

COPY

FOURTH AMENDMENT TO LEASE AGREEMENT

This Fourth Amendment to Lease Agreement (the "Amendment") is executed as of AUG 05 2002, 2002 by and between The City of San Diego, a municipal corporation ("City") and Sports Arena Village LTD., a limited partnership ("Lessee") based upon the following:

RECITALS

A. James R. Simpson entered to that certain Lease Agreement ("Lease"), dated December 28, 1973, filed on January 2, 1974, in the Office of the City Clerk as Document No. 745923, whereby City leased to James R. Simpson, an individual, certain real property ("Premises") more particularly described in Exhibit C of the Lease. Lessee is the successor in interest to James R. Simpson pursuant to assignments of leasehold interest, on file in the office of the City Clerk as Documents No. 762343 and 757301.

B. The Lease was amended by that certain First Amendment to Lease Agreement dated November 17, 1976, on file in the office of the City Clerk as Document No. 762344; by that certain Second Amendment to Lease Agreement between City and Lion Property Company dated June 22, 1977, on file in the office of the City Clerk as Document No. 759971; and by that certain Third Amendment to Lease Agreement between the City and Sports Arena Village, a limited partnership dated November 4, 1985, on file with office of the City Clerk as Document No. 769261.

C. City and Lessee disagree as to proper method of establishing the percentage rates pursuant to Paragraph 6., Percentage Rent Adjustment, of the Lease. Pursuant to provisions of Paragraph 7., Arbitration of Percentage Rent Adjustment, of the Lease, the City and Lessee have agreed upon a qualified professional independent appraiser to set the percentage rates to be applied to Lessee's gross income for ensuing 12-year period until the next percentage rent adjustment.

D. City and Lessee have agreed to resolve the rental dispute by inter alia, entering into this Fourth Amendment to Lease Agreement to establish rental rates effective January 1, 2001, and to restate the encumbrance provision of the Lease.

NOW, THEREFORE, City and Lessee agree as follows:

1. All capitalized terms used herein and not otherwise defined shall have the same meaning assigned to such terms in the Lease.

2. The following language is inserted as Paragraph 9 of Section (C) of the Lease:

DOCUMENT NO. RR-296931

FILED AUG 05 2002
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

9. For the period of January 1, 2001 through December 31, 2012 the percentage rates of Lessee's gross income payable to the City adjusted as follows:

a. Sixteen percent (16%) of all "Operational Gross Income," which is defined as all income resulting from rental of office space, rental of residential units and from any other source resulting from operations conducted on the Premises directly by Lessee or Lessee's agents, specifically excluding operations conducted by sublessees of Lessee. Said Operational Gross Income is further subject to the provision of Section (C) (3), GROSS INCOME hereof. However, with respect to office users who occupy space in the area designated for retail use, the percentage rent shall be thirty-five percent (35%).

b. Thirty five percent (35%) of "Contractual Gross Income," which is defined as income resulting from gross rents accruing to Lessee from subleases contracted by Lessee for rental of commercial stores, shops, restaurants and from any other rentals resulting from subleases contracted by Lessee for any other use of the Premises except rental of office space and residential units and rental of two separate retail pads more particularly described in Section (C). 9. c.

c. Fifty percent (50%) of "Retail Pads Contractual Gross Income", which is herein defined as income resulting from gross rents accruing to Lessee from subleases contracted by Lessee for rental of the retail sites described as "Site A", and "Site B" shown in the attached Exhibit "1".

3. Section (C), RENT, Paragraph 2. b .3 Minimum Rent Adjustment, is amended by deleting the first sentence of the Paragraph and inserting the following sentence therefor:

3. Minimum Rent Adjustment. Prior to January 1, 2013, and prior to the end of each twelfth year thereafter, the minimum rent for the ensuing twelve-year period shall be set at eighty percent (80%) of the average annual rent paid City during the five years preceding the rental review date.

4. Except as expressly amended herein, the provisions of the Lease shall remain unmodified and in full force and effect.

5. Each individual executed this Amendment on behalf of Lessee represents and warrants that he/she is duly authorized to execute and deliver this Amendment on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation.

6. This Amendment shall become effective only upon its execution by Lessee and the City Manager, pursuant to authorization by resolution of the City Council.

City

The City of San Diego, a municipal corporation

Date: AUG 05 2002

By: [Signature]

City Manager

Sports Arena Village, Ltd.

Date: 6-24-02

By: [Signature]

Title: General Partner

Date: _____

By: _____

Approved as to form and legality this 20th day of August, 2002

CASEY GWINN, CITY ATTORNEY

By: [Signature]

Deputy City Attorney

Exhibit 1

Site A

Site A, consisting of a 16,000 square foot pad located in the southeast corner of the Premises, in the 3700 block of Sports Arena Boulevard more particularly described in the Exhibits "A" and "C" of the first amendment to sublease dated May 15, 1980 between Lessee and All Coast Trading Company.

Site B

II. Site B, consisting of a 12,000 square foot pad located in the southwest corner of the Premises, in the 3700 block of Sports Arena Boulevard more particularly described in the Exhibits "A" and "C" of the sublease dated December 13, 1983 between Lessee and Sea Food Broiler Inc., a California Corporation.

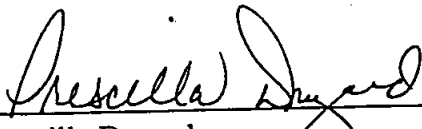
RESOLUTION NUMBER R- 296931

ADOPTED ON AUG 05 2002

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is authorized and empowered to execute, for and on behalf of said City, a Fourth Amendment to Lease Agreement with Sports Arena Village Limited, a California limited partnership, for the adjustment of Lessee's gross income rent for the succeeding twelve-year term of the lease, under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No. RR- 296931.

APPROVED: CASEY GWINN, City Attorney

By


Prescilla Dugard
Deputy City Attorney

PD:cdk
07/19/02
Or.Dept:REA
R-2003-169
Form=auagr.frm

Passed and adopted by the Council of San Diego on August 5, 2002, by the following vote:

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

NAYS: NONE

NOT PRESENT: NONE

VACANT: 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: Manuel E. Ketcham, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-296931, passed and adopted by the Council of The City of San Diego,
California on August 5, 2002.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: Manuel E. Ketcham, Deputy

2
RECORDING
RETURN TO:
CITY OF SAN DIEGO - PROPERTY DEPT
1222 1ST AVENUE MS 503
SAN DIEGO, CA 92101

RECORDING REQUESTED BY
TICOR TITLE INSURANCE COMPANY OF CALIFORNIA

60

RF	6
AR	4
TLR	
MG	/

85-471104

RECORDED IN
OFFICIAL RECORDS
OF SAN DIEGO COUNTY
12:35
1985 DEC 13 PM 12:35
VERA L. LYLE
COUNTY RECORDER

THIRD AMENDMENT TO LEASE AGREEMENT
ATTN: Bob Collins
1132174-06

THIS THIRD AMENDMENT TO LEASE AGREEMENT (the "Amendment") is executed as of NOVEMBER 4, 1985, by and between THE CITY OF SAN DIEGO, a municipal corporation ("City"), and SPORTS ARENA VILLAGE, LTD., a limited partnership ("Lessee"), with reference to the following facts:

A. City and James R. Simpson entered into that certain Lease Agreement dated December 28, 1973, filed on January 2, 1974, in the Office of the City Clerk as Document No. 745923 (the "Lease"), whereby City leased to James R. Simpson, an individual, certain real property located on Sports Arena Boulevard (the "Premises").

B. James R. Simpson assigned his interest in the Lease to Lion Property Company, a partnership.

C. The Lease was amended by that certain First Amendment to Lease Agreement between City and Lion Property Company dated November 17, 1976.

D. The Lease was amended by that certain Second Amendment to Lease Agreement between City and Lion Property Company dated June 22, 1977.

E. Lion Property Company assigned its interest in the Lease and its amendments (hereinafter collectively referred to as the "City Lease") to Sports Arena Village, Ltd.

F. In consideration of the mutual benefits, City and Lessee desire to amend the City Lease as hereinafter set forth.

NOW, THEREFORE, the parties hereto agree as follows:

1. The following is inserted as Paragraph 8 of Section (C) of the City Lease:

8. PERCENTAGE RENT ADJUSTMENT FROM MAY 1, 1985, THROUGH DECEMBER 31, 2000. In lieu of the provisions contained within Paragraphs 6 and 7 of Section (C) of this lease, for the period from May 1, 1985 through December 31, 2000, the percentage rent chargeable pursuant to Section (C)(2)(a) of this lease shall be adjusted as follows:

a) Ten percent (10%) of all "Operational Gross Income," which is herein defined as all income resulting from rental of office space, rental of residential units and from any other source resulting from operations conducted on the premises directly by Lessee or Lessee's agents, specifically excluding operations conducted by sublessees of Lessee. Said Operational Gross Income is further subject to the provisions of Section (C)(3), GROSS INCOME hereof.

441-590-04
10/23/85:126
93141

DOCUMENT NO. 769261
FILED NOV 6 1985
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

769261

b) Twenty percent (20%) of the first \$640,000 per year of "Contractual Gross Income," which is herein defined as income resulting from gross rents accruing to Lessee from subleases contracted by Lessee for rental of commercial stores, shops and restaurants and from any other rentals resulting from subleases contracted by Lessee for any other use of the premises except rental of office space and residential units, and fifty percent (50%) of such Contractual Gross Income in excess of \$640,000 per year. Said Contractual Gross Income is further subject to the provisions of Section (C)(3), GROSS INCOME hereof.

2. Section (C), "RENT," Paragraph 2(a)(4), is hereby deleted in its entirety, and the following is substituted therefor:

4. These percentage rents shall be subject to adjustment in accordance with Sections (C)6, (C)7 and (C)8 hereof.

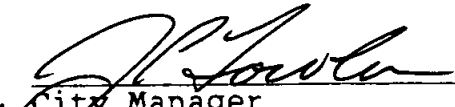
3. Section D, "COVENANTS AND CONDITIONS," Paragraph 23, is hereby deleted in its entirety, and the following is substituted therefor:

23. ENCUMBRANCE. City does hereby consent and agree that Lessee may encumber this lease, its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security type instrument to assure the payment of a promissory note or notes of the Lessee. City further agrees that in the event said deed of trust or mortgage or other security type instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, the City will accept the mortgagee or beneficiary thereof, if reputable, qualified and financially responsible, such as a State or Federal regulated financial institution, as its new tenant under this lease with all the rights, privileges and duties granted and imposed in this lease contract. In the event said mortgagee or beneficiary desires to assign this lease to its nominee, if nominee is a reputable, qualified, and financially responsible person in the opinion of City, City hereby agrees that within forty-five days after the filing of an application for consent to such assignment, City will give its consent thereto.

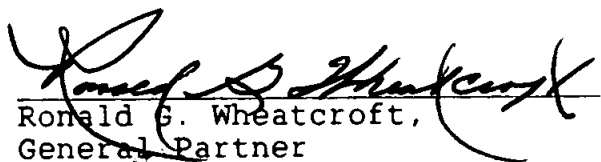
4. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed one and the same instrument.

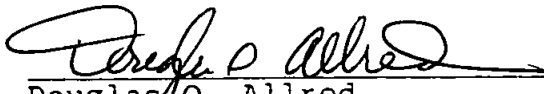
5. This Amendment shall become effective only upon its execution by Lessee and the City Manager of City.

THE CITY OF SAN DIEGO,
a municipal corporation

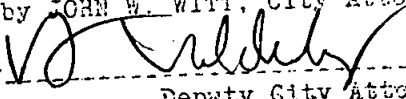
By: 
Deputy City Manager

SPORTS ARENA VILLAGE, LTD.,
a limited partnership

By: 
Ronald G. Wheatcroft,
General Partner

By: 
Douglas O. Allred,
General Partner

APPROVED as
to form by JOHN W. WITT, City Attorney

By: 
Deputy City Attorney

DOCUMENT NO. 769261

FILED NOV 6 1985

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

On November 4, 1985 before me, the undersigned, a Notary Public in and for said State, personally appeared J. P. Fowler known to me to be the Deputy City Manager of City of San Diego and known to me to be the person who executed the within instrument on behalf of said public corporation, agency or political subdivision, and acknowledged to me that such public corporation, agency, or political subdivision executed the same.

WITNESS my hand and official seal

Signature

Lorna M. Murt

Lorna M. Murt

Name (Typed or Printed)



JUL 8 1971

OFFICE OF THE CITY CLERK

SECOND AMENDMENT TO LEASE AGREEMENT SAN DIEGO, CALIFORNIA

THIS AGREEMENT is executed by and between THE CITY OF SAN DIEGO, a municipal corporation, herein called "CITY", and LION PROPERTY COMPANY, a partnership consisting of Donald F. Sammis, Douglas O. Allred and Ronald G. Wheatcroft, herein called "LESSEE".

IN CONSIDERATION of the mutual benefits, CITY and LESSEE hereby amend in the following manner that certain Lease Agreement dated December 28, 1973, and filed January 2, 1974, in the Office of the City Clerk as Document No. 745923 between CITY and James R. Simpson, as assigned by said James R. Simpson to LESSEE herein:

I. Section (C), RENT, Paragraph 2 b) subparagraph (1) is hereby deleted in entirety and the following is substituted therefor:

1) Beginning on said Commencement of Operations and ending on December 31, 1988, except in the event set out in Item 2, following, the Minimum Annual Rent shall be SEVENTY SEVEN THOUSAND SIX HUNDRED THIRTY AND NO/100 DOLLARS (\$77,630) per year;

II. Section (D), Paragraph 30 DELETION OF AREA, is hereby deleted in entirety and the following is substituted therefor:

30. DELETION OF AREA. In the event LESSEE has not commenced development by the end of the fifth (5th) year of said term, of the Northerly 4.773 acres of said premises, the City shall have the absolute right to delete said 4.773 acres from the lease agreement upon ten (10) days written notice thereof given at any time following the first day of the sixth (6th) year of the term hereof. Commencement of development of said Northerly 4.773 acres shall be evidenced by actual physical construction pursuant to a valid building permit issued in accordance with a development plan previously approved by the City Manager. LESSEE shall be entitled to no reduction or diminution of the minimum annual rent requirement, or other adjustment of the lease terms in the event of such deletion except as set out in Section (C) RENT hereof, and CITY shall be free to lease, develop or otherwise dispose of said Northerly 4.773 acres in any manner it so desires in such event.

See note by DSB in file 11-26-80

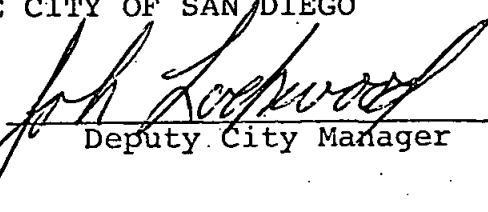
1st Amendment

III. This SECOND AMENDMENT TO LEASE AGREEMENT shall become effective only upon acceptance of a Grant Deed to property described on EXHIBIT "D" which was added by the First Amendment by the City Manager of CITY pursuant to authorization by a resolution of the City Council of CITY.

Dated this 22 day of June, 1977.

THE CITY OF SAN DIEGO

BY

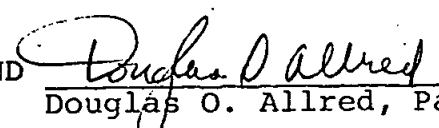

Deputy City Manager

LION PROPERTY COMPANY

BY


Donald F. Sammis, Partner

AND


Douglas O. Allred, Partner

AND


Ronald G. Wheatcroft, Partner

APPROVED as to form and legality this 30 day of June, 1977.

JOHN W. WITT, City Attorney

BY


Deputy

FRH:dc

3-22-77

Job 13061

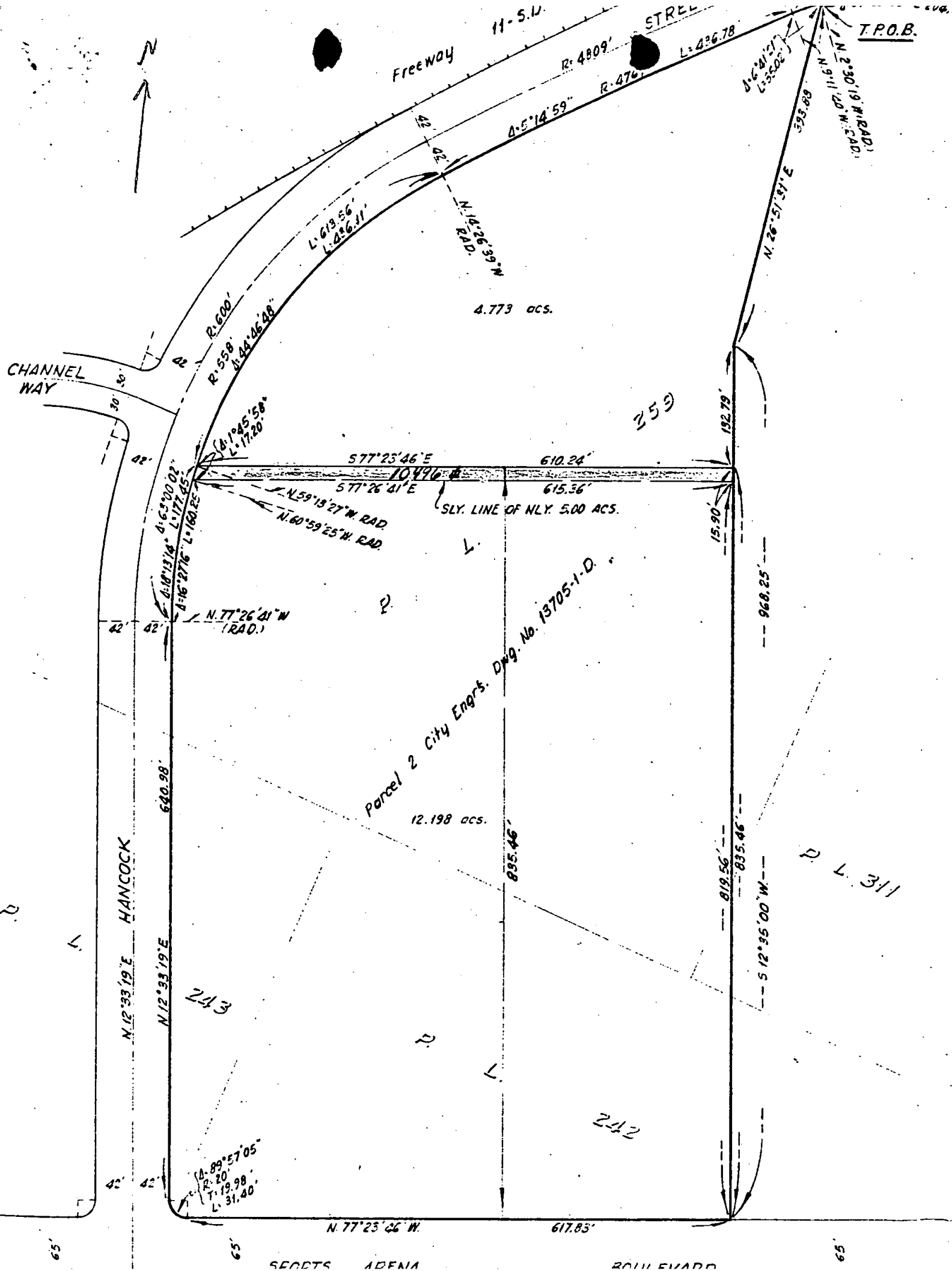
218665

Said Northerly 4.773 acres is described as follows:

DESCRIPTION

THAT PORTION OF PUEBLO LOT 259 OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, 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 COUNTY, NOVEMBER 14, 1921, AS MISCELLANEOUS MAP NO. 36, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHERLY CORNER OF PUEBLO LOT 276; THENCE SOUTH $53^{\circ}17'00''$ EAST ALONG THE NORTHEASTERLY BOUNDARY LINE OF PUEBLO LOT 276, A DISTANCE OF 93.78 FEET; THENCE LEAVING SAID BOUNDARY LINE OF PUEBLO LOT 276, NORTH $72^{\circ}53'15''$ EAST, A DISTANCE OF 120.70 FEET TO A POINT IN THE ARC OF A 270.00 FOOT RADIUS CURVE, CONCAVE SOUTHERLY, A RADIAL TO SAID POINT BEARS NORTH $13^{\circ}11'45''$ EAST; THENCE NORTH-WESTERLY AND WESTERLY THROUGH THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF $20^{\circ}28'03''$, A DISTANCE OF 96.45 FEET; THENCE SOUTH $82^{\circ}42'42''$ WEST, A DISTANCE OF 579.30 FEET; THENCE SOUTH $75^{\circ}31'30''$ WEST 237.21 FEET TO A POINT IN A 300.00 FOOT RADIUS CURVE, CONCAVE SOUTHERLY, A RADIAL TO SAID POINT BEARS NORTH $00^{\circ}57'45''$ EAST; THENCE WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $03^{\circ}28'04''$ AN ARC LENGTH OF 18.16 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID CURVE THROUGH AN ANGLE OF $06^{\circ}41'21''$ AN ARC LENGTH OF 35.02 FEET TO THE BEGINNING OF 4767.00 FOOT RADIUS CURVE, CONCAVE SOUTHERLY; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $05^{\circ}14'59''$ AN ARC LENGTH OF 436.78 FEET TO THE BEGINNING OF A 558.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY, A RADIAL TO SAID POINT BEARS NORTH $14^{\circ}26'39''$ WEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $44^{\circ}46'48''$ AN ARC LENGTH OF 436.11 FEET TO INTERSECTION WITH A LINE THAT IS PARALLEL WITH AND 835.46 FEET NORTHEASTERLY AT RIGHT ANGLES FROM THE NORTHEASTERLY LINE OF SPORTS ARENA BOULEVARD AS SHOWN ON MAP NO. 6417 OF GULL ACRES, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY; THENCE SOUTH $77^{\circ}23'46''$ EAST ALONG SAID PARALLEL LINE 610.24 FEET TO A POINT ON THE EASTERLY LINE OF PARCEL 2 AS SHOWN ON CITY ENGINEER'S DRAWING NO. 13705-1-D ON FILE IN THE OFFICE OF THE CITY ENGINEER OF SAN DIEGO; THENCE ALONG THE EASTERLY LINE OF SAID PARCEL 2 NORTH $12^{\circ}35'00''$ EAST 132.79 FEET TO AN ANGLE POINT THEREIN; THENCE NORTH $26^{\circ}51'31''$ EAST 393.88 FEET TO THE TRUE POINT OF BEGINNING.



Hagar 51A

RESOLUTION No. 218665

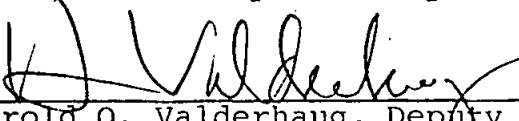
(R-77-2112)

Adopted on JUN 22 1977

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

That the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a Second Amendment to Lease Agreement with LION PROPERTY COMPANY, a Partnership, as Lessee, affecting the proposed development by Lion Property Company of Sports Arena Village on City-owned lands, under the terms and conditions set forth in the form of Second Amendment to Lease Agreement on file in the office of the City Clerk as Document No. 759799.

APPROVED: JOHN W. WITT, City Attorney

By 
Harold O. Valderhaug, Deputy

HOV:sml
5-18-77
Or.Dept.:Property
Job:13061

Passed and adopted by the Council of The City of San Diego
on June 22, 1977, by the following vote:

YEAS: O'Connor, Hubbard, Williams, Morrow, Gade,
Strobl, Haro.

NAYS: None.

ABSENT: Johnson, Wilson.

AUTHENTICATED BY:

PETE WILSON,
Mayor of The City of San Diego, California.

EDWARD NIELSEN,
City Clerk of The City of San Diego, California.

(SEAL)

By ALLYN D. NEVITT, Deputy.

I HEREBY CERTIFY that the above and foregoing is a full,
true and correct copy of RESOLUTION NO. 218665
passed and adopted by the Council of The City of San Diego,
California, on June 22, 1977.

EDWARD NIELSEN,
City Clerk of The City of San Diego, California.

(SEAL)

By *Allyn D. Nevitt*, Deputy.

(Rev. 12/71)

lm

FILED JAN 13 1978
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIAFIRST AMENDMENT TO LEASE AGREEMENT

THIS AGREEMENT is executed by and between THE CITY OF SAN DIEGO, a municipal corporation, herein called "CITY", and LION PROPERTY COMPANY, a partnership consisting of Donald F. Sammis, Douglas O. Allred and Ronald G. Wheatcroft, herein called "LESSEE".

IN CONSIDERATION of the mutual benefits, CITY and LESSEE hereby amend in the following manner that certain Lease Agreement dated December 28, 1973, and filed January 2, 1974, in the Office of the City Clerk as Document No. 745923 between CITY and James R. Simpson, as assigned by said James R. Simpson to LESSEE herein:

I. Section (A), DEMISE, of said Lease Agreement is hereby deleted in entirety and the following is substituted therefor:

A. DEMISE. CITY hereby leases to LESSEE and LESSEE leases from CITY all that certain real property situated in the City of San Diego, State of California, delineated on EXHIBIT C attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises".

1. Said premises are leased to LESSEE for the purposes of construction, operation and maintenance of retail stores, office buildings for rental of office space, and residential complex for rental of residential units and incidental uses as designated by the General Development Plan set forth in Section (D) 24, DEVELOPMENT, hereof.
2. LESSEE covenants to use said premises only for the aforesaid purposes and to diligently conduct the business thereon to produce a reasonable and substantial rent.

II. Section (C), RENT, is hereby deleted in entirety and the following is substituted therefor:

(C) RENT. The rent shall be paid by LESSEE to the Office of the City Treasurer and shall be as follows:

1. CONSTRUCTION PERIOD. The "Construction Period" for this lease is that portion of said term beginning on the effective date of this lease and ending upon the Commencement of Operations which is hereby defined as the opening

of said premises or any portion thereof for business as evidenced by the sale or rental of any goods, services or accommodations or the providing thereon of any goods, services or accommodations; provided, however, said Construction Period, for purposes of this rental provision, shall not end later than May 31, 1978, in any event. During said Construction Period the rent shall be as follows:

THREE THOUSAND SIX HUNDRED NINETY-FIVE AND NO/HUNDREDTHS DOLLARS (\$3,695.00) PER MONTH, PAYABLE ON OR BEFORE THE FIRST DAY OF EACH CALENDAR MONTH IN ADVANCE.

2. OPERATIONS PERIOD. The "Operations Period" of this lease shall be that portion of said term immediately following the aforesaid Construction Period, and continuing for the remainder of said term. During said Operations Period LESSEE shall pay to CITY monthly in arrears within thirty (30) days following the last day of each calendar month the following percentage rent, and in the event that the total amount of said percentage rent paid to CITY in any one lease year is less than the amount of the Minimum Annual Rent for that year as hereinafter set forth, then LESSEE shall pay to CITY the difference between said amounts within thirty (30) days following the last day of each such lease year. For purposes of computing rents due CITY hereunder, unless otherwise specifically stated, a "lease year" shall be a calendar year, January 1 through the following December 31 and Minimum Annual Rent shall be prorated for periods less than a full lease year.

a) PERCENTAGE RENT

- 1) SEVEN PERCENT (7%) of all "Operational Gross Income", which is herein defined as all income resulting from rental of office space, rental of residential units and from any other source resulting from operations conducted on the premises directly by LESSEE or LESSEE'S agents, specifically excluding operations conducted by sublessees of LESSEE. Said Operational Gross Income is further subject to the provisions of Section (C) 3, GROSS INCOME hereof.
- 2) TEN PERCENT (10%) of the first \$250,000 per year of "Contractual Gross Income", which is defined as income resulting from gross rents accruing to LESSEE from subleases contracted by LESSEE for rental of commercial stores, shops and restaurants and from any other rentals resulting from subleases contracted by LESSEE for any other use of the premises except rental of office space and residential units, and TWENTY-FIVE PERCENT (25%) of such Contractual Gross Income in excess of

DELETED

DELETED → \$250,000 per year. Said Contractual Gross Income is further subject to the provisions of Section (C) 3, GROSS INCOME hereof.

- 3) The City Manager of CITY and LESSEE may from time to time throughout said term mutually agree to percentage rental rates or flat rates of rent for uses not specified above and not designated on the General Development Plan. In the absence of said mutual agreement or said written approval, such other uses shall be subject to the applicable rent specified in subparagraphs 1 and 2 above. LESSEE shall not engage in or allow any such other uses on said premises without prior written approval by the City Manager in each instance.
- 4) These percentage rents shall be subject to adjustment in accordance with Sections (C) 6 and 7 hereof.

MINIMUM ANNUAL RENT

- changed to \$77,630/yr by 2nd Amendment*
DELETED
- 1) Beginning on said Commencement of Operations and ending on December 31, 1988, except in the event set out in Item 2, following, the Minimum Annual Rent shall be SEVENTY SIX THOUSAND FOUR HUNDRED THIRTY AND NO/100 DOLLARS (\$76,430.00) per year;
 - 2) Commencing on the date of commencement of development of the Northerly five acres of said premises in accordance with Section (D) 30 DELETION OF AREA hereof, and ending on December 31, 1988, the Minimum Annual Rent shall be ONE HUNDRED FOUR THOUSAND AND NO/100 DOLLARS (\$104,000.00) per year; provided, however, said Minimum Annual Rent as set out in this Item 2 shall not become effective in the event of deletion of said Northerly five acres pursuant to said Section (D) 30, DELETION OF AREA hereof and, in which event, the Minimum Annual Rent set out in the aforesaid Item 1 shall remain applicable;
 - 3) Minimum Rent Adjustment. Prior to January 1, 1989 and prior to the end of each twelfth year thereafter, the minimum rent for the ensuing twelve-year period shall be set at sixty-six and two-thirds percent (66 2/3%) of the average annual rent paid CITY during the three years preceding the rental review date. If the application of this formula indicates a minimum rent substantially in excess of that which would be a fair rental value based upon a reasonable capitalization of the fair market value of the leased premises, then the City Manager

shall have the discretion in the forthcoming period to set a minimum rent figure which represents a fair rental value. Provided, however, in no event shall said minimum annual rent be so adjusted for any period of said term to an amount less than the minimum annual rent required for the preceding 12 year period.

3. **GROSS INCOME.** Gross Income, as used in this lease, shall include all income defined in subparagraphs a) 1 and 2 of Section (C) 1, OPERATIONS PERIOD, hereof, whether said income is received or due but unpaid. Provided, however, gross income shall not include federal, state or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE or LESSEE'S sublessees to a governmental agency accompanied by a tax return or statement as required by law. The amount of such taxes shall be shown on the books and records required to be maintained under Section (D) 1 RECORDS, hereof. No deductions shall be made by LESSEE from either "operational" or "contractual" gross income for possessory interest taxes, common area maintenance, utilities or for any other expenses whatsoever of LESSEE or of any sublessees, for purposes of calculating rents due CITY, except as otherwise specifically set out herein. Amounts paid to LESSEE by sublessees separate from and in addition to rent, as the sublessee's proportionate share of property management services not to exceed 3% of the annual Contractual Gross Income unless otherwise approved by the City Manager, and common area maintenance costs, taxes and public improvement assessments and insurance premiums, on an accountable basis and actually disbursed by LESSEE for said purposes, shall not be included in Contractual Gross Income; provided, however, no such services or disbursements shall be excluded from Operational Gross Income. LESSEE shall be solely responsible for payment of all rents due CITY hereunder whether resulting from operations conducted directly by LESSEE or by any sublessees.
4. **DELINQUENT RENT.** In the event LESSEE fails to pay the applicable rents when due, then LESSEE shall pay CITY, in addition to the delinquent rent, a sum of money equal to FIVE PERCENT (5%) of said delinquent rent; provided, however, in the event said delinquent rent is still unpaid after fifteen days of becoming delinquent, then LESSEE shall pay CITY, instead of said Five Percent, a sum of money equal to TEN PERCENT (10%) of said delinquent rent. It is the intent of this provision that CITY shall be compensated by such additional sums for loss resulting from rental delinquency including costs to CITY of servicing the delinquent account. The City Manager, at his option, may for good cause waive any such delinquency compensation required herein, upon written application of LESSEE.

Deleted

Provided further, in the event that audit by CITY of lease records, as hereinafter provided, discloses that the rent for the audited period has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY ten percent (10%) of the amount by which said rent was underpaid in addition to the unpaid rents so shown to be due CITY as compensation to CITY for administrative cost and loss of interest.

5. RENT CREDIT. LESSEE shall be allowed a credit of \$382,500 against an equal amount of rents due CITY as said rents are earned and become due, including also past-due rents, in accordance with this Section (C) RENT, which amount is the purchase price of certain lands to be conveyed to CITY in a portion of Acre Lot 7 of Sorrento Lands and Townsite as more particularly described in EXHIBIT "D" hereof.

LESSEE shall also be allowed a rent credit in an amount calculated at the interest rate of 8% per annum on the uncredited balance of said purchase price. This rent credit provision shall become effective only upon acceptance of a grant deed to said property by the City Manager pursuant to authorization by a resolution of the City Council of CITY. CITY shall have the right to pay the balance of the uncredited purchase price at any time without penalty.

6. PERCENTAGE RENT ADJUSTMENT. Prior to January 1, 1989, and prior to the end of each twelfth year thereafter, the parties hereto, by mutual consent or through arbitration as hereinafter set forth, will adjust the percentage rates of LESSEE'S gross income to be paid CITY effective upon the first day of the succeeding twelve-year period. Said adjustment will be made to the degree necessary to provide a fair rental to CITY as determined by CITY. In the event that such adjustment is not made by mutual consent prior to sixty days before January 1, 1989, or before the end of said twelve-year periods, then the parties hereto will refer the matter to arbitration under the terms hereinafter set forth.

7. ARBITRATION OF PERCENTAGE RENT ADJUSTMENT. In the event the parties do not agree upon the amount of adjustment to said percentage rates as provided for in the previous paragraph, 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 the City Council of CITY. In the event the parties do not reach agreement as to selection of a mutually acceptable appraiser, then CITY and LESSEE will each select a qualified professional independent real estate appraiser who in turn will select a third qualified professional independent real estate appraiser who will be employed

to set the percentage rates to be applied to LESSEE'S gross income for the ensuing period until the next percentage rent adjustment. In the event a mutually acceptable third appraiser is not agreed upon between the two selected appraisers within ten days, then the two selected appraisers will be discharged and the process repeated until mutuality is achieved and an appraiser is selected to complete the assignment. 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 appointed appraiser. CITY and LESSEE agree to accept and be bound by the percentage rates determined by the appraiser selected to complete the assignment.

In establishing the percentage rates for the items under controversy, the appraiser shall consider the CITY'S property as a fee simple absolute estate, as vacant and available for a full lease term on the open market for its highest and best use or, if this lease has a restricted purpose, then for uses consistent with the authorized purposes of this lease at the commencement of the rental period under arbitration. The appraiser will be guided by prevailing published market percentage rates for similar operations primarily (if available) within the Southern California area.

The date of value of the appraisal shall be on the date of rental adjustment as hereinabove established. In the event the appraisal is not completed in time to permit the percentage adjustment to be made upon the date specified, 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 or overage shall be paid by LESSEE or refunded as applicable by CITY within sixty days after determination of the new percentage rate(s).

III. Section (D) 4, MECHANIC'S LIEN BOND, 12, REMEDIES OF CITY, 13, INSURANCE, 18, OWNERSHIP OF IMPROVEMENTS, 19, SIGNS, 20, CONTROL BY LESSEE, 21, ASSIGNMENT AND SUBLETTING, 22, RENTAL OF DWELLING UNITS, 23, ENCUMBRANCE, 24, DEVELOPMENT, and 28, CONSTRUCTION BOND, are hereby deleted in entirety and the following are substituted therefore in respective numerical sequence:

4. LABOR AND MATERIALMEN'S BOND. LESSEE agrees to save CITY free and harmless, indemnify it against all claims for labor and materials in connection with improvements, repairs or alterations to the leased premises, and the cost of defending against such claims, including reasonable attorney's fees. In the event that improvements, repairs or alterations are constructed on the leased premises by other than the CITY, and a lien is filed, LESSEE agrees to file with CITY within five days a bond sufficient to pay in full all claims of all persons seeking relief under the lien. The bond shall be acknowledged by LESSEE as principal and by a corporation satisfactory to

CITY licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety.

12. REMEDIES OF CITY.

a. Default by Lessee. In the event that:

- 1) LESSEE shall default in the performance or fulfillment of any covenant or condition herein required to be performed or fulfilled by LESSEE and shall fail to cure said default within thirty days following the service on LESSEE of a written notice from CITY specifying the default complained of; or
- 2) LESSEE shall voluntarily file or have involuntarily filed against him 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 through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE in or to the said premises or in or to further possession thereof and CITY may thereupon enter and take possession of said premises and expel LESSEE and all persons so claiming rights thereto. Provided, however, in the event that any default described in Part a, 1) of this section is not curable within thirty (30) days after the service of a written notice upon LESSEE, CITY shall not terminate this lease pursuant to said default if LESSEE immediately commences to cure said default and diligently pursues such cure to completion.

Provided, further, in the event that there is a deed of trust or mortgage on the leasehold interest, CITY shall not terminate this lease until it first shall have served upon the mortgagee or beneficiary written notice of the default or defaults complained of, and the mortgagee or beneficiary shall have thirty (30) days from service of such notice within which to commence such cure as may be necessary and this lease shall not terminate if said mortgagee or beneficiary shall prosecute said cure with reasonable diligence thereafter, and said thirty-day period shall be extended during the time required for said mortgagee or beneficiary to perfect, through litigation or through foreclosure, its rights to cure.

Provided, however, that in the event rent paid to CITY is calculated on the basis of a percentage or percentages of LESSEE'S gross income, and during said period required for mortgagee or beneficiary to perfect a cure of any default or defaults which have been caused by LESSEE'S failure to pay said rent; then in those events if CITY is paid the minimum rent due under this agreement, CITY will not prosecute its right to terminate the mortgagee's or beneficiary's interest. Provided further, that when the mortgagee or beneficiary shall cause to be paid to CITY, any amounts due CITY as a result of the gross income of the said premises exceeding that amount necessary for payment of the minimum rent. In computing the gross rent upon which the computation of the CITY rent is based, reasonable administrative expenses of a court appointed receiver may first be deducted.

- b. City Recourse. If the mortgagee or beneficiary shall be required to perfect its right to cure said default or defaults through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that such default or defaults may be expeditiously corrected:
- 1) CITY may correct or cause to be corrected said default or defaults and charge the costs therefor (including costs incurred by CITY in enforcing this provision) to the account of the LESSEE, which charge shall be due and payable on the date that the rent is next due after presentation by CITY of a statement of all or part of said costs.
 - 2) CITY may correct or cause to be corrected said default or defaults and may pay the costs thereof (including costs incurred by CITY in enforcing this provision) from the proceeds of any insurance fund held by CITY and LESSEE or by CITY and mortgagee or beneficiary or CITY may use said funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct said default or defaults or to pay the costs of such correction performed by or at the direction of CITY.
 - 3) CITY may terminate this lease as to the rights of LESSEE herein by assuming liability for any trust deed or mortgage. LESSEE will assume and agrees to pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related notes by CITY. CITY may, as an alternative, substitute for said terminated LESSEE a new LESSEE reasonably satisfactory to the mortgagee or beneficiary.

Should said default or defaults be noncurable by LESSEE, then any lender holding a beneficial interest in said leasehold whose qualifications have been approved by CITY for assignment of the leasehold interest shall have the absolute right to substitute itself to the estate of the LESSEE hereunder and to commence performance of this lease and this lease shall not terminate if such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself and commence performance within said thirty-day period after service upon it of said written notice by CITY of the default. In the event of the election by the mortgagee or beneficiary to so substitute itself to LESSEE'S estate hereunder, the CITY expressly consents to said substitution and authorizes said mortgagee or beneficiary to perform under this lease with all the rights, privileges and obligations of the original LESSEE hereunder, subject to cure of the default if possible by mortgagee or beneficiary, and LESSEE expressly agrees to assign all its interest in and to its leasehold estate in that event.

- c. 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 LESSEE'S right to possession, and CITY may enforce all its rights and remedies under said lease, including, but not limited to, the right to recover the rent as it becomes due under the lease. For purposes of this section, the following do not constitute a termination of LESSEE'S right to possession:

- 1) Acts by CITY of maintenance, or preservation, or efforts to relet the property.
- 2) The appointment of a receiver upon initiative of CITY to protect the CITY'S interest under the lease.

- d. Damages. Damages which CITY may recover in the event of default under this lease include the worth, at the time of award, of the amount by which the unpaid rent for the balance of the term after the date of award, or for any shorter period of time specified in this lease, exceeds the amount of such rental loss for the same period that the LESSEE proves could be reasonably avoided. The remedies provided by this section are not exclusive and shall be cumulative to all other rights and remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which CITY may be entitled.

13. **INSURANCE COVERAGE.** During the entire term of this lease, LESSEE agrees to procure and maintain public liability insurance which names CITY as an additional insured with an insurance company satisfactory to CITY licensed to do business in California to protect to the extent permitted by law or public policy against loss from liability imposed by law for damages on account of bodily injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever, resulting directly or indirectly from any act or activities of CITY or LESSEE, its sublessees or any person acting for CITY, or LESSEE or under its control or direction, occurring on, adjacent to or in connection with said premises, and also to protect to the extent permitted by law or public policy against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from acts or activities of CITY, or LESSEE, or its sublessees, or any person acting for CITY or LESSEE, or under its control or direction occurring on, adjacent to or in connection with said premises. Such public liability and property damage insurance shall also provide for and protect CITY against incurring any legal cost in defending claims for alleged loss. Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this lease in the amount of not less than ONE MILLION DOLLARS (\$1,000,000) COMBINED SINGLE LIMIT LIABILITY. LESSEE agrees to submit a policy of said insurance to the CITY on or before the effective date of this agreement indicating full coverage of the contractual liability imposed by this agreement and stipulating that the insurance company shall not terminate, cancel or limit said policy in any manner without at least thirty days prior written notice thereof to CITY. If the operation under this agreement results in an increased or decreased risk in the opinion of the City Manager, then LESSEE agrees that the minimum limits hereinabove designated shall be changed accordingly upon request by the City Manager. LESSEE agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which the LESSEE may be held responsible for the payment of damages to persons or property resulting from LESSEE'S activities, the activities of its sublessees or the activities of any person or persons for which LESSEE is otherwise responsible.

LESSEE also agrees to procure and maintain during the entire term of this lease, a policy of fire, extended coverage and vandalism insurance on all permanent property of an insurable nature located upon the leased premises. Said policy shall name the CITY as an additional insured and shall be written by an insurance company satisfactory to CITY licensed to transact business in the State of California and shall be in an amount sufficient to cover at least 100% of the replacement costs of said property. LESSEE agrees to submit

a certificate of said policy to the CITY on or before the effective date of this lease. Said policy shall contain a condition that it is not to be terminated or cancelled without at least thirty (30) days prior written notice to CITY by the insurance company. LESSEE agrees to pay the premium for such insurance and shall require that any insurance proceeds resulting from a loss under said policy are payable jointly to CITY and LESSEE and said proceeds shall constitute a trust fund to be reinvested in rebuilding or repairing the damaged property or said proceeds may be disposed of as specified in Section (D) 15, WASTE, DAMAGE OR DESTRUCTION, hereof; provided, however, that within the period during which there is in existence a mortgage or deed of trust upon the leasehold, then and for that period all policies of fire insurance, extended coverage and vandalism shall be made payable jointly to the mortgagee or beneficiary, the named insured, and CITY, and shall be disposed of jointly by the parties for the following purposes:

- a. As a trust fund to be retained by said mortgagee or beneficiary and applied in reduction of the debt secured by such mortgage or deed of trust with the excess remaining after full payment of said debt to be paid over to LESSEE and CITY to pay for reconstruction, repair, or replacement of the damaged or destroyed improvements in progress payments as the work is performed. The balance of said proceeds shall be paid to LESSEE.

Provided, further, however, nothing herein shall prevent LESSEE, at its option and with the approval of said mortgagee or beneficiary, from filing faithful performance bond in favor of said mortgagee or beneficiary and CITY in an amount equivalent to said insurance proceeds in lieu of surrendering said insurance proceeds to said mortgagee or beneficiary; and CITY.

- b. In the event that this lease is terminated by mutual agreement and said improvements are not reconstructed, repaired or replaced, the insurance proceeds shall be jointly retained by CITY and said mortgagee or beneficiary to the extent necessary to first discharge the debt secured by said mortgage or deed of trust and then to restore the premises in a neat and clean condition. Said mortgagee or beneficiary shall hold the balance of said proceeds for CITY and LESSEE as their interests may appear.

LESSEE agrees to increase the limits of liability when, in the opinion of CITY, the value of the improvements covered is increased, subject to the availability of such insurance at the increased limits. LESSEE agrees, at his sole expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of reasonable

fire and public liability insurance covering said premises, buildings and appurtenances.

18. **OWNERSHIP OF IMPROVEMENTS.** All improvements, except personal property, which have been installed by LESSEE in accordance with the provisions of this agreement, shall at the option of CITY become the property of CITY upon expiration or sooner termination of this agreement. LESSEE shall have the right to remove from the demised premises said personal property at any time prior to the expiration or earlier termination of this agreement, provided that such removal would not, in the opinion of CITY, restrict the operation of the demised premises to the extent that the rent paid to CITY is reduced as a direct result therefrom. LESSEE'S removal of any such personal property shall be at LESSEE'S own expense and shall be conditioned upon LESSEE'S repairing any damage to the remaining improvements and upon LESSEE leaving the demised premises in good order and condition. In the event LESSEE does not so remove said personal property prior to the expiration of this agreement, CITY may remove, sell or destroy the same at the expense of LESSEE, and if the proceeds of the sale are not adequate, LESSEE shall promptly pay to CITY its reasonable cost of any such removal, sale or destruction together with the reasonable cost of repair of damages to CITY'S property resulting from such removal, sale or destruction. At the option of CITY, any personal property not removed by LESSEE may be deemed abandoned and may be removed and sold by CITY and all income received by CITY therefrom shall be the property of CITY exclusively.
19. **AFFIRMATIVE ACTION.** LESSEE agrees to take affirmative action to improve employment opportunities of minorities and women. When applicable, LESSEE agrees to abide by the Affirmative Action Program for Lessees as it now exists or is hereafter amended. A copy of the program, effective as of the date of this agreement, is on file in the Office of the City Clerk as Document No. 746205 and by this reference is incorporated herein. Minorities are presently defined as Mexican-American, Black, Filipino, American Indian, and Asian/Oriental. The goal of this program shall be the attainment of the employment of minorities and women in all areas of employment in a total percentage of employment approximately equal to the total level of minority and women employment as established by the City for its Affirmative Action Program each year.
20. **CONTROL BY LESSEE.** Notwithstanding the provisions of Section (D) 21, ASSIGNMENT AND SUBLETTING hereof, the LESSEE shall have the right without further permission to assign his interest in this agreement once, to a limited partnership upon written notification to CITY. The consent to the one assignment does not waive the requirement for approval by the City Manager of CITY for any subsequent assignment which approval shall not be unreasonably withheld. The partnership named as assignee shall remain

controlled by Donald F. Sammis, Douglas O. Allred and Ronald G. Wheatcroft or any of them, as general partners. Sale or transfer of any of said partnership interest in any manner so as to limit or remove control of the operations conducted on the leased premises from said parties shall be considered an assignment of this lease and shall be subject to the provisions of said Section (D) 21 hereof. Sale or transfer of a noncontrolling interest shall be reported to CITY, giving the names and addresses of the purchasers together with the interest purchased. CITY shall have the right at any time to require a report of the existing stockholders or partners. The death or incapacity of all of the original general partners of the assignee partnership, shall not constitute a "transfer" as hereinabove contemplated if, within sixty days after the death or incapacity of the last surviving general partner, the partnership elects one or more succeeding general partners who are financially responsible and agree to succeed as a general partner to the obligations under this lease. Throughout the term of this lease, LESSEE agrees to maintain competent management of all operations on said premises to the City Manager's satisfaction.

21. ASSIGNMENT AND SUBLETTING. When in the opinion of the City Manager, and subject to the approval of the City Council whenever required, if it is deemed consistent with the best interests of the CITY, LESSEE may assign this lease or any interest therein and may sublease any portion thereof to an assignee or sublessee who has, in the opinion of City Manager, the financial capability and overall competence to successfully operate the assigned or subleased premises. The consent of the City Manager and/or City Council will not be unreasonably withheld. This lease and any interest herein shall not be assignable by operation of law without the written consent of the City Manager. Any or all of the following actions will be considered trafficking in the leasehold which is not a permitted activity under this contract and will be considered as contrary to the CITY'S best interests:
- a. Assignment or subleasing by LESSEE for a consideration in excess of a reasonable return on the actual value of the LESSEE'S installed improvements and/or services rendered.
 - b. Subleasing of the primary function of the lease or subleasing of a major portion of the leasehold.
 - c. If CITY has been notified in writing of the existence of a trust deed or mortgage secured by the leasehold, CITY agrees to give the trustee or beneficiary notice of any sublease or assignment prior to CITY'S approval thereon.

- d. Approval of any assignment or sublease shall be conditioned upon Assignee or Sublessee agreeing in writing that they will assume the rights and obligations thereby assigned or subleased and that they will keep and perform all covenants, conditions and provisions of this agreement which are applicable to the rights required. Provided, however, notwithstanding anything in this section to the contrary, LESSEE shall have the right to assign and sublet without necessity for prior CITY approval only under the condition set forth in Sections (D) 20, CONTROL BY LESSEE, (D) 22, RENTAL OF DWELLING AND OFFICE UNITS, and (D) 23, ENCUMBRANCE hereof.
22. RENTAL OF DWELLING AND OFFICE UNITS. Notwithstanding the provisions of Paragraph (D) 21, ASSIGNMENT AND SUBLETTING hereof, LESSEE shall have the right to sublet or rent dwelling units and office space consistent with the purpose of this lease without prior CITY approval. It is expressly understood that said subleases or rental agreements shall be subordinate and subject to all of the terms and provisions of this lease agreement. If any of the terms and conditions of the subleases or rental agreements are inconsistent with or contrary to any of the terms and conditions set forth in this lease agreement, the latter shall govern.
23. ENCUMBRANCE. CITY does hereby consent and agree that LESSEE may encumber this lease, its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security type instrument to assure the payment of a promissory note or notes of the LESSEE. CITY further agrees that in the event said deed of trust or mortgage or other security type instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, the CITY will accept the mortgagee or beneficiary thereof, if reputable, qualified and financially responsible, such as a State or Federal regulated financial institution, as its new tenant under this lease with all the rights, privileges and duties granted and imposed in this lease contract. In the event said mortgagee or beneficiary desires to assign this lease to its nominee, if nominee is a reputable, qualified, and financially responsible person in the opinion of CITY, CITY hereby agrees that upon the filing of an application for consent to such assignment, CITY will give its consent thereto.
24. DEVELOPMENT. LESSEE agrees to develop the leased premises in accordance with the General Development Plan approved by the City Manager and filed in the Office of the City Clerk. To the extent applicable to the proposed development, said plan shows the design, materials of construction, elevations and colors of all structures, the plot plan of

all structures and above-ground improvements, the uses of all facilities, the schedule of development, the estimated construction costs and financing plan and such other factors as are necessary or desirable in the opinion of the City Manager. The City Manager or his designee shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk.

28. CONSTRUCTION BOND. LESSEE agrees to file with CITY, prior to commencement of any construction performed upon the premises a faithful performance bond in the amount of 100% of the construction costs of the work to be performed. Said bond may be in cash or may be a corporate surety bond satisfactory to CITY or in a combination of both. Said bond shall insure that the construction commenced by LESSEE shall be completed in accordance with approved plans, or at option of the CITY, that the uncompleted construction be removed and the premises restored to a condition satisfactory to CITY. The surety bond will be filed with CITY and any cash used as a part of the bond may be deposited with CITY to be held in trust for the purpose specified above or may be placed in an escrow or other trust approved by CITY. Upon application by LESSEE, CITY may waive this requirement to file a bond. In the event that LESSEE fails to file any such required bond, this lease may be terminated by CITY.

IV. The following Section (D) 35, COASTAL ZONE PERMIT, is hereby added in sequence to said lease agreement.

35. COASTAL ZONE PERMIT. The premises are leased subject to the requirements of the California Coastal Act of 1976 which regulates construction in the coastal zone. All improvements contemplated hereunder must be cleared in accordance with said requirements, as applicable, by LESSEE prior to issuance of City building permits. In the event such clearance is finally denied after appropriate application and processing by LESSEE of all appeals provided for by procedures prescribed by the California Coastal Commission pursuant to said Act, and such denial directly results in LESSEE'S inability to develop the leased premises in substantial accordance with the purpose and intent of this lease as set forth herein and on the approved General Development Plan hereof, then either CITY or LESSEE shall have the right to terminate this lease effective upon the date of said final denial upon written notification thereof to the other party within thirty (30) days following said date. In the event of

said termination by either party, CITY agrees to pay LESSEE within 90 days thereafter the uncredited balance of the purchase price of lands conveyed to CITY as described on EXHIBIT D hereof together with interest at the rate of 8% per annum on said uncredited balance. Such payment is subject to the availability of budgeted funds for such purpose.

V. EXHIBIT "D", attached hereto, describing certain lands to be deeded to CITY is hereby added as an EXHIBIT D attachment to said lease agreement as part thereof.

VI. This FIRST AMENDMENT TO LEASE AGREEMENT shall become effective only upon acceptance of a Grant Deed to property described on EXHIBIT "D" hereof by the City Manager of CITY pursuant to authorization by a resolution of the City Council of CITY.

Dated this 17th day of November, 1976.

THE CITY OF SAN DIEGO

BY

[Signature]
Deputy City Manager

LION PROPERTY COMPANY

BY

[Signature]
Donald F. Sammis, Partner

AND

[Signature]
Douglas O. Allred, Partner

AND

[Signature]
Ronald G. Wheatcroft, Partner

APPROVED as to form and legality this 17th day of Aug, 1977.

JOHN W. WITT, City Attorney

BY

[Signature]
Deputy

STATE OF CALIFORNIA,)
) SS.
 COUNTY OF SAN DIEGO.)

On November 17, 1976, before me, the undersigned, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared

Ray T. Blair, Jr., known to me to be the

Deputy City Manager of The City

of San Diego, the municipal corporation that executed the within instrument, and known to me to be the person who executed the within instrument on behalf of the municipal corporation therein named, and acknowledged to me that such municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, in the County of San Diego, State of California, the day and year in this certificate first above written.

(Insert Notary
Stamp below)

LaVerne E. Miller
 Notary Public in and for said San Diego County,
 State of California.

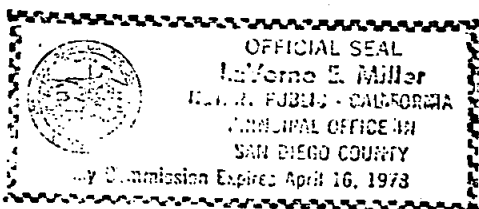


EXHIBIT D

LEGAL DESCRIPTION

PARCEL 1:

Lots "A" and "B" of Acre Lot 7 of Sorrento Lands and Townsite, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 362, filed in the Office of the County Recorder of San Diego County, September 30, 1887.

EXCEPTING therefrom that portion lying Northeasterly and Easterly of the Southwesterly and Westerly line of the land described in deed to the City of San Diego, recorded November 29, 1937 in Book 723, Page 263 of Official Records.

ALSO EXCEPTING therefrom that portion described in deed to the City of San Diego, recorded in Book 721, Page 353 of Deeds, being more particularly described as follows:

A strip of land 30.00 feet wide, lying 15.00 feet on each side of the following described line:

Beginning at a point on the Northwesterly line of said Lot "A", distant thereon 15.00 feet Northeasterly from the most Westerly corner of said Lot "A"; thence along a line parallel with and 15.00 feet Northeasterly from the Southwesterly line of said Lots "A" and "B", South 39°03'00" East, 903.70 feet to a point; thence South 82°58'00" East, 138.50 feet; thence South 59°47'00" East, 186.00 feet to a point on the Southeasterly line of said Lot "B".

AND ALSO EXCEPTING therefrom, the Southeasterly 12.50 feet of that portion of said Lot "B" lying Southwesterly of the Southwesterly line of the 30.00 foot strip above described, as said portion is described in deed to the City of San Diego, recorded August 5, 1899 in Book 279, Page 308 of Deeds, records of San Diego County.

PARCEL 2:

Lots "A" and "B" of Acre Lot 7 of Sorrento Lands and Townsite, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 362, filed in the Office of the County Recorder of San Diego County, September 30, 1887.

EXCEPTING therefrom that portion lying Northeasterly and Easterly of the Southwesterly and Westerly line of the land described in deed to the State of California, recorded May 11, 1970 as File No. 80631.

ALSO EXCEPTING therefrom that portion described in deed to the City of San Diego, recorded in Book 721, Page 353 of Deeds, being more particularly described as follows:

A strip of land 30.00 feet wide, lying 15.00 feet on each side of the following described line:

Beginning at a point on the Northwestern line of said Lot "A", distant thereon 15.00 feet Northeasterly from the most Westerly corner of said Lot "A"; thence along a line parallel with and 15.00 feet Northeasterly from the Southwesterly line of said Lots "A" and "B", South $39^{\circ}03'00''$ East, 903.70 feet to a point; thence South $82^{\circ}58'00''$ East, 138.50 feet; thence South $59^{\circ}47'00''$ East, 186.00 feet to a point on the Southeasterly line of said Lot "B".

AND ALSO EXCEPTING therefrom that portion lying Southwesterly and Westerly of the Southwesterly and Westerly lines of the land described in deed to the City of San Diego, recorded November 29, 1937 in Book 723, Page 263 of Official Records.

217044

RESOLUTION NO. _____

NOV 2 1976

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, an Assignment and Assumption of Lease and Consent to Assignment, by which the City consents to JAMES R. SIMPSON assigning to LION PROPERTY COMPANY his right; title and interest in and to that certain Lease Agreement dated December 28, 1973 and filed in the office of the City Clerk as Document No. 745923, covering premises on Sports Arena Boulevard, under the terms and conditions set forth in the form of Assignment and Assumption of Lease and Consent to Assignment on file in the office of the City Clerk as Document No. 757301.

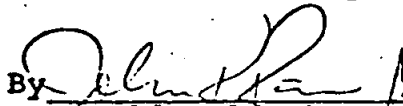
BE IT FURTHER RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a First Amendment to Lease Agreement with LION PROPERTY COMPANY, amending that Lease Agreement on file in the office of the City Clerk as Document No. 745923, 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. 757302.

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized to accept the deed of LION PROPERTY COMPANY, a partnership, executed in favor of The City of San Diego, bearing date of (no date), conveying to said City for public

purposes, Lots "A" and "B" of Acre Lot 7 of Sorrento Lands and Townsite, as more particularly described in said deed.

BE IT FURTHER RESOLVED, that the purchase price of said deed in the amount of \$382,500 plus interest at the rate of 8% per year on the unpaid balance, to be applied against rents due City under that certain Lease Agreement between City and Lion Property Company filed in the office of the City Clerk as Document No. 745923, as amended, is hereby authorized.

APPROVED: JOHN W. WITT, City Attorney

By 
Harold Valderhaug, Deputy

Passed and adopted by the Council of The City of San Diego
on November 2, 1976, by the following vote:

YEAS: Johnson, O'Connor, Hubbard, Williams, Gade, Ellis, Haro.

NAYS: None.

ABSENT: Morrow, Wilson.

AUTHENTICATED BY:

PETE WILSON,
Mayor of The City of San Diego, California.

EDWARD NIELSEN,
City Clerk of The City of San Diego, California.

(SEAL)

By KATHLEEN MARTINEZ, Deputy.

I HEREBY CERTIFY that the above and foregoing is a full,
true and correct copy of RESOLUTION NO. 217044
passed and adopted by the Council of The City of San Diego,
California, on November 2, 1976.

EDWARD NIELSEN,
City Clerk of The City of San Diego, California,

(SEAL)

By Kathleen Martinez, Deputy.

STATE OF CALIFORNIA

COUNTY OF San Diego } SS.On August 17, 1977

before me, the undersigned, a Notary Public in and for said County and State, personally appeared

Donald F. Sammis, Douglas O. Allred,
Ronald G. Wheatcroftto be three known to me
of the partners of the partnership
that executed the within instrument, and acknowledged to me that
such partnership executed the same.Signature Lillian B. StaffordLillian B. Stafford

Name (Typed or Printed)

Notary Public in and for said County and State



FOR NOTARY SEAL OR STAMP

OFFICIAL SEAL
LILLIAN B. STAFFORD
NOTARY PUBLIC CALIFORNIA
PRINCIPAL OFFICE IN
SAN DIEGO COUNTY

My Commission Expires October 22, 1977