extend my personal compliments on your knowledge and professionalism as demonstrated by your recommendations and help in resolving the few remaining difficulties and questions.

This letter shall serve to both memorialize the verbal understandings reached between parties at our meeting in your office on March 3, 2000 and to submit the Proposed Exhibit B to said Rental Agreement.

First, the verbal agreements consisted of:

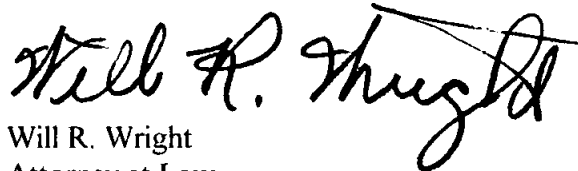
- (1) City agreed to a maximum length period of 30 days in which the Tenant is to acquire an insurance policy as described in detail in paragraph 9 of the Rental Agreement. Tenant agreed to immediately begin all reasonable attempts to acquire said insurance coverage and will submit proof of said insurance coverage to City as soon as it is acquired, including initial submission by FAX. Mr. Balotsky was very helpful in providing possible contacts with representatives of known companies that provide acceptable policies for City property.
- (2) City agreed to a period of four months for Tenant to provide the total security deposit as described in paragraph 4 of the Rental Agreement. Despite Tenant's assertion of having already paid prior owners a security deposit of \$1000, which was never returned, there apparently was no mention of said deposit during the last escrow on the property. I, Tenant's attorney, agreed to prepare an Exhibit B, which would describe the monthly payments over the four-month period allowed to provide the total \$1600 deposit.

Enclosed herewith, please find the proposed Exhibit B said Rental Agreement. On this matter, I now have additional information of which I was unaware at the time of our meeting. Mr. Gutierrez informed me after the meeting that he has proof of his prior submission of \$1000 security deposit paid to prior owners of this property. This proof is in the form of signed receipts for the deposit. Since I have not yet seen these receipts, I cannot provide you with copies. However, Mr. Gutierrez has promised to retrieve these receipts from his files and provide them if requested. As you are well aware, the question of security deposit is one where a new owner is required to recognize upon acquisition of a property. This large initial deposit is a major problem for Mr. Gutierrez at this time as we discussed at the meeting. However, I have attempted to recognize and accommodate the resolution of the problem in the drafting of the proposed Exhibit B. As you can see, I have described the first two monthly payments as being a minimum of \$100, the third payment to be a minimum of \$200, and the final payment to be the remaining balance to reach the total \$1600. Therefore, I recommend that Mr. Gutierrez start submitting his initial payments as described in Exhibit B. This will give us time to consider and resolve any questions concerning this deposit. Even if City recognizes the prior provided \$1000, there would still leave a \$600 balance to reach the new requirement of \$1600.

I am hopeful that you will consider the question of Mr. Gutierrez' prior deposit and agree to submit to your legal department any proof that may be provided. I will provide you with any such proof or documentation as soon as it is presented to me.

If I can be of any further assistance in any manner, please do not hesitate to contact me at the above address or telephone number.

Sincerely,

A handwritten signature in black ink, appearing to read "Will R. Wright". The signature is fluid and cursive, with a large, stylized "W" and "R".

Will R. Wright
Attorney at Law

EXHIBIT B

The Security Deposit of \$1600, as described in Paragraph 4 of the Rental Agreement, shall be provided by Tenant to City over a four-month period as follows:

1. First month's payment shall be a minimum of \$100
2. Second month's payment shall be a minimum of \$100
3. Third month's payment shall be a minimum of \$200
4. Fourth and final month's payment shall be the remaining balance required to reach a total of \$1600 security deposit by Tenant to City as required by the Rental Agreement.

RENTAL AGREEMENT

THIS RENTAL AGREEMENT (Agreement) is made in duplicate by and between THE CITY OF SAN DIEGO (CITY), through its City Manager, and GEORGE GUTIERREZ d.b.a. "AUTO SERVICE GUTIERREZ", (TENANT), who hereby agrees to rent property owned by CITY, described and delineated on the attached Exhibit "A" (PREMISES), on the terms and conditions provided in this Agreement.

In consideration of the mutual covenants contained in this Agreement, and other valuable consideration received, the CITY and TENANT agree as follows:

1. Use. TENANT shall use the PREMISES solely for the purpose of operation of auto repair facility.
2. Term. Term shall be month-to-month beginning on February 24, 2000. Provided, however, that this Agreement may be terminated at any time by TENANT upon thirty (30) days advance written notice (Notice) to CITY or by CITY upon ninety (90) days advance written Notice to TENANT. If CITY gives Notice, CITY shall include with the Notice a proportional part of any rent paid in advance by TENANT.
3. Rent. Rent is \$1,600 per month, payable in advance, on the first day of each calendar month beginning on March 1, 2000. Rent for a lesser period shall be prorated. CITY shall have the right to review the rental rate of this Agreement and may increase rent, at any time, upon thirty (30) days written notice. TENANT agrees to pay said rent to THE CITY OF SAN DIEGO, City Treasurer, 1222 First Avenue, San Diego, California 92101-4155, in advance on the first day of each month so long as tenancy continues.

- V.B.B. [Signature]
4. Deposit. CITY hereby acknowledges receipt of a \$1,600 deposit (Deposit) as guaranty for TENANT'S faithful performance of all covenants and conditions contained in this Agreement. If at any time TENANT fails to keep and perform all of the terms, covenants, and conditions of this Agreement, including the payment of rent, CITY may, at its sole option, appropriate and apply all or any portion of the Deposit to the payment of any loss or damage incurred by the CITY by reason of TENANT'S default or breach. Upon termination of this Agreement, and after TENANT has vacated the PREMISES and returned the keys to the PREMISES, CITY shall return to TENANT the Deposit or portion remaining, if any, without interest, after deductions for an amount equal to any unpaid rents and/or loss and damage to the PREMISES.
- V.B. [Signature] SEE EXHIBIT B.

5. Late Fee. In the event TENANT fails to pay the applicable rents when due, then TENANT shall pay CITY in addition to the delinquent rent, a sum of money equal to five percent (5%) of the delinquent rent. However, if TENANT fails to pay rent within fifteen (15) days of becoming delinquent, then TENANT shall pay CITY a sum of money equal to ten percent (10%) of delinquent rent. It is the intent of this provision to compensate CITY for losses resulting from rental delinquency, including costs to CITY for servicing the delinquent account. If TENANT is

unable to timely payment, TENANT may request in writing that CITY waive delinquent rent charges. The Real Estate Assets Director of CITY (Director) may in his/her sole discretion, for good cause waive delinquent rent charges if TENANT'S written request is received by CITY prior to the date rent is due. Nothing in this paragraph prevents CITY from immediately terminating this Agreement for failure to pay rent promptly when due.

6. Default. TENANT will be in default of this Agreement if any of the following occurs:
 - a. TENANT fails to make any payment required under this Agreement when due;
 - b. TENANT defaults in the performance of any covenant or condition required by this Agreement, other than those requiring payment to CITY, to be performed by TENANT and fails to cure said default within thirty (30) days following written notice thereof from CITY; or if such default, other than those requiring payment to CITY, cannot be cured within thirty (30) days, and TENANT fails to commence to cure the default within said thirty (30) day period and diligently pursue such cure to completion;
 - c. TENANT abandons the PREMISES;
 - d. TENANT makes any misrepresentation or material omission to CITY in connection with this Agreement;
 - e. TENANT voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
 - f. TENANT is adjudicated a bankrupt; or,
 - g. TENANT makes a general assignment for the benefit of creditors.
7. Remedies for Default. If TENANT defaults, CITY may, at its option, give TENANT a written Three (3) Day Notice to Pay or Quit, or CITY may terminate the Agreement and all rights of TENANT 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 6 Defaults, hereof, cannot be cured within thirty (30) days after notice to TENANT, CITY will not terminate this Agreement pursuant to the default if TENANT immediately notifies CITY of TENANT'S intent to cure and immediately commences to cure the default and diligently pursues such cure to completion), and may recover from TENANT the sum of all unpaid rents and any other amounts necessary to compensate CITY for all the detriment proximately caused by TENANT'S failure to perform TENANT'S obligations under the Agreement.
8. Indemnity. TENANT 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 TENANT'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 permit area or the work and operations to be

performed under this agreement, and all expenses of investigating and defending against same; provided, however, the TENANT'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

9. Insurance/Property Damage. TENANT shall take out and maintain at all times during the term of this Agreement the following insurance at its sole expense:
- a. 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 TENANT or by authorized representatives of CITY or TENANT on or in connection with the use or operation of the PREMISES.
 - b. Fire, extended coverage, and vandalism insurance policy on all insurable property on the PREMISES in the amount to cover eighty percent (80%) of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and TENANT. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property.
 - c. Conditions. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without thirty (30) 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 Agreement. A copy of the insurance policy will remain on file with CITY during the entire term of the Agreement. At least thirty (30) days prior to the expiration of each policy, TENANT shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this Agreement.
 - d. Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving TENANT 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. TENANT also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Agreement.
 - e. Accident Reports. TENANT 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, and the report shall be provided to the CITY within ten (10) days of any accident or incident.

10. Utility Bills. TENANT shall pay promptly when due all water, gas, electric, and other utility bills applicable to the PREMISES during occupation and agrees to hold CITY harmless therefrom.
11. Assignment/Subletting. TENANT shall not let or sublet the whole or any portion of the PREMISES, nor assign this tenancy to a third party, nor make or suffer any alterations to be made in or on said PREMISES, without first obtaining the written consent of CITY. In the event of a breach of this condition, CITY shall have the power to immediately declare this Agreement terminated and will be entitled to immediate possession of the PREMISES.
12. TENANT'S Notice of Vacation. Upon vacating PREMISES, TENANT agrees to leave said PREMISES in the condition existing on the day CITY took possession of the PREMISES. TENANT shall reimburse CITY for any damage done to said PREMISES, caused by TENANT'S occupation or tenancy, exclusive of ordinary wear and tear.
13. Maintenance of PREMISES. TENANT shall maintain the PREMISES in a neat, clean and orderly condition at all times during occupancy. TENANT shall maintain the landscape and shall not permit rubbish, garbage, or other waste, to accumulate at any time. TENANT shall not commit or permit any waste of the PREMISES. TENANT shall not use or permit the use of the PREMISES for any illegal purposes. TENANT shall comply with all applicable laws and ordinances concerning the PREMISES and the use thereof.
14. CITY Notice of Vacation. TENANT shall vacate said PREMISES within ninety (90) days after receipt of Notice from CITY. If TENANT fails to timely vacate, TENANT agrees that CITY, or its authorized agents, may enter upon said PREMISES and remove all TENANT personal property, and in this event TENANT waives any and all claims of damages against CITY, its agent or employees. Nothing herein shall be deemed a waiver of any rights of CITY to demand and obtain possession of the PREMISES in accordance with law if TENANT violates any of the terms or conditions of this Agreement. Failure to vacate in a timely manner could also result in loss of potential relocation benefits.
15. Nondiscrimination. TENANT 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 TENANT'S use of the permit area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

16. Signs. No signs shall be displayed on the PREMISES without the prior written consent of the CITY.
17. Repair. No repairs to the PREMISES of any nature will be performed by the CITY unless deemed necessary and in the best interest of the CITY.
18. Legal Proceedings. Should it become necessary for CITY to commence legal proceedings to recover possession, or enforce any other provision of this Agreement, the prevailing party will be entitled to an award of legal costs, including a reasonable sum as attorney's fees. The parties agree that the law of the State of California will govern all disputes under this Agreement. Venue of any action involving this Agreement shall be in the County of San Diego or the Southern District Court of California. Personal service either within or without the State of California shall be sufficient to give personal jurisdiction to any court in which an action is filed for litigation of rights under this Agreement.
19. Possessory Interest. TENANT acknowledges that his interest may be subject to a possible possessory interest tax and agrees that any such tax shall be the liability of and be paid by TENANT before becoming delinquent.
20. Nuisance. TENANT shall not create any nuisance or allow any other persons to create a nuisance on the PREMISES or any part thereof. If in the opinion of the Director, either of these conditions occur, the Director shall have the right to immediately terminate this tenancy.
21. Amendments. The terms of this Agreement may be amended only by written agreement signed by both TENANT and CITY.
22. Entry and Inspection. CITY shall always have the right to enter the PREMISES for purpose of viewing and ascertaining the condition of the PREMISES, or to inspect the operations conducted thereon. In the event the CITY discovers that the PREMISES are not in decent, safe, and sanitary condition, TENANT agrees to have all necessary maintenance work done at its expense within ten (10) days after such entry or inspection by the CITY.
23. Entire Understanding. The Agreement contains the entire understanding of the parties. TENANT, by signing this Agreement, agrees that there is no other written or oral understanding between the parties with respect to the 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 Agreement itself. Each of the parties in this Agreement 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 Agreement.

The failure or refusal of any party to read the Agreement 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 Agreement will be valid unless it is in writing and signed by all parties.

24. Supersedure. Upon execution, this Agreement supersedes any prior agreement, whether oral or written, between TENANT and CITY, or CITY'S predecessor in interest covering the PREMISES.

25. Drafting of Agreement. This Agreement shall not be construed in favor of or against either party by reason of the extent to which party participated in the drafting of the Agreement.

26. 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 TENANT at the PREMISES or at such other address designated in writing by TENANT; 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

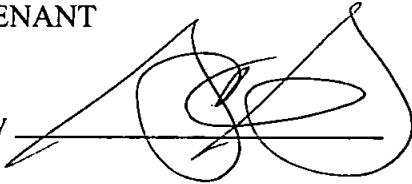
or to any mortgagee, trustee, or beneficiary, as applicable, at such appropriate address designated in writing by the respective party.

- 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.
- c. All notices must be sent by certified mail in order to obtain proof of "deposit in the United States mail."

Executed by CITY, acting by and through its City Manager, and by TENANT as of the dates indicated below.

TENANT

By



Date 3-3, 2000

THE CITY OF SAN DIEGO

By

Linda M. Fierro
Linda M. Fierro
Supervising Property Agent

Date 3-6, 2000

APPROVED as to form and legality this 28th day of Feb, 2000.

CASEY GWINN, City Attorney

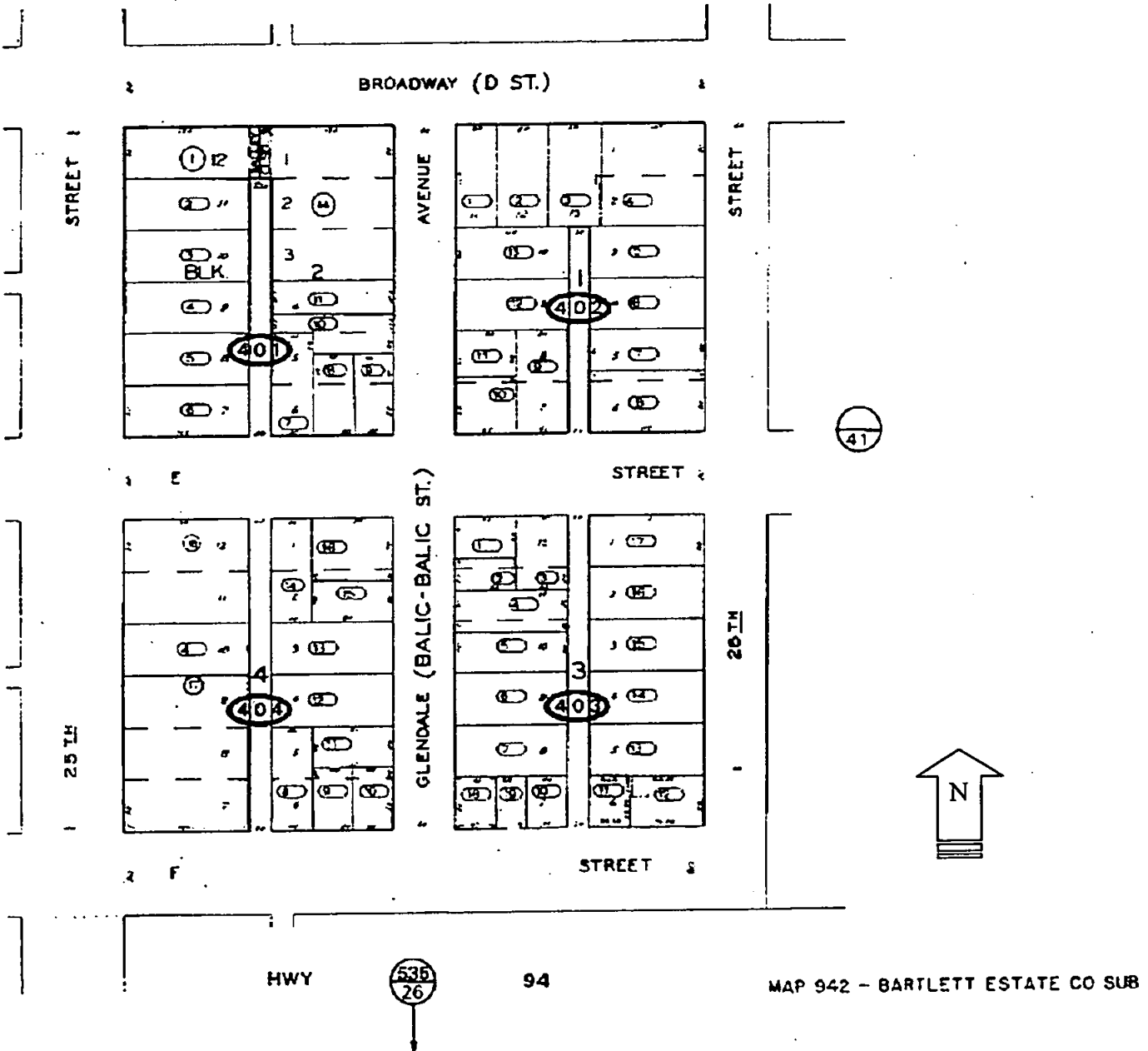
By

Debra Y. Reppin
Deputy City Attorney

VEB/jmj
02/25/00

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EXHIBIT A



Lots 7,8, and 9, Block 4 of Bartlett Estate Company's Subdivision of Block 25 and 26 of Breed and Chase's Additions; according to Map thereof No.942.