Steven M. Strauss, State Bar No. 099153
Michael S. Levinson, State Bar No. 104155
Paul A. Tyrell, State Bar No. 193798
PROCOPIO, CORY, HARGREAVES
& SAVITCH LLP
530 B Street, Suite 2100
San Diego, California 92101
Telephone: (619) 238-1900
Facsimile: (619) 235-0398

Casey Gwinn, City Attorney
Anita M. Noone, Assistant City Attorney
James M. Chapin, Senior Deputy
California State Bar No. 118530
OFFICE OF THE CITY ATTORNEY
CIVIL DIVISION
1200 Third Avenue, Suite 1100
San Diego, CA 92101
Telephone: (619) 533-5800
Facsimile: (619) 533-5856

Attorneys for Defendant and Cross-Complainant
City of San Diego

FILED
CIVIL BUSINESS OFFICE 9
CENTRAL DIVISION

2004 JAN 26 A 11: 57

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

CHARGERS FOOTBALL COMPANY, LLC, a California limited liability company, Plaintiff, v. CITY OF SAN DIEGO, a municipal corporation, Defendant.	Case No. GIC 824587 **CROSS-COMPLAINT FOR DECLARATORY RELIEF, ACCOUNTING AND INJUNCTIVE RELIEF** Dept. 66 Judge: Charles R. Hayes
CITY OF SAN DIEGO, a municipal corporation, Cross-Complainant, v. CHARGERS FOOTBALL COMPANY, LLC, a California limited liability company, and ROES 1-50, Cross-Defendants.	

Cross-Complainant City of San Diego ("the City") alleges as follows:

NATURE OF THE CASE

1. This case arises out of the contractual relationship between the City and the Chargers Football Company, LLC ("the Chargers"). The City and the Chargers (as successors to Chargers Football Company, a California limited partnership) are parties to the 1995 Agreement for Partial Use and Occupancy of San Diego Jack Murphy Stadium, as supplemented ("the Use Agreement"). Among other things, the Use Agreement provides that the Chargers must play their home games at Qualcomm Stadium (formerly Jack Murphy Stadium, "the Stadium") until the year 2020 and pay roughly 10% of their gross stadium income to the City. In return, the City spent more than $78 million on stadium improvements and a new Chargers practice facility.

2. On March 4, 2003, the Chargers delivered a Renegotiation Notice to the City, claiming that a "Triggering Event" had occurred under the "Renegotiation Rights" provision of the Use Agreement, Section 31. The Chargers requested that the City commence to negotiate, pursuant to Section 31, to "offset the impact on the Chargers" of the purported Triggering Event. The Chargers calculated that a Triggering Event had purportedly occurred by a margin of $4.3 million; notwithstanding that calculation, the Chargers claimed that the City was required to provide a new stadium *or* annual payments of $20 million to "offset the impact" of the purported Triggering Event. The $20 million figure was based on a supposed disparity in gross local revenues between the Chargers and other NFL teams.

3. In its First Cause of Action, the City seeks a declaration that the Renegotiation Notice is invalid. Section 31 provides that the Chargers may *only* send a Renegotiation Notice upon the occurrence of a "Triggering Event," which is determined by applying an artificial mathematical formula set forth in Section 31. The City believes the Renegotiation Notice is invalid because a Triggering Event did not occur.

4. In its Second Cause of Action, the City seeks an alternative declaration interpreting the phrase "impact on the Chargers of the Triggering Event." A valid Renegotiation Notice requires the parties to negotiate in good faith for 90 days on the limited subject of amending the Use Agreement to "offset the impact on the Chargers of the Triggering Event." The City and the

Chargers disagree on the meaning of the phrase "impact on the Chargers of the Triggering Event." As a result, the parties are at odds over whether there is any "impact" and, if so, the subject matter and scope of the required negotiations. Therefore, even if the Court finds that the Renegotiation Notice was valid, the City seeks an alternative declaration interpreting the phrase "impact on the Chargers of the Triggering Event." Specifically, the City asks the Court for a declaration interpreting that phrase as referring to actual financial hardship suffered by the Chargers, if any. Such an interpretation is consistent with the parties' intent and will provide the parties with direction as to the proper subject matter and scope of the renegotiations, if any are required.

5. In its Third Cause of action, the City seeks an accounting because the Chargers have not provided information sufficient to allow the City to fully assess the Chargers' assertion that a Triggering Event occurred or that the Chargers have been financially impacted.

6. Finally, in its Fourth Cause of Action, the City seeks injunctive relief to prevent the Chargers from asserting or invoking contractual rights they do not have.

PARTIES

7. The City is, and at all times herein mentioned was, a California municipal corporation chartered pursuant to the Constitution and laws of the State of California and located in the County of San Diego, California.

8. The Chargers are, and at all times herein mentioned were, a California limited liability company with its principal place of business in San Diego, California. The Chargers own and operate the San Diego Chargers, a professional football franchise and member of the National Football League ("the NFL").

9. The City is ignorant of the true names and capacities of the cross-defendants sued herein as Roes 1-50, inclusive, and therefore sues those cross-defendants by such fictitious names. The City will amend this cross-complaint to allege their true names and capacities when they are ascertained. The City is informed and believes and thereon alleges that each of the fictitiously named cross-defendants is responsible in some manner for the occurrences herein alleged and that the City's injuries as herein alleged were proximately caused by such cross-defendants.

10. The City is informed and believes and thereon alleges that, at all times herein mentioned, each of the cross-defendants was the agent of each of the remaining cross-defendants, and in doing the things hereinafter alleged, was acting within the scope of said agency and with the permission and consent of its co-cross-defendants.

VENUE

11. Venue is proper in this judicial district because the parties reside in the County of San Diego, State of California, each of the acts herein alleged was either committed or intended to have substantial effect in this judicial district, and the Use Agreement was executed and intended to be performed in this judicial district.

GENERAL ALLEGATIONS

12. In May of 1995, the Chargers and the City executed a 1995 Agreement for Partial Use and Occupancy of San Diego Jack Murphy Stadium, as modified by a supplement in 1997 and three supplements in 2003 (collectively, "the Use Agreement"). (The 1995 Agreement and the four supplements are attached hereto as Exhibits 1 – 5, respectively.) The Use Agreement obligates the Chargers to play their home games at the Stadium through the year 2020 and pay the City roughly ten percent (10%) of certain revenue generated by home games. In return for the Chargers' promises and performance, the City agreed to renovate the Stadium and build a new practice facility for the Chargers at a total cost of more than $78 million.

Section 31, The Renegotiation Rights Provision.

13. The Use Agreement contains a Renegotiation Rights provision, Section 31, which entitles the Chargers to deliver a Renegotiation Notice, but *only* under certain narrow and precisely circumscribed conditions referred to as a "Triggering Event." Determination of whether a Triggering Event has occurred involves the application of a precise formula to certain narrow categories of player payments and revenues. Significant categories of expenses and revenues were not included in the Triggering Event formula. As a result, a Triggering Event occurs when, and only if, on December 1 of any Triggering Year, the sum of the following three specifically-identified items of Team Salary and certain benefit payments to Charger players on a cash basis exceeds the "Team Salary Cap" for that year:

(i) the actual "Team Salary" (as such terms are defined in Article XXIV, Section 6 of the 1993 Collective Bargaining Agreement except as calculated on a cash basis) of the Chargers for such year; plus

(ii) the total actual benefit payments provided by the Chargers to its players for such year; plus

(iii) the total actual benefit payments provided by the NFL to Chargers' players for such year.

14. "Team Salary Cap" and "Defined Gross Revenues" are defined in Section 31(a) as follows:

> **'Team Salary Cap'** shall mean for any year, on a cash basis, 75% of the Defined Gross Revenues for such year, divided by the number of teams playing in the NFL during such year.
>
> **'Defined Gross Revenues'** shall mean the aggregate revenues received or to be received on an accrual basis, for or with respect to any 'League Year' ... during the term of this Agreement by the NFL and all NFL Teams (and their designees), from the following sources only: (i) regular season, pre-season, and post-season gate receipts ...; and (ii) proceeds from the sale, license, or other conveyance of the right to broadcast for exhibit NFL pre-season, regular season, and play-off games on network and national cable television....

15. Pursuant to Section 31(b)(ii), upon the occurrence of a Triggering Event, the Chargers have 60 days after December 1 of the Triggering Year to provide the City with a Renegotiation Notice, which starts a 90-day renegotiation period (herein, "the renegotiation period".) With respect to the Renegotiation Notice issued by the Chargers in March 2003, the parties have agreed to extend the renegotiation period to May 1, 2004. (See Exhibit 5.) During the renegotiation period, the parties must negotiate "in good faith for an amendment to [the Use] Agreement to offset the impact on the Chargers of the Triggering Event."

16. If there is an impact and the parties do not agree on an amendment during the renegotiation period, then the provisions of Section 31(b)(iii) take effect. Section 31(b)(iii) provides that the Chargers may, at any time in the ensuing 18 months, sign a letter of intent with a third party for relocation to a new stadium. Section 31(b)(iii) further provides that, if such a letter of intent is signed, the City has 90 days to "execute an amendment ... which meets the financial and overall economic terms of the proposed third party transaction." If the City does not execute

such an amendment within that time, the Chargers may terminate the Use Agreement at any time within 60 days thereafter.

17. If the Chargers then elect to terminate the Use Agreement, they must send written notice of termination and pay a termination fee to the City. If the Chargers do not give written notice of termination, or fail to make the required payment, the Use Agreement remains in full force and effect.

The Chargers' March 4, 2003 Renegotiation Notice.

18. The Chargers claim that a Triggering Event occurred on December 1, 2002 and that the 60-day period for the Chargers to send a Renegotiation Notice began on that date. The parties agreed to toll the commencement of the 60-day period until March 1, 2003, subject to the City's reservation of all rights under the Use Agreement to challenge the occurrence and timing of the alleged Triggering Event. (See Exhibit 2.)

19. On March 4, 2003, the Chargers purported to "pull the Trigger" by delivering a Renegotiation Notice to the City. The Renegotiation Notice stated that a Triggering Event had occurred and that the renegotiation period had commenced. (A copy of the Renegotiation Notice is attached as Exhibit 6.) That same day, the Chargers (1) sent a letter to the Mayor and City Council, (2) sent a separate letter to their fans and (3) issued a press release, all stating that negotiations for a new stadium were needed to "ensure the long term future of the team in San Diego." (Copies of the above-described letters and press release are attached as Exhibits 7, 8 and 9.)

20. The Chargers have stated that they do not intend to engage in negotiations with third parties regarding relocation to another stadium.

21. On March 12, 2003, the Chargers produced a 4-page document entitled "San Diego Chargers Trigger Event Calculation Summary" in which the Chargers claimed that they met the criteria for a Triggering Event by $4,413,559. (A copy of the Chargers' March 12 summary is attached as Exhibit 10.) On March 24, 2003, the Chargers provided an amended Triggering Event calculation in which they contended that they met the criteria for a Triggering Event by $4,325,084 and provided more detailed information concerning their calculation. (A copy of the March 24 Triggering Event calculation summary is attached as Exhibit 11.)

The Renegotiation Notice Is Invalid.

22. The City has asked to review source and back-up information supporting the Chargers' Triggering Event calculation. Some information has been provided by the Chargers, but despite the City's repeated requests for further information, the Chargers have not provided sufficient information to support their Triggering Event calculation.

23. Based on the limited information provided to date, as set forth in Paragraphs 24-28, below, it appears that in order to satisfy the Triggering Event formula, the Chargers have improperly inflated their expenses by adding some that the formula does not permit. As such, no Triggering Event has occurred and the Renegotiation Notice is invalid. Moreover, the Chargers' failure, and perhaps inability, to provide sufficient information to support their calculation should be sufficient to invalidate the Renegotiation Notice. The apparent errors in the Chargers' Triggering Event calculation include at least the following:

24. First, the Chargers claimed a "Team Salary" of $76.5 million. That number is grossly overstated because a substantial percentage of that amount (more than $20 million) was paid after the December 1, 2002 cut-off date in the Use Agreement. The post-December 1 payments are improper and must not be included in the Triggering Event calculation because the Use Agreement calls for the Chargers' Team Salary (and benefit payments) to be measured on a *cash* basis "on December 1" of the Triggering Year.

25. Second, like Team Salary, the Chargers failed to apply the December 1 cut-off date to their calculation of benefit payments to Charger players. Of the $12.7 million in total benefit payments claimed by the Chargers, the City presently estimates that close to $3 million was paid after December 1, 2002. Benefit payments made after December 1, 2002 must not be included in the Triggering Event calculation.

26. Third, more than $10 million of the $12.7 million of benefit payments must be excluded because they were not made *to* Chargers' players as specified by the Triggering Event definition. The Triggering Event definition limits allowable benefits to those payments provided "to Chargers' players." Ignoring that limitation, the Chargers' calculation lists such items as workers compensation ($2.8 million), payroll taxes ($1.6 million), player pension plan

($1.5 million), player medical plan ($800,000) and supplemental disability plan ($200,000), none of which are payments provided *to* Chargers' players. Instead, those payments are provided *to* third parties such as insurance companies, government agencies, trustees and administrators. Payments not provided *to* Chargers' players must not be included in the Triggering Event calculation.

27. Fourth, the Chargers included in their calculation of benefit payments a "Minimum Salary Benefit" of $848,530. "Minimum Salary Benefit" is neither a "benefit" nor within the definition of "Team Salary" notwithstanding the Chargers' attempt to characterize it otherwise. The "Minimum Salary Benefit" must not be included in the Triggering Event calculation.

28. Fifth, the Chargers claimed a "Team Salary Cap" of almost $85 million. The Chargers have not provided sufficient information to demonstrate the accuracy of that amount, especially with regard to television revenues.

29. For at least the reasons stated in the preceding paragraphs, a Triggering Event has not occurred and, therefore, the Renegotiation Notice is invalid.

The Parties' Dispute Regarding "Impact."

30. Even if a Triggering Event occurred, the subject matter of negotiations required during the renegotiation period is limited to the "impact on the Chargers of the Triggering Event," if any:

> Upon the delivery of a Renegotiation Notice, the parties hereto shall negotiate in good faith ... to agree upon mutually acceptable terms for *an amendment to this Agreement to offset the impact on the Chargers of the Triggering Event*.... (Use Agreement, § 31(b)(ii), emphasis added.)

31. The Chargers have acknowledged that the phrase "offset the impact on the Chargers of the Triggering Event" is ambiguous and subject to different interpretations. The City asks the Court to issue declaratory relief as to the interpretation of that phrase.

32. The Chargers claimed during negotiations that the "impact on the Chargers of the Triggering Event" is equal to the Chargers' shortfall in gross local revenue compared to the NFL average. The Chargers further claimed that the annual amount of this "impact" is $20 million, and that it must be "offset" by a new stadium deal or by $20 million in annual payments by the City to

the Chargers.

33. The City disputes the Chargers' proffered interpretation of "impact on the Chargers of the Triggering Event." The City contends that the term "impact on the Chargers of the Triggering Event" must be construed in accordance with the intent of the parties. Because the Renegotiation Rights provision was intended to protect the Chargers only in the event of true financial hardship, the purpose of the renegotiation period is to determine whether the Chargers were suffering actual financial hardship and, if necessary, accommodate that financial impact. If the Chargers are not suffering financial hardship, i.e., losing money, there is nothing to negotiate.

34. The basis and support for the Chargers' impact calculation is unknown to the City. The City cannot ascertain if and to what extent the Chargers have suffered financial hardship without financial information of the Chargers' revenues and expenses (for all years from 1994—the year of initial negotiation of the Use Agreement—through the present). To that end, the City requested information regarding the "impact on the Chargers of the Triggering Event." This included requests for profit and loss information. The Chargers flatly refused to produce profit and loss information.

35. Due to the disputes regarding the validity of the Renegotiation Notice and the interpretation of the "impact" language, the City cannot determine with certainty whether the Chargers are in breach of the Use Agreement and whether the City may be entitled to additional relief arising from the issuance of the Renegotiation Notice or the Chargers refusal to negotiate regarding certain issues.

36. This cross-complaint for declaratory relief, accounting and injunctive relief is proper according to the terms of the Use Agreement which provides, in Section 25(a), that the City is entitled to assert any and all rights and remedies at law or in equity.

FIRST CAUSE OF ACTION

(Declaratory Relief re Renegotiation Notice – Against All Cross-Defendants)

37. The City repleads and incorporates Paragraphs 1 through 36.

38. An actual controversy has now arisen between the Chargers and the City regarding the Use Agreement and the rights and obligations of the parties thereunder.

39. The dispute includes a disagreement regarding the validity of the Renegotiation Notice and the related disputes regarding whether or not a Triggering Event has occurred and the sufficiency of the documents provided by the Chargers.

40. A judicial declaration resolving this dispute is necessary and appropriate in order that the City may ascertain its rights and duties under the Use Agreement, whether or not those rights and obligations have been properly exercised and/or met in this instance and whether the Chargers are in breach of the Use Agreement. Specifically, the City requests the following declarations from the Court:

a. A Triggering Event has not occurred;

b. The Renegotiation Notice delivered by the Chargers on March 4, 2003 is invalid;

c. The renegotiation period described in Section 31(b)(ii) has not commenced and the Chargers are not entitled to claim or exercise any rights granted pursuant to Section 31(b)(ii);

d. The Chargers are not entitled to claim or exercise any rights granted pursuant to Section 31(b)(iii) and may not take any steps toward relocation, including negotiating or entering into a letter of intent with any third parties regarding relocation.

SECOND CAUSE OF ACTION

(Declaratory Relief re "Impact" – Against All Cross-Defendants)

41. The City repleads and incorporates Paragraphs 1 through 40.

42. An additional actual controversy has arisen between the Chargers and the City regarding the Use Agreement and the rights and obligations of the parties thereunder.

43. This second dispute relates to the interpretation of the phrase "impact on the Chargers of the Triggering Event," and, depending on the interpretation of that phrase, determination of whether renegotiations are required and, if so, the proper subject matter and scope of such renegotiations.

44. If the Court determines that there has been a Triggering Event and that the Renegotiation Notice is valid, then a judicial declaration resolving this dispute is necessary and

appropriate in order that the City may ascertain its rights and obligations under the Use Agreement, whether or not those rights and obligations have been properly exercised and/or met in this instance and whether the Chargers are in breach of the Use Agreement. Specifically, the City requests the following declarations from the Court:

a. The phrase "impact on the Chargers of the Triggering Event" as set forth in Section 31(b)(ii) does not refer to the Chargers' shortfall in local gross revenues;

b. The phrase "impact on the Chargers of the Triggering Event" as set forth in Section 31(b)(ii) refers to the financial hardship, if any, being suffered by the Chargers;

c. No renegotiations are required pursuant to Section 31(b)(ii) if the Chargers are not suffering financial hardship;

d. The Chargers may not invoke Section 31(b)(iii) or exercise any rights thereunder (including negotiating or entering into a letter of intent with third parties for relocation) if there is no "impact on the Chargers of the Triggering Event";

e. With respect to the Renegotiation Notice delivered by the Chargers on March 4, 2003, there has been no "impact on the Chargers of the Triggering Event".

THIRD CAUSE OF ACTION

(Accounting – Against All Cross-Defendants)

45. The City repleads and incorporates Paragraphs 1 through 44.

46. The Chargers' March 4, 2003 renegotiation notice asserts that a Triggering Event has occurred which would require negotiations pursuant to Section 31(b). Pursuant to Section 31(b)(ii), "Upon delivery of a Renegotiation Notice, the parties hereto shall negotiate in good faith … to agree upon mutually acceptable terms for an amendment to this [Use] Agreement *to offset the impact on the Chargers of the Triggering Event*…." (emphasis added).

47. The Chargers' assertion that a Triggering Event has occurred involves complex accounts and disputes concerning the construction of the Section 31, application of the Triggering Event formula, determinations of "Team Salary Cap," "Team Salary" and "benefit payments" to Chargers' players, the "impact on the Chargers" of the alleged Triggering Event, and the Chargers' profitability, among other things.

48. An accounting is required so that the City is fully aware of its liability and exposure, if any, with regard to the Triggering Event. An accounting is also required so that the City is able to determine whether negotiations are required and, if so, to obtain the benefits of the renegotiation period. The basis and support for the Chargers' Triggering Event calculation is unknown to the City and cannot be ascertained without an accounting of the Chargers' revenues and expenses. The "impact on the Chargers" of the purported Triggering Event is also unknown to the City and cannot be ascertained without a complete accounting that also addresses the Chargers' profitability for all years from 1994 through the present.

FOURTH CAUSE OF ACTION

(Injunctive Relief – Against All Cross-Defendants)

49. The City repleads and incorporates Paragraphs 1 through 48.

50. The City has no adequate remedy at law for the injuries if will suffer if the Court does not issue injunctive relief to protect the City's rights and give effect to the judgment herein.

51. Therefore, the Chargers, their agents, attorneys and representatives must be enjoined and restrained from engaging in any further wrongful actions as described herein, including without limitation:

a. commencing or continuing the renegotiation period pursuant to Section 31(b)(ii);

b. taking any steps toward relocation, including negotiating or entering into a letter of intent with any third parties regarding relocation unless the Court finds that the Renegotiation Notice was valid and construes the phrase "impact on the Chargers of the Triggering Event" as requested by the City's second cause of action for declaratory relief; and/or

c. exercising any rights granted pursuant to Section 31(b)(iii) unless the Court finds that the Renegotiation Notice was valid, construes the phrase "impact on the Chargers of the Triggering Event" and until the parties have thereafter negotiated in good faith for at least 90 days pursuant to Section 31(b)(ii) for an amendment to the Use Agreement to offset such "impacts" in accordance with the Court's construction.

52. In addition, if the Court finds that any renegotiations are required pursuant to Section 31(b)(ii), the City requests that the Court issue an order restarting the renegotiation period so that the parties may engage in meaningful renegotiations based on the Court's declaration.

PRAYER FOR RELIEF

WHEREFORE, the City prays for relief as follows:

On the First Cause of Action for Declaratory Relief:

For a declaration as follows:

1. A Triggering Event has not occurred;

2. The Renegotiation Notice delivered by the Chargers on March 4, 2003 is invalid;

3. The renegotiation period described in Section 31(b)(ii) has not commenced and the Chargers are not entitled to claim or exercise any rights granted pursuant to Section 31(b)(ii);

4. The Chargers are not entitled to claim or exercise any rights granted pursuant to Section 31(b)(iii) and may not take any steps toward relocation, including negotiating or entering into a letter of intent with any third parties regarding relocation.

On the Second Cause of Action for Declaratory Relief:

For a declaration as follows:

1. The phrase "impact on the Chargers of the Triggering Event" as set forth in Section 31(b)(ii) does not refer to the Chargers' shortfall in local gross revenues;

2. The phrase "impact on the Chargers of the Triggering Event" as set forth in Section 31(b)(ii) refers to the financial hardship, if any, being suffered by the Chargers;

3. Section 31(b)(ii) does not require renegotiations if the Chargers are not suffering financial hardship;

4. The Chargers may not invoke Section 31(b)(iii) or exercise any rights thereunder (including negotiating or entering into a letter of intent with third parties for relocation) if there is no "impact on the Chargers of the Triggering Event";

5. With respect to the Renegotiation Notice delivered by the Chargers on March 4, 2003, there has been no "impact on the Chargers of the Triggering Event".

On the Third Cause of Action for Accounting:

1. For an accounting of the books and records of the Chargers relating to the Chargers' assertion that a Triggering Event has occurred, including an accounting of the Chargers' revenues and expenses;

2. For an accounting of all books and records of the Chargers which relate to the impact on the Chargers from the alleged Triggering Event including the Chargers' profit and loss information for all years from 1994 through the present, and such other information as is relevant to a determination of whether there has been financial hardship.

On the Fourth Cause of Action for Injunctive Relief:

For an order enjoining and restraining the Chargers, their agents, attorneys and representatives from engaging in any further wrongful actions as described herein, including without limitation:

1. commencing or attempting to commence the running of the renegotiation period pursuant to Section 31(b)(ii);

2. negotiating or entering into a letter of intent with third parties concerning relocation unless the Court finds that the Renegotiation Notice was valid and construes the phrase "impact on the Chargers of the Triggering Event" as requested by the City's second cause of action for declaratory relief; and/or

3. commencing or attempting to commence the exercise of any rights granted pursuant to Section 31(b)(iii) unless the Court finds that the Renegotiation Notice was valid, construes the phrase "impact on the Chargers of the Triggering Event" and until the parties have thereafter negotiated in good faith for at least 90 days pursuant to Section 31(b)(ii) for an amendment to the Use Agreement to offset such "impacts" in accordance with the Court's construction.

In addition, if the Court finds that any renegotiations are required pursuant to Section 31(b)(ii), the City requests that the Court issue an order restarting the renegotiation period so that the parties may engage in meaningful renegotiations based on the Court's declaration.

On all causes of action:

1. For costs of suit herein incurred;

2. For such other and further relief as this Court deems just and proper.

DATED: January 26, 2004

PROCOPIO CORY HARGREAVES
& SAVITCH LLP

By: Steven M. Strauss

Steven M. Strauss
Michael S. Levinson
Paul A. Tyrell
Attorneys for Defendant and Cross-Complainant
City of San Diego

Chargers Football Company, LLC, v. City of San Diego
San Diego Superior Court Case No. GIC 824587

FILED
CIVIL BUSINESS OFFICE 9
CENTRAL DIVISION

2004 JAN 26 A 11:57

CLERK SUPERIOR COURT
SAN DIEGO, CALIFORNIA

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is PROCOPIO, CORY, HARGREAVES & SAVITCH LLP, 530 B Street, Suite 2100, San Diego, California 92101. On January 26, 2004 I served the within documents:

CROSS-COMPLAINT FOR DECLARATORY RELIEF, ACCOUNTING AND INJUNCTIVE RELIEF

[ ] by transmitting via facsimile number (619) 235-0398 the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. A copy of the transmission confirmation report is attached hereto.

[X] by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

[ ] by placing the document(s) listed above in a sealed overnight envelope and depositing it for overnight delivery at San Diego, California, addressed as set forth below. I am readily familiar with the practice of this firm for collection and processing of correspondence for processing by overnight mail. Pursuant to this practice, correspondence would be deposited in the overnight box located at 530 "B" Street, San Diego, California 92101 in the ordinary course of business on the date of this declaration.

[ ] by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Harriet S. Posner
Carl Alan Roth
Skadden, Arps, Slate, Meagher & Flom LLP
300 South Grand Avenue, Suite 3400
Los Angeles, CA 90071-3144
Tel: 213-687-5000
Fax: 213-687-5600
Attorneys for Chargers Football Company, LLC

[X] *(State)* I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 26, 2004, at San Diego, California.

Pamela Tei Lewis