

SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT TO LEASE AGREEMENT is dated for reference purposes only, October 23, 2002, by and between the CITY OF SAN DIEGO, a California municipal corporation, hereinafter called "CITY," and William D. Evans and Lucy E. Lamoreaux (formerly Lucy E. Cooper) and as assigned to BH PARTNERSHIP, a California Limited Partnership hereinafter called "LESSEE."

## RECITALS

- A. LESSEE entered into a Lease Agreement dated March 17, 1966, as amended by that certain First Amendment to Lease Agreement dated April 24, 1967 (the "Lease", "lease" or "lease agreement"), with CITY for that certain real property located in Mission Bay Park, San Diego, California more specifically described in Exhibit "A." Said real property is hereinafter called the "premises", "leased premises" or "Demised Premises."
- B. BH PARTNERSHIP is successor in interest to William D. Evans and Lucy E. Lamoreaux by the Consent to Assignment to BAHIA HOTELS ASSOCIATES, a California General Partnership that was subsequently renamed BH PARTNERSHIP, a California Limited Partnership in a Landlord Consent dated June 1, 1994.
- C. The Lease is in full force and effect, and neither LESSEE or CITY has actual knowledge of any default or breach by the other under the Lease.
- D. CITY and LESSEE acknowledge that LESSEE desires to develop the leased premises in accordance with the Mission Bay Master Plan Update approved by the City Council and certified by the State of California Coastal Commission.
- E. CITY and LESSEE acknowledge that the premises shall be defined as described in the Mission Bay Park Survey dated October 2000.

NOW, THEREFORE, in consideration of the Recitals and the mutual obligations set forth herein, CITY and LESSEE hereby agree to amend and modify said Lease as follows:

1. Section (A) DEMISE of the Lease is deleted and replaced as follows:

(A) Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of

California, described in Exhibit "A" attached hereto and by this reference made part of this Lease.

2. Section (B) TERM of the Lease is deleted and replaced as follows:

(B) TERM: The term of this Lease shall expire on March 31, 2031. Any holding over by LESSEE after expiration shall not be considered as a renewal or extension of this Lease. The occupancy of the premises after the expiration or termination of this Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.

3. The first two sentences of Section (C) RENT and subsections (C)1, (C)2, (C)3, (C)4, (C)5, (C)6, (C)7a and (C)7b are deleted and replaced as follows:

(C) RENT: The rent is payable monthly in arrears, except as otherwise provided herein, within one month following the close of the calendar month in which the income was earned, at 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, and shall be as follows:.

Commencing November 1, 2002, LESSEE agrees to pay to CITY a sum of money based upon a percentage of gross income and volume of units sold as listed below, or a minimum yearly rental hereinafter set forth, whichever of the two is greater.

1. LESSEE shall pay SEVEN PERCENT (7%) of gross income received by LESSEE from the rental of all rooms, cottages and other living accommodations. Provided however, LESSEE may deduct from such gross income before computing the rent due CITY, any commission or fee paid to a travel agent as a result of procurement or attempted procurement by said agent, bureau or agency of tenant for said rooms, cottages and other living accommodations; provided further, that such deduction shall not exceed TEN PERCENT (10%) of such gross income; and provided further, that no deductions shall be allowed with respect to fees paid to any such agency or bureau if LESSEE has any financial interest therein.
2. SIX PERCENT (6%) of all gross income from operations of a cocktail lounge and any bar dispensing alcoholic beverages, or from any other operation, concession or facility engaged in the sale of alcoholic beverages. The CITY hereby approves, insofar as it is able to do so, the right of LESSEE to engage in the sale of alcoholic beverages on the leased premises, both "on sale" and "off sale" as defined by the California Alcoholic Beverage Control Board; provided, however, that LESSEE shall, upon City's approval, build adequate facilities in keeping with the design of the leased premises for the dispensing of said alcoholic beverages.

3. **THREE PERCENT (3%) of the gross income from all operations involving the serving of meals, or the dispensing of food, including but not limited to the coffee shop, restaurant and food dispensed in the cocktail lounge.**
4. **TWENTY-FIVE PERCENT (25%) of gross income from boat slip rental and boat storage.**
5. **TEN PERCENT (10%) of gross income from any boat rentals or from fares in conjunction with the operation of any excursion, sightseeing, or shuttle boat as first approved in writing by the City Manager.**
6. **SEVEN PERCENT (7%) of gross income from the operation of a health club or other similar facility.**
7.
  - a. **SEVEN PER CENT (7%) of gross income from the operation of a gift shop or other similar facility.**
  - b. **TEN PERCENT (10%) of gross income from any other source resulting from occupancy of said premises; provided however, that all revenues arising from telephone and telegraph charges by LESSEE to patrons on said premises shall not be subject to rent.**

4. **Section (C) RENT.**

Subsections (C) 12 and (C) 13 are added to Section (C) RENT as follows:

12. **PERCENTAGE RATE ADJUSTMENT.** At least six (6) months prior to March 31, 2018, the parties hereto, by mutual consent or through appraisal as hereinafter set forth, will adjust the percentage rates of LESSEE'S gross income to be paid to CITY effective as of April 1, 2018. Said adjustment will be made to provide a fair market rent to CITY as determined by the City Manager and LESSEE, taking into consideration the criteria set forth in Section (C) 13 below. In the event that such adjustment has not been arrived at by mutual consent by January 31, 2018, then the parties hereto will have the premises appraised under the terms hereinafter set forth.
13. **PERCENTAGE RATE APPRAISAL.** In the event the parties do not agree upon the amount of adjustment to said percentage rates as provided for in the previous section, then the adjustment shall be determined by a qualified professional independent real estate appraiser selected by mutual consent of the parties to this agreement from the list of appraisers approved by CITY within ten (10) days of receipt of the list of appraisers. CITY and LESSEE agree to equally share the cost of the mutually selected appraiser. In the event the parties do not reach agreement

as to selection of a mutually acceptable appraiser, then CITY and LESSEE shall each select a qualified professional independent real estate appraiser who in turn will select a third qualified professional independent real estate appraiser, which third appraiser will be employed to set the percentage rates to be applied to LESSEE'S percentage rate adjustment. In the event a mutually acceptable third appraiser is not agreed upon between the two selected appraisers within ten (10) days, then the third appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his or her individual capacity, upon application by either CITY or LESSEE with prior notice thereof to the other party. In the event that the Superior Court judge declines to make the appointment, the parties hereto agree that the third appraiser shall be promptly determined in accordance with the rules of the American Arbitration Association. Said third appraiser shall complete the assignment within sixty (60) days of appointment. Each party shall pay the cost of its own selected appraiser, and both CITY and LESSEE agree to equally share the cost of the third mutually selected or court-appointed appraiser. CITY and LESSEE agree to accept and be bound by the percentage rates determined by the appraiser selected or appointed to complete the assignment.

In establishing the percentage rates for categories set forth in Section "C" of the Lease, the appraiser shall consider CITY'S property as a fee simple absolute estate, and as vacant and available for a full Lease term equal to the initial full term of Lease on the open market for the authorized purposes of this lease at the commencement of the rental period under review. The appraiser will be guided by prevailing market percentage rates for similar operations primarily within the Southern California area, if available. In the event the appraisal is not completed in time to permit the percentage adjustment to be made upon the applicable commencement of the ten-year period, LESSEE agrees to continue to pay rent in accordance with the then-existing lease rates, and the adjustment, when determined, will be retroactive to said effective date of rental adjustment as hereinabove established. Any deficiency shall be paid by LESSEE to CITY within sixty (60) days after determination of the new percentage rate(s). IN NO EVENT, HOWEVER, SHALL ANY RENT ADJUSTMENT RESULT IN ANY DECREASE IN ANY PERCENTAGE RENTAL RATE. Notwithstanding the foregoing, the City Manager, in his sole discretion, may determine that no market value adjustment is necessary and waive the requirement for the appraisal process for any specific adjustment period.

5. Subsection 19 INSURANCE of Section (D) COVENANTS AND CONDITIONS is deleted and replaced as follows:

19. 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 Five Million Dollars (\$5,000,000) 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 one hundred (100%) percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.

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

(1) Additional Insured. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the Lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A current 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.

c. 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.

(1) 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, 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.

d. Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the 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 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 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 herein.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the premises shall be commenced by LESSEE within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenable by reason of such damage.

6. Subsection (D)20(e) is added to Section (D) DEVELOPMENT as follows:

- (e) Beginning January 1, 2003, and on January 1 of each succeeding calendar year through 2008, LESSEE agrees to expend funds as designated in the schedule below for Qualified Improvements to the premises. "Qualified Improvements" shall mean labor and material costs for building improvements, leasehold improvements, major fixtures and equipment, and entitlement costs. The expenditures of such sums shall be subject to City audit.

| <u>Calendar Year</u> | <u>Qualified Improvement Expenditures</u> |
|----------------------|-------------------------------------------|
| 2003                 | \$500,000                                 |
| 2004                 | \$515,000                                 |
| 2005                 | \$530,450                                 |
| 2006                 | \$546,363                                 |
| 2007                 | \$562,754                                 |
| 2008                 | \$579,637                                 |

The above schedule reflects an annual escalation of three percent (3%) of the prior year rate.

7. New Subsection (D)32 is added to Section (D) COVENANTS AND CONDITIONS as follows:

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

In the event of any release of a hazardous substance, LESSEE shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

LESSEE agrees to assume the defense of, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S operations on the premises, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the premises, LESSEE shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if LESSEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the premises. In addition, LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of CITY.

At any time within the twelve (12) months before the expiration or earlier termination of this Lease, LESSEE, at CITY'S sole option, shall cause an environmental assessment of the premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Said environmental assessment shall be obtained at the sole cost and expense of LESSEE and shall establish what, if any, hazardous substances exist on, in, or under the premises, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then said environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. LESSEE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

8. New Subsection (D)33 is added to Section (D) COVENANTS AND CONDITIONS as follows:

33. 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.

9. New Subsection (D)34 is added to Section (D) COVENANTS AND CONDITIONS is added to as follows:

34. COMPLIANCE WITH CITY'S EQUAL OPPORTUNITY CONTRACTING PROGRAM

(a) Equal Opportunity Contracting. LESSEE acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. LESSEE and all of its subcontractors are individually responsible to abide by its contents.

LESSEE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment on any basis prohibited by law.

LESSEE submitted and CITY acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that LESSEE will take to achieve the CITY'S commitment to equal employment opportunities.

LESSEE agrees to insert the foregoing provisions in all subcontracts for any work covered by this lease agreement so that such provisions will be binding upon each subcontractor. LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by the CITY'S Equal Opportunity Contracting Program staff.

(b) Local Business and Employment. LESSEE acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. LESSEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Lease agreement from local residents and firms as opportunities occur. LESSEE agrees to hire qualified local residents and firms whenever feasible.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.

10. New Subsection (D)35 is added to Section (D) COVENANTS AND CONDITIONS as follows:

35. 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.

11. New Subsection (D)36 is added to Section (D) COVENANTS AND CONDITION as follows:

36. Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
  - (1) The dangers of drug abuse in the workplace.
  - (2) The LESSEE'S policy of maintaining a drug-free workplace.
  - (3) Any available drug counseling, rehabilitation, and employees assistance programs.
  - (4) The penalties that may be imposed upon employees for drug abuse violations.
- c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

12. New Subsection (D)37 is added to Section (D) COVENANTS AND CONDITIONS as follows:

37. 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 sublessees 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.

13. New Subsection (D)38 is added to Section (D) COVENANTS AND CONDITIONS as follows:

38. Plastic Food Containers.

- a. LESSEE shall not, after the effective date of this lease, provide to its customers any prepared food in polystyrene foam food

packaging, nor shall LESSEE obtain or keep any polystyrene foam food packaging of a type, design, and condition suited for providing prepared food to its customers for consumption off the leased premises.

- b. LESSEE'S food packaging for prepared food to be consumed on the premises or for takeout food shall be biodegradable, and LESSEE shall provide upon demand evidence in the form of paid invoices to indicate the purchase of biodegradable containers in amounts sufficient to indicate compliance with this section. LESSEE'S food packaging for prepared food to be consumed off the premises shall be biodegradable unless LESSEE demonstrates to the satisfaction of CITY that biodegradable food packaging materials are not available for purchase in the quantities required by LESSEE. In the event that biodegradable food packaging materials are not available for purchase in the quantities required by LESSEE, LESSEE may limit its use of such packaging to the amount actually available.
- c. For purposes of this lease, the following definitions are applicable:
  - (1) "Prepared food" means foods or beverages which are prepared on the leased premises by cooking, chopping, slicing, mixing, freezing or squeezing, and which require no further preparation to be consumed.
  - (2) "Food packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws and lids which are not intended for reuse, on or in which any foods or beverages are placed or packaged on the leased premises.
  - (3) "Takeout food" means prepared foods or beverages requiring no further preparation to be consumed and which are purchased in order to be consumed off the leased premises.

- 14. New Subsection (D)39 is added to Section (D) COVENANTS AND CONDITIONS as follows:

39. Water Quality-Best Management Practices and Stormwater Pollution Prevention Plan. CITY and LESSEE are committed to the implementation of programs to manage activities on the Leased Premises in a manner which aids in the protection of San

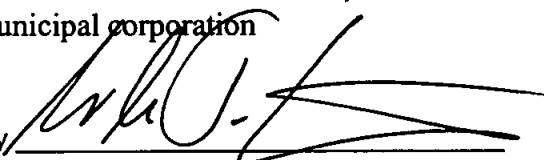
Diego's precious water resources. LESSEE shall comply with the Best Management Practices ("BMP") including the Stormwater Pollution Prevention Plan ("SWPPS") approved by CITY's Stormwater Management Program. LESSEE shall submit for review and approval by City Manager or its designee, within ninety (90) days of the execution of this Second Amendment to Lease Agreement, BMP and SWPPS that will control erosion and reduce the amount of pollutants and other sediments discharged from the Leased Premises. The BMP and SWPPS will be reviewed periodically by CITY. Upon written notice from the City Manager requesting an update of the BMP, LESSEE shall submit updated BMP and SWPPS as a result of any review by CITY to ensure compliance with any changes in laws or regulation.

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

IN WITNESS WHEREOF, this Second Amendment to Lease Agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

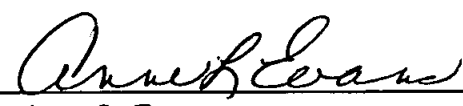
THE CITY OF SAN DIEGO, a California  
municipal corporation

Date 11-6-02

By   
William T. Griffith, Director  
Real Estate Assets Department

LESSEE: BH Partnership, a California  
limited partnership

Date 10-23-02

By   
Anne L. Evans,  
Managing General Partner

APPROVED as to form and legality this 14<sup>th</sup> day of November, 2002.

CASEY GWINN, CITY ATTORNEY

By   
Prescilla M. Dugard,  
Deputy City Attorney

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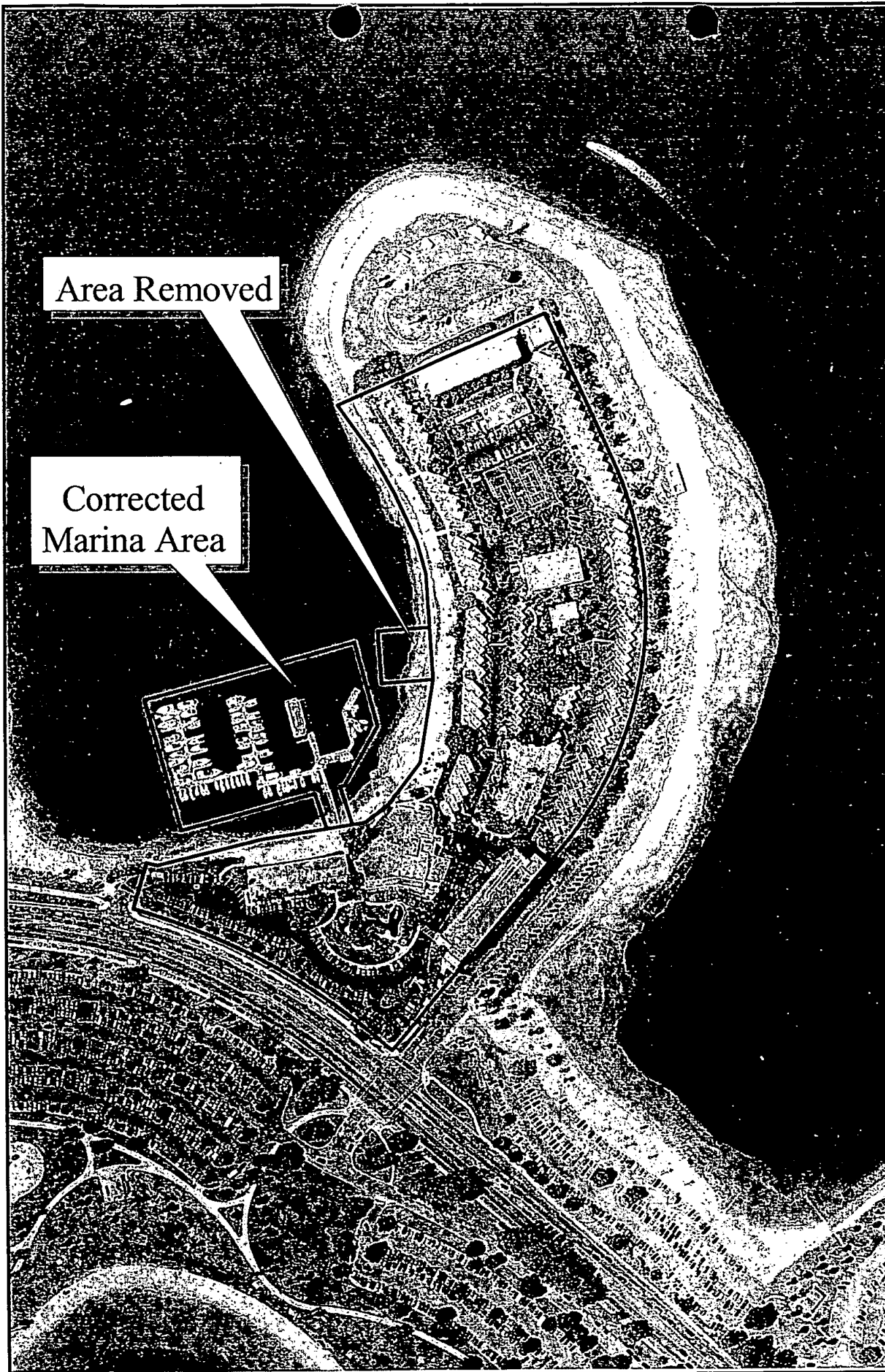
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Area Removed

Corrected  
Marina Area

# BH PARTNERSHIP



1:1800.

Plot Date: 10/23/02



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That portion of the tidelands and submerged or filled lands of Mission Bay, formerly False Bay, according to Map thereof made by James Pascoe in 1870, a copy of which Map was filed in the Office of the County Recorder of San Diego, November 14, 1921, and is known as Miscellaneous Map No. 36, all being in the City of San Diego, County of San Diego, State of California, described as follows:

PARCEL I

Beginning at the Southeast corner of Lot 24 in Block 10 of Resubdivision of Blocks 7, 8 and 10 and a portion of Block 9 and Lot "A", Inspiration Heights, according to Map thereof No. 1700, filed in the office of the County Recorder of San Diego County, December 27, 1917; thence along the Southerly line of said Lot 24, South  $89^{\circ}55'56''$  West, (Record North  $89^{\circ}59'$  West) 25.00 feet to a point of tangent curve in the boundary of said Lot 24; thence South  $00^{\circ}04'04''$  East, 2.00 feet to an intersection with a line which is parallel with and 2.00 feet Southerly at right angles to the Southerly line of said Block 10; thence along said parallel line North  $89^{\circ}55'56''$  East, 249.70 feet; thence North  $05^{\circ}30'00''$  West 104.06 feet to the United States Coast and Geodetic Survey Triangulation Station "Old Town", (The Lambert Grid Co-ordinates, California Zone 6, for said Station "Old Town" are  $X = 1,712,415.17$  - East and  $Y = 213,819.22$  - North) and said Triangulation Station is located at Latitude  $32^{\circ}45'02.845''$  North and Longitude  $117^{\circ}11'07.200''$  West, being also the point of origin for the San Diego City Engineer's Mission Bay Park Co-ordinate System; thence North 7,745.14 feet and West 19,146.93 feet to the TRUE POINT OF BEGINNING, the Mission Bay Park Co-ordinates of said TRUE POINT OF BEGINNING being North 7,745.14 feet and West 19,146.93 feet; thence North  $15^{\circ}33'49''$  East, 91.02 feet to Mission Bay Park Co-ordinates North 7,832.82 feet and West 19,122.51 feet, being also a point

on the Mean High Tide Line of Mission Bay, as established on Miscellaneous Map No. 198 recorded in the Office of the County Recorder of San Diego County on June 17, 1948; thence continuing along said mean High Tide Line as follows: South.  $76^{\circ}42'39''$  East, 20.00 feet to Mission Bay Park Co-ordinates North 7,828.23 feet and West 19,103.05 feet; thence North  $75^{\circ}27'18''$  East 205.98 feet to Mission Bay Park Co-ordinates North 7,879.95 feet and West 18,903.67 feet; thence North  $80^{\circ}32'22''$  East 201.56 feet to Mission Bay Park Co-ordinates North 7,913.09 feet and West 18,704.85 feet; thence North  $51^{\circ}26'35''$  East 53.10 feet, thence North  $37^{\circ}18'49''$  East 100.98 feet; thence North  $8^{\circ}51'34''$  East 162.01 feet to a point hereby designated as Station "17" on said Mean High Tide Line; thence North  $4^{\circ}30'49''$  West, 203.19 feet to Mission Bay Park Co-ordinates North 8,389.13 feet and West 18,593.16 feet; thence north  $16^{\circ}54'27''$  West, 64.06 feet; thence North  $25^{\circ}25'48''$  West, 100.02 feet; thence North  $29^{\circ}25'37''$  West, 100.40 feet; thence North  $36^{\circ}08'47''$  West, 102.17 feet to Mission Bay Park Co-ordinates North 8,710.70 feet and West 18,764.33 feet; thence leaving said Mean High Tide Line, North  $65^{\circ}52'30''$  East, a distance of 435.62 feet; thence South  $25^{\circ}16'00''$  East, 305.31 feet to a point on the arc of a tangent curve concave Westerly, having a radius of 705.0 feet; thence Southerly along the arc of said curve, through a central angle of  $65^{\circ}16'$ , a distance of 803.08 feet to Mission Bay Park Co-ordinates North 7,858.57 feet and West 18,333.94 feet; thence South  $40^{\circ}00'00''$  West, tangent to said curve, 496.60 feet; thence North  $50^{\circ}00'21''$  West, 28.76 feet to the point of tangency of a curve concave Southwesterly, having a radius of 1260.0 feet; thence Northwesterly along the arc of said curve, through a central angle of  $24^{\circ}25'50''$ , a distance of 536.01 feet to the TRUE POINT OF BEGINNING of this Parcel I.

Bahia legal description - Parcel I.wpd

**PARCEL II**

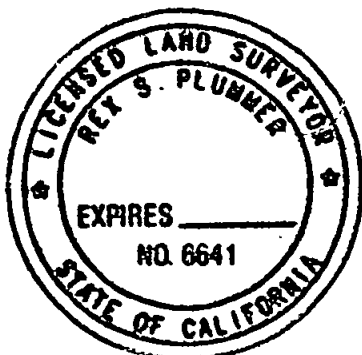
BEING A PORTION OF THE TIDELANDS AND SUBMERGED LANDS OF MISSION BAY (FALSE BAY) AND A PORTION OF ISLAND NO. 2 AS SHOWN PER MISCELLANEOUS MAP NO. 72 ON FILE WITH THE RECORDER OF SAN DIEGO COUNTY, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT A LEAD AND DISC STAMPED LS 6641 BEING THE MOST SOUTHERLY CORNER OF THE B. H. PARTNERSHIP BAHIA HOTEL LEASE NO. 26, PARCEL 1, PER RECORD OF SURVEY NO. 16891, FILED IN THE OFFICE OF THE RECORDER OF SAID COUNTY AS FILE NO. 2001-0113422 ON FEBRUARY 28, 2001, SAID LEAD AND DISC BEARS SOUTH 11° 59' 25" WEST 1,439.38 FEET FROM A LEAD AND DISC STAMPED LS 6641 BEING THE MOST NORTHERLY CORNER OF SAID LEASE PARCEL 1 PER SAID RECORD OF SURVEY NO. 16891; THENCE ALONG A RANDOM LINE NORTH 16° 15' 50" WEST 441.08 FEET TO A POINT ON THE NORTHERLY LINE OF SAID LEASE PARCEL 1, SAID POINT BEING THE **TRUE POINT OF BEGINNING**; THENCE LEAVING SAID LINE

1. NORTH 17°57'18" WEST 70.52 FEET; THENCE
2. SOUTH 74°42'39" WEST 264.33 FEET; THENCE
3. NORTH 15°17'21" WEST 258.32 FEET; THENCE
4. NORTH 74°42'39" EAST 414.13 FEET; THENCE
5. SOUTH 15°17'21" EAST 166.13 FEET; THENCE
6. SOUTH 29°17'14" WEST 129.43 FEET; THENCE
7. SOUTH 74°42'39" WEST 8.91 FEET; THENCE
8. SOUTH 17°57'18" EAST 76.12 FEET TO A POINT ON THE NORTH LINE OF SAID LEASE PARCEL 1; THENCE
9. SOUTH 81°03'42" WEST 50.63 FEET ALONG THE NORTH LINE OF SAID LEASE PARCEL 1 TO THE **TRUE POINT OF BEGINNING**.

CONTAINS 2.444 ACRES, MORE OR LESS.

THE BEARINGS AND DISTANCES HEREIN ARE IN TERMS OF THE CALIFORNIA COORDI-  
NATE SYSTEM, NAD83, AND ARE BASED ON SAID RECORD OF SURVEY NO. 16891.



W.O. NO.  
DWG. NO.

*[Signature]* 10/18/02

REX S. PLUMMER  
LS 6641  
EXPIRATION DATE 12/31/03

DATE

05.11.2003

RESOLUTION NUMBER R- 297246

ADOPTED ON OCT 28 2002

WHEREAS, the City and BH Partnership, dba Bahia Resort Hotel, have negotiated a lease amendment for City-owned property in Mission Bay, at the rental rate of approximately \$1.1 million per annum, the fair market rate as determined by City valuation staff; and

WHEREAS, the amendment extends the lease term for 15 years and increases percentage rates to current market levels; and

WHEREAS, the amendment will result in an increase in revenue to the City of approximately \$300,000 per year; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is authorized to execute, for and on behalf of the City of San Diego, a Second Amendment to Lease Agreement with BH Partnership, for the continued operation of the Bahia Resort Hotel located in Mission Bay Park, San Diego, California, at an estimated rent of \$1.1 million, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR- 297246.

APPROVED: CASEY GWINN, City Attorney

By Prescilla Dugard  
Prescilla Dugard  
Deputy City Attorney

PD:cdk

10/22/02

10/28/02 COR. COPY

Or.Dept:REA

R-2003-578

Passed and adopted by the Council of San Diego on October 28, 2002 by the following vote:

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

**NAY: NONE**

**VACANT: NONE**

**NOT PRESENT: NONE**

AUTHENTICATED BY:

**DICK MURPHY**

Mayor of The City of San Diego, California

**CHARLES G. ABDELNOUR**

City Clerk of The City of San Diego, California

(SEAL)

By: Esther Ramos, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of  
RESOLUTION NO. R- 297246, passed and adopted by the Council of The City of  
San Diego, California on October 28, 2002

**CHARLES G. ABDELNOUR**

City Clerk of The City of San Diego, California

(SEAL)

By: , Deputy

RESOLUTION No. 190087ADOPTED ON APR 13 1967

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

That the City Manager be, and he is hereby authorized and empowered to execute, for and on behalf of said City, a First Amendment to Lease Agreement with WILLIAM D. EVANS and LUCY E. LAMOREAUX (formerly Lucy E. Cooper), as Lessee, amending that certain Lease Agreement between the parties which is on file in the office of the City Clerk as Document No. 697319, to (1) clarify the rent provisions, and (2) increase the number of living units permitted to be constructed on the leased premises from 302 to 319, under the terms and conditions set forth in the form of First Amendment to Lease Agreement, on file in the office of the City Clerk as Document No. 710513.

APPROVED: EDWARD T. BUTLER, City Attorney

By James P. McGowan, Jr., Deputy

rb/4-10-67

APR 24 1967

FIRST AMENDMENT TO LEASE AGREEMENT

FILED

OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

THE CITY OF SAN DIEGO (City) and WILLIAM D. EVANS and LUCY E. LAMOREAUX (formerly Lucy E. Cooper), whose address is 998 West Mission Bay Drive, San Diego, California 92109, hereinafter called "Lessee",

WITNESSETH:

WHEREAS, City and Lessee have heretofore entered into a Lease Agreement on March 17, 1966, which said Lease Agreement is filed in the Office of the City Clerk as Document No. 697319, for the purpose of constructing, operating and maintaining a cottage resort area within Mission Bay Park as more particularly described in said Lease Agreement; and

WHEREAS, City and Lessee desire to amend said Lease Agreement to permit Lessee to construct 17 additional living units over and above those permitted in said Lease Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Lessee hereby agree to amend and modify said Lease Agreement in the following particulars only and in no other manner.

I

THAT THE LAST SUBPARAGRAPH OF SUBPARAGRAPH C (7) BEGINNING "PROVIDED, HOWEVER, EITHER CITY, ACTING BY" AND ENDING "HAS BEEN IN EFFECT SHALL REMAIN EFFECTIVE" IS HEREBY DELETED IN ITS ENTIRETY AND THE FOLLOWING SUBSTITUTED THEREFOR:

PROVIDED, HOWEVER, either City, acting by and through the City Manager, or Lessee, may at any time request a review of the said flat monthly rental and/or items included for computation of rents provided in this Section (C) 7. Following such review, in the event City Manager and Lessee agree in writing upon a revision of the rental provisions of this Section C (7), then such revision shall become effective immediately, and shall remain in effect for a minimum period of twelve consecutive months. In the event Lessee and City Manager cannot agree

upon a revised flat monthly rental following such review, then Lessee shall pay to City a sum of money equal to the percentage of gross income as provided for hereinabove in this Section C (7) as it exists at the time of said review.

II

THAT SUBPARAGRAPH D(20) (b) IS HEREBY DELETED IN ITS ENTIRETY AND THE FOLLOWING SUBSTITUTED THEREFOR:

(b) Lessee may increase the total number of dwelling units to Three Hundred Nineteen (319) during the balance of said term.

IN WITNESS WHEREOF, this Amendment to Lease Agreement is executed by the City, acting by and through the City Manager of said City, under and pursuant to Resolution No. 190087 authorizing said execution, and the Lessee has caused this Amendment to be executed, the day and year first above written.

Walter Hahn, Jr.  
THE CITY OF SAN DIEGO City Manager  
By [Signature]  
Assistant City Manager

LESSEE:

By [Signature]  
William D. Evans

By [Signature]  
Lucy E. Lamoreaux

I HEREBY APPROVE the form and legality of the foregoing Amendment this

10<sup>th</sup> day of April, 1967.

EDWARD T. BUTLER, City Attorney

By [Signature]

BWH:sh  
3-23-67

# RESOLUTION No. 190087

ADOPTED ON APR 13 1967

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

That the City Manager be, and he is hereby authorized and empowered to execute, for and on behalf of said City, a First Amendment to Lease Agreement with WILLIAM D. EVANS and LUCY E. LAMONTEAUX (formerly Lucy R. Cooper), as Lessee, amending that certain Lease Agreement between the parties which is on file in the office of the City Clerk as Document No. 697319, to (1) clarify the rent provisions, and (2) increase the number of living units permitted to be constructed on the leased premises from 302 to 319, under the terms and conditions set forth in the form of First Amendment to Lease Agreement, on file in the office of the City Clerk as Document No. 210513.

APPROVED: EDWARD T. BUTLER, City Attorney

By James P. McElowan, Jr., Deputy

rb/4-10-67

Passed and adopted by the Council of The City of San Diego  
on April 13, 1967, by the following vote:

YEAS -- Councilmen: deKirby, Scheidle, Morrow, Walsh, Hitch,  
Schaefer.

NAYS -- Councilmen: None.

ABSENT -- Councilmen: Cobb, Hom, Mayor Curran.

AUTHENTICATED BY:

FRANK CURRAN,  
Mayor of The City of San Diego, California.

JOHN LOCKWOOD,  
City Clerk of The City of San Diego, California.

(SEAL)

By WINNIFRED A. BOESE, Deputy.

I HEREBY CERTIFY that the above and foregoing is a full,  
true and correct copy of RESOLUTION NO. 190087 passed  
and adopted by the Council of The City of San Diego, California,  
on April 13, 1967.

JOHN LOCKWOOD,  
City Clerk of The City of San Diego, California.

(SEAL)

By Winnifred A. Boese, Deputy.

**APR 24 1967**

FIRST AMENDMENT TO LEASE AGREEMENT

FILED

OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

THE CITY OF SAN DIEGO (City) and WILLIAM D. EVANS and LUCY E. LAMOREAUX  
(formerly Lucy E. Cooper); whose address is 998 West Mission Bay Drive,  
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as more particularly described in said Lease Agreement; and

WHEREAS, City and Lessee desire to amend said Lease Agreement to permit  
Lessee to construct 17 additional living units over and above those  
permitted in said Lease Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants and  
conditions herein contained, City and Lessee hereby agree to amend and  
modify said Lease Agreement in the following particulars only and in  
no other manner.

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HOWEVER, EITHER CITY, ACTING BY" AND ENDING "HAS BEEN IN EFFECT SHALL  
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rental and/or items included for computation of rents provided in this  
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Lessee agree in writing upon a revision of the rental provisions of  
this Section C (7), then such revision shall become effective immedi-  
ately, and shall remain in effect for a minimum period of twelve con-  
secutive months. In the event Lessee and City Manager cannot agree

upon a revised flat monthly rental following such review, then Lessee shall pay to City a sum of money equal to the percentage of gross income as provided for hereinabove in this Section C (7) as it exists at the time of said review.

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IN WITNESS WHEREOF, this Amendment to Lease Agreement is executed by the City, acting by and through the City Manager of said City, under and pursuant to Resolution No. 190087 authorizing said execution, and the Lessee has caused this Amendment to be executed, the day and year first above written.

THE CITY OF SAN DIEGO

By Meno Wilhelms  
City Manager

LESSEE:

By William D. Evans  
William D. Evans

By Lucy E. Lamoreaux  
Lucy E. Lamoreaux

I HEREBY APPROVE the form and legality of the foregoing Amendment this 10<sup>th</sup> day of April, 1967.

EDWARD T. BUTLER, City Attorney

By James P. McGowan

BWH: sh  
3-23-67