

COPY

FIRST AMENDMENT TO AGREEMENT TO LEASE

That certain Agreement to Lease ("Lease") dated November 1, 1990, filed in the office of the City Clerk as Document No. RR-279654 by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "City", as Lessor, and DIXIELINE LUMBER COMPANY, a Delaware corporation, hereinafter called "Lessee", is hereby amended as follows:

A. Section 3.4, Encroachment onto Kurtz Street Right-of-Way is hereby added in sequence.

3.4 Encroachment onto Kurtz Street Right-of-Way.

The parties hereto acknowledge that certain of Lessee's permanent improvements ("Lessee's Improvements") are located within the public right-of-way on Kurtz Street (the "Kurtz Street Right-of-Way") on the westerly side of Kurtz Street. The improvements were constructed prior to the City assuming the position of Lessor of the Premises, and Lessee contends that it has the right to keep and maintain Lessee's Improvements in the Kurtz Street Right-of-Way without interference by City. Removal of Lessee's Improvements from the Kurtz Street Right-of-Way would be extremely costly and efforts by the City to remove the same without Lessee's consent could result in expensive and lengthy litigation. City now desires to have certain sidewalk and street improvements (the "Street Improvements") constructed along the Kurtz Street Right-of-Way adjacent to the Premises to provide better pedestrian access. Rather than move Lessee's Improvements, the parties have agreed to the following:

3.4.1 The parties shall execute an Encroachment Removal Agreement in the form set forth in Exhibit 1 attached hereto and incorporated herein.

3.4.2 The Street Improvements shall consist of a four-foot (4') wide sidewalk and curb and a gutter approximately four hundred ten feet (410') in length on the westerly side of the Kurtz Street Right-of-Way adjacent to the Premises. The Street Improvements shall be constructed in accordance with plans prepared by Nasland Engineering dated March 30, 1993, which plans City has approved.

3.4.3 Lessee shall cause the Street Improvements to be designed, engineered and constructed at Lessee's sole cost and expense, but subject to the rent credits hereinafter set forth. In this connection, Lessee has obtained three (3) competitive bids for construction of the Street Improvements and has accepted the bid of American Asphalt and Concrete, Inc.

DOCUMENT NO. RR-283339

FILED JAN 31 1994

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

("Contractor") as the lowest responsible bid. Upon execution of this Amendment by the City Manager, Lessee shall cause construction of the Street Improvements to be commenced by the Contractor and shall use its best efforts to insure that the work of construction is completed within ninety (90) days thereafter.

3.4.4 It is estimated that the cost of construction, plus the cost of design and engineering will be approximately Thirty-Six Thousand Dollars (\$36,000.00). Accordingly, the City shall reimburse to Lessee, in the form of rent credits as hereinafter set forth, one-half (1/2) of the total cost of the design, engineering and construction of the Street Improvements up to but not exceeding the sum of Eighteen Thousand Dollars (\$18,000.00). Upon completion of construction, Lessee shall submit to the City for its approval an itemized statement of all costs of design, engineering and construction of the Street Improvements. Upon the City's approval thereof, which approval shall not be unreasonably withheld, Lessee shall be entitled to credit of one-half (1/2) of the approved amount not to exceed Eighteen Thousand Dollars (\$18,000.00), as credits against the first rents thereafter accruing under the Lease.

B. Section 7.4, Non-Discrimination is hereby deleted in its entirety and the following substituted in its place:

7.4 Non-Discrimination. Lessee agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in Lessee's use of the Premises, including, but not limited to, the providing of goods, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment.

C. Nothing contained herein is intended to alter or amend any other covenant or condition of the Lease.

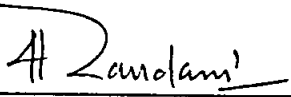
Date: JAN 31 1994

CITY OF SAN DIEGO

By: Robert J. Collins
Robert J. Collins,
Deputy Director
Property Management Services

THE ABOVE IS ACKNOWLEDGED AND ACCEPTED THIS 5th DAY OF NOVEMBER,
1993.

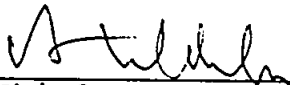
DIXIELINE LUMBER COMPANY

By: A. Zamolani

By: CHIEF FINANCIAL OFFICER

APPROVED AS TO FORM AND LEGALITY

JOHN W. WITT, City Attorney

By: 
Chief Deputy City Attorney

THE ABOVE IS ACKNOWLEDGED AND ACCEPTED THIS 5th DAY OF NOVEMBER,
1993.

DIXIELINE LUMBER COMPANY

By: At Landau

By: CHIEF FINANCIAL OFFICER

APPROVED AS TO FORM AND LEGALITY
JOHN W. WITT, City Attorney

By: Chief Deputy City Attorney

EXHIBIT 1
ADDENDUM TO ENCROACHMENT REMOVAL AGREEMENT

If at any time hereafter, the City Engineer determines that in the public interest the encroaching structures must be removed, the City shall (i) remove the encroaching structures at its sole cost and expense after reasonable notice to the Owner to vacate the same and (ii) reimburse to the owner the full cost of replacing on the owner's property the improvements which constituted the encroaching structures.

Encroachment Approval Agreement

W.O. _____

Coord. # _____

In accordance with the provisions of Section 62.0302 of the San Diego Municipal Code, the undersigned, the owner of property described in attached Exhibit 2
(LEGAL DESCRIPTION)
In the City of San Diego, County of San Diego, State of California, in consideration of the grant

of permission by the City of San Diego to install and maintain buildings and other improvements

for the use and benefit of owner's property, over, under and across the public right-of-way on Kurtz Street

covenants and agrees with the City of San Diego, as follows:

(FOR COUNTY RECORDER'S USE ONLY)

Sec. 62.0302

(a) The encroachment shall be ~~installed and~~ maintained in a safe and sanitary condition at the sole cost, risk and responsibility of the owner and successors in interest.

(b) The property owner shall agree to at all times indemnify and save the City free and harmless from and pay in full, any and all claims, demands, losses, damages or expenses that the City may sustain or incur in any manner resulting from the ~~construction, maintenance, state of use, repair or presence of~~ the structure installed hereunder, including any loss, damage or expense arising out of (1) loss of or damage to property, and (2) injury to or death of persons; excepting any loss, damage or expense and claims for loss, damage or expense resulting in any manner from the negligent act or acts of the City, its contractors, officers, agents or employees.

(c) ~~The property owner must remove or relocate an encroachment within 30 days after notice by the City Engineer or the City Engineer may cause such work to be done, and the costs thereof shall be a lien upon said land.~~ See Attached Exhibit 1

(d) ~~For structures encroaching over or under the public right-of-way, the owner agrees to provide an alternate right-of-way and/or to relocate said City facility to a new alignment, all without cost or expense to the City, whenever it is determined by the City Engineer that the City facility cannot be economically placed, replaced, or maintained due to the presence of the encroaching structure.~~

(e) Whatever rights and obligations were acquired by the City with respect to the rights-of-way shall remain and continue in full force and effect and shall in no way be affected by the City's grant of permission to ~~construct and maintain the encroachment structure.~~ except as provided h

(f) The property owner shall maintain a policy of liability insurance in an amount satisfactory to the City Engineer in order to protect the City from any potential claims which may arise from the ~~encroachments.~~ the failure of the Property owner to maintain,

use or repair the encroachment structure as set forth in paragraphs (a) and (b) above.

SEE ATTACHED EXHIBITS

See Dwg. Nos. _____

APPROVED:

November 5, 1993

(DATE)

DIXIELINE LUMBER COMPANY

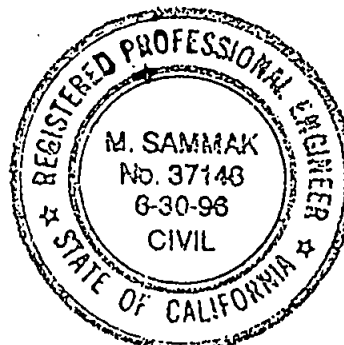
(SIGNATURES)

By: Al Landau

M. V. Rollinger, City Engineer

By: M. V. Rollinger 4/20/94

DEPUTY



R-283339

Attach properly notarized acknowledgement here.

9.1 Legal Description.

Those portions of Pueblo Lots 313, 314, 337 and 338 of the Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State of California, according to the map thereof made by James Pascoe recorded in the Office of the County Recorder of said County as Miscellaneous Map No. 36, described as follows:

Beginning at a 3/4-inch iron pipe marked L.S. 2412 monumenting a point in the Northerly line of Sports Arena Boulevard, 115.00 feet wide, distant along said line North 77°55'15" West 46.42 feet from a 3/4-inch iron pipe marked L.S. 2412 monumenting the Westerly terminus in said line of a tangent curve having a radius of 1,019.93 feet and being concave Southwesterly; thence along said Northerly line North 77°55'15" West 174.03 feet; thence leaving said line North 24°11'14" East 347.69 feet; thence North 35°56'45" East 222.00 feet to the Southwesterly line of Kurtz Street, 57.00 feet wide, said line being also a line parallel with and distant Southwesterly 7.00 feet measured at right angles from the Northeasterly line of said Pueblo Lots 337 and 338; thence along said Southwesterly line South 53°59'00" East 66.32 feet and South 53°58'40" East 383.68 feet; thence leaving said line South 35°56'45" West 147.26 feet; thence North 54°03'15" West 50.00 feet; thence South 35°56'45" West 93.80 feet; thence North 75°04'35" West 182.12 feet; thence South 35°56'45" West 185.00 feet to the Point of Beginning; containing 3.801 acres, more or less.

EXHIBIT 2 TO

ENCROACHMENT REMOVAL AGREEMENT

THE ABOVE IS ACKNOWLEDGED AND ACCEPTED THIS 5th DAY OF NOVEMBER,
1993.

DIXIELINE LUMBER COMPANY

By: H. Zandani

By: CHIEF FINANCIAL OFFICER

APPROVED AS TO FORM AND LEGALITY

JOHN W. WITT, City Attorney

By: V. Wilhelms
Chief Deputy City Attorney

**CITY OF SAN DIEGO
REAL ESTATE ASSETS DEPARTMENT
M E M O R A N D U M**

FILE: Leases - Dixieline Lumber
DATE: April 1, 1994
TO: FILE
FROM: Martin L. Mumert, Property Agent
SUBJECT: Waiver of Term, Encroachment Removal Agreement

The first amendment to the subject lease was approved by Council January 11, 1994.

It provided that the lessee would construct a sidewalk and curb at the rear of their property that would be 4.5 ft. wide instead of the usual 6 feet wide. Lessee had encroached on the public right of way as a result of errors in the legal description contained in their original lease with the City's predecessor in interest, Union Oil.

They relied on the legal description when taking out permits to build the improvements. The result was that the buildings are two feet into the right of way. No objection was raised when the permits were taken out.

The City's standard encroachment removal agreement contains provisions that if at any time in the future the City requires the removal of the encroachments, the encroaching party must pay for the costs of removal. This provision was eliminated from the standard encroachment removal agreement executed by the lessee in connection with the lease amendment, since any attempt to enforce would likely result in expensive and protracted litigation.



Martin L. Mumert, Property Agent
Property Management Division

cc: Harold O. Valderhaug
Mohammad Sammak

(R-94-950)

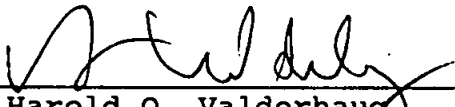
RESOLUTION NUMBER R- 283339

ADOPTED ON JAN 31 1994

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized to execute, for and on behalf of The City of San Diego, a First Amendment to Lease Agreement with DIXIELINE LUMBER, which First Amendment provides a maximum rent credit of \$18,000, being fifty percent (50%) of construction costs for sidewalk, curb and gutter improvements on Kurtz Street, in connection with the lease premises located at 3250 Sports Arena Boulevard, under the terms and conditions set forth in that First Amendment to Lease Agreement on file in the office of the City Clerk as Document No. RR- 283339.

APPROVED: JOHN W. WITT, City Attorney

By



Harold O. Valderhaug
Chief Deputy City Attorney

HOV:ps
12/14/93
Or.Dept:Prop.
Job:220475
R-94-950
Form=r-t

Passed and adopted by the Council of The City of San Diego on JAN 31 1994 by the following vote:

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

NAYS: None.

NOT PRESENT: None.

AUTHENTICATED BY:

SUSAN GOLDING

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: PAT INGLETT, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION
NO. R- 283339, passed and adopted by the Council of The City of San Diego, California
on JAN 31 1994.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: Pat Inglett, Deputy