

FIFTH AMENDMENT TO OPERATING SUBLEASE

[SAN DIEGO SPORTS ARENA]

THIS FIFTH AMENDMENT TO OPERATING SUBLEASE is made by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and SAN DIEGO ENTERTAINMENT, INC., a California corporation ("SD ENTERTAINMENT"), and AEG MANAGEMENT SD, LLC, a Delaware limited liability company ("AMSD"), to be effective as of **September 1, 2010** (the "Fifth Amendment Effective Date"), when signed by the parties and approved by the San Diego City Attorney, as follows:

RECITALS

- A. CITY owns certain real property at and around the San Diego Sports Arena located at 3500 Sports Arena Boulevard, San Diego, California 92110 (the "Project," consisting of an indoor sports arena, parking facility, and related facilities, and more particularly described in the "Operating Sublease," defined below).
- B. Pursuant to that certain SAN DIEGO SPORTS ARENA GROUND LEASE AGREEMENT (the "Ground Lease") dated August 10, 1965, **CITY leased the Project to SAN DIEGO ARENA LEASE COMPANY, a California nonprofit corporation ("SD Arena Lease Company").**
- C. Pursuant to that certain SAN DIEGO SPORTS ARENA OPERATING SUBLEASE¹ dated August 6, 1971, (the "Operating Sublease"), **SD Arena Lease Company subleased the Project to SD ENTERTAINMENT.**
- D. The Operating Sublease was amended by that certain AMENDMENT TO OPERATING SUBLEASE² dated November 30, 1987.
- E. The Operating Sublease was further amended by that certain SECOND AMENDMENT TO OPERATING SUBLEASE³ dated March 29, 1993 (the "Second Operating Sublease Amendment"), **pursuant to which the Ground Lease was terminated and SD Arena Lease Company's interest in the Operating Sublease was transferred to CITY, making the Operating Sublease a direct lease between CITY and SD ENTERTAINMENT.**
- F. Under that certain SUBLEASE AGREEMENT⁴ (the "Sublease"), **SD ENTERTAINMENT subleased the Project to ARENA GROUP 2000, L.P., a California limited partnership ("AG 2000").**

¹ Recorded on August 6, 1971 as File/Page No. 174413, Book 1971 of the Official Records of San Diego County, California.

² Filed in the San Diego City Clerk's Office as Document No. RR-269856 on November 30, 1987.

³ Filed in the San Diego City Clerk's Office as Document No. RR-281708 on March 29, 1993.

⁴ Filed in the San Diego City Clerk's Office as Document No. RR-281708-3 on March 29, 1993.

- G. The Operating Sublease was further amended by that certain THIRD AMENDMENT TO OPERATING SUBLEASE⁵ dated September 30, 1997 (the "Third Operating Sublease Amendment").
- H. The Operating Sublease was last amended by that certain FOURTH AMENDMENT TO OPERATING (SUBLEASE) AGREEMENT⁶ dated April 2, 2002 (the "Fourth Operating Sublease Amendment").
- I. The Third Operating Sublease Amendment and the Fourth Operating Sublease Amendment were each executed by AG2000, the sub-lessee under the Operating Sublease. SD ENTERTAINMENT, the lessee under the Operating Sublease, did not execute the Third Operating Sublease Amendment or the Fourth Operating Sublease Amendment, but wants to ratify those amendments, effective as of their respective effective dates.
- J. CITY and AG 2000 entered into that certain SECOND AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING⁷ dated July 24, 1995 (the "Second Restated MOU"), which anticipated the development of a new sports arena and **expired on March 28, 1997, but with surviving provisions.**
- K. Pursuant to that certain ASSIGNMENT AND ASSUMPTION AGREEMENT dated September 3, 2008, by and between AG 2000 and AMSD, **AMSD assumed all of AG 2000's rights and obligations under the Sublease and the Second Restated MOU.**
- L. SD ENTERTAINMENT has requested a three-year extension of the Operating Sublease, which will also extend the term of the Sublease (see Sublease, section 2. Term). CITY has agreed to extend the Operating Sublease, subject to the terms and conditions of this Fifth Amendment to Operating Sublease and AEG'S execution and delivery of the "Agreement Affecting Surviving Provisions of Second Restated MOU," in form and content as attached hereto as **Exhibit A: Agreement Affecting Surviving Provisions of Second Restated MOU.**

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged and accepted, the parties agree as follows:

- 1. Ratification of Amendments. SD ENTERTAINMENT hereby approves, ratifies, and affirms the Third Operating Sublease Amendment and the Fourth Operating Sublease Amendment, effective as of their respective effective dates.

⁵ Filed in the San Diego City Clerk's Office as Document No. RR-289248 on September 30, 1997.

⁶ Filed in the San Diego City Clerk's Office as Document No. RR-296247 on April 2, 2002

⁷ Filed in the San Diego City Clerk's Office as Document No. RR-286158 (date illegible).

2. Agreement Affecting Surviving Provisions of Second Restated MOU. CITY and AMSD shall each execute and deliver the Agreement Affecting Surviving Provisions of Second Restated MOU. Notwithstanding the Fifth Amendment Effective Date, this Fifth Amendment shall have no force and effect unless CITY and AMSD execute and deliver the Agreement Affecting Surviving Provisions of Second Restated MOU.

3. Term.

- a. The following shall be deleted from Section 2 of the Operating Sublease:

The term of the Sublease shall expire at 12:00 midnight on November 7, 2015, plus a period equal to the time period between (a) the Effective Date of this Amendment and (b) the earlier of eighteen (18) months from the Effective Date of the Amended MOU or the date the City and Hahn/Marasco mutually, in good faith, determine that a downtown site for a new sports arena is either not feasible and/or not desirable pursuant to Section 1.a of the Amended MOU. For the purposes of this Operating Sublease the lease year shall be defined as commencing on November 8 of each year.

- b. As referenced above, "this Amendment" means the Second Operating Sublease Amendment, and the "Amended MOU" means that certain AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING dated March 29, 1993⁸. The Amended MOU was by and between CITY and RONALD E. HAHN, an individual ("Hahn"), and C. SAMUEL MARASCO, an individual ("Marasco"). Hahn and Marasco later assigned their interests in the Amended MOU to AG 2000. Since no evidence can be found that CITY and Hahn and Marasco, or AG 2000 mutually determined that a downtown site for a new sports arena was either not feasible and/or not desirable pursuant to the Amended MOU, the time period of eighteen (18) months was applied to determine the expiration date of the Operating Sublease. The parties agree that the expiration date of the Operating Sublease was May 7, 2017. To extend the term of the Operating Sublease an additional three (3) years, and to have the Operating Sublease end on the last day of a month, as a matter of convenience, the following shall be added to Section 2 of the Operating Sublease:

**The term of this Sublease shall commence on August 6, 1971,
and expire on May 31, 2020.**

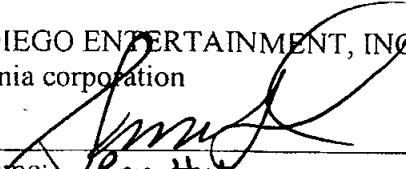
4. No Other Changes. In all other respects, the Operating Sublease shall remain unchanged and in full force and effect.

⁸ Filed in the San Diego City Clerk's Office as Document No. RR-281707.

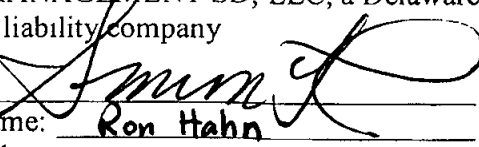
5. Authority to Contract. Each individual executing this Fifth Amendment on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Fifth Amendment on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Fifth Amendment is binding upon such person or entity in accordance with its terms. Each person executing this Fifth Amendment on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

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

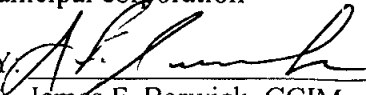
SAN DIEGO ENTERTAINMENT, INC., a
California corporation

BY: 
Name: Ron Hahn
Title: President

AEG MANAGEMENT SD, LLC, a Delaware
limited liability company

BY: 
Name: Ron Hahn
Title: VP

THE CITY OF SAN DIEGO, a California
municipal corporation

BY: 
James F. Barwick, CCIM
Real Estate Assets Director

Approved as to Form and Legality:

JAN I. GOLDSMITH, City Attorney

BY: 
Name: Brock Ladewig
Title: Deputy City Attorney

Exhibit A: Agreement Affecting Surviving Provisions of Second Restated MOU

AGREEMENT AFFECTING SURVIVING PROVISIONS
OF SECOND RESTATED MOU
[SAN DIEGO SPORTS ARENA]

THIS AGREEMENT AFFECTING SURVIVING PROVISIONS OF SECOND RESTATED MOU ("Agreement") is made by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and AEG MANAGEMENT SD, LLC, a Delaware limited liability company ("AMSD"), to be effective as of **September 1, 2010** (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney, as follows:

RECITALS

- A. CITY owns certain real property at and around the San Diego Sports Arena located at 3500 Sports Arena Boulevard, San Diego, California 92110 (the "Project," consisting of an indoor sports arena, parking facility, and related facilities, and more particularly described in the "Operating Sublease," defined below).
- B. Pursuant to that certain SAN DIEGO SPORTS ARENA GROUND LEASE AGREEMENT (the "Ground Lease") dated August 10, 1965, **CITY leased the Project to SAN DIEGO ARENA LEASE COMPANY**, a California nonprofit corporation ("SD Arena Lease Company").
- C. Pursuant to that certain SAN DIEGO SPORTS ARENA OPERATING SUBLEASE¹ dated August 6, 1971, (the "Operating Sublease"), **SD Arena Lease Company subleased the Project to SAN DIEGO ENTERTAINMENT, INC., a California corporation ("SD Entertainment")**.
- D. The Operating Sublease was amended by that certain AMENDMENT TO OPERATING SUBLEASE² dated November 30, 1987.
- E. The Operating Sublease was further amended by that certain SECOND AMENDMENT TO OPERATING SUBLEASE³ dated March 29, 1993, **pursuant to which the Ground Lease was terminated and SD Arena Lease Company's interest in the Operating Sublease was transferred to CITY, making the Operating Sublease a direct lease between CITY and SD Entertainment.**

¹ Recorded on August 6, 1971 as File/Page No. 174413, Book 1971 of the Official Records of San Diego County, California.

² Filed in the San Diego City Clerk's Office as Document No. RR-269856 on November 30, 1987.

³ Filed in the San Diego City Clerk's Office as Document No. RR-281708 on March 29, 1993.

- F. Under that certain SUBLEASE AGREEMENT⁴ (the "Sublease"), **SD Entertainment subleased the Project to ARENA GROUP 2000, L.P., a California limited partnership ("AG 2000").**
- G. The Operating Sublease was further amended by that certain THIRD AMENDMENT TO OPERATING SUBLEASE⁵ dated September 30, 1997.
- H. The Operating Sublease was last amended by that certain FOURTH AMENDMENT TO OPERATING (SUBLEASE) AGREEMENT⁶ dated April 2, 2002.
- I. CITY and AG 2000 entered into that certain SECOND AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING⁷ dated July 24, 1995 (the "Second Restated MOU"), which anticipated the development of a new sports arena and **expired on March 28, 1997, but with surviving provisions.**
- J. Pursuant to that certain ASSIGNMENT AND ASSUMPTION AGREEMENT dated September 3, 2008, by and between AG 2000 and AMSD, **AMSD assumed all of AG 2000's rights and obligations under the Sublease and the Second Restated MOU.**
- K. SD Entertainment has requested a three-year extension of the Operating Sublease, which will also extend the term of the Sublease (see Sublease, section 2. Term). CITY has agreed to extend the Operating Sublease, subject to AMSD'S execution and delivery of this Agreement and the terms and conditions of the "Fifth Amendment to Operating Sublease," in form and content as attached hereto as **Exhibit A: Fifth Amendment to Operating Sublease.**

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged and accepted, the parties agree as follows:

1. Fifth Amendment to Operating Sublease. CITY and AMSD shall each execute and deliver the Fifth Amendment to Operating Sublease. Notwithstanding the Effective Date of this Agreement, this Agreement shall have no force and effect unless the Fifth Amendment to Operating Sublease is fully executed and delivered by CITY, AMSD, and SD Entertainment.
2. Expiration of Put-Call Option. Notwithstanding any provision of the Second Restated MOU to the contrary, the surviving rights and obligations under sections 4(b) and 4(c) of the Second Restated MOU shall expire on May 7, 2017. Such rights and obligations relate to:

⁴ Filed in the San Diego City Clerk's Office as Document No. RR-281708-3 on March 29, 1993.

⁵ Filed in the San Diego City Clerk's Office as Document No. RR-289248 on September 30, 1997.

⁶ Filed in the San Diego City Clerk's Office as Document No. RR-296247 on April 2, 2002.

⁷ Filed in the San Diego City Clerk's Office as Document No. RR-286158 (date illegible).

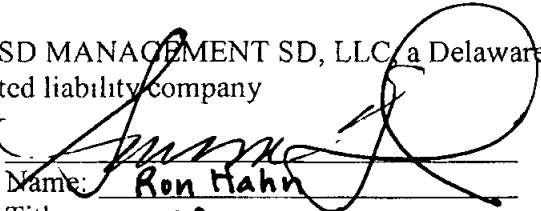
(a) AMSD'S right to receive lease payment credits over at least fifteen (15) years at not more than \$800,000 per year until AMSD receives an aggregate amount equal to the fair market value of the leasehold or sub-leasehold interest in the "Midway Site" (as such term is defined in the Second Restated MOU); and (b) AMSD'S right to require CITY to purchase AMSD'S leasehold or sub-leasehold interest in the Midway Site for its fair market value, and CITY'S right to require AMSD to sell such interest to CITY on the same terms (i.e., the "put-call option").

3. Dispute Resolution. Notwithstanding any provision of the Second Restated MOU to the contrary, any dispute between the parties arising out of the interpretation or performance of any provision (surviving or not) of the Second Restated MOU shall be resolved pursuant to this section, which shall nullify and supersede section 11. Arbitration of Disputes of the Second Restated MOU
 - a. Mediation. Any dispute or claim by or between CITY and AMSD relating to this Agreement or the Second Restated MOU which cannot be settled informally shall first be submitted to mediation under the Commercial Mediation Rules of the American Arbitration Association before resorting to arbitration or litigation. CITY and AMSD shall each pay one half of the cost of such mediation. Notwithstanding the foregoing, nothing in this section shall preclude a party from filing an action, either in arbitration or in the courts, or taking other necessary legal action to protect that party's legal rights, either prior to or during the mediation process, and such action shall not be considered a waiver or breach of the right and obligation to mediate, provided the party filing the action proceeds with mediation as required herein. No dispute or claim by or between CITY and AMSD relating this Agreement or the Second Restated MOU or otherwise shall be submitted to binding arbitration under any circumstance.
 - b. Court Action. In any court action relating to this Agreement or the Second Restated MOU, the parties shall request the court to appoint a referee to hear the case pursuant to Code of Civil Procedure sections 638 *et seq.* The parties shall request that the referee be an active or retired attorney with at least ten (10) years' experience in business law in Southern California, or a retired California Superior Court judge. Pending resolution of the dispute, the parties shall continue their performances under this Agreement and the surviving provisions of the Second Restated MOU to the extent reasonably practicable. The parties shall request the court to instruct the referee to make the ruling consistent with the express requirements of this Agreement and the surviving provisions of the Second Restated MOU. To the extent not inconsistent with the express requirements of this Agreement and the surviving provisions of the Second Restated MOU, the referee shall be requested to consider and apply commonly accepted practices for similar projects in Southern California, such that the contemplated performances can proceed on a commercially reasonable basis while adequately protecting the parties' rights. Considering the parties' need for prompt resolution of disputes, the parties agree that delays and continuances shall be requested and granted only in exigent circumstances. All discovery shall be completed no later than ten (10) days before the first hearing date established by the referee; provided that the court or referee may extend such period in the event of a party's refusal or failure to provide requested discovery.

4. No Other Changes. In all other respects, the surviving provisions of the Second Restated MOU shall remain unchanged and in full force and effect.
5. Authority to Contract. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity represents and warrants that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

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

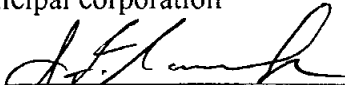
AMSD MANAGEMENT SD, LLC, a Delaware
limited liability company

BY: 

Name: Ron Hahn

Title: VP

THE CITY OF SAN DIEGO, a California
municipal corporation

BY: 

James F. Barwick, CCIM

Real Estate Assets Director

Approved as to Form and Legality:

JAN I. GOLDSMITH, City Attorney

BY: 

Name: Brock Ladewig

Title: Deputy City Attorney

Exhibit A: Fifth Amendment to Operating Sublease

101
101.2

RESOLUTION NUMBER R- 306203

DATE OF FINAL PASSAGE OCT 18 2010

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING TWO AGREEMENTS
AFFECTING THE OPERATION OF THE SAN DIEGO
SPORTS ARENA, AND CONSENTING TO RENAMING
THE SAN DIEGO SPORTS ARENA THE "VALLEY
VIEW CASINO CENTER."

WHEREAS, SAN DIEGO ENTERTAINMENT, INC. [SD Entertainment], is the City's
tenant at the San Diego Sports Arena under an Operating Sublease which expires May 7, 2017;
and

WHEREAS, SD Entertainment has requested a three-year extension of the Operating
Sublease to further discussions with major sports teams, entertainment promoters, and for
naming rights; and

WHEREAS, a proposed Fifth Amendment to Operating Sublease would extend the term
of the Operating Sublease an additional three (3) years from May 7, 2017 to May 31, 2020; and

WHEREAS, the City and AEG MANAGEMENT SD, LLC [AMSD] were parties to a
Second Restated and Amended Memorandum of Understanding [MOU] which expired March
28, 1997, but with surviving provisions; and

WHEREAS, a proposed Agreement Affecting Surviving Provisions of Second Restated
MOU would result in certain surviving provisions of the MOU expiring on May 17, 2017; and

WHEREAS, pursuant to the Operating Sublease, AMSD has the right to sell the naming rights to the San Diego Sports Arena, subject only to the City's consent to both the person or entity acquiring the naming rights, and the identification signage; and

WHEREAS, AMSD has entered into a Naming Rights Agreement with SAN PASQUAL CASINO DEVELOPMENT GROUP, INC., a wholly-owned entity of the San Pasqual Band of Mission Indians, doing business as "Valley View Casino and Hotel," to change the name of the San Diego Sports Arena to "Valley View Casino Center;" and

WHEREAS, pursuant to the Operating Sublease, the City will receive ten percent (10%) of AMSD'S gross receipts for the naming rights; NOW, THEREFORE,

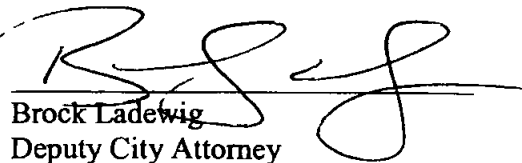
BE IT RESOLVED, by the Council of The City of San Diego, that the Mayor or his designee is authorized to execute and deliver, for and on behalf of The City of San Diego, the Fifth Amendment to Operating Sublease, on file in the Office of the City Clerk as Document No. RR- 306203 - 1.

BE IT FURTHER RESOLVED, that the Mayor or his designee is authorized to execute and deliver, for and on behalf of The City of San Diego, the Agreement Affecting Surviving Provisions of Second Restated MOU, on file in the Office of the City Clerk as Document No. RR- 306203 - 2.

BE IT FURTHER RESOLVED, that The City of San Diego hereby consents to AEG Management SD, LLC (AMSD) granting the naming rights to the San Diego Sports Arena to SAN PASQUAL CASINO DEVELOPMENT GROUP, INC., a wholly-owned entity of the San

Pasqual Band of Mission Indians, doing business as "Valley View Casino and Hotel," and to the identification signage of the San Diego Sports Arena as "Valley View Casino Center."

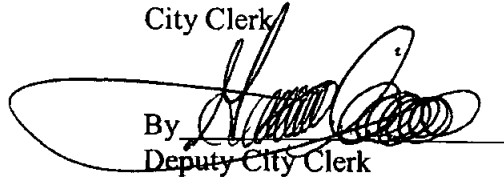
APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Brock Ladewig
Deputy City Attorney

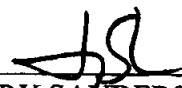
BL:mm
09/21/2010
Or.Dept: READ
R-2011-206
PL#2010-02338

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of OCT 12 2010.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 10.18.10
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor