

CONSENT TO SECOND AMENDMENT TO SUBLEASE

RECITALS

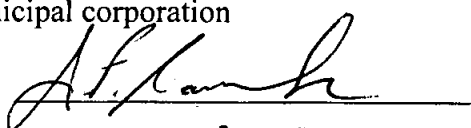
- A. RETIREMENT FUND TRUST OF THE PLUMBING-HEATING AND PIPING INDUSTRY OF SOUTHERN CALIFORNIA, now known as SOUTHERN CALIFORNIA PIPE TRADES RETIREMENT FUND ("SUBLESSOR"), is the successor-in-interest to the lessee under that certain LEASE AGREEMENT (the "Master Lease") dated April 1, 1977, and recorded in the Office of the San Diego City Clerk as Document No. 759240 on May 11, 1977, by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), as lessor, and HIGH FLYERS, LTD., a California limited partnership, as lessee.
- B. The Master Lease relates to certain CITY-owned real property identified in the Master Lease (the "Marina Village Property").
- C. Pursuant to that certain SUBLEASE AGREEMENT ("the "Sublease") dated February 1, 1995, as amended by that certain FIRST AMENDMENT OF SUBLEASE dated February 16, 1995, by and between SUBLESSOR and JASON PELTIER, an individual doing business as "Ranch Catering" ("SUBLESSEE"), a portion of the Marina Village Property was subleased to SUBLESSEE.
- D. SUBLESSOR and SUBLESSEE have entered into that certain AMENDMENT TO SUBLEASE (the "Second Amendment") dated August 28, 2009, and have requested CITY'S consent thereto.

CONSENT

CITY hereby consents to the Second Amendment.

Date: 03/29/2010

THE CITY OF SAN DIEGO, a California
municipal corporation

BY: 

Name: James F. Barwick, CCIM

Title: Director, Real Estate Assets

Approved as to Form and Legality:

JAN I. GOLDSMITH, City Attorney

BY: 

Name: Brock Ladewig

Title: Deputy City Attorney

Balotsky, Vladimir

From: Balotsky, Vladimir
Sent: Tuesday, March 09, 2010 11:00 AM
To: Ladewig, Brock
Subject: Consent to Second Amendment - Retirement Fund Trust
Attachments: SKMBT_C45210030910430.pdf

Hi Brock,

I spoke with Doug Enger, City External revenue manager. He confirmed that the City audited the Marina Village all leasehold activities including Jason Peltier dba Ranch Catering. The rental rates applied to Jason Peltier activities were those the master lease agreement set for food, alcohol, and misc (2.5%/5%/10% respectively). The base rent (subject to holding over language in the consent) was not applicable since the subtenant was paying percentage rent. Therefore, there is no additional rent due from the subtenant. Please revise the consent to reflect it.

Thank you,

Vladimir Balotsky, SR/WA | Supervising Property Agent | Asset Management
City of San Diego | Real Estate Assets Department
1200 Third Avenue, Suite 1700, San Diego, CA 92101
(619) 235-5248 (office), (619) 236-6706 (fax)
vbalotsky@sandiego.gov

AMENDMENT TO SUBLEASE

THIS AMENDMENT TO SUBLEASE (this "Amendment") is made effective as of the 28th day of August, 2009, by and between THE RETIREMENT FUND TRUST OF THE PLUMBING-HEATING AND PIPING INDUSTRY OF SOUTHERN CALIFORNIA ("Sublandlord"), and JASON PELTIER, an individual, dba Ranch Catering ("Subtenant"), with reference to the following:

A. Sublandlord and Subtenant entered into that certain Sublease dated as of February 1, 1995 (the "Original Sublease"), as amended by that certain First Amendment to Sublease dated as of February 16, 1995 (the "First Amendment"), by and between Sublandlord and Subtenant (the Original Sublease, as amended by the First Amendment, is hereinafter referred to as the "Sublease"), for the lease of certain premises (the "Premises") known as the kitchen area of the Baja Room and consisting of approximately 2,000 rentable square feet in the building located at 1904 Quivera Road, San Diego, California, comprising part of that certain commercial, retail and marina complex commonly known and identified as "Marina Village" (the "Project") as more particularly described in the Sublease.

B. Sublandlord and Subtenant desire by this Amendment to amend the Sublease in order to (i) acknowledge Subtenant's holdover in the Premises, (ii) reinstate the term of the Sublease on a month-to-month basis, (iii) provide for a revised Base Rent, and (iv) further amend, modify and supplement the Sublease as set forth herein.

NOW, THEREFORE, in consideration of the foregoing Recitals (which are incorporated herein by this reference), for the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sublandlord and Subtenant hereby agree as follows:

1. **Definitions.** Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Sublease. Unless the context clearly indicates otherwise, all references to the "Sublease" in the Sublease and in this Amendment shall hereinafter be deemed to refer to the Sublease, as amended hereby.

2. **Extension of Sublease Term.** Sublandlord and Subtenant acknowledge that the term of the Sublease expired on January 31, 1998 and that Subtenant has been holding over in the Premises since such date. Notwithstanding Subtenant's holdover in the Premises or anything to the contrary contained in the Sublease, Sublandlord and Subtenant agree that the term of the Sublease is hereby affirmed, ratified and agreed by the parties to be on a month-to-month tenancy commencing on June 1, 2009 (the "Month-to-Month Commencement Date") and shall be terminable by either party upon thirty (30) days prior written notice to the other, unless sooner terminated in accordance with the terms of the Sublease.

3. **Base Rent.** Notwithstanding anything to the contrary contained in the Sublease, and in addition to all other amounts due and payable by Subtenant in connection with the Sublease to be paid in the manner specified therein, including, without limitation, Percentage Rent, City Percentage Rent, and amounts due in connection with Subtenant's indemnification, insurance, maintenance, repair and utility obligations, Subtenant shall, commencing on the

1/2 OFF MONTH
BASE RENT

Month-to-Month Commencement Date, pay in the manner specified in the Sublease, Base Rent in the monthly amount of \$1,000.00 per month; provided, that so long as the Sublease has not been terminated, such amount shall be subject to a four percent (4%) increase on every anniversary of the Month-to-Month Commencement Date.

4. **Percentage Rent.** The first paragraph of Section 4 of the Original Sublease is hereby deleted in its entirety and replaced with the following:

In addition to Base Rent, Sublessee shall pay Sublessor, as additional rent, "**Percentage Rent**" monthly for each lease month during the term of the Sublease. Percentage Rent shall equal five percent (5%) of Sublessee's gross sales (net of sales tax) as defined by Paragraph 3 of the Master Lease ("**Gross Sales**"), which Gross Sales shall be exclusive of income allocable to sales within the Seaside Room, Catalina Room and the Marina Deli, which specific premises are subject to a separate agreement. All other sales of Sublessee within the Marina Village site, including without limitation, income contracted through the Marina Village Conference Center, shall be included in the Gross Sales of Sublessee with respect to this Sublease and shall be subject to Percentage Rent and City Percentage Rent in accordance with the terms of this Sublease.

5. **Use.** The parties agree that Lessee shall have no exclusive use rights with respect to the Premises, including without limitation, any exclusive catering rights with respect to events held in the Baja Room located at 1904 Quivera Way, San Diego, California. Accordingly, the second and third sentences of Section 6 of the Original Sublease are hereby deleted and of no further force or effect.

6. **Condition of Premises.** Subtenant acknowledges that (a) it has been occupying and continues to occupy the Premises, (b) it is familiar with the condition of the Premises, (c) it accepts the Premises in its "as-is, where-is and with all faults" condition without improvement or allowance, and (d) Sublandlord has made no representation or warranty regarding the condition of the Premises or the suitability thereof for Subtenant's business.

7. **Subtenant's Estoppel.** Subtenant hereby certifies and acknowledges that, as of the date of the mutual execution of this Amendment, (a) Sublandlord is not in default in any respect under the Sublease; (b) Subtenant does not have any defenses to its obligations under the Sublease; (c) there are no offsets against Base Rent or any other amount payable in connection with the Sublease; (d) Sublandlord is holding the security deposit in the amount of \$2,000.00; and (e) Sublandlord has completed all improvements and paid all allowances required to be constructed or paid by Sublandlord in accordance with the terms of the Sublease, including, without limitation, any and all rent concessions provided for in Section 3 of the Original Sublease. Subtenant acknowledges and agrees that: (i) the representations herein set forth constitute a material consideration to Sublandlord in entering into this Amendment; (ii) such representations are being made by Subtenant for purposes of inducing Sublandlord to enter into this Amendment; and (iii) Sublandlord is relying on such representations in entering into this Amendment.

8. **Confidentiality.** Sublandlord and Subtenant hereby agree to keep the terms of the Sublease and this Amendment and the negotiation of the Sublease and this Amendment confidential, and neither party shall disseminate or disclose such information to third parties except each party's financial, legal and space planning advisors and consultants in connection with the negotiation and documentation of this Amendment.

Public Record

9. **Notices.** Until such time as a party delivers written notice to the other of any change to any such address, the parties' addresses for notices under the Sublease shall be as follows:

To Sublandlord: c/o American Realty Advisors
801 North Brand Blvd., Suite 800
Glendale, California 91203
Attention: Stanley Iezman

To Subtenant: c/o Ranch Catering
3560 Mt. Acadia Blvd
San Diego, CA 92111
Attention: Jason Peltier

10. **Entire Agreement.** This Amendment contains the entire agreement and understanding between the parties concerning the subject matter of this Amendment and supersedes all prior agreements, terms, understandings, conditions, representations and warranties, whether written or oral, concerning the matters that are the subject of this Amendment. Wherever possible, each term of this Amendment shall be interpreted in such a manner as to be valid under applicable laws, rules, regulations and court authority, but if, notwithstanding the foregoing, any term of this Amendment is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms of this Amendment shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

11. **Brokers.** Except with respect to Packard Realty, Inc., the broker involved in this Amendment, Subtenant hereby represents and warrants to Sublandlord that Subtenant has not entered into any agreement or taken any other action that might result in any obligation on the part of Sublandlord or Subtenant to pay any brokerage commission, finder's fee or other compensation with respect to this Amendment, and Subtenant agrees to protect, defend, indemnify and hold Sublandlord harmless from and against any and all actions, adjudications, awards, causes of action, claims, costs, damages, demands, expenses (including, without limitation, attorneys' fees and costs and court costs), fees, fines, forfeitures, injuries, judgments, liabilities, liens, losses, obligations, orders, penalties, proceedings, stop notices and suits (collectively, "Claims") in any way arising or resulting from or in connection with or related to any breach or inaccuracy of such representation and warranty.

12. **ERISA.** Subtenant has been informed that a specified pension plan may have an interest in the Project. Subtenant hereby represents and warrants that it is not a party in interest to such plan, within the meaning of Section 3(14) of the Employee Retirement Income Security Act of 1974, as amended.

13. **Ratification.** Sublandlord and Subtenant hereby ratify and confirm their respective rights and obligations under the Sublease. Except as specifically herein amended, the Sublease is and shall remain in full force and effect according to the terms thereof. In the event of any conflict between the terms of the Sublease and the terms of this Amendment, the terms of this Amendment shall control.

14. **Headings.** The headings to sections of this Amendment are for convenient reference only and shall not be used in interpreting this Amendment.

15. **Counterparts.** This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

16. **OFAC Compliance.**

(a) As used herein, "**Blocked Party**" shall mean any party or nation that (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the U.S. Treasury ("**OFAC**") pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) or other similar requirements contained in the rules and regulations of OFAC (the "**Order**") or in any enabling legislation or other Executive Orders in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the "**Orders**") or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the "**Lists**"); or (ii) has been determined by competent authority to be subject to the prohibitions contained in the Orders.

(b) As a material inducement for Sublandlord entering into this Amendment, Subtenant warrants and represents that none of Subtenant, any affiliate of Subtenant, any partner, member or stockholder in Subtenant or any affiliate of Subtenant, or any beneficial owner of Subtenant, any affiliate of Subtenant or any such partner, member or stockholder of Subtenant (collectively, a "**Subtenant Owner**"): (i) is a Blocked Party; (ii) is owned or controlled by, or is acting, directly or indirectly, for or on behalf of, any Blocked Party; or (iii) has instigated, negotiated, facilitated, executed or otherwise engaged in this Amendment, directly or indirectly, on behalf of any Blocked Party. Subtenant shall immediately notify Sublandlord if any of the foregoing warranties and representations becomes untrue during the term of the Sublease.

(c) Subtenant shall not: (i) transfer or permit the transfer of any interest in Subtenant or any Subtenant Owner to any Blocked Party; or (ii) make a transfer to any Blocked Party or party who is engaged in illegal activities.

(d) If at any time during the term of the Sublease (i) Subtenant or any Subtenant Owner becomes a Blocked Party or is convicted, pleads nolo contendere, or is indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering; (ii) any of the representations or warranties set forth in this Section become untrue; or (iii) Subtenant breaches any of the covenants set forth in this Section, the same shall constitute a default under the Sublease. In addition to any other remedies to which Sublandlord may be entitled on account of such default, Sublandlord may immediately terminate the Sublease and refuse to pay any disbursements due to Subtenant under the Sublease.

IN WITNESS WHEREOF, Sublandlord and Subtenant have caused their duly authorized representatives to execute this Amendment as of the date first above written.

SUBLANDLORD:

Southern California Pipe Trades Retirement Fund

CA or
B

By: American Realty Advisors, a California corporation,
Its Investment Manager

By:


Stanley E. Iczman, President and CEO
Scott H. Darling, Vice President

SUBTENANT:


Jason Peltier, dba Ranch Catering

FIRST AMENDMENT OF SUBLEASE

This First Amendment of Sublease ("First Amendment") to Marina Village Sublease is made by and between The Retirement Fund Trust of the Plumbing-Heating and Piping Industry of Southern California (Sublessor) and Jason Peltier d.b.a. Ranch Catering (Sublessee) effective this 16th day of February, 1995.

RECITALS

1. Sublessor and Sublessee entered into a written agreement dated February 1, 1995, ("Sublease"), for the sublease for certain space identified as "Premises" consisting of a portion of Marina Village more particularly described in Exhibits "A" of Sublease.
2. The Sublease is presently in full force and effect.
3. Sublessee is in possession of the subject premises.
4. To the best of the knowledge of Sublessee as of the date hereof, there exist no offsets, counterclaims or defenses of Sublessee under the Sublease against Sublessor and there exists no events that would constitute a basis for any such offsets, counterclaims or defenses upon the lapse of time or the giving of notice, or both.
5. The Sublease constitutes the entire present agreement between Sublessor and Sublessee with respect to the premises and the rights and obligations of the Sublessor and Sublessee in connection with the premises.
6. The Sublessor and Sublessee wish to amend the Sublease.

TERMS OF AMENDMENT

Now, therefor, in consideration of mutual covenants and conditions set forth herein, the Sublessor and Sublessee agree as follows:

- A. Recitals: All of the Recitals set forth hereinabove are incorporated herein by this reference and made a part of this First Amendment. Paragraph B, C, D and E of this amendment apply only to the additional premises rented as a part of this Amendment.
- B. Sublease of Premises: Sublessor hereby subleases to Sublessee and Sublessee hereby hires from Sublessor additional premises located at Marina Village on Mission Bay,

1842 Quivira Way, San Diego, California, the entry, dining and patio areas of Building 1904 (Baja Room). Sublessor shall obtain written consent of the City (acting by and through its City Manager) to this Sublease Amendment required under Section (D) 21 of the Master Lease.

C. Term: The term of the First Amendment to Sublease for the additional premises is February 16, 1995 through May 19, 1995.

D. Rent: For the additional premises, Sublessee hereby agrees to pay, in addition to rents outlined in the Sublease Agreement, without abatement, deduction or offset other than as specified in this paragraph, rent in the amount of Twenty Five Thousand Dollars (\$25,000) pro-rated monthly, in advance, on or before the tenth (10th) day of each month, with the first months rent due and payable upon execution of this Amendment. Rent concessions of up to \$5,000 will be allowed for authorized Sublessee improvements in establishing an America's Cup decor for the Baja Room dining areas. Sublessee improvements must be approved in writing by Sublessor. Sublessee acknowledges that sublessee improvements hereby become the property of the Sublessor.

E. Use: Sublessee shall use the premises, Building 1904, for the purposes of restaurant and bar operations and are subject to the provisions of the Sublease and Master Lease.

F. Consent of Lessor: The efficacy of this First Amendment of Sublease is expressly conditioned upon the parties obtaining written approval of the City of San Diego as Lessor to the contents hereof. A true and correct copy of such approval shall be attached to this First Amendment when obtained.

This First Amendment contains all of the agreements of the parties hereto with respect to the matters contained herein and no prior agreement, arrangement or understanding pertaining to any such matters shall be effective for any purpose. Nothing in this First Amendment shall be deemed to waive or modify any of the provisions of the Sublease except as expressly stated herein.

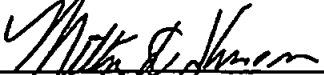
The provisions of the First Amendment shall bind and inure to the benefits of the heirs, representatives, successors and assigns of the parties hereto.

This First Amendment may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same First Amendment.

IN WITNESS WHEREOF, this First Amendment is entered into by parties as the day and year first written above.

SUBLESSOR:

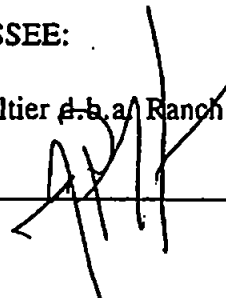
The Retirement Fund Trust of the Plumbing-Heating
and Pipe Industry of Southern California

By: 

Its: ADMINISTRATOR

SUBLESSEE:

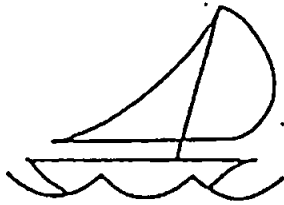
Jason Peltier d.b.a. Ranch Catering

By: 

Marina Village

Special Events & Conference Center

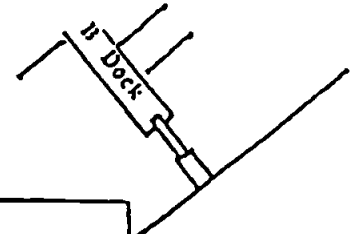
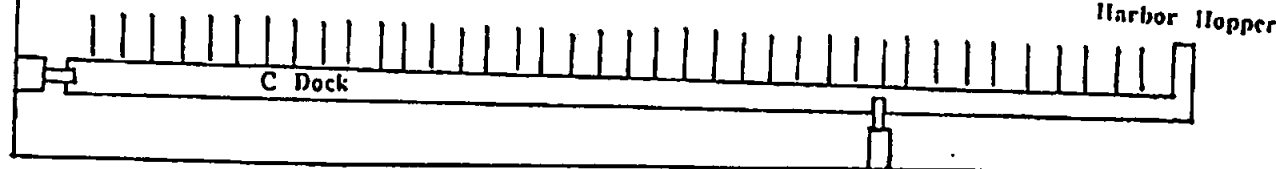
1936 Quivira Way San Diego, Ca 92109
(619) 222-1620



MISSION BAY



1840-1842



Sunset Room 1935

Bldg A 1925

Captains Room Rest Rooms

1845
2
1
Coral

Baja Room 1904
RANCH CATERING

Shanghai 1930 Bayview Room 1933

Bldg F 1950
Dockside
8 3
9
Nautical

Salmon House 1970

Courtyard

Snack Shack
9 8 6
1 3 4 5
Bldg C 1875

Starboard 1920
Restrooms

Courtyard

Terrace 7 Office
1 4
Bldg G 1936

11 10 9 8
12 1 3 4 5
Bldg E 1960

8 7
6
M.B.L.A.
1
Bldg D 1945

Conference Center Office 1936

PARKING

PARKING

QUIVIRA WAY

QUIVIRA ROAD

EXHIBIT "A"