

RESOLUTION NO. OB-05-13

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER EL CAJON REDEVELOPMENT AGENCY APPROVING THE SECOND AMENDMENT TO GROUND LEASE - DOMINIC DONATO.

WHEREAS, Section 34181 (e) of the California Health and Safety Code provides that the Oversight Board shall direct the Successor Agency to determine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities, and present proposed termination or amendment agreements to the Oversight Board for its approval. It further states that the Oversight Board may approve any amendments to or early termination of those agreements if it finds that the amendments or early termination would be in the best interest of the taxing entities; and

WHEREAS, the Oversight Board (the "Oversight Board") of the Successor Agency of the former El Cajon Redevelopment Agency (the "Successor Agency") held a meeting on February 20, 2013, at which time it considered an amendment under that certain Ground Lease with the tenant, Domenico Donato (the "Tenant"), dated November 22, 2002, and first amended on January 22, 2003, (the "Ground Lease"); and

WHEREAS, the Tenant now desires to sell the interest in his business and assign the Ground Lease to another operator as authorized under Article 10 of the Ground Lease, so long as the assignee is "financially qualified and has sufficient experience in the operation and management of restaurants"; and

WHEREAS, Burner Nicolosi's, Inc., dba Nicolosi's Italian Restaurant has operated a successful restaurant in the San Diego Area since 1952, and has submitted a request for the Successor Agency to consent to the transfer of the Ground Lease as modified by a second amendment; and

WHEREAS, minor revisions to the Ground Lease are necessary to remove 450 square feet of public right-of way that is under a separate City of El Cajon Public Works agreement, and correction of the "Restricted Premises" from 205 to 510 square feet;

WHEREAS, proposed amendment would be in the best interests of the Successor Agency, the City of El Cajon, and all taxing entities by encouraging economic development activities to continue without interruption.


NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER CITY OF EL CAJON REDEVELOPMENT AGENCY AS FOLLOWS:

- A. The Oversight Board finds that:
 - 1. The recitals above are true and correct and have been incorporated herein by reference; and
 - 2. The proposed project is exempt from the California Environmental Quality Act (CEQA) under Section 15061 (b) (3) (General Rule) of the CEQA Guidelines because it will have no physical effect on the environment; and
 - 3. The proposed new amendment would be in the best interest of the taxing entities because it will result in economic development activities continuing without interruption in the City of El Cajon.
- B. The Oversight Board hereby APPROVES the proposed amendment to assign the Ground Lease with additional minor changes as presented in **Exhibit "A"**, with such changes as may be approved by the Executive Director.
- C. The Executive Director of the Successor Agency is hereby authorized to execute such documents as are reasonably necessary and proper to completely and fully compromise the aforementioned outstanding claim with the Tenant.

[The remainder of this page intentionally left blank.]

PASSED AND ADOPTED by the Oversight Board of the Successor Agency of the former El Cajon Redevelopment Agency at a meeting held this 20th day of February, 2013, by the following vote to wit:

AYES: ABUSHABAN, BUXBAUM, CHADWICK, GRIFFIN, GRIFFITHS,
RANU, TURNER-EMERSON
NOES: NONE
ABSENT: NONE



Debra Turner-Emerson, Chairperson

ATTEST:



Jennifer Ficacci, Oversight Board Acting Secretary

GROUND LEASE

This lease is entered into on the 22nd day of November, 2002, between the EL CAJON REDEVELOPMENT AGENCY, a public body corporate and politic, ("Landlord"), and Domenico Donato (the "Tenant").

A. Landlord is the owner of that certain public right-of-way in the City of El Cajon, County of San Diego, State of California, known as the "Prescott Promenade," including that portion of the Prescott Promenade (APN 488-211-08) owned by the Agency, described in Exhibit "A," which is attached hereto and made a part hereof by this reference (the "Premises").

B. Tenant desires to lease the Premises for the purpose of constructing an outside dining area to be used in conjunction with Tenant's commercial operations at 215-233 East Main Street, El Cajon, California (the "Restaurant"), in accordance with the agreement of the parties as set forth in this lease.

ARTICLE 1

LEASE OF PREMISES AND TERM OF LEASE

Agreement to Lease

Section 1.01. For and in consideration of the rents to be paid and covenants to be performed by Tenant under this lease, Landlord agrees to lease the Premises to Tenant, and Tenant agrees to lease the Premises from Landlord, on the terms and conditions set forth in this lease. Except as expressly otherwise provided in this lease, "the Premises" includes the right-of-way, exclusive of any right of access to or from the Prescott Promenade, El Cajon, and further exclusive of any improvements now and subsequently located on the Premises, notwithstanding that any improvements may, or shall be, construed as affixed to and as constituting part of the described Premises, and without regard to whether ownership of the improvements is in Landlord or in Tenant.

Status of Title

Section 1.02. Title to the leasehold estate created by this lease is subject to all exceptions, easements, rights, rights-of-way, and other matters of record, except that Tenant shall have the right to occupy the Premises exclusive of any public right-of-way owned by the Landlord.

Tenant recognizes that Landlord's interest in the Premises is subject to the rights of the owner of the underlying property. The parties agree that in the event Tenant should become possessed of the underlying fee ownership of the Premises while possessing a leasehold interest in Landlord's right-of-way interest in the Premises, there shall not occur

a merger of the interests so as to deprive Landlord of its established right of way interest.

Section 1.03. The term of this lease shall be for a period of thirty (30) years effective upon the issuance of the Certificate of Occupancy and continuing thereafter for thirty (30) years unless terminated earlier as provided in this lease.

00 10/20/02
45/11/10/02

ARTICLE 2

RENT

Annual Rent

Section 2.01. Tenant agrees to pay to Landlord annual rent (the "Rent") for each year during the term of this lease in the following amounts: \$791.28 per year. The Rent is calculated as follows: Patio space on Prescott Promenade – 492 sq. ft.; sidewalk area – 450 sq. ft.; for a total leased area of 942 sq. ft @ \$.84 per square foot. Should the actual square footage prove greater than 942 sq. ft., Tenant agrees to adjust rent to pay for the actual square footage of the Premises, except that in no circumstances is rent to be less than \$791.28 per year.

Time and Place for Payment of Rent

Section 2.02. All Rent provided for in Section 2.01 of this lease shall be paid by Tenant on an annual basis on the first day of each calendar year. All Rent required under this lease shall be paid to Landlord at El Cajon Redevelopment Agency, 200 East Main Street, El Cajon, California 92020, Attention: Executive Director, or any other place or places that Landlord may designate by written notice to Tenant.

No Partnership or Joint Venture

Section 2.03. Nothing in this lease shall be construed to render Landlord in any way or for any purpose a partner, joint venturer, or associate in any relationship with Tenant other than that of Landlord and Tenant, nor shall this lease be construed to authorize either to act as agent for the other.

ARTICLE 3

USE OF PREMISES

Permitted Use

Section 3.01. Tenant shall use the Premises solely for the purpose of constructing, maintaining, and operating an outside dining facility to be used in conjunction with the Restaurant (the "Improvements"). Tenant shall not change the use of the Premises without first obtaining the written consent of Landlord. Tenant shall use its best

efforts to use and permit use of the Premises for purposes permitted by this Section 3.01, which, in Tenant's reasonable opinion, will attract patrons to the Restaurant in the downtown El Cajon area.

Compliance With Laws

Section 3.02. Tenant shall, at Tenant's own cost and expense, obtain all permits necessary for the construction of the Restaurant and the Improvements on the Premises, and shall comply with all statutes, ordinances, regulations and requirements of all governmental entities, both federal and state and county or municipal, including those requiring capital improvements to the Premises or Improvements relating to the use and occupancy of the Premises and the Restaurant (and specifically not limited to any particular use or occupancy by Tenant), whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted. Tenant shall maintain all licenses, permits, or other governmental authorizations throughout the term of this lease. The judgment of any court of competent jurisdiction, or the admission by Tenant in a proceeding brought against Tenant by any government entity, that Tenant has violated any such statute, ordinance, regulation, or requirement shall be conclusive as between Landlord and Tenant and shall constitute grounds for termination of this lease by Landlord.

Prohibited Uses

Section 3.03. Tenant shall not use or permit the Premises or any portion of the Premises to be improved, developed, used, or occupied in any manner or for any purpose that is in any way in violation of any valid law, ordinance, or regulation of any federal, state, county, or local governmental agency, body, or entity. Tenant shall comply with all storm water discharge requirements implemented by the City of El Cajon, and shall comply with Order No. 2001-01 of the California Regional Water Quality Control Board, San Diego Region, creating waste discharge requirements. Furthermore, Tenant shall not maintain, commit, or permit the maintenance or commission of any nuisance as now or hereafter defined by any statutory or decisional law applicable to the Premises or any part of the Premises.

ARTICLE 4

TAXES AND UTILITIES

Tenant to Pay Taxes

Section 4.01. Tenant shall pay during the term of this lease, without abatement, deduction or offset, any and all real and personal property taxes, general and special assessments, business improvement district assessments, and other charges (including any increase caused by a change in the tax rate or by a change in assessed valuation, and further including any possessory interest taxes charged to Tenant as a result of its

leasehold interest in public right-of-way) of any description levied or assessed during the term of this lease by any governmental agency or entity on or against the Premises, the Improvements located on the Premises, personal property located on or in the Premises or Improvements, and the leasehold estate created by this lease.

Payment Before Delinquency

Section 4.04. Any and all taxes and assessments and installments of taxes and assessments required to be paid by Tenant under this lease shall be paid by Tenant at least ten (10) days before such tax, assessment, or installment of tax or assessment becomes delinquent. On the written request of Landlord, Tenant shall deliver to Landlord the official and original receipt evidencing the payment of any taxes, assessments, and other charges required under this Article.

Tax-Hold Harmless Clause

Section 4.05. Tenant shall indemnify and hold Landlord and Landlord's elected and appointed officers, directors, officials, agents, and employees, and Landlord's property, including the Premises, and any Improvements now or subsequently located on the Premises, free and harmless from any liability, loss or damages resulting from any taxes, assessments, or other charges required by this article to be paid by Tenant and from all interest, penalties, and other sums imposed thereon, and from any sales or other proceedings to enforce collection of any such taxes, assessments, or other charges.

Utilities

Section 4.06. Tenant shall pay or cause to be paid, and hold Landlord and Landlord's property including the Premises free and harmless from all charges for the furnishing of gas, water, electricity, telephone service and other public utilities to the Premises during the lease's term and for the removal of garbage and rubbish from the Premises during the term of this lease.

Payment by Landlord

Section 4.07. Should Tenant fail to pay within the time specified in this Article any taxes, assessments, or other charges required by this Article to be paid by Tenant, Landlord may, without notice to or demand on Tenant, pay, discharge, or adjust that tax, assessment, or other charge for the benefit of Tenant. In that event, Tenant shall promptly on written demand of Landlord reimburse Landlord for the full amount paid by Landlord in paying, discharging, or adjusting that tax, assessment, or other charge together with interest thereon at the then-maximum legal rate from the date of payment by Landlord until the date of repayment by Tenant. If this Article does not specify the time within which Tenant must pay any charge required by this Article, Tenant shall pay that charge before it becomes delinquent.

ARTICLE 5

CONSTRUCTION BY TENANT

Duty to Construct

Section 5.01. Tenant shall, at Tenant's sole cost and expense, construct or cause to be constructed on the Premises the Improvements, including outside dining facilities and a trash enclosure, to be used solely in conjunction with the Restaurant in the manner and according to the terms and conditions specified in this Article.

Requirement of Landlord's Written Approval

Section 5.02. No structure or other improvement of any kind shall be constructed on the Premises unless and until Landlord has approved the plans, specifications, and proposed location of that structure or improvement in writing. Furthermore, no structure or other improvement shall be constructed on the Premises that do not comply with plans, specifications, and locations approved in writing by Landlord. Tenant's plans for improvements on the Premises shall also require the approval of the El Cajon Community Development Corporation Design Committee.

All Work on Written Contract

Section 5.03. All work required in the construction of the outside dining facility and trash enclosure, including any site preparation work, landscape work, and utility installation work, as well as actual construction work on the outside dining facility, shall be performed only by competent contractors licensed under the laws of the State of California and shall be performed in accordance with written contracts with those contractors. Each such contract shall provide that the final payment under the contract due to the contractor shall be in an amount equaling at least ten percent (10%) of the full amount payable under the contract and shall not be paid to contractor until whichever of the following last occurs:

(a) The expiration of thirty-five (35) days from the date of recording by Tenant as owner of a Notice of Completion of the outside dining facilities, Tenant agreeing to record that Notice of Completion promptly within the time specified by law for the recording of that notice; or

(b) The settlement and discharge of all liens of record claimed by persons who supplied either labor or materials for the construction of the outside dining facilities.

Compliance With Law and Standards

Section 5.04. The outside dining facilities shall be constructed, all work on the

Premises shall be performed, and all buildings or other improvements on the Premises shall be erected in accordance with all valid laws, ordinances, regulations, and orders of all federal, state, county, or local governmental agencies or entities having jurisdiction over the Premises; provided, however, that any structure or other improvement erected on the Premises, including the outside dining facilities, shall be deemed to have been constructed in full compliance with all such valid laws, ordinances, regulations and orders when a valid Certificate of Occupancy entitling Tenant to occupy and use the Improvements has been duly issued by the City of El Cajon. All work performed on the Premises under this lease, or authorized by this lease, shall be done in a good workmanlike manner and only with new materials of good quality and high standard.

Mechanics' Liens

Section 5.05: At all times during the term of this lease, Tenant shall keep the Premises and all Improvements now or hereafter located on the Premises free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Premises. Should Tenant fail to pay and discharge or cause the Premises to be released from any such lien or claim of lien within twenty (20) days after service on Tenant of a written request from Landlord to do so, Landlord may pay, adjust, compromise, and discharge any such lien or claim or lien on any terms and in any manner that Landlord may deem appropriate. In that event, Tenant shall, on or before the first day of the next calendar month following any such payment by Landlord, reimburse Landlord for the full amount paid by Landlord in paying, adjusting, compromising, and discharging that lien or claim of lien, including any attorneys' fees or other costs expended by Landlord, together with interest at the then-maximum legal rate from the date of payment by Landlord to the date of repayment by Tenant.

Ownership of Improvements

Section 5.06. Title to all Improvements, including the outside dining facilities to be constructed on the Premises by Tenant, shall be owned by Tenant until expiration of the term or earlier termination of this lease. All Improvements, including the outside dining facilities, on the Premises at the expiration of the term or earlier termination of this lease shall, without compensation to Tenant, then automatically, and without any act of Tenant or any third party become Landlord's property. Tenant shall surrender the Improvements to Landlord at the expiration of the term or earlier termination of this lease, free and clear of all liens and encumbrances, other than those, if any, permitted under this lease or otherwise created or consented to by Landlord. Tenant agrees to execute, acknowledge, and deliver to Landlord any instrument requested by Landlord as necessary in Landlord's opinion to perform Landlord's right, title and interest to the Improvements and the Premises.

[Remainder of Page Intentionally Blank]

ARTICLE 6

ENCUMBRANCE OF LEASEHOLD ESTATE

No Right of Tenant to Encumber

Section 6.01. Tenant may not, at any time, encumber to any institutional lender regulated by state or federal authority, by deed of trust or mortgage or other security instrument, any of Tenant's interest under this lease and the leasehold estate hereby created in Tenant for any purpose or purposes whatsoever. In the event that Tenant requests permission to encumber the Premises, Tenant shall request, in writing, from Landlord, the consent of Landlord to the encumbrance of the Premises. The consent of Landlord may be at its sole discretion. Any leasehold encumbrance permitted by Landlord shall be under those terms and conditions, which Landlord reasonably believes necessary to protect its interest in the Premises. Any such leasehold encumbrance shall require that the Landlord must approve the financial stability of the Tenant, and any prospective subtenants. Further, the Landlord shall be entitled to cure any default under any such leasehold encumbrance as a term and condition of any encumbrance agreement.

Tenant's Right to Encumber Restaurant

Section 6.02. Nothing herein contained shall restrict or prohibit Tenant or its sublessee in its right to encumber the Restaurant only. It shall not be required that Tenant or sublessee seek the consent of Landlord for any financing which only encumbers the Restaurant and the real property upon which it is located.

ARTICLE 7

REPAIRS AND RESTORATION

Maintenance by Tenant

Section 7.01. At all times during the term of this lease Tenant shall, at Tenant's own cost and expense, keep and maintain the Premises, all Improvements, and all appurtenances now or hereafter on the Premises in a first-class condition, in good order and repair, and in a safe and clean condition.

Requirements of Governmental Agencies

Section 7.02. At all times during the term of this lease Tenant, at Tenant's own cost and expense, shall do all of the following:

- (a) Make all alterations, additions or repairs to the Premises or the Improvements on the Premises required by any valid law, ordinance, statute, order, or regulation now or

hereafter made or issued by any federal, state, county, local, or other governmental agency or entity;

(b) Observe and comply with all valid laws, ordinances, statutes, orders, and regulations now or hereafter made or issued respecting the Premises or the Improvements on the Premises by any federal, state, local or other governmental agency or entity; and

(c) Indemnify and hold Landlord, and its elected and appointed officers, directors, officials, agents, and employees, and the property of Landlord, including the Premises, free and harmless from any and all liability, loss, damages, fines, penalties, claims, and actions resulting from Tenant's failure to comply with and perform the requirements of this Section.

Tenant's Duty to Restore Premises

Section 7.03. If at any time during the term of this lease, any Improvements now or hereafter on the Premises are destroyed in whole or in part by fire, theft, the elements, or any other cause not the fault of Landlord, this lease shall continue in full force and effect and Tenant, at Tenant's own cost and expense, shall repair and restore the damaged Improvements. Any restoration by Tenant shall comply with the original plans for the Improvements described in Article 5, except as may be modified by Tenant to comply with any local building regulations, or except as may be otherwise modified by Tenant and approved in writing by Landlord. The work of repair and restoration shall be commenced by Tenant within sixty (60) days after the damage or destruction occurs and shall be completed with due diligence not later than one hundred twenty (120) days after the work is commenced. In all other respects, the work of repair and restoration shall be done in accordance with the requirements for original construction work on the Premises set forth in Article 5 of this lease. Tenant's obligation for restoration described in this Section shall exist whether or not funds are available from insurance proceeds.

Application of Insurance Proceeds

Section 7.04. Any and all fire or other insurance proceeds that become payable at any time during the term of this lease because of damage to or destruction of any Improvements on the Premises shall be paid to Tenant and applied by Tenant toward the cost of repairing and restoring the damaged or destroyed Improvements in the manner required by Section 7.03 of this lease.

[Remainder of Page Intentionally Blank]

ARTICLE 8

INDEMNITY AND INSURANCE

Indemnity Agreement

Section 8.01. Tenant shall indemnify and hold Landlord, and Landlord's elected and appointed officers, officials, directors, agents, and employees, and Landlord's property, including the Premises and Improvements now or hereafter on the Premises, free and harmless from any and all liability, claims, loss, damages, or expenses resulting from Tenant's occupation and use of the Premises, specifically including, without limitation, any liability, claim, loss, damage, or expense arising by reason of the following:

(a) The death or injury of any person, including Tenant or any person who is an employee or agent of Tenant, or by reason of the damage to or destruction of any property, including property owned by Tenant or by any person who is an employee or agent of Tenant, from any cause whatever while that person or property is in or on the Premises or in any way connected with the Premises or with any of the Improvements or personal property on the Premises;

(b) The death or injury of any person, including Tenant or any person who is an employee or agent of Tenant, or by reason of the damage to or destruction of any property, including property owned by Tenant or any person who is an employee or agent of Tenant, caused or allegedly caused by either (1) the condition of the Premises or some building or improvement on the Premises, or (2) some act or omission on the Premises of Tenant or any person in, on, or about the Premises with the permission and consent of Tenant;

(c) Any work performed on the Premises or materials furnished to the Premises at the instance or request of Tenant or any person or entity acting for or on behalf of Tenant; or

(d) Tenant's failure to perform any provision of this lease or to comply with any requirement of law or any requirement imposed on Tenant or the Premises by any duly authorized governmental agency or political subdivision.

Liability Insurance

Section 8.02. Tenant shall, at Tenant's own cost and expense, procure and maintain during the entire term of this lease a broad form comprehensive coverage policy of public liability insurance issued by an insurance company licensed and admitted by the State of California insuring Tenant and Landlord against loss or liability caused by or connected with Tenant's occupation and use of the Premises under this lease in amounts and under the terms of El Cajon City Council Policy No. D-3, a copy of which is attached as Exhibit "B" hereto and incorporated herein by this reference.

Fire and Casualty Insurance

Section 8.03. Tenant shall, at Tenant's own cost and expense, at all times during the term of this lease, keep all Improvements on the Premises insured for their full replacement value by insurance companies authorized to do business in the State of California against loss or destruction by fire and the perils commonly covered under the standard extended coverage endorsement to fire insurance policies in the county where the Premises are located. If at any time a leasehold encumbrance is in existence, the policy shall also contain a standard lender endorsement.

Deposit of Insurance With Landlord

Section 8.04. Tenant shall, within ten (10) days after the execution of this lease and promptly thereafter when any such policy is replaced, rewritten, or renewed, deliver to Landlord a true and correct copy of each insurance policy required by this Article of this lease or a certificate executed by the insurance company or companies or their authorized agent evidencing that policy or policies.

Notice of Cancellation of Insurance

Section 8.05. Each insurance policy required under this Article shall contain a provision that it cannot be canceled for any reason unless at least ten (10) days' prior written notice of the cancellation is given to Landlord in the manner required by this lease for service of notices on Landlord by Tenant.

ARTICLE 9

CONDEMNATION

Total Condemnation

Section 9.01. If, during the term of this lease, fee title to all of the Premises or to all of the Improvements, or the entire leasehold estate of Tenant is taken under the power of eminent domain by any public or quasi-public agency or entity (a "Total Taking"), this lease shall terminate as of 12:01 a.m. on whichever of the following occurs first: (1) the date legal title becomes vested in the agency or entity exercising the power of eminent domain, or (2) the date actual physical possession is taken by the agency or entity exercising the power of eminent domain. Thereafter, both Landlord and Tenant shall be released from all obligations under this lease, except those specified in Section 9.05.

Partial Taking—Restaurant

Section 9.02. If at any time during the term of this lease, a taking of the adjacent

Restaurant occurs, although the Premises are not taken, Tenant shall have the right to terminate this lease without penalty subject to the terms of Section 9.04 herein.

Condemnation Award

Section 9.03. Any compensation or damages awarded or payable because of the taking of all or any portion of the Premises by eminent domain shall be allocated between Landlord and Tenant as follows:

(a) All compensation or damages awarded or payable because of the taking by eminent domain of any land that is part of the Premises shall be paid to and be the sole property of Landlord, free and clear of any claim of Tenant or any person claiming rights to the Premises through or under Tenant;

(b) All compensation or damages awarded or payable because of any Improvements constructed or located on the portion of the Premises taken by eminent domain when this lease is terminated because of the taking by eminent domain, whether all or only a portion of the Premises is taken by eminent domain, shall belong to and be the sole property of Tenant; and

(c) Any severance damages awarded or payable because only a portion of the Premises is taken by eminent domain shall be the sole and separate property of Landlord.

ARTICLE 10

ASSIGNMENT AND SUBLEASING

No Assignment Without Landlord's Consent

Section 10.01. Tenant may assign this lease or any interest in this lease, subject to the prior written consent of Landlord, which shall not be unreasonably withheld or delayed, provided that the proposed assignee is financially qualified and has sufficient experience in the operation and management of restaurants, to perform all of the agreements, undertakings, and covenants of this lease and all other agreements entered into by Tenant which relate to the management, operation, maintenance, construction, and restoration of the Improvements and the Premises. Landlord shall have thirty (30) days after receipt of information regarding a proposed assignee to notify Tenant of whether it consents or does not consent to the proposed assignment. Absent any notification of Landlord during the 30-day period, Landlord shall be conclusively deemed to have consented to the assignment. Consent by Landlord to one assignment shall not be deemed to be consent to any subsequent assignment. Any assignment made contrary to the terms of this Section shall be null and void unless otherwise permitted by this Article.

Tenant's Right to Sublease

Section 10.02. Tenant shall have the right to sublease all or any portion of the Premises from time to time, and at all times during the term of this lease, without Landlord's consent; provided, however, that the following conditions are met:

- (a) The term of any sublease shall not extend beyond the term of this lease;
- (b) Any and all subleases shall be expressly made subject to all of the terms, covenants, and conditions of this lease; and
- (c) Any subtenant shall be required to attorn to Landlord in the event of Tenant's default under this lease.

Transfers to or by Corporation

Section 10.03. Notwithstanding Section 10.01 of this lease, Tenant may, without the prior consent of Landlord, transfer and assign all of Tenant's interest under this lease and the leasehold estate created under this lease to a corporation now or hereafter organized in which Tenant owns at least ninety percent (90%) of all outstanding shares of stock. If Tenant is a corporation, or if Tenant's interest in this lease is assigned to a corporation under the sentence above, any transfer or assignment of any stock or interest in the corporation totaling in the aggregate more than twenty percent (20%) of all stock or interest in the corporation shall be considered an assignment of this lease requiring the prior written consent of Landlord and subject to the standards set forth in Section 10.01; provided, however, that any transfer of shares to a shareholder's spouse, children, or grandchildren caused by the shareholder's death shall be excepted from this requirement.

ARTICLE 11

DEFAULT AND REMEDIES

Continuation of Lease in Effect

Section 11.01. Should Tenant breach this lease and abandon the Premises before the natural expiration of the lease's term, Landlord may continue this lease in effect by not terminating Tenant's right to possession of the Premises, in which event Landlord shall be entitled to enforce all Landlord's rights and remedies under this lease, including the right to recover the rent specified in this lease as it becomes due under this lease.

Termination and Unlawful Detainer

Section 11.02. In the event of a tenant default under this lease, Landlord may terminate this lease by written notice and may also bring an action in addition to or in lieu of

any other rights or remedies of Landlord to reenter and regain possession of the Premises by the laws of unlawful detainer of the State of California then in effect.

Breach and Default by Tenant

Section 11.03. All covenants and agreements contained in this lease are declared to be conditions of this lease and to the term hereby leased to Tenant. Should Tenant fail to perform any covenant, condition, or agreement contained in this lease and the default is not cured within thirty (30) days after written notice of the default is served on Tenant by Landlord (except for the failure to pay rent which shall require three (3) days' notice), then Tenant shall be in default under this lease. In addition to Tenant's failure to perform any covenant, condition, or agreement contained in this lease within the cure period permitted by this Section, the following shall constitute a default by Tenant under this lease:

(a) The appointment of a receiver to take possession of the Premises or the Improvements, or of Tenant's interest in, to, and under this lease, the leasehold estate, or of Tenant's operations of the Premises for any reason, including, without limitation, assignment for the benefit of creditors or voluntary or involuntary bankruptcy proceedings, when not released within sixty (60) days;

(b) An assignment by Tenant for the benefit of creditors; or the voluntary filing by Tenant or the involuntary filing against Tenant of a petition, other court action, or suit under any law for the purpose of (1) adjudicating Tenant a bankrupt, (2) extending time for payment, (3) satisfaction of Tenant's liabilities, or (4) reorganization, dissolution, or arrangement on account of, or to prevent, bankruptcy or insolvency; provided, however, that in the case of an involuntary proceeding, if all consequent orders, adjudications, custodies, and supervisions are dismissed, vacated, or otherwise permanently stayed within ninety (90) days after the filing or other initial event, then Tenant shall not be in default under this Section; and

(c) The subjection of any right or interest of Tenant to or under this lease to attachment, execution, or other levy, or to seizure under legal process when the claim against Tenant is not released within 90 days.

Cumulative Remedies

Section 11.04. The remedies given to Landlord in this Article shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law and elsewhere provided in this lease.

Waiver of Breach

Section 11.05. The waiver by Landlord of any breach by Tenant of any of the

provisions of this lease shall not constitute a continuing waiver or a waiver of any subsequent breach by Tenant of either the same or a different provision of this lease.

Surrender of Premises

Section 11.06. On expiration or earlier termination of this lease, Tenant shall surrender the Premises and all Improvements in or on the Premises to Landlord in as good, safe, and clean condition as practicable, reasonable wear and tear excepted.

ARTICLE 12

OTHER PROVISIONS

Force Majeure

Section 12.01. Except as otherwise expressly provided in this lease, if the performance of any act required by this lease to be performed by either Landlord or Tenant is prevented or delayed by reason or any act of God, strike, lockout, labor trouble, inability to secure materials, restrictive governmental laws or regulations, or any other cause (except financial inability) not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay will be excused. However, nothing contained in this Section shall excuse the prompt payment of rent by Tenant as required by this lease or the performance of any act rendered difficult or impossible solely because of the financial condition of the party required to perform the act.

Notices to Landlord

Section 12.02. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this lease or by law to be served on or given to Landlord by Tenant shall be in writing and shall be deemed duly served and given when personally delivered to Landlord, to any managing employee of Landlord, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, and sent by express mail that allows for tracking, addressed to Landlord at 200 East Main Street, El Cajon, California 92020. Landlord may change Landlord's address for the purpose of this section by giving written notice of that change to Tenant in the manner provided in Section 12.03.

Notices to Tenant

Section 12.03. Except as otherwise provided by law, any and all notices or other communications required or permitted by this lease or by law to be served on or given to Tenant by Landlord shall be in writing and shall be deemed duly served and given when personally delivered to Tenant, to any managing employee of Tenant, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid,

and sent by express mail that allows for tracking, addressed to Tenant at 215-233 East Main Street, California 92020. Tenant may change Tenant's address for the purpose of this section by giving written notice of that change to Landlord in the manner provided in Section 12.02.

Governing Law

Section 12.04. This lease, and all matters relating to this lease, shall be governed by the laws of the State of California in force at the time any need for interpretation of this lease or any decision or holding concerning this lease arises. Any such action shall be brought in the Superior Court for the County of San Diego, East County Division. Tenant hereby expressly waives any right to remove any such action from San Diego County as otherwise permitted by California Code of Civil Procedure section 394.

Binding on Heirs and Successors

Section 12.05. This lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, but nothing in this Section shall be construed as a consent by Landlord to any assignment of this lease or any interest in the lease by Tenant except as provided in Article 10 of this lease.

Partial Invalidity

Section 12.06. If any provision of this lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this lease shall remain in full force and effect unimpaired by the holding.

Sole and Only Agreement

Section 12.07. This instrument constitutes the sole and only agreement between Landlord and Tenant respecting the Premises, the leasing of the Premises to Tenant, the construction of the outside dining facilities described in this lease on the Premises, and the lease terms set forth in this lease; and correctly sets forth the obligations of Landlord and Tenant to each other as of its date. Any agreements or representations respecting the Premises, their leasing to Tenant by Landlord, or any other matter discussed in this lease not expressly set forth in this instrument are null and void.

Time of Essence


Section 12.08. Time is expressly declared to be of the essence of this lease.

Memorandum of Lease for Recording

Section 12.09. Neither Landlord nor Tenant shall record this lease without the written consent of the other. However, Landlord and Tenant shall, at the request of either at any time during the term of this lease, execute a memorandum or "short form" of this lease for purposes of, and in a form suitable for, recordation. The memorandum or "short form" of this lease shall describe the parties, set forth a description of the leased premises, specify the term of this lease, incorporate this lease by reference, and include any other provisions required by law.

EXECUTED on November 22, 2002, at El Cajon, California.

EL CAJON REDEVELOPMENT AGENCY

By 
Bill Garrett, Executive Director

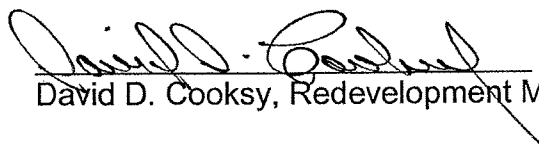
ATTEST:


Marilynn Linn, Secretary

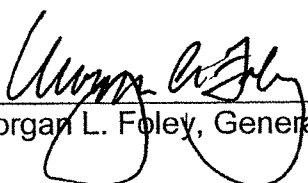
TENANT

By:  11-21-02
Domenico Donato

APPROVED AS TO CONTENT:


David D. Cooksy, Redevelopment Manager

APPROVED AS TO FORM:


Morgan L. Foley, General Counsel

COUNCIL DATE: 11-12-02
ITEM#: Closed Session

FIRST AMENDMENT TO GROUND LEASE

THIS FIRST AMENDMENT TO GROUND LEASE (the "First Amendment"), is made and entered into effective this 22 day of JANUARY, 2003, by and between the EL CAJON REDEVELOPMENT AGENCY, a public body corporate and politic, (the "Landlord") and DOMENICO DONATO (the "Tenant").

RECITALS

1. Landlord and Tenant have entered into that certain Ground Lease, dated November 22, 2002 (the "Lease"), by which Landlord and Tenant established the terms and conditions for lease, by Landlord, to Tenant, of that certain real property located on approximately 942 square feet of land adjacent to property leased or owned by Tenant at 215-233 East Main Street, El Cajon, California, as more particularly described in the Lease (the "Premises").

2. The parties desire to amend the lease to change the area leased by the Tenant, from the Landlord, thereby redefining the term, "Premises", adjusting the rent for the Premises (as redefined), and limiting the use of portions of the Premises.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Section 1. Section 1.01 to the lease is hereby amended to read as follows:

Section 1.01. For and in consideration of the rents to be paid and covenants to be performed by Tenant under this lease, Landlord agrees to lease the Premises to Tenant, and Tenant agrees to lease the Premises from Landlord, on the terms and conditions set forth in this lease. Except as expressly otherwise provided in this lease, "the Premises" includes the right-of-way, exclusive of any right of access to or from the Prescott Promenade, El Cajon, and further exclusive of any improvements now and subsequently located on the Premises, notwithstanding that any improvements may, or shall be, construed as affixed to and as constituting part of the described Premises, and without regard to whether ownership of the improvements is in Landlord or in Tenant. Notwithstanding the foregoing, the Premises shall include a portion of right-of-way, which shall be restricted in use by the Tenant, and shall remain open to the public, and maintained by the Landlord, and shall be designated as "Restricted Premises" in Exhibit "A" of this Lease. P

Section 2. Section 2.01 to the Lease is hereby amended to read as follows:

Section 2.01. Tenant agrees to pay to Landlord annual rent (the "Rent") for each year during the term of this lease in the following amounts: \$792.28 per year. The Rent is calculated as follows: Patio space on Prescott Promenade – 492 square feet; sidewalk area – 450 square feet; for a total of unrestricted leased area of 942 square feet @ \$.84 per square foot; Restricted Premises – 205 square feet @ \$1.00 per 205 square feet. Should the actual square footage of unrestricted leased area prove greater than 942 square

feet, Tenant agrees to adjust rent to pay for the actual square footage of the Premises, except that in no circumstances is rent to be less than \$792.28 per year. Should the actual square footage of the Restricted Premises prove greater or less than 205 square feet, the annual rent for this leased area shall remain \$1.00.


Section 3. Exhibit "A" to the lease is hereby replaced by a new Exhibit "A", attached hereto as Exhibit 1 to this First Amendment, and made a part of the lease by this reference.

Section 4. Except as otherwise amended by this First Amendment, the lease shall remain in full force and effect.

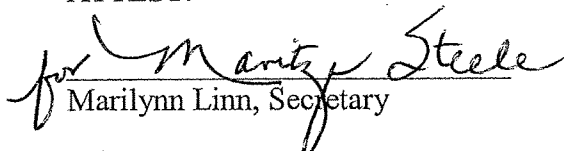
IN WITNESS WHEREOF, Landlord has caused this First Amendment to Ground Lease to be signed and executed on its behalf by its Executive Director, duly attested by its Secretary, and the Tenant has signed and executed this First Amendment to Ground Lease, effective the date first written above.

"LANDLORD"

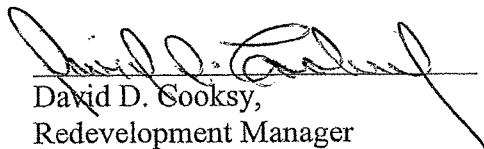
EL CAJON REDEVELOPMENT
AGENCY

By 
Bill Garrett, Executive Director

ATTEST:


Marilynn Linn, Secretary

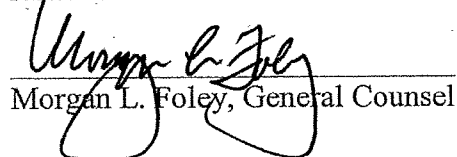
APPROVED AS TO CONTENT:


David D. Gooksy,
Redevelopment Manager

"TENANT"


Domenico Donato

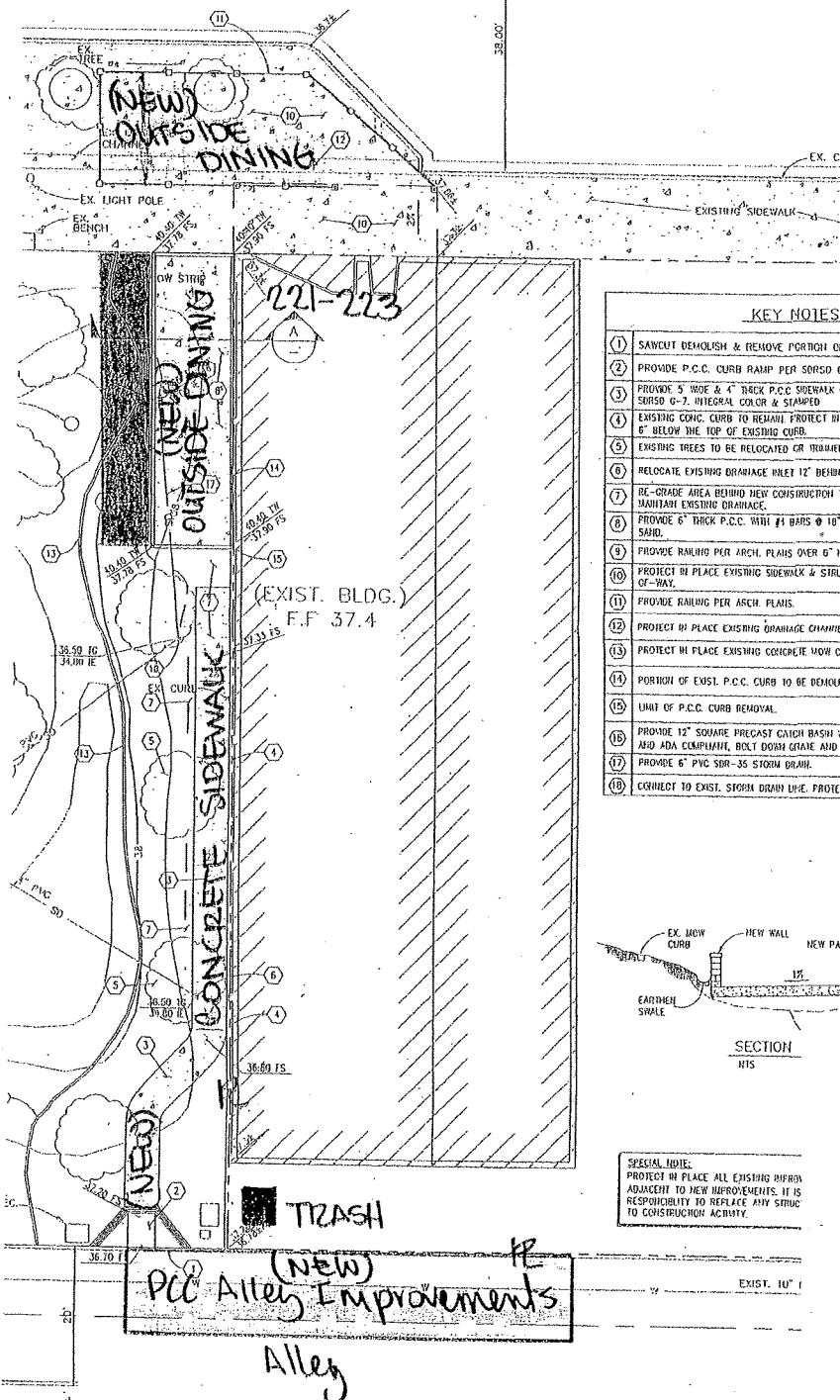
APPROVED AS TO FORM:


Morgan L. Foley, General Counsel

COUNCIL DATE: 11/12/02
ITEM#: 10.

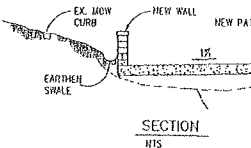
EXHIBIT "1"

EAST MAIN STREET



KEY NOTES

- (1) SAWCUT DEMOLISH & REMOVE PORTION OF
- (2) PROVIDE P.C.C. CURB RAMP PER SORSO 6
- (3) PROVIDE 5" WIDE & 4" THICK P.C.C. SIDEWALK 6 SORSO 6-7, INTEGRAL COLOR & STAMPED
- (4) EXISTING CONC. CURB TO REMAIN PROTECT IN 6" BELOW THE TOP OF EXISTING CURB.
- (5) EXISTING TREES TO BE RELOCATED OR REMOVED
- (6) RELOCATE EXISTING DRAINAGE INLET 12" BEHIND RE-GRADE AREA BEHIND NEW CONSTRUCTION TO MAINTAIN EXISTING DRAINAGE.
- (7) PROVIDE 6" THICK P.C.C. WITH #1 BARS @ 10" SAND.
- (8) PROVIDE RAILING PER ARCH. PLANS OVER 6" IN
- (9) PROTECT IN PLACE EXISTING SIDEWALK & STRIP OF-WAY.
- (10) PROVIDE RAILING PER ARCH. PLANS.
- (11) PROTECT IN PLACE EXISTING DRAINAGE CHANNEL.
- (12) PROTECT IN PLACE EXISTING CONCRETE MOW CO
- (13) PORTION OF EXIST. P.C.C. CURB TO BE DEMOLISH
- (14) UNIT OF P.C.C. CURB REMOVAL.
- (15) PROVIDE 12" SQUARE PRECAST CATCH BASIN IN AND ADA COMPLIANT, BOLT DOWN GRATE AND F
- (16) PROVIDE 6" PVC SDR-35 STORM DRAIN.
- (17) CONNECT TO EXIST. STORM DRAIN LINE. PROTECT



SPECIAL NOTE:
PROTECT IN PLACE ALL EXISTING IRRIGATION ADJACENT TO NEW IMPROVEMENTS. IT IS RESPONSIBILITY TO REPLACE ANY STRUCTURE TO CONSTRUCTION ACTIVITY.