

DUPLICATE

CONSENT TO TRANSFER OF LEASE

The CITY of San Diego (CITY), as Lessor under that certain Lease Agreement (Lease) executed with High Fliers Ltd., a California limited partnership (HIGH FLIERS), filed in the Office of the City Clerk as Document 759240, and assigned by HIGH FLIERS to Marina Village, Ltd., a California limited partnership (LESSEE), in 1983, hereby consents to the transfer of the Lease from LESSEE to the Retirement Fund Trust of the Plumbing-Heating and Piping Industry of Southern California (TRUST), the general partner of LESSEE, upon the dissolution of LESSEE and the distribution of LESSEE's assets to TRUST, on the following conditions:

1. All terms and conditions of the Lease shall remain in effect, and TRUST shall be bound thereby as if it were the original lessee under the Lease.
2. TRUST shall at all times retain a property manager; acceptable to CITY, to manage the day-to-day operation of retail shops and restaurants in the shopping center. TRUST shall at all times retain a competent dockmaster acceptable to the CITY Manager, who shall manage the marina and administer the dockside affairs of boaters within the marina. Acceptance of the property manager and the dockmaster by CITY shall not be unreasonably withheld.
3. TRUST shall have its property manager prepare a management plan for the center's future operation which shall include, but not be limited to projected operating expenses and revenues and which plan shall be satisfactory to the City Manager and updated annually. If the plan is unacceptable to the City Manager, the City Manager shall advise TRUST of the perceived deficiencies of the plan in writing and in specific detail. TRUST's property manager shall continue to submit plans in a timely manner until one is found acceptable to the City Manager, which acceptance shall not be unreasonably withheld. The initial management plan shall be submitted by the property manager to the City Manager for acceptance within four months of the effective date of dissolution of LESSEE.
4. TRUST shall pay any and all outstanding sums due CITY and any additional sums determined due CITY by the City Auditor and Comptroller, under the terms of the lease.
5. TRUST shall expend a sum of at least \$50,000 annually in promotion of operations of the leased premises.

DOCUMENT NO. 769740

FILED JUN 05 1990

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

6. This consent to transfer will be effective upon CITY's receipt of documents evidencing completion of dissolution of LESSEE.

The City of San Diego, a municipal corporation

Dated: 12/27/89

By: Shen Kullman
for Property Director

The Retirement Fund Trust of the
Plumbing-Heating and Piping Industry
of Southern California

Date: 1/6/89

By: M. J. O'Sullivan

Date: _____

By: _____

APPROVED AS TO FORM AND LEGALITY THIS 22 DAY of December, 1989

JOHN W. WITT, City Attorney

By: [Signature]
Deputy City Attorney

MLS:st(62-6)
12-21-89

COPY

ASSIGNMENT AND ASSUMPTION OF LEASE
AND
CONSENT TO ASSIGNMENT AGREEMENT

The City of San Diego, a municipal corporation, as Lessor (City), High Fliers, Ltd., a California general partnership (Assignor), and Marina Village, Ltd., a California limited partnership (Assignee), do agree as follows:

1. Assignor hereby transfers and assigns to Assignee all its right, title and interest in and to that certain lease agreement dated February 16, 1977 between City, as Lessor, and High Fliers, Ltd., Lessee, filed in the Office of the City Clerk as Document 759240 covering premises more particularly described in said lease agreement.
2. Assignee hereby assumes all rights and obligations of Assignor as Lessee under said lease agreement and agrees to keep and perform all covenants, conditions and provisions of said lease agreement.
3. City hereby consents to the assignment to and assumption by Assignee of said lease agreement and declares that, upon payment of the sums required by Paragraph 7 hereof and any additional sums determined due City by the City Auditor and Comptroller, there are no breaches or defaults of the lessee's obligations under said lease agreement.
4. At the Closing as defined in that certain Contribution Agreement dated May 24, 1983, as amended, Assignee shall cause the secured indebtedness on the leasehold premises to be reduced to an amount no greater than \$6.9 million, the exact dollar amount of said indebtedness shall be equal to the unpaid principal under the secured promissory note in favor of The Retirement Fund Trust of the Plumbing-Heating and Piping Industry of Southern California (the "Trust") calculated as of the effective assignment date and as if there had not been any default of obligations under said promissory note.
5. Assignee shall hire a property manager, acceptable to City, to manage the day-to-day operation of retail shops and restaurants in the shopping center. Assignee shall cause the sublessee of the marina facility to engage a competent dockmaster, acceptable to the City Manager, who shall administer to the dockside affairs of boaters within the marina. Acceptance of the pro-

DOCUMENT NO. **768834**

JAN 11 1984

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OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

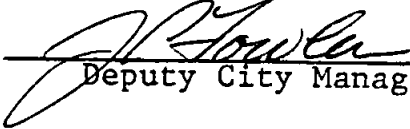
perty manager and the dockmaster by City shall not be unreasonably withheld.

6. Assignee shall have its property manager prepare a management plan for the center's future operation which shall include, but not be limited to projected operating expenses and revenues and which plan shall be satisfactory to the City Manager and updated annually. If the plan is unacceptable to the City Manager, the City Manager shall advise Assignee of the perceived deficiencies of the plan in writing and in specific detail. Assignee's property manager shall continue to submit plans in a timely manner until one is found acceptable to the City Manager, which acceptance shall not be unreasonably withheld. The initial management plan shall be submitted by the property manager to the City Manager for acceptance within five months of the effective assignment date except that if C.W. Clark, Inc. is retained by Assignee as property manager, the management plan shall be submitted within three months of the assignment.
7. Assignee shall pay any and all outstanding sums due City and any additional sum determined due City by the City Auditor and Comptroller, under the terms of the lease, as a condition precedent to the effectiveness of City's consent hereto.
8. Assignee shall expend a sum of at least \$50,000 annually in promotion of operations of the leased premises, until total shop space is 80 percent or more occupied and all restaurants are fully operational.
9. City agrees to a modification in the presently existing loan documents between Assignor and the Trust wherein the due date for the indebtedness for the leasehold improvements is changed to reduce the time for repayment.
10. Any future assignments by Assignee or changes in the capital interests in Assignee held by its partners whereby more than 50% of the capital interests in Assignee are proposed to be transferred must be approved by City, which approval shall not be unreasonably withheld.
11. This assignment will be effective only upon execution by Assignor, Assignee and City and provided City receives the sums specified in Paragraph 7.

12. This agreement may be executed in counterparts each of which shall be deemed an original.

Dated: 10-19-83

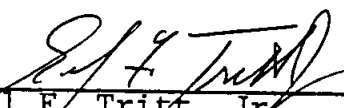
Lessor:
The City of San Diego

By: 
Deputy City Manager

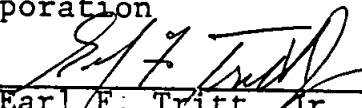
Assignor:
High Fliers, Ltd., A General
Partnership

By: Its General Partners:

Dated: 12-8-83


Earl F. Tritt, Jr.

Fliers, Inc., a California
corporation

By: 
Earl F. Tritt, Jr.,
President

Assignee:
Marina Village, Ltd., A
California Limited Partnership

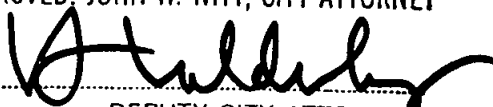
Dated: _____

By: The Retirement Fund Trust
of the Plumbing-Heating
and Piping Industry of
Southern California, Its
General Partner

By: _____
Its Chairman,
Board of Trustees

By: _____
Its Co-Chairman,
Board of Trustees

APPROVED: JOHN W. WITT, CITY ATTORNEY

BY: 
DEPUTY CITY ATTORNEY

12. This agreement may be executed in counterparts each of which shall be deemed an original.

Dated: 10-19-83

Lessor:
The City of San Diego

By: [Signature]
Deputy City Manager

Assignor:
High Fliers, Ltd., A General Partnership

By: Its General Partners:

Dated: 12-8-83

[Signature]
Earl F. Tritt, Jr.

Fliers, Inc., a California corporation

By: [Signature]
Earl F. Tritt, Jr.,
President

Assignee:
Marina Village, Ltd., A California Limited Partnership

Dated: 12-20-83

By: The Retirement Fund Trust of the Plumbing-Heating and Piping Industry of Southern California, Its General Partner

By: [Signature]
Its Chairman,
Board of Trustees

By: [Signature]
Its Co-Chairman,
Board of Trustees

APPROVED: JOHN W. WITT, CITY ATTORNEY

BY: [Signature]
DEPUTY CITY ATTORNEY

DOCUMENT NO. 767703

FILED MAY 16 1980
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

CONSENT TO ASSIGNMENT OF LEASE

The City of San Diego, ("City") in that certain Lease Agreement (the "Lease") between City as Lessor and High Fliers, Ltd., a California limited partnership, as Lessee, dated April 1, 1977 and evidenced by a Memorandum of Lease recorded July 15, 1977 as Document No. 77-296337, herein referred to as the "Lease", hereby consents to the Assignment of the Lease by High Fliers, Ltd., a California limited partnership, to High Fliers, Ltd., a California general partnership the form of which assignment is filed in the Office of the City Clerk as Document No. 767702, subject to the following conditions:

- (1) This Consent shall not be construed as a Consent to any subsequent agreement, assignment or sublease, nor as a waiver of any rights or recourse of the City under or pursuant to the Lease.
- (2) The assignment shall not have the effect of reducing or altering in any manner the rents due City under the Lease, or any other right or rights to which the City is entitled under or pursuant to the Lease.

Dated: March 7, 1980

The City of San Diego

Approved as to form and legality

this 7 day of March, 1980

By


City Manager

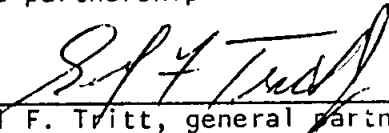
JOHN W. WITT, City
Attorney

By

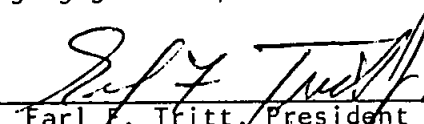

Deputy City Attorney

Dated: March 6, 1980

HIGH FLIERS, LTD., a California
limited partnership

By 
Earl F. Tritt, general partner

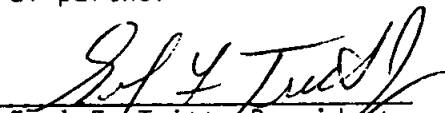
By FLIERS, INCORPORATED,
managing general partner

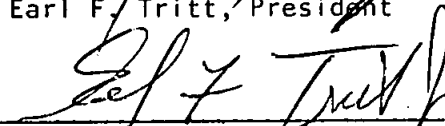
By 
Earl F. Tritt, President

Dated: March 6, 1980

HIGH FLIERS, LTD., a California
general partnership

By FLIERS, INCORPORATED,
general partner

By 
Earl F. Tritt, President

By 
Earl F. Tritt, general partner

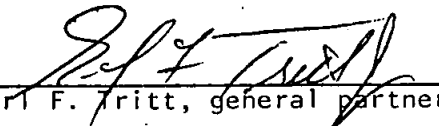
ASSIGNMENT OF LEASE

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, HIGH FLIERS, LTD., a California limited partnership formed pursuant to the Uniform Limited Partnership Act as codified in the California Corporations Code, hereby sells, transfers and assigns to HIGH FLIERS, LTD., a California general partnership, formed pursuant to the Uniform Partnership Act as codified in the California Corporations Code, all its rights, title, and interest in and to that certain Lease Agreement (the "Lease") executed between the City of San Diego, a Municipal Corporation, as Lessor, and High Fliers, Ltd., a California limited partnership, as Lessee, dated April 1, 1977 and evidenced by a Memorandum of Lease recorded July 25, 1977 as Document No. 77-296337. A copy of the Lease, as amended, is attached hereto as Exhibit 1.

Dated: March 6, 1980

HIGH FLIERS, LTD., a California
limited partnership

By


Earl F. Tritt, general partner

By FLIERS, INCORPORATED,
managing general partner

By


Earl F. Tritt, President

DOCUMENT NO. 767702

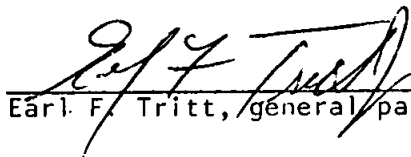
FILED MAY 16 1980
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, HIGH FLIERS, LTD., a California general partnership, hereby accepts the Assignment of the Lease subject to all of the terms, covenants and conditions in the Lease. High Fliers, Ltd. covenants and agrees to faithfully keep and perform each and all of said terms, covenants and conditions of the Lease.

Dated: March 6, 1980

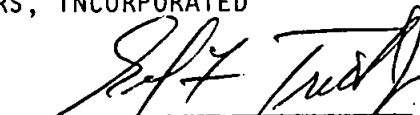
HIGH FLIERS, LTD., a California
general partnership

By


Earl F. Tritt, general partner

By FLIERS, INCORPORATED

By


Earl F. Tritt, President