Memorandum

To : Mr. Robert H. Gustafson

Date September 16, 1987

From : Richard H. Ochsner RHO

Subject : Lease Extension

Your memo of September 10, 1987, expresses concern with Michele Hicks' memo to Verne Walton of September 8, 1987, regarding a lease between and . Michele's letter deals with a lease which had an original term of 20 years, with one five-year extension option. The lease has been amended from time to time to grant an additional five-year option, but at no time has the lessee ever had a legal right of possession for a term, including options, exceeding 35 years. Although the continued granting of these five-year options will eventually extend the overall term of the lease arrangement to more than 35 years, Ms. Hicks advised that there was no change in ownership since the remaining term of the lease, plus any renewal term, never exceeded 35 years.

You state that you are concerned about this advice, given the position we have taken on AB 114 that the granting of an option to extend a possessory interest does not, per se, constitute a change in ownership. You then ask "Would the answer be the same if the original lease was amended to extend for five more years (assuming the exercising of the option extended the original lease to 35 years)?"

I believe the answer to your question is set forth clearly in the paragraph on the second page of Michele's memorandum which is taken from our letter of July 13, 1981. Basically, there cannot be a change in ownership as long as the remaining lease term plus any renewal or extension options which have been granted to the lessee amount to a period of less than 35 years. Thus, a lessor with property under a lease with 29 years remaining on the term may grant a new five-year extension to the lessee once every five years, indefinitely, and there will never be a change in ownership under existing rules. These conclusions are based upon the provisions of the

Revenue and Taxation Code and property tax Rule 462. If there is a problem with this conclusion, please let us know wherein you feel we have misinterpreted the law.

RHO/rz

cc: Mr. Gordon P. Adelman
Mr. Verne Walton
Ms. Michele Hicks

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