

DUPLICATE

SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT TO LEASE AGREEMENT ("Second Amendment") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and PIER 1 IMPORTS (U.S.), INC., a Delaware corporation ("LESSEE"), to be effective as of **August 1, 2009** (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney, as follows:

RECITALS

- A. CITY and LESSEE are parties to that certain CITY OF SAN DIEGO FLAT RATE LEASE (the "Lease"), effective as of November 1, 1990, and filed in the Office of the City Clerk on July 13, 1992, as Document No. RR-280329, and as amended by that certain FIRST AMENDMENT TO LEASE AGREEMENT dated July 29, 1999, and filed in the Office of the City Clerk on July 26, 1999, as Document No. RR-291976.
- B. The parties now want to amend the Lease to extend the term, adjust the rent, and provide for water quality best management practices, effective as of the Effective Date.

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

1. Term. Lease section 2.01 Commencement, shall be deleted in its entirety and replaced with the following:

2.01 Commencement. The term of this lease shall commence November 1, 1990, and terminate July 31, 2014. "Lease Year" as used in this lease shall mean each 12-month period commencing on the first day of August during the term of this lease.

2. Right to Extend. Lease section 2.02 Right to Extend shall be deleted in its entirety.
3. Rent. Lease section 3.02 Rent shall be deleted in its entirety and replaced with the following:

3.02 Rent. Effective as of August 1, 2009, the rent shall be One Hundred Sixty-Eight Thousand Four Hundred Thirty-Five Dollars (\$168,435) per year, payable in equal monthly installments of Fourteen Thousand Thirty-Six Dollars and Twenty-Five Cents (\$14,036.25). LESSEE acknowledges and agrees that the rent credit referred to in section 2.05 Rent Credit has been fully applied and amortized, and shall have no further effect.

DOCUMENT NO. 92-305281
FILED OCT 06 2009
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

mk

4. Water Quality. Lease section 7.20, Water Quality - Best Management Practices shall be added to Lease section 7: General Provisions, as follows:

7.20 Water Quality - Best Management Practices. CITY and LESSEE are committed to the implementation of controls ("BMP") to manage activities on the premises in a manner which aids in the protection of the City of San Diego's precious water resources. It is LESSEE's responsibility to identify and implement an effective combination of BMP so as not to cause pollutant discharges to the storm drain system in violation of the San Diego Municipal Code Section 43.03 Stormwater Ordinance. Therefore, LESSEE shall, at a minimum, implement and comply, as applicable, with the BMP for industrial and commercial facilities adopted under the San Diego Municipal Code Section 43.0307(a). LESSEE shall prevent pollutant discharges to the storm drain system. LESSEE shall identify and implement any additional BMP that may be required to avoid the discharge of pollutants to the storm drain system.

5. City Manager. Lease section 7.21 San Diego's Strong Mayor Form of Governance shall be added to Section 7: General Provisions, as follows:

7.21 San Diego's Strong Mayor Form of Governance. All references to "City Manager" in this lease shall be deemed to refer to "the Mayor of San Diego or his or her designee". This section shall remain in effect for the duration CITY operates under the Mayor-Council (commonly referred to as "Strong Mayor") form of governance pursuant to Article XV of the City of San Diego City Charter.

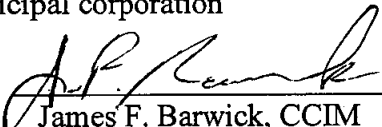
6. Subleases. CITY acknowledges LESSEE'S right to renew or extend: (i) the sublease with WILLIAM KENTON AND EDYTHE KENTON A/K/A EDITH KENTON for the parking area; and/or (ii) the sublease with CLEAR CHANNEL OUTDOOR, INC., for the installation and operation of signage facilities through the term of the Lease, or any portion thereof, without any further obligation to obtain CITY's prior written consent thereto.
7. No Other Changes. Except as may render the terms of this Second Amendment inoperable, all other terms and conditions of the Lease shall remain in full force and effect. Any conflict between the terms and conditions of the Lease and those of this Second Amendment shall be resolved in favor of this Second Amendment.
8. Authority to Contract. Each individual executing this Second Amendment on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and



deliver this Second 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 legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Second Amendment is binding upon such person or entity in accordance with its terms. Each person executing this Second Amendment on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid and 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 Second Amendment is executed to be effective as of the Effective Date:

THE CITY OF SAN DIEGO, a California
municipal corporation

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

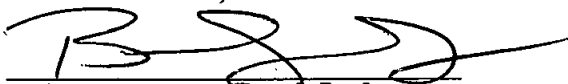
PIER 1 IMPORTS (U.S.), INC., a Delaware
corporation

BY: 
Michael A. Carter
Senior Vice President 

BY: _____
Name: _____
Title: _____

APPROVED AS TO FORM AND LEGALITY:

JAN I. GOLDSMITH, CITY ATTORNEY

BY: 
Name: **Brock Ladewig**
Deputy City Attorney

(R-2010-169)

LEASE-PIER 1

IMPORTS, INC.

101
10/06

RESOLUTION NUMBER R- 305281

DATE OF FINAL PASSAGE OCT 14 2009

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING THE MAYOR TO
EXECUTE A SECOND AMENDMENT TO LEASE
AGREEMENT BETWEEN THE CITY AND PIER 1
IMPORTS (U.S.), INC.

WHEREAS, the City and Pier 1 Imports (U.S.), Inc., a Delaware corporation [Pier 1],
entered into that certain City of San Diego Flat Rate Lease, effective as of November 1, 1990,
and filed in the Office of the City Clerk on July 13, 1992, as Document No. RR-280329[Lease],
for the use of approximately 1.173 acres of City-owned land [Premises]; and

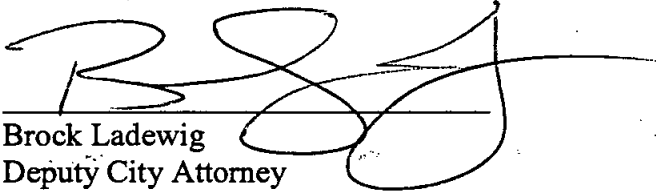
WHEREAS, the Lease had an initial term of 10 years, but was extended to July 31, 2009
by that certain First Amendment to Lease Agreement dated July 29, 1999, and filed in the Office
of the City Clerk on July 26, 1999, as Document No. RR-291976; and

WHEREAS, Pier 1 would like to extend the Lease for an additional five years with an
annual rent of \$168,435; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, the Mayor or his designee
is authorized to execute and deliver, on behalf of the City, that Second Amendment to Lease

Agreement between the City and Pier 1 Imports (U.S.), Inc., a Delaware corporation, on file in the Office of the City Clerk as Document No. RR- 305281.

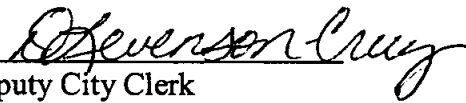
APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Brock Ladewig
Deputy City Attorney

BL:mm
09/14/09
Or.Dept: READ
R-2010-169
MMS #10406

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of Oct 14 2009

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 10.14.09
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

Passed by the Council of The City of San Diego on October 6, 2009 by the following vote:

YEAS: **LIGHTNER, FAULCONER, GLORIA, YOUNG, FRYE,**
 EMERALD, HUESO.

NAYS: **DEMAIO.**

NOT PRESENT: **NONE.**

VACANT: **NONE.**

RECUSED: **NONE.**

AUTHENTICATED BY:

JERRY SANDERS

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

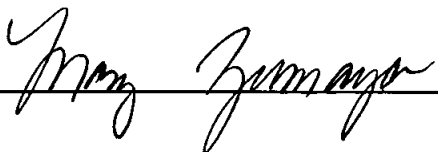
By: Mary Zumaya, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-305281 approved by the Council of the City of San Diego, California,
and authenticated by the Mayor on October 14, 2009.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By: , Deputy

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO				CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) N/A	
TO: CITY COUNCIL		FROM (ORIGINATING DEPARTMENT): Real Estate Assets		DATE: 08/13/2009	
SUBJECT: Second Amendment to Lease Agreement with Pier 1 Imports (U.S.), Inc.					
PRIMARY CONTACT (NAME, PHONE): Frederick L. Reale, (619) 236-7028 51A			SECONDARY CONTACT (NAME, PHONE): Kristin E. Geitz, (619) 236-7031 51A		
COMPLETE FOR ACCOUNTING PURPOSES					
FUND					
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER					
OBJECT / GENERAL LEDGER ACCT					
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00
FUND					
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER					
OBJECT / GENERAL LEDGER ACCT					
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00
COST SUMMARY (IF APPLICABLE): Fiscal Impact: Annual rent of \$168,435 will be deposited into the General Fund 1000000, General Ledger Account 418055: "Other Midway/Frontier Rent" during the five-year Extended Term of the Lease. Rent revenue to be paid to the City over the entire five-year extended lease term will total \$842,175.					
ROUTING AND APPROVALS					
CONTRIBUTORS/REVIEWERS:		APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	
Equal Opportunity Contracting		ORIG DEPT.	Barwick, James	8/26/2009	
Financial Management		CFO			
Environmental Analysis		DEPUTY CHIEF	Jarrell, David	9/10/2009	
Comptroller		COO			
		CITY ATTORNEY	Ladewig, Brock	9/14/2009	
		COUNCIL PRESIDENTS OFFICE	Halsey, Keely	9/23/2009	
PREPARATION OF:		☒ RESOLUTIONS	☐ ORDINANCE(S)	☐ AGREEMENT(S)	☐ DEED(S)

Adopt the Resolution to authorize the Mayor to execute the Second Amendment to Lease Agreement with Pier 1 Imports (U.S.), Inc.	
STAFF RECOMMENDATIONS: Authorize the execution of the proposed Second Amendment to the Lease Agreement.	
SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)	
COUNCIL DISTRICT(S):	02
COMMUNITY AREA(S):	Midway/Pacific Highway Corridor Community.
ENVIRONMENTAL IMPACT:	This activity is exempt from CEQA pursuant to state CEQA guidelines, Section 15301 Class 1, Existing Facilities.
CITY CLERK INSTRUCTIONS:	DO NOT RECORD. Return at least three (3) "wet signature" copies of the fully-executed Amendment to the Real Estate Assets Department, Attn: Frederick L. Reale, M.S. 51A, for further handling. One (1) copy will be retained by READ and the other two (2) will be sent to the lessee.

**COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO**

DATE: 08/13/2009

ORIGINATING DEPARTMENT: Real Estate Assets

SUBJECT: Second Amendment to Lease Agreement with Pier 1 Imports (U.S.), Inc.

COUNCIL DISTRICT(S): 02

CONTACT/PHONE NUMBER: Frederick L. Reale/(619) 236-7028 51A

REQUESTED ACTION:

Authorize the Mayor to execute a Second Amendment to the Ground Lease Agreement ("Lease") with Pier 1 Imports (U.S.), Inc ("Pier 1"). The Second Amendment will amend the Lease by extending the term, adjusting the rent, and providing for water quality best management practices.

STAFF RECOMMENDATION:

Authorize the execution of the proposed Second Amendment to the Lease Agreement.

EXECUTIVE SUMMARY OF ITEM BACKGROUND: On July 16, 1992, the City and Pier 1 Imports (U.S.), Inc. ("Pier 1") entered into a Ground Lease Agreement ("Lease") for the use of approximately 1.173 acres of City-owned land ("Premises"). The Premises were leased to Pier 1 solely and exclusively for the purposes of conducting a retail sales operation and for such other related or incidental purposes if first approved in writing by the City Manager. The Lease had an initial term of ten (10) years commencing on November 1, 1990 and terminating on October 31, 2000, and included a right to extend the Lease for three additional five-year periods ("Right to Extend").

On July 29, 1999, the City and Pier 1 entered into a First Amendment to Lease Agreement ("First Amendment"). The First Amendment extended the termination date of the Lease to July 31, 2009 and changed the Right to Extend to one additional five-year term ("Extension Term") at market rent. Pier 1 gave notice of its intent to exercise its right to extend on June 19, 2009; however, it was conditioned on Council's approval of a lease amendment reducing their rent to \$168,435 per year. The Lease was placed on holdover on August 1, 2009, pending Council action on this item.

Pier 1's sales volume has dramatically decreased at the Sports Arena location during the last five-year period. Due to the current economic climate, Pier 1 has closed over 20% of its stores nationwide. Pier 1 submitted a best and final offer of \$168,435 annual rent and stated that unless their proposed rent was agreed to, it would close this store.

The Premises are located in an area where the community plan is in the process of an update. Since the ultimate use of the property would be determined by the plan update, a new lease would be limited to a term of five years or less, making it difficult to locate a replacement tenant. In addition to lost rent while a new tenant was located and a lease was negotiated, the City would

incur the cost of tenant improvements and brokerage commissions. These factors would negate the financial benefit of the possible increased rent that a new tenant might pay for the space.

FISCAL CONSIDERATIONS: Annual rent of \$168,435 will be deposited into General Fund 1000000, General Ledger Account 418055: "Other Midway/Frontier Rent" during the extended term of the Lease. Rent revenue to be paid to the City over the entire five-year extended lease term will total \$842,175.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE): This agreement is not subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708).

This agreement is subject to the City's Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

PREVIOUS COUNCIL and/or COMMITTEE ACTION: N/A.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Pier 1 Imports (U.S.), Inc. and the City of San Diego.

Barwick, James
Originating Department

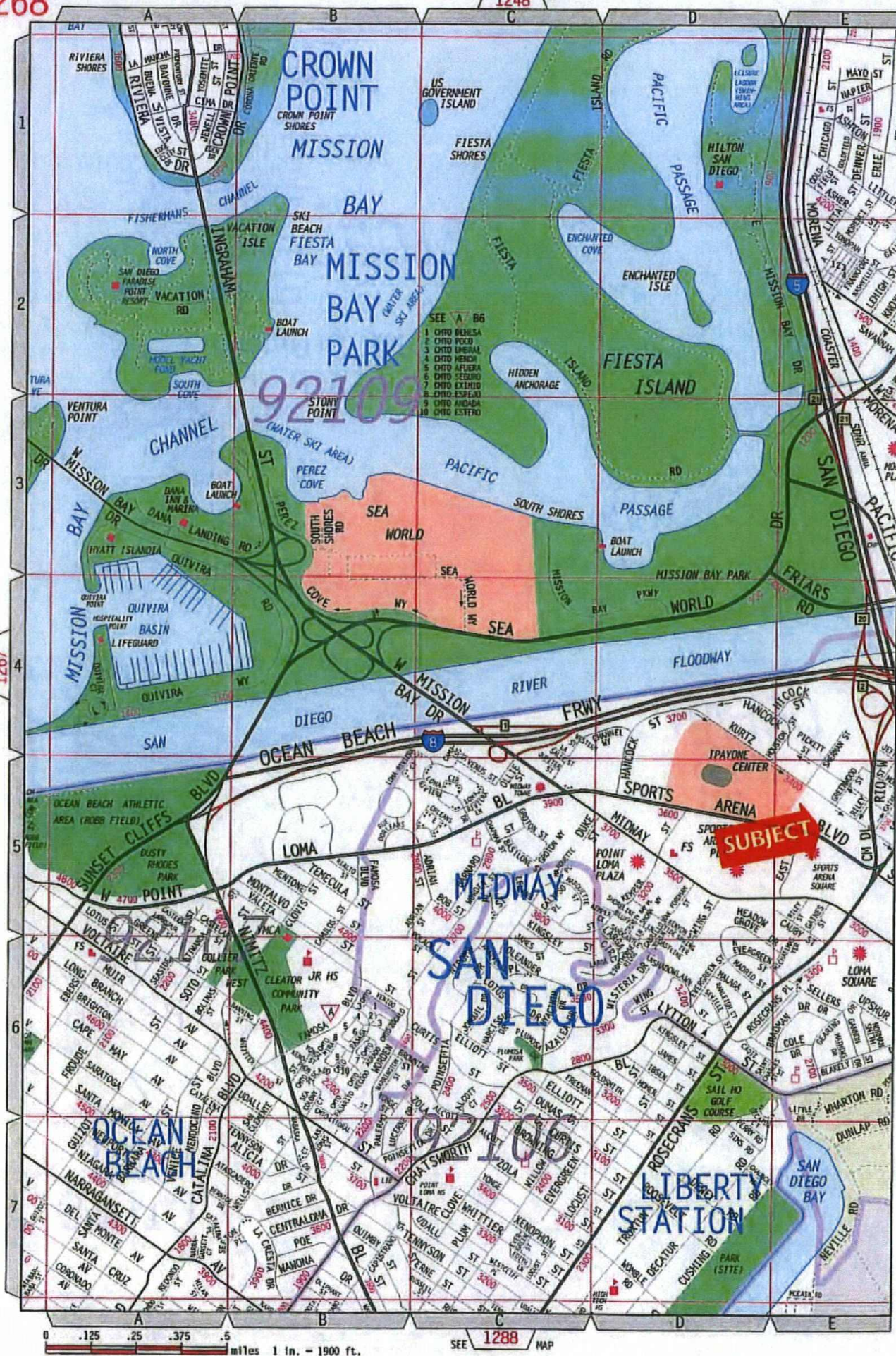
Jarrell, David
Deputy Chief/Chief Operating Officer

1268

SEE 1248 MAP

SAN DIEGO CO.

SEE 1267 MAP



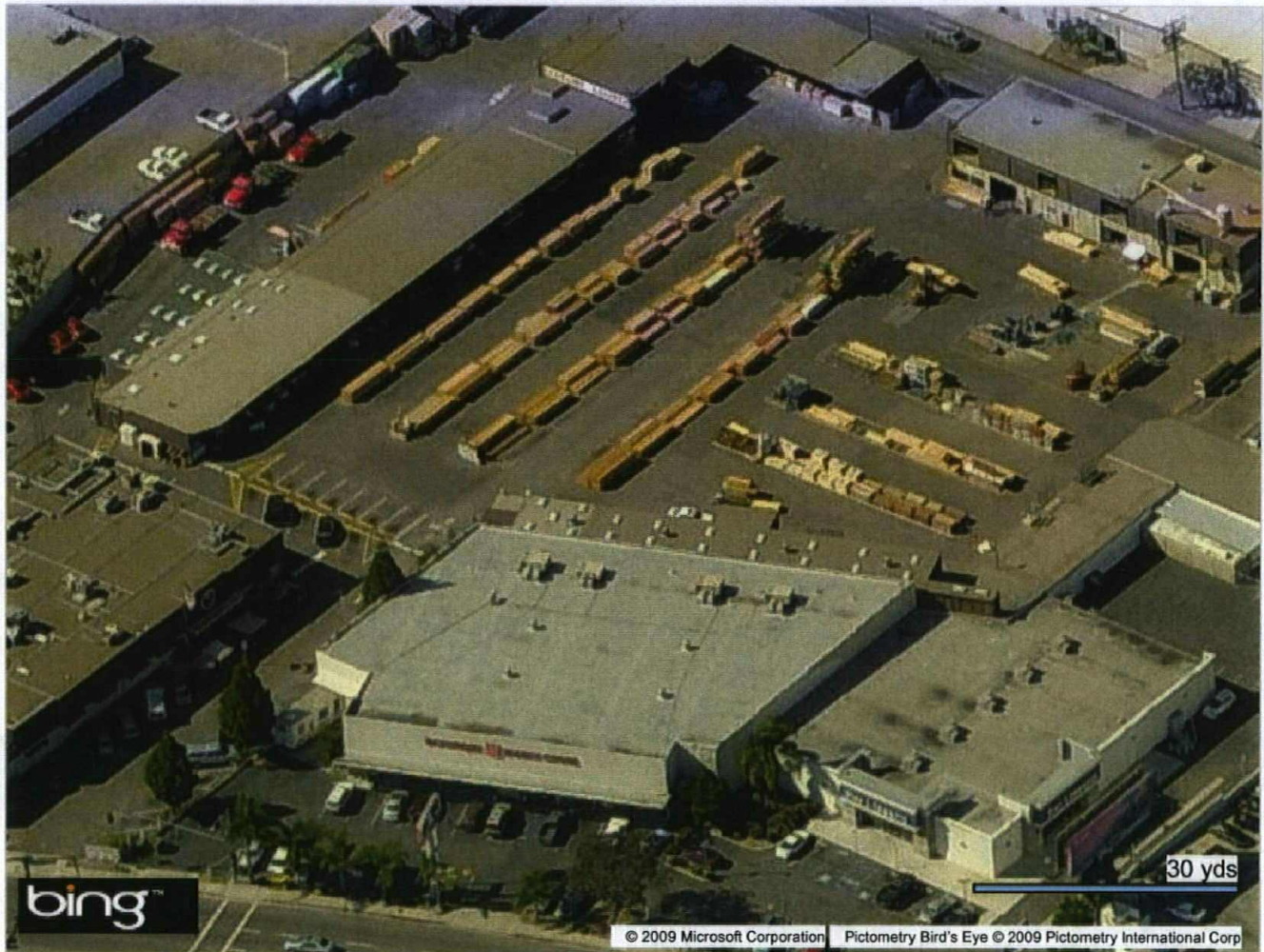
SEE 1288 MAP

Street Map Plus Report

For Property Located At

3250 SPORTS ARENA BLVD, SAN DIEGO CA 92110-4528

RealQuestProfessional™



bing™

30 yds

© 2009 Microsoft Corporation Pictometry Bird's Eye © 2009 Pictometry International Corp

Prior Contract Documents

1. CITY OF SAN DIEGO FLAT RATE LEASE executed between the City of San Diego, a municipal corporation, and Pier 1 Imports (U.S.), Inc., a Delaware corporation, effective as of November 1, 1990, and filed in the Office of the City Clerk on July 13, 1992 as Document No. RR-280329.
2. FIRST AMENDMENT TO LEASE AGREEMENT entered into by and between the City of San Diego, a municipal corporation, and Pier 1 Imports (U.S.), Inc., a Delaware corporation, dated July 29, 1999, and filed in the Office of the City Clerk on July 26, 1999 as Document No. RR-291976.
3. MEMORANDUM OF LEASE entered into between City of San Diego, a municipal corporation, and Pier 1 Imports (U.S.), Inc., a Delaware corporation, dated July 29, 1999, and filed in the San Diego County Recorder's Office on September 27, 1999 as Document No. 1999-0656655.

For electronic viewing, please contact:

Frederick L. Reale
Property Agent
Real Estate Assets Department
Tel: 619-236-7028
Fax: 619-236-6706
FReale@sandiego.gov

**DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO
EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION**

DATE:
August 31, 2009

SUBJECT: Second Amendment to Lease Agreement with Pier 1 Imports (U.S.), Inc.

GENERAL CONTRACT INFORMATION

Recommended Contractor: N/A
Amount of this Action: \$168,435 (Annual Rent will be deposited into the General Fund)
Funding Source: N/A

SUBCONTRACTOR PARTICIPATION

No subconsultant participation for this action.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required

This agreement is not subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708).

This agreement is subject to the City's Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

ADDITIONAL COMMENTS

This action is to authorize the Mayor to execute a Second Amendment to the Ground Lease Agreement ("Lease") with Pier 1 Imports (U.S.), Inc. (Pier 1"). The Second Amendment will amend the Lease by extending the term, adjusting the rent and providing for water quality best management practices.


MM-J