

DUPLICATE

THE CITY OF SAN DIEGO



HODGES GOLF IMPROVEMENT CENTER, LLC

Percentage Rate Lease

DOCUMENT NO. 292941

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SAN DIEGO, CALIFORNIA

LEASE OUTLINE

SECTION 1: USES	1
1.1 <u>Premises</u>	1
1.2 <u>Uses</u>	1
1.3 <u>Related Council Actions</u>	1
1.4 <u>Quiet Possession</u>	2
1.5 <u>Easements and Reservations</u>	2
1.6 <u>Competent Management</u>	2
SECTION 2: TERM	3
2.1 <u>Commencement</u>	3
2.2 <u>Holdover</u>	3
2.3 <u>Quitclaim and Surrender of LESSEE'S Interest</u>	3
SECTION 3: RENT	3
3.1 <u>Time and Place of Payment</u>	3
3.2 <u>Rent</u>	4
3.3 <u>Payment Procedure</u>	6
3.4 <u>Gross Income</u>	7
3.5 <u>Inspection of Records</u>	8
3.6 <u>Delinquent Rent and Audit Fees</u>	9
3.7 <u>Unauthorized Use Charge</u>	10
3.8 <u>Payment for Water</u>	10
SECTION 4: ASSIGNMENT	11
4.1 <u>Time is of Essence; Provisions Binding on Successors</u>	11
4.2 <u>Assignment and Subletting</u>	11
4.3 <u>Additional Consideration to CITY</u>	12
4.4 <u>Encumbrance</u>	13
4.5 <u>Defaults and Remedies</u>	14
4.6 <u>Eminent Domain</u>	16
4.7 <u>MBE/WBE Assignment</u>	17
SECTION 5: INSURANCE RISKS/SECURITY	17
5.1 <u>Indemnity</u>	17
5.2 <u>Insurance</u>	17
5.3 <u>Waste, Damage, or Destruction</u>	19
SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS	20
6.1 <u>Acceptance of Premises</u>	20
6.2 <u>Entry and Inspection</u>	20
6.3 <u>Maintenance</u>	20
6.4 <u>Improvements/Alterations</u>	21
6.5 <u>Utilities</u>	21

6.6	<u>Liens</u>	21
6.7	<u>Taxes</u>	21
6.8	<u>Signs</u>	22
6.9	<u>Ownership of Improvements and Personal Property</u>	22
6.10	<u>Unavoidable Delay</u>	23
6.11	<u>Development Plan</u>	23

SECTION 7: GENERAL PROVISIONS 23

7.1	<u>Notices</u>	23
7.2	<u>Compliance with Law</u>	24
7.3	<u>CITY Approval</u>	24
7.4	<u>Nondiscrimination</u>	24
7.5	<u>Compliance with CITY'S Equal Opportunity Contracting Program</u>	24
7.6	<u>Partial Invalidity</u>	25
7.7	<u>Legal Fees</u>	25
7.8	<u>Number and Gender</u>	25
7.9	<u>Captions</u>	25
7.10	<u>Entire Understanding</u>	26
7.11	<u>CITY Employee Participation Policy</u>	26
7.12	<u>Drug-free Workplace</u>	26
7.13	<u>Disabled Access Compliance</u>	27
7.14	<u>CITY Option to Purchase</u>	28
7.15	<u>Standard of Employees</u>	28
7.16	<u>Relocation Payments</u>	28
7.17	<u>Limited Liability (LLC) Corporate Authority</u>	28

SECTION 8: SPECIAL PROVISIONS 28

8.1	<u>Resource Management Plan</u>	28
8.2	<u>Reporting Requirements</u>	28
8.3	<u>Noxious Weeds, Pests, and Erosion</u>	29
8.4	<u>No Warranty</u>	29
8.5	<u>Cutting of Trees</u>	29
8.6	<u>Hold Harmless, Flood Damage and Other Acts of God</u>	29
8.7	<u>Water Rights</u>	29
8.8	<u>Construction of Public Hiking, Biking and Riding Trails</u>	32
8.9	<u>LESSEE Responsibility for Preserving Environmental, Historical and Cultural Resource Sites</u>	32
8.10	<u>Public Access to Trails and/or Environmental, Historical, and Cultural Resource Sites</u>	33
8.11	<u>Hazardous/Toxic Waste</u>	33

SECTION 9: SIGNATURES	34
9.1 <u>Signature Page</u>	34
SECTION 10: EXHIBITS	35
10.1 <u>Parcel Map(s)</u>	35
10.2 <u>General Development Plan</u>	36
10.3 <u>Limited Liability Corporate Name</u>	37

**CITY OF SAN DIEGO
PERCENTAGE RATE LEASE**

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and HODGES GOLF IMPROVEMENT CENTER, LLC, a California Limited Liability Company, hereinafter called "LESSEE."

SECTION 1: USES

1.1 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, described as consisting of approximately 17.47 acres and further described in Exhibit "A" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises" or "leased premises." It is further agreed that the leasehold has not been surveyed however CITY and LESSEE agree to approximate acreage. The lease includes the right to use the water underneath the premises for the purpose of the lease only, subject to Section 8.7, Water Rights, hereof.

1.2 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of operating a golf driving range, golf school, and miniature golf course with restaurant, pro shop, putting green and vending machines, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

The use of the premises for any unauthorized purpose shall constitute a substantial default and subject this lease to termination at the sole option of the CITY.

LESSEE covenants and agrees to use the premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to continuously use the premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

1.3 Related Council Actions. By the granting of this lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the premises. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the leased premises. LESSEE shall diligently seek all entitlements and actions, from both CITY and other government agencies with jurisdiction over the

premises, as are necessary to develop and operate the uses contemplated by this lease, all at no cost to the CITY.

- 1.4 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold, and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises.

1.5 Easements and Reservations.

- a. CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the premises, together with the right to store and recapture water from the soils beneath the surface of the premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

Any injury that may result from the percolation, storage and/or recapture of water from the soil beneath the surface of the premises shall not be considered unreasonable or substantial interference, provided, however, that the CITY will reimburse LESSEE for physical damages or operational damages, if any, to the permanent improvements located on the leased premises resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage or operational damage as determined by CITY, provided, however, that rent reimbursement shall not constitute LESSEE'S sole legal remedy. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

- 1.6 Competent Management. Throughout the term of this lease agreement, LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a golf driving

range, golf school and miniature golf course with restaurant, pro shop, putting green and vending machines, and related activities in a fiscally responsible manner.

SECTION 2: TERM

- 2.1 Commencement. The term of this agreement shall be twenty-five (25) years commencing on the first day of the calendar month following execution by the City Manager. "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager.
- 2.2 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 2.3 Quitclaim and Surrender of LESSEE'S Interest. On execution of this lease, LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the premises. CITY may record such deed only on the expiration or earlier termination of this lease. In the event that CITY requires any subsequent quitclaim deed, LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor.

At the expiration or earlier termination of this lease, LESSEE shall surrender the premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the date of execution hereof, and in a decent, safe, and sanitary condition. In the case of termination of this lease by CITY prior to the end of the specified lease term, any liens and encumbrances must be approved in writing by the City Manager.

SECTION 3: RENT

- 3.1 Time and Place of Payment. All rents required herein must be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 2289, San Diego, California, 92112-4165, or delivered to the Office of the City Treasurer, City Operations Building, 1222 First Avenue, Third Floor, San Diego, California.

The place of payment may be changed at any time by CITY upon thirty (30) days' written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

- 3.2 Rent. If the minimum rent is greater than the percentage rent on a calendar month basis, then 1/12 of the annual minimum rent is required to be paid for that month. Minimum rents are to be paid in monthly installments on or before the day of the calendar month when percentage rents are due pursuant to Section 3.3, Payment Procedure, hereof.

Provided, however, in the event that the combined total percentage rent payments and monthly installments of the minimum rent during any lease year equal or exceed the required annual minimum rent for that year, then for the balance of such year, LESSEE shall discontinue paying monthly installments of the minimum rent and shall continue paying only percentage rents until the beginning of the ensuing lease year. Provided further, if in any lease year, minimum rents paid plus percentage rents paid exceed the annual minimum rent and also exceed the rent which would have been paid if the percentage rent had been paid on total gross income, the excess over the total rent owed shall be credited against the next payable rent as it becomes due. It is the intent of this provision that LESSEE shall pay monthly installments of the annual minimum rent as a guarantee against the percentage rent requirement and that the greater of the two requirements, minimum or percentage, whichever occurs throughout the term, shall prevail on an annual basis.

- a. Pre-Construction Period. Beginning on the effective date of this lease agreement, for a period not to exceed six months and only if construction is delayed because of environmental considerations covered in the CEQA document, rent payments would not be due until construction commences.
- b. Construction Period/Operation Period Minimum Rent. Minimum rent for the first five (5) years of this lease shall be Fifteen Thousand Dollars (\$15,000) per year, which is One Thousand Two Hundred Fifty Dollars (\$1250) on a monthly basis. Minimum rents for years 6-25 of this lease will be eighty percent (80%) of the average rental paid for the preceding two years, to be recalculated at the commencement of each even-numbered lease year.
- c. Percentage Rents. Percentage rents shall be calculated on a calendar month basis and shall consist of the following percentages of the gross income resulting from the use of the Premises:

<u>Business Activities</u>	<u>Percentage</u>
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restaurant	seven percent (7%)
beer & wine	five percent (5%)
pro shop (retail)	seven percent (7%)
putting green	seven percent (7%)
golf school	six percent (6%)
miniature golf	six percent (6%)
vending machines	fifty percent (50%) of commissions received
driving range and	years 1 through 5: five percent (5%)
other authorized uses	years 6 through 10: ten and one-half percent (10.5%)
	years 11 through 15: eleven percent (11%)
	years 16 through 20: eleven and one-half percent (11.5%)
	years 21 through 25: twelve percent (12%)

The City Manager, in his sole discretion, may approve another percentage rate or flat rate of rent for each other incidental service or operation supplementary to the permitted use(s) set forth under Section 1.2, Uses, hereof as may be approved in writing by the City Manager prior to commencement of such other service(s) or operations. Provided, however, any activity conducted on the premises without prior approval by the City Manager shall be subject to the requirements of Section 3.7, Unauthorized Use Charge, hereof.

- d. Percentage Rate Adjustment. At least six (6) months prior to the end of the fifteenth year of the term of this agreement, by mutual consent or through appraisal as hereinafter set forth, will adjust the percentage rates of LESSEE'S gross income to be paid CITY effective upon the first day of the remaining term of this lease. Said adjustment will be made to the degree necessary to provide a fair rental to CITY as determined by the City Manager and LESSEE, taking into consideration the criteria set forth in Section 3.3.e. below. In the event that such adjustment is not made by mutual consent prior to two (2) months before the end of said fifteen-year periods, then the parties hereto will refer the matter to appraisal under the terms hereinafter set forth.
- e. Percentage Rate Appraisal. In the event the parties do not agree upon the amount of adjustment to said percentage rates as provided for in the previous section, then the adjustment shall be determined by a qualified professional independent real estate appraiser selected by mutual consent of the parties to this agreement from the list of appraisers approved by CITY. CITY and LESSEE agree to equally share the cost of the mutually selected

appraiser. In the event the parties do not reach agreement as to selection of a mutually acceptable appraiser, then CITY and LESSEE shall each select a qualified professional independent real estate appraiser who in turn will select a third qualified professional independent real estate appraiser, which third appraiser will be employed to set the percentage rates to be applied to LESSEE'S percentage rate adjustment. In the event a mutually acceptable third appraiser is not agreed upon between the two selected appraisers within ten (10) days, then the third appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his or her individual capacity, upon application by either CITY or LESSEE with prior notice thereof to the other party. In the event that the Superior Court judge declines to make the appointment, the parties hereto agree that the third appraiser shall be promptly determined in accordance with the rules of the American Arbitration Association. Said third appraiser shall complete the assignment within sixty (60) days of appointment. Each party shall pay the cost of its own selected appraiser, and both CITY and LESSEE agree to equally share the cost of the third mutually selected or court-appointed appraiser. CITY and LESSEE agree to accept and be bound by the percentage rates determined by the appraiser selected or appointed to complete the assignment.

In establishing the percentage rates for the items under controversy, the appraiser shall consider CITY'S property as a fee simple absolute estate, and as vacant and available for a full lease term equal to the initial full term of lease on the open market for the authorized purposes of this lease at the commencement of the rental period under review. The appraiser will be guided by prevailing market percentage rates for similar operations primarily within the Southern California area, if available. In the event the appraisal is not completed in time to permit the percentage adjustment to be made upon the applicable commencement of the ten-year period, LESSEE agrees to continue to pay rent in accordance with the then-existing lease rates, and the adjustment, when determined, will be retroactive to said effective date of rental adjustment as hereinabove established. Any deficiency shall be paid by LESSEE to CITY within sixty (60) days after determination of the new percentage rate(s). IN NO EVENT, HOWEVER, SHALL ANY RENT ADJUSTMENT RESULT IN ANY DECREASE IN ANY PERCENTAGE RENTAL RATE. Notwithstanding the foregoing, the City Manager, in his sole discretion, may determine that no market value adjustment is necessary and waive the requirement for the appraisal process for any specific adjustment period.

- 3.3 Payment Procedure. On or before the last day of the calendar month following the calendar month in which the gross income subject to rents was earned, LESSEE

shall provide CITY with a correct statement together with a payment of rent on all applicable gross receipts in a form selected by CITY. The statement will be signed by LESSEE or its authorized agent attesting to the accuracy thereof, which shall be legally binding upon LESSEE. Each statement will indicate or include:

- a. One-twelfth of the annual minimum rent until the full annual rent is achieved in any lease year.
- b. Total gross receipts for the subject month, itemized as to business categories for which separate percentage rents are established. A gross receipts breakdown of each business conducted on the premises must be included when a reported category shows gross income to be from more than one business operation.
- c. The percentage rental due CITY, computed and totaled.
- d. The accumulated total of all rents previously paid for the current lease year.
- e. Payment in the greater of the two following amounts:

One-twelfth of the annual minimum rent or the total percentage rent due CITY computed as described in this section.

Any rents due CITY from sublease activities or operations will begin with the earliest of the following dates (whether or not prior approval was given by CITY as required by this lease and whether or not a separate percentage rent was established by CITY):

- (1) Sublease commencement date.
- (2) Physical occupancy date.
- (3) Earliest activity date (i.e., sale of goods, solicitation of business, construction or alterations, etc.).

- 3.4 Gross Income. "Gross income" or "gross receipts", as used in this lease, shall include all income resulting from occupancy of the leased premises from whatever source derived whether received or to become due. Provided, however, gross income shall not include federal, state, or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by LESSEE in computing gross income. Gross income shall not include refunds for goods returned for resale on

the premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of LESSEE. The percentage rent shall be calculated and paid by LESSEE on the basis of said gross income whether the income is received by LESSEE or by any sublessee, permittee or licensee, or their agents, and all gross income received by any sublessee, permittee, licensee, or other party as a result of occupancy of said premises or the operation thereof shall be regarded as gross income of LESSEE for the purpose of calculating the percentage rent hereunder required to be paid by LESSEE to CITY, except as may be otherwise specified by or pursuant to this lease.

3.5 Inspection of Records.

- a. Records. LESSEE shall, at all times during the lease term, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, or other documents as necessary to allow CITY to easily determine the total gross income.

Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day.

In the event of admission charges or rentals, LESSEE shall issue serially numbered tickets for each such admission or rental and shall keep an adequate record of such tickets, as well as a record of unissued tickets.

All retail sales and charges may be recorded by a system other than cash registers or other comparable devices provided such system is approved by CITY.

- b. Financial Statements. Within sixty (60) days after the end of each lease year as previously established herein, LESSEE will, at its expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of rents paid CITY for the year are classified according to the categories of business established for any percentage rental and for any other business conducted on or from the premises. Said statement shall be signed by LESSEE or its authorized agent attesting to the accuracy thereof, which shall be legally binding upon LESSEE.

- c. Right to Inspect. All LESSEE'S books of account, records, and supporting documentation, as described under Section 3.5a. hereinabove, will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. Said books and records shall be maintained separate from all other accounts not relating to the leased premises. The CITY, at its discretion, shall have the right to inspect and audit the business of LESSEE, its agents, sublessees, concessionaires, and licensees operating on and in connection with the premises as necessary and appropriate for CITY to determine the amounts of rent due CITY in compliance with the requirements of this lease.

At CITY'S request, LESSEE shall promptly provide, at LESSEE'S expense, any necessary data to enable CITY to fully comply with all requirements of the state or federal government for lease information or reports concerning the premises. Such data will include, if required, a detailed breakdown of LESSEE'S receipts and expenses.

- d. Audit Cost. The full cost of CITY'S audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case LESSEE hereby agrees to pay CITY'S cost of audit(s):

- (1) The audit(s) reveal an underpayment of more than five percent (5%) or more than \$10,000, whichever is less, between the rent due as reported and paid by LESSEE pursuant to this lease and rent due as determined by the audit(s); or
- (2) LESSEE has failed to maintain complete and true books, records, accounts, and supporting source documents in strict accordance with this section hereof.

LESSEE shall pay any deficiency determined by the audit(s) plus interest on such amount as defined in Section 3.6, Delinquent Rent and Audit Fees, hereof, within thirty (30) days of notice thereof by CITY. CITY will credit any overpayment against incoming rents. Any overpayment determined after the end of this lease will be refunded by CITY within thirty (30) days of confirmation by the City Manager of the audit(s) findings.

- e. Default. LESSEE'S failure to keep complete and accurate records by means of double-entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with covenants of this lease, a breach of this lease and cause for termination.

- 3.6 Delinquent Rent and Audit Fees. If LESSEE fails to pay the rent when due, LESSEE will pay, in addition to the unpaid rents, five percent (5%) of the

delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional ten percent (10%) [being a total of fifteen percent (15%)], which is hereby mutually agreed by the parties hereto to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payments of rent be less than Twenty-five Dollars (\$25).

In the event CITY audit(s), if applicable, discloses that the rent for the audited period(s) has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit(s) plus ten percent (10%) per year on the amount by which said rent was underpaid, in addition to the unpaid rents as shown to be due CITY, as compensation to CITY for administrative costs and loss of interest as previously described herein. In the event CITY audit(s) discloses that the unpaid rent is less than five percent (5%) of the total rent, and should LESSEE fail to pay said unpaid rent within thirty (30) days after written notice from CITY, an additional fee of ten percent (10%) of said unpaid amount shall be added to the unpaid amount to compensate CITY for costs and losses due to such nonpayment. LESSEE agrees to pay such amounts and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this lease.

- 3.7 Unauthorized Use Charge. LESSEE shall pay CITY twenty percent (20%) of the gross receipts for any service or use that is not permitted by this lease. This payment is subject to the due date provided in this lease for rental payments and the provision for delinquent rent. The existence of the twenty percent (20%) charge in this clause and the payment of this charge or any part of it, does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the leased premises.
- 3.8 Payment for Water. As provided in Section 1.1, Premises, hereof, it is understood and agreed by CITY and LESSEE that the LESSEE shall have the right to use, for on-site irrigation purposes only, water pumped from any wells on the property, subject to Section 8.7, Water Rights, hereof. The parties acknowledge and agree that LESSEE intends to obtain potable water service from the City of Escondido. The water rate charged to LESSEE by CITY shall be in accordance with water rates and charges as established by the CITY from time to time and applicable to the leased premises. However, the parties acknowledge that, at the present time, no water rate has been adopted by the CITY which is applicable to the leased premises; and, that it is expected that CITY will adopt said rates and charges by no

later than December 31, 2000. Until such time as the CITY adopts the water rates and charges, the payment for water shall be calculated based on the rate charged by the San Diego County Water Authority for untreated water, less LESSEE's actual pumping costs as adjusted annually to reflect changed circumstances. Pumping costs shall include the LESSEE's actual energy costs associated with the extraction of water. CITY shall bill LESSEE according to its standard billing practices.

SECTION 4: ASSIGNMENT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants, and conditions of this lease, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 4.2 Assignment and Subletting. LESSEE shall not assign this lease or any interest therein and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the written consent of the City Manager.

"Assignment" for the purposes of this clause shall include any transfer of any ownership interest in this lease by LESSEE. "Assignment" shall include the cumulative transfer of more than 50% of the ownership interest in LESSEE to persons who were not owners of LESSEE at the inception of this lease.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this agreement which are applicable to the rights acquired. The City Manager shall require, as a condition to approval of any sublease of the majority portion of the leasehold or any assignment, that the LESSEE pay an additional consideration as set forth in Section 4.3 Additional Consideration to CITY, hereof commencing on the effective date of such proposed sublease of the majority portion of the leasehold or assignment, and may further require that this lease or the requested sublease otherwise be revised to comply with standard

CITY lease requirements that are then current. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have an interest in this lease as a sublessee or assignee. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

- 4.3 Additional Consideration to CITY. LESSEE acknowledges that CITY expends considerable sums for maintenance of San Pasqual Valley areas adjacent to the leasehold. LESSEE further acknowledges that the expenditure of such funds enhances the value of the leasehold. LESSEE and CITY agree that the exact amount of such enhancement is impossible to ascertain. However, CITY desires to be reimbursed to a reasonable extent in consideration for the continued maintenance of adjacent areas. Therefore, LESSEE and CITY agree that in the event of an assignment; in the event of a subletting of the majority portion of the leasehold; or in the event of a refinancing creating an encumbrance against the leasehold after the permanent improvements have been constructed, pursuant to the Development Plan as described in Section 6.11 hereof, LESSEE shall pay to CITY two percent (2%) of the gross amount paid for the leasehold in connection with an approved assignment of the lease, two percent (2%) of any amount paid LESSEE in consideration of a sublease of all or a majority portion of the leasehold, or two percent (2%) of the amount of any increased loan or encumbrance against the property over and above the amount of the encumbrance needed to finance the improvements. The amount upon which the two percent (2%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of noncash consideration, including but not limited to stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY'S consent to any assignment, majority subletting, or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this paragraph, together with an acknowledgment from the proposed assignee, sublessee, or refinancing agency as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction, be it an assignment, a sublease, or a refinancing. Any assignment, subletting, or refinancing in violation of the terms and conditions of this paragraph shall be void. The provisions of this paragraph shall not apply to:
- a. An assignment or transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession, or by operation of law for the benefit of the spouse or descendants (i) of LESSEE (if an individual) or (ii) of LESSEE'S principal owner or chief executive officer (if LESSEE is other than an individual);

- b. Such other assignment for which the City Manager determines that the legal and equitable ownership interests in the leasehold have remained unchanged, such as a change in the legal or fictitious name of the LESSEE without any other change in the equity in beneficial use of, or legal title to, the leasehold as an asset or the income produced thereby.

4.4 Encumbrance. Subject to prior consent by CITY, which shall not be unreasonably withheld, LESSEE may encumber this lease, its leasehold estate, and its improvements thereon by deed of trust, mortgage, chattel mortgage, or other security instrument to assure the payment of a promissory note or notes of LESSEE, upon the express condition that the proceeds of such loan or loans be devoted exclusively to the purpose of developing the leased premises in accordance with Section 10.2, General Development Plan, hereof. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the premises; on-site improvements; escrow charges; premiums for hazard insurance or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest, and commissions; and architectural, engineering, and attorneys' fees and other normal expenses incidental to such construction.

Any subsequent encumbrances on the premises or on any permanent improvements thereon must first have the approval in writing of the City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the premises. Provided, however, after the premises are fully developed in accordance with said Development Plan to the satisfaction of the City Manager, proceeds from refinancing or from such subsequent encumbrances may be used to reduce LESSEE'S equity so long as LESSEE pays additional consideration to CITY, and further that LESSEE understands and specifically agrees that the City Manager shall have the sole and absolute discretion to approve, disapprove, or condition any such proposed subsequent encumbrance, including but not limited to amending the lease to provide then-current rents and provisions.

In the event any such approved deed of trust or mortgage or other security-type instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, CITY will accept the approved mortgagee or beneficiary thereof as its new tenant under this lease with all the rights, privileges, and duties granted and imposed in this lease.

Upon prior written approval by CITY, said mortgagee or beneficiary may assign this lease to its nominee, if nominee is a reputable, qualified, and financially responsible person or entity in the opinion of CITY. Any deed of trust, mortgage, or other security instrument shall be subject to all of the terms, covenants, and conditions of this lease and shall not be deemed to amend or alter any of the terms,

covenants, or conditions hereof. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have a financial interest in this lease. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

4.5 Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, and LESSEE shall fail to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Section 4.4a.(1), hereinabove is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty-day

period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

- b. Remedies of Lender. Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default, and the default, if curable, is cured by such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.
- c. Abandonment by LESSEE. Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.
- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

- 4.6 Eminent Domain. If all or part of the premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:
- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - b. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - c. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the premises taken.
 - d. Award. Any award for the taking of all or any part of the premises under the power of eminent domain by a condemning authority other than the City of San Diego, or any payment made under threat of the exercise of such power by a condemning authority other than the City of San Diego, shall be the property of CITY; provided, however, that LESSEE shall be entitled to any award for legally allowed losses and/or damages attributable to the value of its leasehold interest and improvements pertaining to the realty, if any, consistent with Section 6.9 of this Lease. CITY shall have no liability to LESSEE for any award not provided by such other condemning authority(ies).
- If the CITY should exercise its power of eminent domain as to all or any part of the premises, LESSEE shall be entitled only to an award attributable to the value of the improvements pertaining to the realty, if any, consistent with Section 6.9 of this Lease.
- e. Transfer. CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.

- f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

4.7 MBE/WBE Assignment. LESSEE acknowledges that it is CITY policy to encourage Minority Business Enterprise/Women Business Enterprise (MBE/WBE) involvement in CITY contracts and leases, and that a public purpose is served thereby. If LESSEE proposes to assign this lease to a non-MBE/WBE buyer, LESSEE agrees to first use due diligence in finding a qualified MBE/WBE assignee. LESSEE shall fulfill this requirement to use due diligence by doing all of the following:

- a. LESSEE, at its expense, shall advertise the proposed sale of the leasehold in at least one issue each of three different minority/women-focus publications of general circulation. The publications shall be approved by the City Manager, and City Manager shall provide a list of such publications to LESSEE upon request. The ads may be either display or classified and shall state that LESSEE desires to locate a qualified MBE/WBE buyer. The ads shall also request respondents to register their interest with a designated employee of CITY. Affidavits of publication shall be furnished to the City Manager.
- b. LESSEE shall allow no fewer than 20 calendar days from the date of publication for interested parties to respond. Any offers from prospective MBE/WBE buyers shall be presented in writing to CITY for review, together with LESSEE'S reason(s) for accepting or rejecting the proposal.

SECTION 5: INSURANCE RISKS/SECURITY

5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold the CITY, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the leasehold or the work and operations to be performed under this agreement, and all expenses of investigating and defending against same; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

5.2 Insurance.

- a. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:

- (1) Public liability and property damage insurance in the amount of not less than One Million Dollars (\$1,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises.
 - (2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.3, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.
- b. LESSEE'S responsibility to maintain said insurance also includes the following:
- (1) Additional Insured. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. Each policy shall either provide for severability of interests or contain a cross-liability endorsement. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.
 - (2) Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice. CITY'S

requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.

- (3) Accident Reports. LESSEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.
- (4) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection (4), if LESSEE fails or refuses to take out or maintain insurance as required in this lease or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE, and CITY shall be entitled to exercise all legal remedies in the event of such default.

↑ DELETED

- 5.3 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage; or, at CITY'S option, LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which

existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the premises shall be commenced by LESSEE within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenable by reason of such damage.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself that the premises are suitable for LESSEE'S intended use. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this lease. LESSEE further acknowledges that the premises are in the condition called for by this lease.
- 6.2 Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days' written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.
- 6.3 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises including access roads, throughout the term. LESSEE will make all repairs and replacements necessary to maintain and preserve the premises and access roads in a decent, safe, healthy, and sanitary

condition satisfactory to CITY. LESSEE agrees to maintain the existing fencing around the perimeter of the leased premises.

6.4 Improvements/Alterations. Except for improvements that are part of LESSEE'S approved use permit for the premises and as outlined in the development plan and made a part of this lease, no improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.

6.5 Utilities. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground if required.

6.6 Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the premises and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations, or repairs are made to the premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

- a. take all actions necessary to record a valid release of lien, or
- b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

6.7 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and agrees that this lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.

6.8 Signs. Except for such as are part of LESSEE'S approved use permit for the premises, LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.

6.9 Ownership of Improvements and Personal Property.

- a. Any and all improvements, trade fixtures, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE shall at lease expiration or termination be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except as otherwise provided in this lease.
- b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or one hundred eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.
- c. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
- d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
- e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.
- f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said

premises upon expiration or termination of this lease, then CITY shall have the first right to acquire or purchase said personal property.

- 6.10 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.
- 6.11 Development Plan. LESSEE agrees to develop the leased premises in accordance with the General Development Plan approved by the City Manager and filed in the Office of the City Clerk which plan is hereby incorporated by this reference. The general contents and provisions of the Development Plan are described in Section 10.2, hereof. The City Manager or his designee shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk. Failure by LESSEE to comply with the General Development Plan shall constitute a major default and subject this lease to termination by CITY. The City Manager, in his sole discretion, may approve an extension to the date specified for completion in the Development Plan of up to one (1) year without further City Council approval.

SECTION 7: GENERAL PROVISIONS

7.1 Notices

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at the leased premises or at such other address designated in writing by LESSEE; and to CITY as follows:

City Manager
Attention: Real Estate Assets Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

Lessee:
Hodges Golf Improvement Center, LLC.
Attn: David Campbell, Managing Member
5021 New Ranch Road
El Cajon, CA 92020

or to any mortgagee, trustee, or beneficiary, as applicable, at such appropriate address designated in writing by the respective party.

- b. Any party entitled or required to receive notice under this lease may by like notice designate a different address to which notices shall be sent.

7.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation. LESSEE shall diligently see all entitlements and actions, from both CITY and other government agencies with jurisdiction of the premises, as are necessary to develop and operate the uses contemplated by this lease.

7.3 CITY Approval. The approval or consent of CITY, wherever required in this lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.

7.4 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE'S use of the premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

7.5 Compliance with CITY'S Equal Opportunity Contracting Program.

- a. Equal Opportunity Contracting. LESSEE shall submit to the Project Manager statistical information as requested in the City of San Diego Contract Activity Report indicating the amount of subcontracting provided by firms during the period covered by the report. This information should be accompanied by an invoice from each subconsultant/subcontractor/vendor/service provider listed in the report.
- b. Equal Employment Opportunity. LESSEE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other

applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or place of birth.

Upon request by the City of San Diego, LESSEE will submit a current Work Force Report and, if required, an Equal Employment Opportunity Plan which sets forth the actions that LESSEE will take to achieve the CITY'S goals for the employment of African Americans, American Indians, Asians, Filipinos, Latinos, women, and people with disabilities.

Further, LESSEE will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this lease agreement so that such provisions will be binding upon each subcontractor.

- c. Local Business and Employment. LESSEE acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms on all CITY contracts. LESSEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this lease agreement from local residents and firms as opportunities occur. LESSEE agrees to hire qualified local residents and firms whenever feasible.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this lease agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.

- 7.6 Partial Invalidity. If any term, covenant, condition, or provision of this lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect, unless a party's consideration thereby failed.
- 7.7 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.
- 7.8 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.9 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this lease. The numbers of the paragraphs

and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.

- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties, representations, and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this lease.

The failure or refusal of any party to read the lease or other documents, inspect the premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this lease will be valid unless it is in writing and signed by all parties.

- 7.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or LESSEES shall include a condition that the contract, agreement, or lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who, within the twelve months immediately preceding such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.

- 7.12 Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The LESSEE'S policy of maintaining a drug-free workplace.

- (3) Any available drug counseling, rehabilitation, and employees assistance programs.
 - (4) The penalties that may be imposed upon employees' for drug abuse violations.
- c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

7.13 Disabled Access Compliance. LESSEE agrees to comply with the California Code of Regulations (Building Code) as defined in California Health and Safety Code (Title 24), the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE'S compliance shall include but not necessarily be limited to the following:

- a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
- c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- d. Where required by law, LESSEE shall comply with CITY'S disabled access requirements by bringing up to code and making accessible any areas of the premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of LESSEE.
- e. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this lease.

- 7.14 CITY Option to Purchase. In the event LESSEE desires to dispose of its interest in this lease, together with any of its interest in improvements, trade fixtures, and furnishings owned by LESSEE on the leased premises, CITY shall be given the first right to purchase said interest and improvements at a mutually agreeable price. If CITY does not exercise such right to purchase, LESSEE shall not then sell or offer to sell its interest at a lower price without first reoffering to CITY the right to purchase at such lower price.
- 7.15 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.
- 7.16 Relocation Payments. LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this lease, except an award as set forth in Section 4.6(d), Eminent Domain.
- 7.17 Limited Liability (LLC) Corporate Authority. Each individual executing this lease on behalf of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this lease is binding upon the corporation in accordance with its terms, and that LESSEE is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify LESSEE to do business in the state where the premises are situated.

SECTION 8: SPECIAL PROVISIONS

- 8.1 Resource Management Plan. LESSEE agrees to develop a Resource Management Plan for the purpose of maintaining the premises in a condition for sustainable for its approved use under Section 1.2 Uses. A Resource Management Plan is a combination of best management practices that are determined by CITY and LESSEE to be applicable to the leased premises. It is further defined as a combination of conservation and management practices applied to land used. Adoption of a Resource Management System is the most effective and practical means to prevent or reduce the generation of pollutants to a level compatible with water quality goals. The Resource Management Plan shall be reviewed and approved by City Manager.

LESSEE agrees to develop a Resources Management Plan ("RMP") for the purpose of maintaining the premises in a condition such as to protect water quality in a manner that is consistent with the ongoing water quality objectives established by the CITY, including but not limited to, any groundwater management plan for the San Pasqual Basin. The execution of this Lease is subject to, and contingent upon, the acceptance by the CITY of a RMP to be provided by the LESSEE. The CITY shall have the sole discretion to determine the necessary elements of the

RMP. LESSEE agrees to update the RMP every five years, unless earlier requested by the CITY to meet changed circumstances.

- 8.2 Reporting Requirements. LESSEE agrees to provide to the Water Department regular reports about the agricultural activities conducted on the leased property. These reports will detail the usage of water, pesticides, herbicides, fertilizers, and soil amendments. The required reports are specified in the Resource Management Plan.
- 8.3 Noxious Weeds, Pests, and Erosion. LESSEE shall take proper corrective action, to the satisfaction of CITY, to prevent the infestation of noxious weeds, pests, and erosion throughout the entire leased premises.
- 8.4 No Warranty. CITY does not warrant that the premises are suitable for the purposes for which they are leased as stated herein.
- 8.5 Cutting of Trees. No growing or mature trees are to be destroyed or removed without prior written consent of the City Manager; trees growing along roadways may be trimmed back as required by the LESSEE. Trees growing in manmade ditches may be removed by LESSEE. Trees growing in natural drainage channels may not be removed without written consent of the City Manager.
- 8.6 Hold Harmless, Flood Damage and Other Acts of God. LESSEE understands and agrees that the leasehold area is subject to flood damage and that other damage may result to the leasehold from other circumstances, including weather conditions and such causes as fire and earthquakes. LESSEE agrees that any damages resulting from flooding or such other causes shall not result in any liability on the part of the CITY, and LESSEE specifically agrees to assume the defense of, indemnify, and hold CITY harmless for any such damages. LESSEE further specifically agrees that CITY shall have no obligation whatsoever to construct or maintain channels or to construct, maintain, or operate reservoirs or any part of its water distribution system or otherwise change its operations or release water from reservoirs or otherwise change any part of its water distribution system or operations in such a way as to control, alleviate, or minimize potential damages to the leasehold area. LESSEE specifically assumes the risk of all damages resulting from flooding or weather conditions or other natural causes. LESSEE is authorized to minimize potential flood damage through improved drainage and other flood control improvements as agree upon with CITY. Were it not for LESSEE'S agreement to assume all risk regarding flooding and LESSEE'S further agreement that CITY has absolutely no obligation with regard to controlling or mitigating or reducing flood damages or potential flood damages, CITY would not enter into this lease.
- 8.7 Water Rights. There is hereby reserved to CITY, and LESSEE herein expressly agrees that in addition to the reservations made in Section 1.5, Easements and

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Reservations, hereof, CITY shall have the right throughout said term to divert, impound, store and transport by means of dams, reservoirs, or by pumping any and all water, both surface and underground, which flows over, under or across the leased premises, together with the right to divert, inject, spread or percolate water in or through the soils beneath the surface of the leased premises. Nothing in this agreement shall result in the transfer of the CITY'S rights, title or interest in the water on the leased premises to any other person or entity.

a. LESSEE has been advised and acknowledges that:

- (1) the leased premises are located within the San Pasqual groundwater basin ("San Pasqual Basin");
- (2) the CITY is the lawful owner and has at all times asserted its pueblo, overlying and appropriative water rights in the San Pasqual Basin;
- (3) the CITY intends to take any and all steps necessary to fully protect its water rights in the San Pasqual Basin, including but not limited to, the possible adoption of a groundwater management plan and groundwater management ordinance;
- (4) protection of the CITY'S water rights in the San Pasqual Basin is an essential element of the CITY'S long term plan to ensure a reliable and cost-effective water supply for CITY residents;
- (5) another essential element of the CITY'S long term plan to ensure a reliable and cost-effective water supply for CITY residents is the increased production and distribution of recycled water for non-potable uses such as those which are the subject of this lease;
- (6) in order for the CITY to accomplish its long term objectives, it is planned that the San Pasqual Basin will be utilized, in part, for the storage of imported or non-potable water, and, that such storage will necessitate certain activities by CITY employees and consultants on the leased premises; and
- (7) any injury that results from the percolation, storage and recapture of water from the soil beneath the surface of the premises shall not be considered unreasonable or substantial interference with the LESSEE'S use of the leasehold premises, nor otherwise entitle LESSEE to damages or other legal recourse against CITY, except as otherwise provided in Section 1.5.

- b. LESSEE shall have the right, at LESSEE'S sole cost, to develop and use on the leased premises only the amount of water necessary to carry out the purpose of this lease, as follows:
- (1) As to any existing well, LESSEE shall have the right to operate the well and use the water on the leased premises, including the right of ingress and egress to the well area. LESSEE shall install, at LESSEE'S sole cost, a metering device on all well(s) (including open wells) satisfactory to and approved by the Water Utilities Department to measure the quantity of water pumped from the well(s). CITY shall have the right to reasonable access to such metering device(s) as required for periodic meter reading and to determine that said meter(s) are functioning properly.
 - (2) LESSEE may only construct new wells with the express written approval of CITY and according to CITY specifications. Upon completion of construction of any such new well(s), to be at LESSEE's sole cost, the well shall be dedicated to and operated by the CITY, provided, however, that the CITY may, in its sole discretion agree to some other plan of operation.
- c. LESSEE agrees that upon termination of this agreement, it will leave any wells developed or used on the leased premises during the term of this lease in good order and condition and that the casing shall be left in place.
- d. CITY shall at all times have the right to reasonable access to the leased property to protect its water rights and water quality; for monitoring the level and quality of natural surface and groundwaters over and under the leased premises; and, for purposes necessary to the implementation of any groundwater management plan that may be adopted by CITY. Should the monitoring indicate surface and/or groundwater quality degradation, the CITY shall in its sole discretion have the right to require alteration of any irrigation or other practices by LESSEE which may cause such water quality degradation as determined by the CITY.
- e. CITY shall have the right in its sole discretion to construct over and under the leased premises its own wells, pipelines, and other facilities necessary to develop the maximum water yield potential of the leased premises. At such time as the CITY has constructed adequate facilities to provide water service to LESSEE, the CITY shall have the right to require LESSEE to connect, or to reconnect, to such CITY constructed water facilities. It is expressly acknowledged and agreed that the facilities that may be constructed by CITY to serve LESSEE may provide for the delivery of non-potable or reclaimed water only; and, LESSEE expressly agrees to connect to and utilize the non-potable or reclaimed water provided by these

facilities. In that event, LESSEE shall be subject to the rules and regulations applicable to all other water customers receiving similar class and/or quality service from the CITY, including but not limited to payment of customary service charge and water rates. CITY shall be under no duty whatsoever to provide potable or non-potable water to the leased premises. After receiving notice from the CITY that the CITY will be providing water service to LESSEE, LESSEE shall have the right to cancel this agreement upon 30 days written notice to CITY. In the event LESSEE elects to cancel this agreement, no compensation for permanent improvements of any kind installed or existing on the premises shall be due LESSEE by the CITY. Any and all permanent improvements existing, installed or constructed on the premises shall be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property.

- 8.8 Construction of Public Hiking, Biking and Riding Trails. LESSEE has been advised and acknowledges that the leased premises are within the focused planning area of the proposed San Dieguito River Valley Park. LESSEE and San Dieguito Joint Powers Authority (JPA) have agreed to have public hiking, biking and riding trails go around the perimeter of the premises. Any such trail shall be fenced as necessary for the reasonable security and/or protection of the premises (Security Fencing). All costs related to the construction and maintenance of the Security Fencing installed on the leasehold shall be the sole responsibility of the LESSEE. The cost related to the construction and maintenance of the trails and any additional or other exterior fencing shall be the sole responsibility of the City or another public agency or body charged with operating and/or maintaining the San Dieguito River Valley Park. LESSEE shall comply with and be responsible for the cost of complying with all requirements of the Mitigated Negative Declaration (MND) for this project, the terms of which are hereby made a part of this lease. CITY or another public agency shall be responsible for all costs of additional actions such as the construction and maintenance of the trails and additional trail fencing not set forth in the MND.
- 8.9 LESSEE Responsibility for Preserving Environmental, Historical and Cultural Resource Sites. LESSEE understands and agrees that, in connection with the establishment of the San Dieguito River Valley Park, sensitive resource sites as well as environmental, historical, and cultural resources may be identified along the proposed trail system or elsewhere on the leased premises. LESSEE agrees that it shall be responsible for protecting such sites and resources to the extent reasonably feasible. Provided, however, if additional measures for the site such as fencing, the installation and maintenance costs involved shall be the sole responsibility of the City or another public agency or body charged with operating and/or maintaining the San Dieguito River Valley Park. LESSEE shall comply with and be responsible for the cost of complying with all requirements of the Mitigated Negative Declaration (MND) for this project, the terms of which are hereby made

a part of this lease. CITY or another public agency shall be responsible for all costs of additional actions not set forth in the MND.

- 8.10 Public Access to Trails and/or Environmental, Historical, and Cultural Resource Sites. LESSEE has been advised and acknowledges that public access may be required to access hiking, biking, and riding trails constructed on the perimeter near the property. Also, such public access may be necessary for viewing environmental, historical, and/or cultural resources sites located near the leasehold. All costs related to the construction and maintenance of the security fencing shall be the responsibility of the City or another public agency or body charged with operating and/or maintaining the San Dieguito River Valley Park. LESSEE shall comply with and be responsible for the cost of complying with all requirements of the Mitigated Negative Declaration (MND) for this project, the terms of which are hereby made a part of this lease. CITY or another public agency shall be responsible for all costs of additional actions not set forth in the MND.
- 8.11 Hazardous/Toxic Waste. Other than approved agricultural chemicals, i.e., insecticides, pesticides, herbicides, and fungicides applied in accordance with all applicable regulations, LESSEE will not allow the installation or release of hazardous substances in, on, under or from the premises. For the purposes of this provision, a release shall include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substance. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the City Clerk's office as City Clerk Document 769704-1.

In the event of any release of a hazardous substance, LESSEE shall be responsible for all costs of remediation and removal of such substances in accordance with applicable rules and regulations of governmental authorities.

LESSEE agrees to assume the defense of, indemnify and hold the CITY harmless from any and claims, costs and expenses related to environmental liabilities resulting from LESSEE'S operations on the premises, including, but not limited to, costs of environmental assessments, cost of remediation and removal, any necessary response costs, damage for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the premises, LESSEE shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if LESSEE knows, or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this

knowledge or belief and shall take all acts necessary to alleviate such danger. LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environmental action or private suits relative to the premises. In addition, LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of the CITY.

Notwithstanding the above, LESSEE shall not be responsible for any toxic waste or hazardous substance disposed of or discharged on the premises prior to the effective date of this lease agreement.

See 8.12 → Added By First AMENDMENT

SECTION 9: SIGNATURES

9.1 Signature Page.

IN WITNESS WHEREOF, this lease agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date 6-13-00

By [Signature]

LESSEE: HODGES GOLF
IMPROVEMENT CENTER, LLC

Date 4-7-00

[Signature]

APPROVED as to form and legality this 16th day of June, 2000.

CASEY GWINN, City Attorney

By [Signature]
Deputy City Attorney

DWE:DLB:jmj-n:pev

4/7/00

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SECTION 10: EXHIBITS

10.1 Parcel Map(s).

10.2 General Development Plan.

The General Development Plan consists of:

- a. Plot Plan
- b. Development Schedule
- c. Schematic Elevation
- d. Landscape Plan

and is filed in the Office of the City Clerk referenced in this lease.

EXHIBIT "A"

REVISED LEASE LINE

All that portion of Rancho San Bernardo in the City of San Diego, County of San Diego, State of California, according to Patent Map thereof, recorded in Book 2, Page 462 of Patents, filed August 21, 1883 in the Office of the San Diego County Recorder described as follows:

Beginning at a point on the centerline of Sunset Drive (relocation of CHC Route 3, Division 1) as shown on Record of Survey Map No. 16483 filed in the Office of the Recorder of said County and State February 23, 2000, said point being the Northeasterly terminus of that centerline course shown as Delta = $51^{\circ}46'56''$ R=300.00 feet, L = 271.13 feet; thence continuing along said centerline North $84^{\circ}47'36''$ East 200.81 feet; thence leaving said centerline South $05^{\circ}12'24''$ East 30.00 feet to the TRUE POINT OF BEGINNING; thence North $84^{\circ}47'36''$ East 20.56 feet to the beginning of a non-tangent 230.00 foot radius curve concave Southerly, a radial line to said point bears North $05^{\circ}13'04''$ West; thence Easterly along the arc of said curve through a central angle of $34^{\circ}08'27''$ a distance of 137.05 feet; thence South $61^{\circ}04'37''$ East 88.83 feet to the beginning of a tangent 100.00 foot radius curve concave Northwesterly; thence Northeasterly along the arc of said curve through a central angle of $101^{\circ}49'12''$ a distance of 177.71 feet to the beginning of a reverse 25.00 foot radius curve concave Southeasterly; thence Northeasterly along the arc of said curve through a central angle of $84^{\circ}12'16''$ a distance of 36.74 feet to the beginning of a reverse 1263.00 foot radius curve concave Northerly; thence Easterly along the arc of said curve through a central angle of $20^{\circ}26'04''$ a distance of 450.45 feet; thence South $11^{\circ}52'48''$ East 72.04 feet; thence South $03^{\circ}34'27''$ West 17.81 feet; thence South $09^{\circ}18'16''$ West 51.51 feet; thence South $13^{\circ}21'21''$ West 103.36 feet; thence South $16^{\circ}08'12''$ West 121.86 feet; thence South $18^{\circ}34'58''$ West 127.53 feet; thence South $37^{\circ}58'02''$ West 37.63 feet; thence South $17^{\circ}15'38''$ West 39.35 feet; thence South $35^{\circ}06'28''$ West 28.39 feet; thence South $32^{\circ}50'29''$ West 32.31 feet; thence South $33^{\circ}35'29''$ West 38.02 feet; thence South $27^{\circ}20'50''$ West 34.56 feet; thence South $03^{\circ}29'17''$ West 12.95 feet; thence South $07^{\circ}14'48''$ West 45.62 feet; thence South $05^{\circ}53'42''$ West 40.50 feet; thence South $15^{\circ}56'24''$ West 10.15 feet; thence South $17^{\circ}50'53''$ West 37.84 feet; thence South $37^{\circ}42'27''$ West 31.33 feet; thence South $03^{\circ}23'32''$ West 19.96 feet; thence South $16^{\circ}50'53''$ West 35.33 feet; thence South $15^{\circ}30'10''$ East 40.05 feet; thence South $22^{\circ}12'56''$ West 19.20 feet; thence South $21^{\circ}08'51''$ West 11.71 feet; thence South $15^{\circ}20'35''$ West 12.95 feet; thence South $13^{\circ}08'33''$ West 12.08 feet; thence South $18^{\circ}08'11''$ West 12.68

feet; thence South 20°27'16" West 9.01 feet; thence South 54°13'59" West 22.35 feet; thence South 00°03'06" East 18.00 feet; thence South 05°48'48" East 19.90 feet; thence South 02°46'30" East 12.62 feet; thence South 15°28'57" West 19.10 feet; thence South 20°01'58" West 11.29 feet; thence South 30°28'28" West 9.94 feet; thence North 75°58'35" West 94.58 feet; thence North 34°29'58" West 29.91 feet; thence North 58°43'59" West 49.32 feet; thence North 77°39'12" West 62.97 feet; thence North 82°16'58" West 58.57 feet; thence South 85°53'26" West 54.06 feet; thence South 84°11'57" West 30.41 feet; thence North 82°00'11" West 65.27 feet; thence North 72°57'25" West 67.23 feet; thence North 73°46'31" West 28.10 feet; thence North 77°20'47" West 32.90 feet; thence North 33°03'17" West 30.67 feet; thence South 43°06'50" West 25.14 feet; thence North 74°00'12" West 126.93 feet; thence North 17°07'49" East 329.87 feet; thence North 06°13'16" East 43.71 feet; thence North 08°19'10" West 66.36 feet; thence North 03°08'11" East 69.06 feet; thence North 20°46'44" East 48.70 feet; thence North 00°24'11" West 45.82 feet; thence North 06°56'43" East 54.56 feet; thence North 05°43'23" East 70.85 feet; thence North 03°22'31" West 47.39 feet; thence North 05°06'05" West 37.71 feet; thence North 04°04'04" East 33.43 feet; thence North 04°54'25" East 29.31 feet; thence North 10°22'53" East 30.97 feet; thence North 28°29'38" East 38.40 feet; thence North 78°35'15" West 4.21 feet to the Point of Beginning.

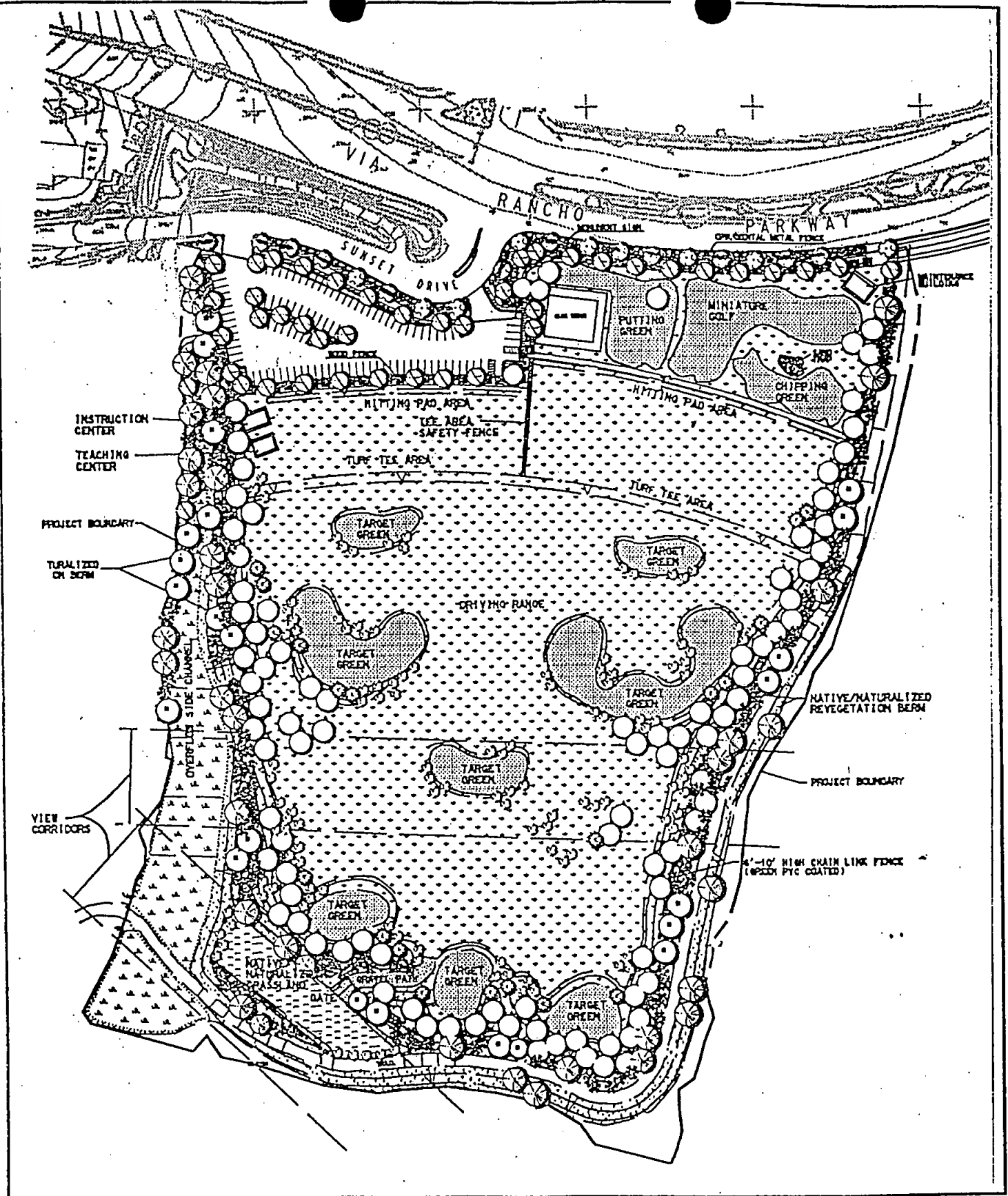
Containing 17.834 acres.

 11-20-2000

Robert G. Schoettmer L.S. 4324



W.O. No. 981136
Dwg. No. 00040-C



LANDSCAPE CONCEPT PLAN • 98-0466
 HODGES GOLF IMPROVEMENT CENTER
 CITY OF SAN DIEGO • DEVELOPMENT SERVICES

Figure
3

EXHIBIT "A"

FLOWAGE EASEMENT

All that portion of Rancho San Bernardo, in the City of San Diego, County of San Diego, State of California, according to Patent Map thereof, recorded in Book 2, Page 462 of Patents, filed August 21, 1883 in the Office of the San Diego County Recorder described as follows:

Beginning at a point on the centerline of Sunset Drive (relocation of CHC Route 3, Division 1) as shown on Record of Survey Map No. 16483 filed in the Office of the Recorder of said County and State February 23, 2000, said point being the Northeasterly terminus of that centerline course shown as Delta = $51^{\circ}46'56''$, $R = 300.00$ feet, $L = 271.13$ feet; thence continuing along said centerline North $84^{\circ}47'36''$ East 200.81 feet; thence leaving said centerline South $05^{\circ}12'23''$ East 30.00 feet; thence North $84^{\circ}47'36''$ East 20.56 feet to the beginning of a non-tangent 230.00 foot radius curve concave Southerly, a radial line to said point bears North $05^{\circ}13'04''$ West; thence Easterly along the arc of said curve through a central angle of $34^{\circ}08'27''$ a distance of 137.05 feet; thence South $61^{\circ}04'37''$ East 88.83 feet to the beginning of a tangent 100.00 foot radius curve concave Northwesterly; thence Northeasterly along the arc of said curve through a central angle of $101^{\circ}49'12''$ a distance of 177.71 feet to a tangent point with a 25.00 foot reverse curve concave Southeasterly; thence Northeasterly along the arc of said curve through a central angle of $84^{\circ}12'16''$ a distance of 36.74 feet to a tangent point with a 1263.00 foot reverse curve concave Northerly as shown on Parcel Map 10929 (as ultimate Right-of-way); thence Easterly along the arc of said curve through a central angle of $20^{\circ}26'04''$ a distance of 450.45 feet to the TRUE POINT OF BEGINNING; thence South $11^{\circ}52'48''$ East 72.04 feet; thence South $03^{\circ}34'27''$ West 17.81 feet; thence South $09^{\circ}18'16''$ West 51.51 feet; thence South $13^{\circ}21'21''$ West 103.36 feet; thence South $16^{\circ}08'12''$ West 121.86 feet; thence South $18^{\circ}34'58''$ West 127.53 feet; thence South $37^{\circ}58'02''$ West 37.63 feet; thence South $17^{\circ}15'38''$ West 39.35 feet; thence South $35^{\circ}06'28''$ West 28.39 feet; thence South $32^{\circ}50'29''$ West 32.31 feet; thence South $33^{\circ}35'29''$ West 38.02 feet; thence South $27^{\circ}20'50''$ West 34.56 feet; thence South $03^{\circ}29'17''$ West 12.95 feet; thence South $07^{\circ}14'48''$ West 45.62 feet; thence South $05^{\circ}53'42''$ West 40.50 feet; thence South $15^{\circ}56'24''$ West 10.15 feet; thence South $17^{\circ}50'53''$ West 37.84 feet; thence South $37^{\circ}42'27''$ West 31.33 feet; thence South $03^{\circ}23'32''$ West 19.96 feet; thence South $16^{\circ}50'53''$ West 35.33 feet; thence South $15^{\circ}30'10''$ East 40.05 feet; thence South $22^{\circ}12'56''$ West 19.20 feet; thence South $21^{\circ}08'51''$ West 11.71 feet; thence South $15^{\circ}20'35''$ West 12.95 feet; thence South $13^{\circ}08'33''$ West 12.08 feet; thence South $18^{\circ}08'11''$ West 12.68 feet; thence South $20^{\circ}27'16''$ West 9.01 feet;

thence South 54°13'59" West 22.35 feet; thence South 00°03'06" East 18.00 feet; thence South 05°48'48" East 19.90 feet; thence South 02°46'30" East 12.62 feet; thence South 15°28'57" West 19.10 feet; thence South 20°01'58" West 11.29 feet; thence South 30°28'28" West 9.94 feet; thence North 75°58'35" West 94.58 feet; thence North 34°29'58" West 29.91 feet; thence North 58°43'59" West 49.32 feet; thence North 77°39'12" West 62.97 feet; thence North 82°16'58" West 58.57 feet; thence South 85°53'26" West 54.06 feet; thence South 84°11'57" West 30.41 feet; thence North 82°00'11" West 65.27 feet; thence North 72°57'25" West 67.23 feet; thence North 73°46'31" West 28.10 feet; thence North 77°20'47" West 32.90 feet; thence North 33°03'17" West 30.67 feet; thence South 43°06'50" West 25.14 feet; thence North 74°00'12" West 126.93 feet; thence North 17°07'49" East 329.87 feet; thence North 06°13'16" East 43.71 feet; thence North 08°19'10" West 66.36 feet; thence North 03°08'11" East 69.06 feet; thence North 20°46'44" East 48.70 feet; thence North 00°24'11" West 45.82 feet; thence North 06°56'43" East 54.56 feet; thence North 05°43'23" East 70.85 feet; thence North 03°22'31" West 47.39 feet; thence North 05°06'05" West 37.71 feet; thence North 04°04'04" East 33.43 feet; thence North 04°54'25" East 29.31 feet; thence North 10°22'53" East 30.97 feet; thence North 28°29'39" East 22.98 feet to the beginning of a non-tangent 122.50 foot radius curve concave Southwesterly, to which a radial line bears North 62°33'15" East; thence Southeasterly along the arc of said curve through a central angle of 10°18'36" a distance of 22.04 feet; thence along a non-tangent line South 11°09'32" East 59.65 feet to the beginning of a non-tangent 55.14 foot radius curve concave Westerly, to which a radial line bears North 78°14'54" East; thence Southerly along the arc of said curve through a central angle of 12°22'49" a distance of 11.91 feet; thence along a non-tangent line South 04°24'47" East 13.35 feet; thence South 06°24'17" East 36.12 feet to the beginning of a non-tangent 481.55 foot radius curve concave Westerly, to which a radial line bears North 82°06'26" East; thence Southerly along the arc of said curve through a central angle of 06°45'04" a distance of 56.74 feet; thence along a non-tangent line South 02°08'59" West 46.71 feet to the beginning of a non-tangent 528.00 foot radius curve concave Westerly, to which a radial line bears North 88°08'57" East; thence Southerly along the arc of said curve through a central angle of 07°03'37" a distance of 65.06 feet; thence along a non-tangent line South 06°08'57" West 42.30 feet; thence South 05°19'26" West 77.46 feet to the beginning of a non-tangent 100.34 foot radius curve concave Easterly, to which a radial line bears North 82°34'02" West; thence Southerly along the arc of said curve through a central angle of 17°23'22" a distance of 30.45 feet; thence along a non-tangent line South 14°20'17" East 29.40 feet; thence South 13°16'48" East 67.15 feet to the beginning of a non-tangent 114.84 foot radius curve concave Westerly, to which a radial line bears North 73°20'06" East; thence Southerly along the arc of said curve through a central angle of 20°55'47" a distance of 41.95 feet; thence along a non-tangent line South 05°48'32" West 85.78 feet; thence South 06°19'42" West 77.92 feet to the beginning of a non-tangent 73.70 foot radius curve concave Northwesterly, to which a radial line bears

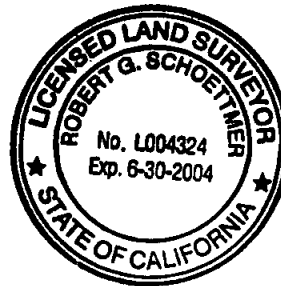
South 88°51'25" East; thence Southwesterly along the arc of said curve through a central angle of 22°04'17" a distance of 28.39 feet; thence along a non-tangent line South 20°17'39" West 50.90 feet to the beginning of a non-tangent 15.38 foot radius curve concave Easterly, to which a radial line bears North 66°34'14" West; thence Southerly along the arc of said curve through a central angle of 60°27'00" a distance of 16.23 feet; thence along a non-tangent line South 41°58'52" East 57.33 feet to the beginning of a non-tangent 109.71 foot radius curve concave Northeasterly, to which a radial line bears South 48°17'19" West; thence Southeasterly along the arc of said curve through a central angle of 27°02'05" a distance of 51.77 feet; thence along a non-tangent line South 64°53'05" East 55.34 feet to the beginning of a non-tangent 125.16 foot radius curve concave Northerly, to which a radial line bears South 18°51'28" West; thence Easterly along the arc of said curve through a central angle of 22°18'10" a distance of 48.72 feet to the beginning of a non-tangent 411.32 foot radius curve concave Northerly, a radial line to said point bear South 0°07'11" East; thence Easterly along the arc of said curve through a central angle of 07°12'34" a distance of 51.76 feet; thence along a non-tangent line South 88°35'30" East 42.24 feet; thence South 00°51'11" East 14.00 feet; thence South 83°32'39" East 20.16 feet; thence South 85°47'43" East 24.48 feet to the beginning of a non-tangent 363.00 foot radius curve concave Southwesterly, to which a radial line bears North 06°10'37" East; thence Southeasterly along the arc of said curve through a central angle of 18°14'38" a distance of 115.59 feet; thence along a non-tangent line South 60°16'07" East 15.30 feet to the beginning of a non-tangent 72.00 foot radius curve concave Northerly, to which a radial line bears South 29°08'34" West; thence Easterly along the arc of said curve through a central angle of 72°32'28" a distance of 91.16 feet to the beginning of a compound 99.00 foot radius curve concave Northwesterly; thence Northeasterly along the arc of said curve through a central angle of 33°21'03" a distance of 57.63 feet; thence North 13°15'02" East 114.99 feet; thence North 13°18'14" East 41.64 feet; thence North 14°39'34" East 64.69 feet; thence North 16°34'59" East 44.54 feet to the beginning of a non-tangent 261.41 foot radius curve concave Southeasterly, to which a radial line bears North 80°21'35" West; thence Northeasterly along the arc of said curve through a central angle of 18°16'03" a distance of 83.35 feet; thence along a non-tangent line North 29°00'45" East 40.54 feet; thence North 30°40'19" East 103.81 feet to the beginning of a non-tangent 155.27 foot radius curve concave Northwesterly, to which a radial line bears South 58°55'21" East; thence Northeasterly along the arc of said curve through a central angle of 09°37'13" a distance of 26.07 feet; thence along a non-tangent line North 59°40'25" West 14.00 feet; thence North 23°25'17" East 48.87 feet; thence North 25°37'29" East 38.79 feet to the beginning of a non-tangent 34.00 foot radius curve concave Northwesterly, to which a radial line bears South 54°59'33" East; thence Northeasterly along the arc of said curve through a central angle of 20°50'11" a distance of 12.37 feet to the beginning of a non-tangent 311.13 foot radius curve concave Northwesterly to which a radial line bears South 69°07'16" East; thence Northeasterly along the arc

of said curve through a central angle of $03^{\circ}56'31''$ a distance of 21.41 feet; thence along a non-tangent line North $12^{\circ}36'59''$ East 34.03 feet; thence North $15^{\circ}00'54''$ East 82.84 feet; thence North $12^{\circ}10'10''$ East 117.93 feet to the beginning of a non-tangent 188.36 foot radius curve concave Westerly, to which a radial line bears South $74^{\circ}07'36''$ East; thence Northerly along the arc of said curve through a central angle of $14^{\circ}22'46''$ a distance of 47.27 feet to the beginning of a non-tangent 580.94 foot radius curve concave Easterly to which a radial line bears North $85^{\circ}30'23''$ West; thence Northerly along the arc of said curve through a central angle of $05^{\circ}31'52''$ a distance of 56.08 feet to the beginning of a non-tangent 123.64 foot radius curve concave Westerly to which a radial line bears South $83^{\circ}23'44''$ East; thence Northerly along the arc of said curve through a central angle of $08^{\circ}40'34''$ a distance of 18.72 feet to a point on the arc of a non-tangent 1263.00 foot radius curve concave Northerly, a radial line to said point bears South $08^{\circ}25'26''$ East; thence Easterly along said curve through a central angle of $00^{\circ}42'11''$ an arc distance of 15.50 feet to the TRUE POINT OF BEGINNING.

Containing 3.005 acres.

 11-20-2000

Robert G. Schoettmer L.S. 4324



W.O. No. 981136
Dwg. No. 00040-C

LEGEND

FLOWAGE EASEMENT SET ASIDE  INDICATES RADIAL BEARING (R)

ASSESSORS PARCEL NO.

272-131-08

REFERENCE DRAWING

RECORD OF SURVEY 16483
DOC NO. 1993-036429
(EX LEASE AGREEMENT)

T.P.O.B. OF FLOWAGE EASEMENT

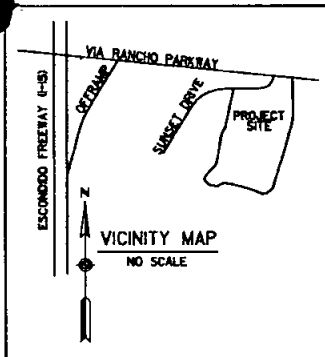
NOTE

AREA WITHIN PROPOSED LEASE LINE = 17.834 ACRES
AREA WITHIN FLOWAGE EASEMENT = 3.001 ACRES



CURVE TABLE			
NO.	DELTA	RADIUS	LENGTH
1	Δ=34°08'27"	230.00'	137.05'
2	Δ=101°49'12"	100.00'	177.71'
3	Δ=84°12'16"	25.00'	36.74'
4	Δ=20°26'04"	1263.00'	450.45'
5	Δ=10°18'36"	122.50'	22.04'
6	Δ=12°22'49"	55.14'	11.91'
7	Δ=6°45'04"	481.55'	56.74'
8	Δ=7°03'37"	528.00'	65.06'
9	Δ=17°23'22"	100.34'	30.45'
10	Δ=20°55'47"	114.84'	41.95'
11	Δ=22°04'17"	73.70'	28.39'
12	Δ=60°27'00"	15.38'	16.23'
13	Δ=27°02'05"	109.71'	51.77'
14	Δ=22°18'10"	125.16'	48.72'
15	Δ=7°12'34"	411.32'	51.76'
16	Δ=18°14'38"	363.00'	115.59'
17	Δ=72°32'28"	72.00'	91.16'
18	Δ=33°21'03"	99.00'	57.63'
19	Δ=18°16'03"	261.41'	83.35'
20	Δ=9°37'13"	155.27'	26.07'
21	Δ=20°50'11"	34.00'	12.37'
22	Δ=3°56'31"	311.13'	21.41'
23	Δ=14°22'46"	188.36'	47.27'
24	Δ=5°31'52"	580.94'	56.08'
25	Δ=8°40'34"	123.64'	18.72'

COURSE TABLE		
NO.	BEARING	LENGTH
①	N00°03'06"W	18.00'
②	N05°48'48"W	19.90'
③	N02°46'30"W	12.62'
④	N15°28'57"E	19.10'
⑤	N20°01'58"E	11.29'
⑥	N30°28'28"E	9.94'
⑦	N04°24'47"W	13.35'
⑧	N06°08'57"E	42.30'
⑨	N00°51'11"W	14.00'
⑩	N60°16'07"W	15.30'
⑪	N59°40'25"W	14.00'



AREA RELINQUISHED TO THE CITY OF SAN DIEGO
OCT. 27, 1969 AS DOC. 197324, O.R.

POB
END OF 300' RADIUS CURVE
ON CENTERLINE OF SUNSET
DRIVE (RELOCATION OF CHC
ROUTE 3 DIV. 1) AS SHOWN
ON RECORD OF SURVEY 16483

RICK ENGINEERING COMPANY
3000 Plaza Road
San Diego, California 92130-0000
PHONE 594-0000 FAX 594-0000 J. 134708



Robert G. Schoettner 11-20-2000
ROBERT G. SCHOETTNER LS 4324

PRIVATE CONTRACT J-13475E	
FLOWAGE EASEMENT - IN A PORTION OF RANCHO SAN BERNARDO BOOK 2 PAGE 462 PATENTS FOR HODGES GOLF IMPROVEMENT CENTER	
CITY OF SAN DIEGO, CALIFORNIA	R.O. NO. 90836
SHEET 1 OF 1 SHEET	
3/14/01	
DESCRIPTION	BY APPROVED DATE FILED
ORIGINAL REC	REC
1968-63H	
CCS 83	
328-175H	
LAMBERT COORDINATES	
00040-C	

10.3 Limited Liability Corporate Name.

The Hedges Golf Improvement Center, LLC
NAME OF LLC

I, Patrick Ahearn, certify that I am the
MANAGING Partner of the Limited Liability Company executing the
attached Lease; that Patrick Ahearn, who signed this agreement on behalf
of the Limited Liability Company is the MANAGER of the company; that
this Lease was duly signed for and on behalf of the company pursuant to the authority of its
articles of organization and operating agreement; that execution of this Lease is within the scope
of the company's powers; and that set forth below are the names of the managers, officers, or
members of the company who have the authority to conduct the business and affairs of the
company.

By Patrick Ahearn
Title: MANAGER

Name Richard Tette

Name Cam. Grimes

Name Richard Purdye

Name _____

(R-2000-803)

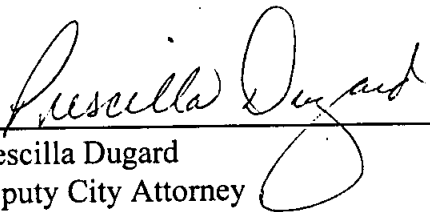
RESOLUTION NUMBER R- 292941

ADOPTED ON APR 10 2000

WHEREAS, the City and Hodges Golf Improvement Center have negotiated a Percentage Rate Lease at the initial rental rate of \$15,000 per year, the fair market rate as determined by City valuation staff; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is authorized to execute, for and on behalf of The City of San Diego, a 25-year lease agreement with Hodges Golf Improvement Center, LLC, a California Limited Liability Company, for the construction and operation of a golf driving range and related activities on 17.47 acres on Sunset Drive in San Pasqual Valley, at an initial minimum annual rent of \$15,000 per year, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR- 292941.

APPROVED: CASEY GWINN, City Attorney

By 
Prescilla Dugard
Deputy City Attorney

PD:cdk
01/31/2000
Or.Dept:PDR
R-2000-803

Passed and adopted by the Council of San Diego on APR 10 2000 by the following vote:

YEAS: MATHIS, WEAR, STEVENS, WARDEN, McCARTY, VARGAS

NAYS: KEHOE, STALLINGS, MAYOR GOLDING

NOT PRESENT: NONE

AUTHENTICATED BY:

SUSAN GOLDING

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: Esther Ramos, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R- 292941, passed and adopted by the Council of The City of San
Diego, California on APR 10 2000.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: Esther Ramos, Deputy