

DUPLICATE

RECORDING REQUESTED BY

ORIGINAL

1889

RETURN TO:

THE CITY OF SAN DIEGO

PROPERTY DEPARTMENT

CITY OPERATIONS BUILDING

1222 FIRST AVE. MAIL STATION 503

SAN DIEGO, CA 92101

ATTN: Bob Collins

83-382965
RECORDED IN
OFFICIAL RECORDS
OF SAN DIEGO COUNTY, CA.

1983 OCT 24 PM 2:21

VERA L. LYLE
COUNTY RECORDER

NO FEE

PERCENTAGE LEASE

BETWEEN

THE CITY OF SAN DIEGO

AND

WATT INDUSTRIES/SAN DIEGO, INC.

(OF THE PROPERTY)
NOTE: IF A CHANGE IN USE IS CONSIDERED,
REVIEW DEED RESTRICTIONS TO SEE
IF IT IS PERMISSIBLE. THE DEEDS
ARE FILED BEHIND THIS INSTRUMENT.

DOCUMENT NO. RR-257594-1

FILED DEC 6 1982

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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1892

PERCENTAGE LEASE

Approved by Council Resolution
No. _____ Dated DEC 6 1982

R-257594

THIS LEASE AGREEMENT is executed by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter "CITY", and WATT INDUSTRIES/SAN DIEGO, INC., a California corporation, hereinafter called "LESSEE".

I. LEASED 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 Lot B of Tentative Map 02-199-0, hereinafter "T.M. 02-199-0," and delineated as Lot B on Exhibit "A" attached hereto and by this reference made part of this lease. Said real property is hereinafter sometimes called "premises" and "leased premises".

A. PERMITTED USE. The premises are leased to LESSEE for the purpose of:

- (1) Constructing, operating and maintaining thereon a country club and 27-hole golf course facilities, including, but not limited to, permanent lakes, gallery mounds, paved cart paths, and a clubhouse with men's and women's locker rooms, clubrooms, banquet rooms, kitchen and snack bar facilities, parking, bar, cardrooms and tennis facilities in accordance with the General Development Plan on file with the City Clerk as Document No. RR-257594-2 and

SEE EXHIBIT "B" ATTACHED HERETO FOR
LEGAL DESCRIPTION. ⁻¹⁻ OF GOLF COURSE
(LEASED PREMISES)

- (2) Such other related and incidental purposes and at such rents as may first be approved in writing by CITY and for no other purpose.
- B. OBLIGATION TO DILIGENTLY USE. LESSEE covenants to use the premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof.
- C. RELATED COUNCIL ACTIONS. By the granting of this lease, the City Council of the City of San Diego is not obligating itself with regard to any other discretionary action relating to development or operation of the premises. Such discretionary action includes, but is not limited to, rezonings, variances, environmental clearances or any other governmental agency approvals which are required.
- D. OPEN SPACE AREAS. Contiguous to the leased premises is that certain real property herein referred to as the "Open Space areas" described as Lots A, C, D and E of T.M. 02-199-0 and delineated as Lots A, C, D and E on Exhibit "A"

II. TERM OF LEASE.

- A. COMMENCEMENT AND TERMINATION. The term of this lease shall be sixty-one (61) years commencing on the date of acquisition of title by CITY to the leased premises or in no event later than January 1, 1984; provided, however, the term may be extended as hereinafter provided. If CITY does not acquire title to the leased premises by January 1, 1984, this lease shall terminate.
- B. SURRENDER OF PREMISES. At the expiration or earlier termination of this lease, LESSEE shall execute, acknowledge and deliver to CITY, within five days after written demand by CITY, a valid and recordable quitclaim deed covering all of the leasehold premises. The leasehold premises shall be delivered free and clear of all liens and encumbrances.

III. CONSIDERATION.

- A. RENT. As rent for and in consideration of this lease, LESSEE shall pay rent as follows:
- (1) The basic rent due for the first twenty-five (25) years of the term is Three Thousand Dollars (\$3,000.00), payable upon execution hereof.

- EFFECTIVE DATE
9/27/03
20th YEAR
9/27/2003
JANUARY 1, 2004
- (2) Commencing on the first day of January of the twentieth (20th) year following the sale of eighty percent (80%) of the proposed 1,100 memberships (which is 880 memberships) or commencing January 1, 2010, whichever date or event shall first occur, and continuing thereafter until January 1, 2030, rent shall be paid as follows:

LESSEE shall pay to CITY quarter-annually in arrears as percentage rent, an amount equal to ten percent (10%) of the Gross Receipts, as defined below, an amount equal to four percent (4%) of the Gross Food Receipts, as defined below, and an amount equal to six percent (6%) of the Gross Beverage Receipts, as defined below. On or before the sixtieth (60th) day following the end of each quarter-annual lease year (defined below) LESSEE shall, without notice or demand from CITY, deliver to CITY in the manner prescribed for giving notices, a statement prepared by a certified public accountant or a financial officer of LESSEE showing the Gross Receipts, Gross Food Receipts and Gross Beverage Receipts on or from the premises for that quarter-annual lease year, and shall concurrently pay to CITY such percentage rent. A quarter-annual lease year shall be each three (3) month period during a calendar year. Within sixty (60) days after the end of each calendar year during the term hereof that percentage rents are payable to CITY, LESSEE shall furnish to CITY a statement in writing, duly certified to be true and correct by a financial officer of LESSEE, showing in detail the Gross Receipts, Gross Food Receipts and Gross Beverage Receipts of the leased premises during the immediately preceding calendar year.

- (3) Commencing on January 1, 2030, and continuing thereafter through the remainder of the term, rent shall be paid as provided in Section III, A.(2) above; provided, however, the percentage rent for the Gross Receipts shall be twelve percent (12%) in lieu of the ten percent (10%) specified therein.

B. ADDITIONAL CONSIDERATION. In addition to the rent due hereunder and as additional consideration, LESSEE shall:

- (1) At its sole expense, maintain, throughout the term, all Open Space areas, including, but not limited

Initials AG

to, the channel to be constructed through the property on Lot B as shown on Exhibit "A" subject to the conditions found in Paragraph IV, B.(11) herein. ~~the obligations of LESSEE pursuant to this subpart (1) shall terminate as to any portion of the Open Space areas subsequently leased or used pursuant to a written agreement between CITY and a person or entity other than LESSEE.~~

- (2) Develop the leased premises in accordance with the CITY approved General Development Plan identified in Section IV, B.(14), Development, of this lease.
- (3) During the first twenty-five (25) years of the lease term ending December 31, 2009, pay to CITY three percent (3%) of all memberships sold in excess of Twenty-Five Million Dollars (\$25,000,000.00) by LESSEE in LESSEE or in the facilities operated by LESSEE on the leased premises. Sale of memberships for other than full cash payment shall be regarded as sales at full cash value of said memberships for purposes of this provision. Payment shall be made quarter-annually pursuant to Section III, A.(2) above. Thereafter, the terms for payment of percentage rent provided in Section III, A.(2) shall be controlling.

C. DEFINITIONS.

- (1) The term "Gross Receipts" shall mean the total, as determined under the cash method of accounting, of all gross receipts which are the charges for merchandise, services, rents, subleases and from all other sources derived, including, but not limited to, all deposits not refunded, orders taken on or from the premises to be filled or paid for elsewhere, sales by all subtenants, concessionaires or licensees, gross receipts from coin-operated or other vending, weighing and other devices on the premises, consideration received by LESSEE, sublessees, licensees, permittees or employees from the operation of public telephones on the premises, fees for lessons, green fees, tennis court fees, public and private banquets held for other than members of LESSEE, membership dues and all other fees paid by members of LESSEE, brokerage commissions, fees and any proceeds retained by LESSEE in the transfer of a membership, sale of memberships in LESSEE or the facilities operated by LESSEE, and fees and other receipts of whatever nature or source derived by LESSEE, sublessees,

licensees, permittees or employees resulting from the occupancy of the premises. Anything herein to the contrary notwithstanding, the term "Gross Receipts" shall not include Gross Food Receipts or Gross Beverage Receipts.

- (2) The term "Gross Food Receipts" shall mean the total, as determined under the cash method of accounting, of all gross receipts which are the charges for all food served and sold on the premises, including non-alcoholic beverages, but shall not include public or private banquets held for other than members of LESSEE, which shall be included in Gross Receipts.
- (3) The term "Gross Beverage Receipts" shall mean the total, as determined under the cash method of accounting, of all gross receipts which are the charges for all alcoholic beverages served and sold on the premises.
- (4) Excluded from the definitions of Gross Receipts, Gross Food Receipts and Gross Beverage Receipts, or subtracted if previously included, shall be:
 - (a) All uncollected credit and installment balances reasonably determined, subject to the demonstration of diligent collection efforts by LESSEE and shown on LESSEE's books to be uncollectible;
 - (b) All sums collected and paid out for sales taxes, luxury taxes, excise taxes and similar taxes required by law to be added to the total purchase price, whether now or hereafter in force, to be collected from customers and paid to government agencies by LESSEE;
 - (c) Merchandise returned to shippers or manufacturers;
 - (d) All credits and cash refunds made on any sale that took place on or from the premises;
 - (e) All cash or credit received in settlement of any claims for loss of or damage to merchandise;

- (f) Gift certificates or like vouchers, if not issued for value, until the time they have been converted into a sale by redemption;
- (g) That portion of the purchase price by which the price is actually reduced for merchandise traded in for credit;
- (h) Bulk sales made by LESSEE not in the ordinary course of business not to exceed the cost thereof, except sales of merchandise traded in for credit; and
- (i) Any income or receipts that, under generally accepted accounting principles, are derived from the sale or disposal of any capital assets, or from the retirement of any of LESSEE's indebtedness, or from LESSEE's investment of any funds not invested in the premises or the operation of LESSEE's business within the premises.

D. FINANCIAL RECORDS MAINTENANCE.

- (1) LESSEE shall keep true, accurate and complete records in a manner and form satisfactory to CITY from which CITY can at all reasonable times determine the nature and amounts of gross receipts subject to rental from the operation of the leased premises. Such records shall show all transactions relative to the conduct of the operation, and such transactions shall be supported by documents of original entry such as sales slips, cash register tapes, purchase invoices and tickets issued or other means satisfactory to CITY. All sales or rentals of merchandise and services rendered shall be recorded by means of cash register system which automatically issues a customer's receipt or certifies the amount recorded on a sales slip. Said cash register shall have a locked-in total which is constantly accumulating, which total cannot be reset, and at the option of CITY, a constantly locked-in accumulating printed transaction counter which cannot be reset, and/or a printed detailed audit tape located within the register. Complete beginning and ending cash register readings shall be made a matter of daily record. The City Auditor and Comptroller shall audit the business of LESSEE, its agents, sublessees, concessionaires or licensees operating on the premises at least once every

three (3) years or more frequently as deemed appropriate by the City Auditor.

In the event such audit discloses that the percentage rental required for the period audited exceeds the amount of percentage rental paid to CITY by LESSEE during said period, LESSEE shall, within thirty (30) days of notification thereof by CITY subject to subparagraph D.(4) hereof, pay to CITY the amount of such deficiency. In the event that such audit discloses that the percentage rental required for the period audited is less than the amount of rents paid to CITY during said period, the amount of overpayment shall be credited against the then next successive quarter-annual lease year until said overpayment is fully credited. Any such overpayment occurring in the last quarter-annual lease year shall be refunded by CITY within thirty (30) days of said audit findings.

- (2) LESSEE shall also maintain accurate records of actual and projected operating expenses and revenue, and such other operating information as CITY from time to time deems necessary and LESSEE shall submit such information to CITY upon request.
- (3) Said records and accounts shall be maintained separate from all other accounts not relating to the operation of the leased premises and shall be made available to CITY at one location within the limits of the City of San Diego. CITY shall have, through its duly authorized agents or representatives, the right to examine and audit said records and accounts at any and all reasonable times. Any additional sums due CITY as determined by CITY's audit are due and payable within thirty (30) days of notification thereof by CITY.
- (4) In the event that such audit discloses that the rent for the audited period has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY ten percent (10%) of the amount by which said rent was underpaid in addition to the unpaid rents so shown to be due CITY as compensation to CITY for audit and administrative costs and loss of interest.

E. DELINQUENT RENT. In the event LESSEE fails to pay the applicable rents or any audit deficiencies when due, then LESSEE shall pay CITY, in addition to the

delinquent rent, a sum of money equal to five percent (5%) of said delinquent rent; provided, however, in the event said delinquent rent is still unpaid after fifteen (15) days of becoming delinquent, then LESSEE shall pay CITY, instead of said five percent (5%), a sum of money equal to ten percent (10%) of said delinquent rent. It is the intent of this provision that CITY shall be compensated by such additional sums for loss resulting from rental delinquency and costs to CITY of servicing the delinquent account. The City Manager, at his option, may for good cause waive any such delinquent compensation required herein, upon written application of LESSEE.

IV. COVENANTS AND CONDITIONS.

A. CITY COVENANTS.

- (1) Quiet Possession. LESSEE, paying the said rent and performing the covenants and agreements herein, shall and may at all times during the said term peaceably and quietly have, hold and enjoy the premises for the term hereof. If CITY for any reason whatsoever cannot deliver possession of the premises to LESSEE at the commencement of said term as hereinbefore specified, or if LESSEE is dispossessed through action of a title superior to CITY's, then and in either of such events, this lease shall not be void or 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 rent covering the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the leased premises.
- (2) Right to Assign and Sublet. When in the opinion of the City Manager, if it is deemed consistent with the best interests of CITY, LESSEE may assign this lease or any interest therein and may sublease any portion thereof to an assignee or sublessee who has, in the opinion of the City Manager, the financial capability and overall competence to successfully operate the assigned or subleased premises. The consent of the City Manager will not be unreasonably withheld. This lease and any interest herein shall not be assignable by operation of law without the written consent of the City Manager.

If CITY has been notified in writing of the existence of a trust deed or mortgage secured by the leasehold, CITY agrees to give the trustee or beneficiary notice of any sublease or assignment prior to CITY's approval thereof. Approval of any assignment or sublease shall be conditioned upon assignee or sublessee agreeing in writing that they will assume the rights and obligations thereby assigned or subleased and that they will keep and perform all covenants, conditions and provisions of this lease which are applicable to the rights acquired.

(3) Right to Encumber.

- (a) Subject to Section IV.A(2) and the prior written consent of CITY, which consent shall not be unreasonably withheld, LESSEE shall have the right to encumber the leasehold estate by mortgages, deeds of trust, conditional or unconditional assignments, security agreements and other instruments of hypothecation (any and all of which are herein referred to as "mortgage", and holder of any mortgage is herein referred to as "mortgagee"); any mortgagee shall have the right to:
 - (i) Cure any breach hereunder;
 - (ii) Foreclose the mortgage; and
 - (iii) Accept an assignment of the leasehold estate in lieu of such foreclosure.
- (b) The proceeds of any of the above-listed approved encumbrances must be spent to improve the leasehold interest of LESSEE.
- (c) No exercise by LESSEE of any option or election herein, and no agreement between CITY and LESSEE amending or terminating this lease, shall be effective without the written consent thereto of each mortgagee holding a mortgage in effect at the time of such exercise or agreement.
- (d) All fire and other casualty insurance proceeds shall be disbursed pursuant to the terms and conditions of this lease.

- (e) Any condemnation award proceeds shall be disbursed pursuant to this lease.
- (f) Anything to the contrary notwithstanding in this lease regarding CITY's remedies upon breach, CITY shall not be entitled to exercise any of the remedies granted herein unless and until:
 - (i) CITY has delivered a written notice (describing with reasonable specificity each breach claimed by CITY to exist) to each mortgagee of record as of the date of such notice; and
 - (ii) There has been failure of such breach to be cured within thirty (30) days after said delivery of such written notice.
- (g) If a breach (other than the failure to pay rent or other sums required hereby) occurs, CITY, anything to the contrary notwithstanding in this lease regarding CITY's remedies upon breach, shall not exercise any right or remedy so long as a mortgagee:
 - (i) Commences during the thirty (30) day period described in the preceding paragraph the judicial or other foreclosure of the mortgage;
 - (ii) Prosecutes said foreclosure with reasonable diligence; and
 - (iii) Cures, during said thirty (30) day period, all breaches which are capable of being cured and, during the period of said foreclosure, performs or causes to be performed all acts required by this lease which the mortgagee is capable of performing; included in said curing and in said performance shall be, without limitation thereto, payment of all rents, monies and charges required by this lease to be paid by LESSEE.
- (h) In the event the leasehold estate is transferred at any foreclosure sale pursuant to a mortgage, or in the event of an assignment in lieu of foreclosure, the following shall apply:

- (i) Subject to the prior written consent of CITY, which consent shall not be unreasonably withheld, the transferee shall acquire the leasehold estate without necessity of CITY's consent, anything herein to the contrary notwithstanding, and the leasehold estate shall thereafter be freely assignable by the foreclosing party without necessity of CITY's consent.
- (ii) Except as excused by reason of the next-following subpart, the transferee shall have a reasonable time to cure then-existing nonmonetary breaches.
- (iii) The following breaches, if any, relating to the prior LESSEE shall be deemed cured: 1) attachment, execution or other judicial levy upon the leasehold estate, 2) assignment of the leasehold estate for the direct or indirect benefit of creditors of LESSEE, 3) judicial appointment of a receiver or similar officer to take possession of the leasehold estate or the premises, or 4) filing any petition by, for or against LESSEE under any chapter of the Federal Bankruptcy Act.
- (iv) By its acceptance of the leasehold estate, the transferee shall assume this lease and covenant with CITY to be bound hereby.
- (i) In the event of any conflict between this subpart (3) and any other provision of this lease, this subpart shall prevail.
- (j) If such transferee shall be a national or state bank, federal or state savings and loan association, life insurance company or other lending institution, such transferee shall, by its assignment of the leasehold estate, be relieved of any and all liability arising after the effective date of such assignment.
- (4) Right to Terminate. LESSEE shall have the right to terminate this lease at any time during the first two (2) years of the term upon thirty (30) days

written notice to CITY. Upon proper delivery of such notice, this lease shall terminate and be of no further force and effect. LESSEE shall not be entitled to any rebate in prepaid rent upon such termination, and in no event shall LESSEE or CITY have any further obligations to each other with respect to this lease upon such termination.

B. LESSEE COVENANTS.

- (1) Management. LESSEE agrees to provide and maintain competent professional management, to the reasonable satisfaction of the City Manager, for the leased premises.
- (2) Legal Descriptions. LESSEE agrees to provide CITY with legal descriptions of the leased premises and of the Open Space areas within a reasonable period of time after a final map records for the Fairbanks Country Club Subdivision and title to the leased premises is conveyed to CITY.
- (3) Affirmative Action. LESSEE agrees to take affirmative action to improve employment opportunities of minorities and women. When applicable, LESSEE agrees to abide by the Affirmative Action Program for Lessees as it now exists or is hereafter amended. A copy of the program, effective as of the date of this lease, is on file in the Office of the City Clerk and by this reference is incorporated herein. Minorities are presently defined as Mexican-American, Black, Filipino, American Indian and Asian/Oriental. The goal of this program shall be the attainment of the employment of minorities and women in all areas of employment in a total percentage of employment approximately equal to the total level of minority and women employment as established by CITY for its Affirmative Action Program each year.
- (4) Compliance with Law. LESSEE agrees, at its sole cost and expense, to comply and secure compliance with all the requirements now in force, or which may hereafter be in force, of all municipal, county, State and Federal authorities, pertaining to the premises, or the operations conducted thereon, and to faithfully observe and secure compliance with, in the use of the premises, all applicable county and municipal ordinances and State and Federal statutes now in force or which

may hereafter be in force, and to pay before delinquency all taxes, assessments and fees assessed or levied upon LESSEE or the leased premises, including the land and any buildings, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained by LESSEE or by reason of the business or other activities of LESSEE upon or in connection with the leased premises. LESSEE recognizes and understands that this lease may create a possessory interest subject to property taxation and that LESSEE may be subject to the payment of property taxes levied on such interest. LESSEE further agrees that such tax payment shall not reduce any rent due CITY hereunder and that any such tax shall be paid by LESSEE before becoming delinquent. The judgment of any court of competent jurisdiction, or the admission of LESSEE or any sublessee or permittee in any action or proceeding against them, or any of them, whether CITY be a party thereto or not, that LESSEE, sublessee or permittee has violated any such ordinance or statute in the use of the premises shall be conclusive of that fact as between CITY and LESSEE.

- (5) Construction/Alterations. LESSEE agrees not to construct or install any buildings or structures on the premises or otherwise improve or alter the premises in any manner except in accordance with plans and specifications previously submitted to the City Manager and approved by him in writing. LESSEE shall not make any major structural or architectural design alterations to approved buildings, structures or improvements installed on the premises except in accordance with plans and specifications previously approved in writing by the City Manager. This provision shall not limit or set aside any obligation of LESSEE 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 any improvements or alterations to the premises or to assume any expense therefor.
- (6) Construction Bond. LESSEE agrees to file with CITY, prior to commencement of any construction performed upon the premises, a faithful performance bond in the amount of one hundred percent (100%) of the construction costs of the work to be performed.

Said bond may be in cash or may be a corporate surety bond satisfactory to CITY or in a combination of both. Said bond shall insure that the construction commenced by LESSEE shall be completed in accordance with approved plans, or at the option of CITY, that the uncompleted construction be removed and the premises restored to a condition satisfactory to CITY. The surety bond will be filed with CITY and any cash used as a part of the bond may be deposited with CITY to be held in trust for the purpose specified above or may be placed in an escrow or other trust approved by CITY. Upon application by LESSEE, CITY may waive or modify this requirement to file a bond. In the event that LESSEE fails to file any such required bond, this lease may be terminated by CITY.

- (7) Indemnity. LESSEE agrees that CITY, its agents, officers and employees, shall not be liable for any claims, liabilities, penalties, fines or for any damage to the goods, properties or effects of LESSEE, its sublessees or representatives, agents, employees, guests, licensees, invitees, patrons or clientele or of any other person whomsoever, nor for personal injuries to, or deaths of any persons, whether alleged to have been caused by or resulting from any acts or omission of LESSEE or its sublessees in or about the leased premises, or any act or omission of any person, or from any defect in any part of the leased premises, or from any other cause or reason whatsoever. LESSEE agrees that CITY, its agents, officers and employees, shall not be liable for any act or omission of LESSEE, its sublessees or representatives, agents, employees, guests, patrons or clientele, in any parts of the Open Space areas. LESSEE agrees to indemnify and save free and harmless CITY and its authorized agents, officers and employees against any of the foregoing alleged liabilities and any costs and expenses incurred by CITY on account of any claim or claims therefor.
- (8) Insurance Coverage. During the entire term of this lease and including and covering both the leased premises and the Open Space areas, LESSEE agrees to procure and maintain public liability insurance which names CITY as an additional insured with an insurance company satisfactory to CITY licensed to do business in California, to protect against loss from liability imposed by law for damages on

account of bodily injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever, resulting directly or indirectly from any act or activities of CITY or LESSEE, its sublessees or any persons acting for CITY or LESSEE or under its control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from acts or activities of CITY or LESSEE, or its sublessees, or any person acting for CITY or LESSEE, or under its control or direction. Such property damage and public liability insurance shall also provide for and protect CITY against incurring any legal cost in defending claims for alleged loss. Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this lease in the amount of not less than One Million Dollars (\$1,000,000.00) COMBINED SINGLE LIMIT LIABILITY. LESSEE agrees to submit a policy of said insurance to CITY on or before the effective date of this lease indicating full coverage of the contractual liability imposed by this lease and stipulating that the insurance company shall not terminate, cancel or limit said policy in any manner without at least thirty (30) days prior written notice thereof to CITY. If the operation under this lease results in an increased or decreased risk in the opinion of the City Manager, then LESSEE agrees that the minimum limits hereinabove designated shall be changed accordingly upon request by the City Manager. LESSEE agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which LESSEE may be held responsible for the payment of damages to persons or property resulting from LESSEE's activities, the activities of its sublessees or the activities of any person or persons for which LESSEE is otherwise responsible.

LESSEE also agrees to procure and maintain during the entire term of this lease, a policy of fire, extended coverage and vandalism insurance on all permanent property of an insurable nature located upon the leased premises. Said policy shall name CITY as an additional insured and shall be written by an insurance company satisfactory to CITY licensed to transact business in the State of California and shall be in an amount sufficient to

cover at least one hundred percent (100%) of the replacement costs of said property. LESSEE agrees to submit a certificate of said policy to CITY on or before the effective date of this lease. Said policy shall contain a condition that it is not to be terminated or cancelled without at least thirty (30) days prior written notice to CITY by the insurance company. LESSEE agrees to pay the premium for such insurance and shall require that any insurance proceeds resulting from a loss under said policy are payable jointly to CITY and LESSEE and said proceeds shall constitute a trust fund to be reinvested in rebuilding or repairing the damaged property or said proceeds may be disposed of as specified in Section IV, B. (12) Waste, Damage or Destruction, hereof; provided, however, that within the period during which there is in existence a mortgage or deed of trust upon the leasehold, then and for that period all policies of fire insurance, extended coverage and vandalism shall be made payable jointly to the mortgagee or beneficiary, the named insured and CITY, and shall be disposed of jointly by the parties for the following purposes:

- (a) As a trust fund to be retained by said mortgagee or beneficiary and applied in reduction of the debt secured by such mortgage or deed of trust with the excess remaining after full payment of said debt to be paid over to LESSEE and CITY to pay for reconstruction, repair or replacement of the damaged or destroyed improvements in progress payments as the work is performed. The balance of said proceeds shall be paid to LESSEE; provided, however, nothing herein shall prevent LESSEE, at its option and with the approval of said mortgagee or beneficiary, from filing a faithful performance bond in favor of said mortgagee or beneficiary and CITY in an amount equivalent to said insurance proceeds in lieu of surrendering said insurance proceeds to said mortgagee or beneficiary and CITY.
- (b) In the event that this lease is terminated by mutual agreement and said improvements are not reconstructed, repaired or replaced, the insurance proceeds shall be jointly retained by CITY and said mortgagee or beneficiary to the extent necessary to first discharge the debt secured by said mortgage or deed of trust

and then to restore the premises in a neat and clean condition. Said mortgagee or beneficiary and CITY shall hold the balance of said proceeds for CITY and LESSEE as their interests may appear.

LESSEE agrees to increase the limits of liability when, in the opinion of CITY, the value of the improvements covered is increased, subject to the availability of such insurance at the increased limits. LESSEE agrees, at its sole expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of reasonable fire and public liability insurance covering the premises, buildings and appurtenances.

- (9) Labor and Materialmen's Bond. LESSEE agrees to save CITY free and harmless, indemnify it against all claims for labor and materials in connection with improvements, repairs or alterations to the leased premises, and the cost of defending against such claims, including reasonable attorney's fees. In the event that improvements, repairs or alterations are constructed on the leased premises by other than CITY, and a lien is filed, LESSEE agrees to file with CITY within five (5) days, a bond sufficient to pay in full all claims of all persons seeking relief under the lien. The bond shall be acknowledged by LESSEE, as principal, and by a corporation satisfactory to CITY licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company, as surety.
- (10) Legal Proceedings. LESSEE agrees that should it become necessary for CITY to commence legal proceedings to collect rent, recover possession or enforce any other provision of this lease, the prevailing party will be entitled to legal costs in connection therewith, including reasonable attorney's fees as determined by the court. The parties agree that the law of the State of California shall be used in interpreting this lease and will govern all disputes under this lease and will determine all rights and obligations hereunder. Personal service either within or without the State of California shall be sufficient to give personal jurisdiction to any court in which an action is filed for litigation of rights under this lease.

- (11) Maintenance. LESSEE agrees to assume full responsibility for the operation and maintenance of the premises and the Open Space areas including, but not limited to, the channel through the leased premises, throughout the term hereof without expense to CITY unless otherwise specified herein, and to perform all repairs and replacements necessary to maintain and preserve the premises and the Open Space areas in a decent, safe, healthy and sanitary condition in a manner satisfactory to CITY and in compliance with all applicable laws. LESSEE agrees that CITY shall not be required to perform any maintenance, repairs or services or to assume any expense not specifically assumed herein in connection with the premises and the Open Space areas; provided, however, LESSEE shall not be responsible for the maintenance and repair of Open Space areas leased, transferred or used by CITY or by CITY's agents, employees, independent contractors, grantees and licensees, except in those cases where the Open Space areas are used by the general public. If the areas leased, transferred or used by CITY or by CITY's agents, employees, independent contractors, grantees or licensees cease to be so leased or used, and said areas are substantially returned to their original open space state, LESSEE shall once again become responsible for the maintenance and repair of said Open Space areas.

LESSEE's required performance of the Open Space maintenance hereunder shall include removal of nuisances, obstructions, hazards, and evidence of illegal dumping; and, as a minimum, at least semi-annual litter and weed abatement pursuant to the requirements of City ordinances as such ordinances may be amended from time to time.

- (12) Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry or national origin in LESSEE's use of the premises, including, but not limited to, the providing of goods, services, faci-

lities, privileges, advantages and accommodations, and the obtaining and holding of employment.

- (13) Utility Costs. LESSEE agrees to order, obtain and pay for all utilities and services, and installation charges in connection therewith.
- (14) 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 and the Open Space areas 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 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.
- 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 the premises are untenable by reason of such damage.
- (15) Signs. No signs shall be displayed on the premises without the prior consent of CITY.
- (16) Development. 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 as Document No. RR 257594-2

C. CONDITIONS.

- (1) Administration and Notices. Control and administration of this lease is under the jurisdiction of the City Manager of CITY as to CITY's interest herein and any communication relative to the terms or conditions or any changes thereto or any notice or notices provided for by this lease or by law to be given or served upon CITY may be given or served by registered letter deposited in the United States mails, postage prepaid, and addressed to the City Manager, Attention Property Director, City Administration Building, 202 "C" Street, San Diego, California 92101. Any notice or notices provided for by this lease or by law to be given or served upon LESSEE, mortgagee, trustee or beneficiary, may be given or served by depositing in the United States mails, postage prepaid, a letter addressed to said LESSEE at 16236 San Dieguito Road, P.O. Box 8086, Rancho Santa Fe, California 92067, or at the leased premises, or at such other address designated in writing by LESSEE, mortgagee, trustee or beneficiary, or may be personally served upon them or any person hereafter authorized by them to receive such notice. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the principals of the parties so served, upon personal service or forty-eight (48) hours after mailing in the manner required herein.
- (2) CITY Approval and Consent. The approval or consent of CITY, wherever required in this lease, shall mean the approval or consent of the City Manager except in the following situations which shall require resolution by City Council:
 - (a) Any amendment to the terms, covenants or conditions of this lease.
 - (b) Any assignment of controlling interest in this lease, which shall not include such assignments as shall be made solely for pledging the leasehold as security for a loan or loans as may be authorized by the City Manager within the scope of this lease, provided that such security assignments do not transfer possession of the leasehold; provided, however, the initial assignment from LESSEE to the association that will own and operate the country

club and golf course will not require City Council approval.

- (c) Any sublease of a major portion of the revenue producing activities of the premises or a major portion of the premises. The term "major" in this context, shall mean 20% or more of the revenue producing activities on which lease rents are paid to the City or 20% or more of the area of the leasehold, whichever applies.
 - (d) Any revision to the approved General Development Plan which substantially changes the concept of uses, quality and exterior design of the improvements and development of leased premises.
 - (e) Any substantial modification to the Open Space or to the level of maintenance required under Section IV.B.(11) Maintenance hereof.
- (3) Eminent Domain. In the event the leased premises or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, then the interests of CITY and LESSEE (or beneficiary or Mortgagee if there is a trust deed or mortgage then in effect) in the award and the effect of the taking upon this lease shall be as follows:
- (a) In the event of such taking of only a part of the leased premises, leaving the remainder of the premises in such location and in such form, shape and size as to be used effectively and practicably, in the opinion of CITY, for the conduct thereon of the operations permitted hereunder, this lease shall terminate and end as to the portion of the leased premises so taken as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the leased premises not so taken, and from and after such date the minimum rental, if any, required by this lease to be paid by LESSEE to CITY shall be reduced in the proportion to which the value of the leased premises so taken bears to the total value of the premises; provided, however, CITY shall have the right, with the consent of

LESSEE, to substitute like adjacent property and maintain the rent schedule without diminution.

- (b) In the event of the taking of only a part of the leased premises, leaving the remainder of the premises in such location and in such form, shape or reduced size as to render the same not effectively and practicably usable, in the opinion of CITY, for the conduct thereon of the operations permitted hereunder, this lease and all right, title and interest thereunder shall cease on the date title to the premises or the portion thereof so taken vests in the condemning authority.
- (c) In the event the entire leased premises are so taken, this lease and all of the right, title and interest thereunder shall cease on the date title to the premises so taken vests in the condemning authority.
- (d) In the event of any taking under Subparagraphs (a), (b) or (c) hereinabove, the only portion of any award of compensation which shall be paid to LESSEE shall be the fair market value of LESSEE's interest in the improvements placed upon that portion of the leased premises which are taken by the condemning agency. It is the intention of this provision that LESSEE shall not in any condemnation receive any bonus or penalty by reason of LESSEE's contractual rights in connection with the property condemned.
- (e) Notwithstanding the foregoing provisions of this Section, CITY may, in its discretion and without affecting the validity and existence of this lease, transfer CITY's interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. In the event of such transfer by CITY, LESSEE shall retain whatever rights it may have to recover from the said authority the fair market value of LESSEE's interest in the improvements taken by the authority and which LESSEE has placed upon the leased premises in accordance with the provisions of this lease.

- (4) Entry and Inspection. CITY reserves and shall always have the right to enter the 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 the premises or the Open Space areas 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 for and 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 the premises in a decent, safe, healthy and sanitary condition. Further, if at any time CITY determines that the premises or Open Space areas 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 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.
- (5) Holding Over. The occupancy of the premises after the expiration of the term of this lease shall be construed to be a tenancy from month to month, and all other terms and conditions of this lease shall continue in full force and effect. The extension of the term of this lease, pursuant to Section V hereinafter, shall not be deemed a tenancy from month to month.
- (6) Merger. The voluntary or other surrender of this lease by LESSEE, or a mutual cancellation thereof, shall not work a merger and shall, at the option of CITY, terminate all or any existing subleases or subtenancies or may, at the option of CITY, operate as an assignment to it of any or all such subleases or subtenancies.
- (7) Oral Representation. It is specifically understood and agreed hereby that this lease contains the complete expression of the whole agreement between

the parties hereto, and that there are no promises, representations, agreements, warranties or inducements, either expressed orally or implied by the parties, except as are fully set forth herein; and further, that this lease cannot be enlarged, modified or changed in any respect except by written agreement duly executed by and between the parties.

- (8) Ownership of Improvements. All improvements, except such fixtures as are hereinafter described on the attached addendum, which have been installed by LESSEE in accordance with the provisions of this lease, shall at the option of CITY become the property of CITY upon expiration or sooner termination of this lease.

LESSEE shall have the right to remove from the premises only those fixtures described on the attached addendum at any time prior to the expiration or earlier termination of this lease, provided that such removal would not, in the opinion of CITY, restrict the operation of the premises to the extent that the rent paid to CITY is reduced as a direct result therefrom. LESSEE's removal of any of said fixtures shall be at LESSEE's own expense and shall be conditioned upon LESSEE's repairing any damage to the remaining improvements and upon LESSEE leaving the premises in good order and condition. In the event LESSEE does not so remove said fixtures prior to the expiration of this lease, CITY may require LESSEE to remove, sell or destroy the same, or CITY may remove, sell or destroy the same at the expense of LESSEE, and if the proceeds of the sale are not adequate, LESSEE shall promptly pay to CITY its reasonable cost of any such removal, sale or destruction, together with the reasonable cost of repair of damages to CITY's property resulting from such removal, sale or destruction. At the option of CITY, any such fixtures not removed by LESSEE may be deemed abandoned and may be removed and sold by CITY and all income received by CITY therefrom shall be the property of CITY exclusively. Said addendum may be changed from time to time upon approval of the City Manager, without further resolution by the City Council.

(9) Remedies of CITY.(a) Default by LESSEE. In the event that:

- (i) LESSEE shall default in the performance or fulfillment of any covenant or condition herein required to be performed or fulfilled by LESSEE and shall fail to cure said default within thirty (30) days following the service on LESSEE of a written notice from CITY specifying the default complained of; or
- (ii) LESSEE shall voluntarily file or have involuntarily filed against him any petition under any bankruptcy or insolvency act or law; or
- (iii) LESSEE shall be adjudicated a bankrupt; or
- (iv) 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 through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE in or to the premises or in or to further possession thereof, and CITY may thereupon enter and take possession of the premises and expel LESSEE and all persons so claiming rights thereto. Provided, however, in the event that any default described in subpart (a)(i) of this Section is not curable within thirty (30) days after the service of a written notice upon LESSEE, CITY shall not terminate this lease pursuant to said default if LESSEE immediately commences to cure said default and diligently pursues such cure to completion.

- (b) CITY Recourse. If a mortgagee shall perfect its right to cure said default or defaults through litigation or through foreclosure, pursuant to Section IV, A.(3) hereinabove, then CITY shall have the option of the following courses of action in order that such default or defaults may be expeditiously corrected:

- (i) CITY may correct or cause to be corrected said default or defaults and charge the costs therefor (including costs incurred by CITY in enforcing this provision) to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after presentation by CITY of a statement of all or part of said costs.
- (ii) CITY may correct or cause to be corrected said default or defaults and may pay the costs thereof (including costs incurred by CITY in enforcing this provision) from the proceeds of any insurance fund held by CITY and LESSEE, or by CITY and mortgagee, or CITY may use said funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct said default or defaults or to pay the costs of such correction performed by or at the direction of CITY.
- (iii) CITY may terminate this lease as to the rights of LESSEE herein by assuming liability for any mortgage. LESSEE will assume and agrees to pay any and all penalties or bonuses required by the mortgagees as a condition for early payoff of the related notes by CITY. CITY may, as an alternative, substitute for said terminated LESSEE a new LESSEE reasonably satisfactory to the mortgagee.

Should said default or defaults be noncurable by LESSEE, then any mortgagee shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this lease and this lease shall not terminate if such mortgagee shall give notice in writing of its election to so substitute itself and commence performance within thirty (30) days after service upon it of written notice by CITY of the default. In the event of the election by the mortgagee to so substitute itself to LESSEE's estate hereunder, CITY expressly consents to said substitution and authorizes said mortgagee to

perform under this lease with all the rights, privileges and obligations of the original LESSEE hereunder, subject to cure of the default if possible by mortgagee, and LESSEE expressly agrees to assign all of its interest in and to its leasehold estate 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 LESSEE's right to possession, and CITY may enforce all of its rights and remedies under this lease, including, but not limited to, the right to recover the rent as it becomes due under this lease. For purposes of this subpart (c), the following do not constitute a termination of LESSEE's right to possession:

(i) Acts by CITY of maintenance, or preservation, or efforts to relet the property.

(ii) The appointment of a receiver upon initiative of CITY to protect CITY's interest under this lease.

(d) Damages. Damages which CITY may recover in the event of default under this lease include the worth, at the time of award, of the amount by which the unpaid rent for the balance of the term after the date of award, or for any shorter period of time specified in this lease, exceeds the amount of such rental loss for the same period that LESSEE proves could be reasonably avoided. The remedies provided by this Section are not exclusive and shall be cumulative to all other rights and remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which CITY may be entitled.

(10) Reservation of CITY Rights. CITY hereby reserves all rights, title and interest in any and all gas, oil and minerals beneath the leased premises. CITY shall have the right to enter the leased premises for the purpose of making repairs to or developing municipal services. CITY hereby reserves the right to grant and use such easements or establish and use such rights of way over, under, along and

across the leased premises for utilities, thoroughfares or access as it may deem advisable for the public good. Provided, however, CITY shall not unreasonably interfere with LESSEE's use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements of LESSEE located on the leased premises resulting from CITY's exercising the rights retained in this paragraph. Such reimbursement may include an offset in the rent due CITY proportionate to the amount of said physical damage as determined by the City Manager. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to the rights reserved herein.

- (11) Time is of the Essence. Time is of the essence of each and all of the terms and provisions of this lease and this lease shall inure to the benefit of and be binding upon the parties hereto and any successor of LESSEE as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements in this lease shall extend to and bind any assigns or sublessees of LESSEE.
- (12) Waiver. The waiver by CITY of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by CITY shall not be deemed to be a waiver of any preceding breach by LESSEE of any term, covenant or condition of this lease, regardless of CITY's knowledge of such preceding breach at the time of acceptance of such rent. Failure on the part of CITY to require or exact full and complete compliance with any of the covenants, conditions or agreements of this lease shall not be construed as in any manner changing the terms hereof and shall not prevent CITY from enforcing any provision hereof.

V. EXTENSION OF TERM.

- A. EXPIRATION OF TERM. On or before six (6) months prior to the expiration of the original sixty-one (61) year term, CITY shall, in its discretion, determine whether the premises shall become publicly operated or remain

privately operated or be designated for some use other than as a golf course.

- (1) Public Operation. In the event CITY determines that public operation of the premises as a golf course is in the best interest of CITY, it shall deliver notice thereof to LESSEE within thirty (30) days of such determination, in which event this lease shall expire and terminate pursuant to Section II hereinabove.
- (2) Private Operation. In the event CITY determines that the premises shall remain privately operated as a golf course, it shall deliver notice thereof to LESSEE within thirty (30) days of such determination, and the following shall be applicable:
 - (a) The term of this lease shall not automatically expire at the end of its original term but shall continue thereafter so long as LESSEE is not otherwise in breach hereof, until all other subparts of this subpart (2) have been complied with.
 - (b) Upon the determination provided for herein, CITY shall enter into good faith negotiations with LESSEE for a new lease for continued operation of the premises as a private golf course. The term of said new lease shall be for a minimum of fifteen (15) years.
 - (c) If after the expiration of one (1) year good faith negotiations the parties have not arrived at an agreement for a new lease, CITY shall have the right, if it so chooses, to seek other potential operators of the premises for a private golf course.
 - (d) In the event CITY negotiates an agreement with another operator for a private golf course that includes any term more favorable to the prospective operator than the terms that existed at the time good faith negotiations were terminated between CITY and LESSEE, CITY shall offer the agreement to LESSEE. LESSEE shall have the right to accept the agreement within thirty (30) days of receipt thereof upon the terms and conditions negotiated for

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the continued operation of the premises as a private golf course.

- (3) Other Designation. Nothing herein shall preclude CITY from designating the premises for other uses at the expiration of the term.

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

THE CITY OF SAN DIEGO

Date

12/17/82

By

June Turner
ASSISTANT TO THE CITY MANAGER

LESSEE:

WATT INDUSTRIES/SAN DIEGO, INC.,
a California corporation

Date

11/11/82

By

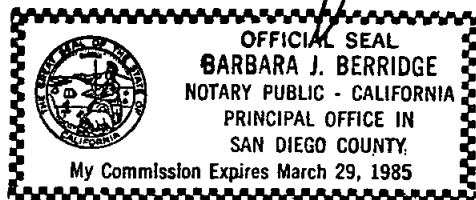
By

APPROVED as to form and legality this 20 day of December, 1982.

JOHN W. WITT, City Attorney

By

W. H. H. H. H.
DEPUTY

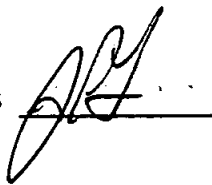


1925

EXHIBIT "B"

Lot 2, Fairbanks Country Club Unit No. 1, in the City of San Diego, County of San Diego, State of California, according to map thereof No. 10730, filed in the Office of County Recorder of San Diego County, September 29, 1983.

City Manager's Initials



Lessee's Initials



RJC:sn(1)D7
10-24-83

1926

(R-83-769)

RESOLUTION NUMBER R- 257594

Adopted on DEC 6 1982

BE IT RESOLVED, by the Council of The City of San Diego, as follows:

That the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a lease agreement with WATT INDUSTRIES/SAN DIEGO, INC., pursuant to which the City will lease approximately 400 acres of property presently owned by Watt Industries but proposed for conveyance to City, for development and operation of a golf course and related facilities, and pursuant to which an additional approximately 214 acres of open space lands shall be maintained by Watt Industries, with a total rent of \$3,000 to be payable to City prior to January 1, 2010, with percentages of gross receipts to be payable to City as rent commencing on or before January 1, 2010, and which lease has a term of 61 years commencing on the date of acquisition of title by City, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR-

257594 .

APPROVED: John W. Witt, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
11/9/82
Or.Dept:Prop.
Job: 217372
Form=r.none

1927

Passed and adopted by the Council of The City of San Diego on

December 6, 1982

by the following votes:

YEAS: Clator, Golding, Williams, Struikma, Murphy.

NAYS: Mitchell, Gotch.

NOT PRESENT: Wilson.

DISTRICT 8: Vacant.

AUTHENTICATED BY:

PETE WILSON

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By BARBARA BERRIDGE

Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. R- 257594 passed and adopted by the Council of The City of San Diego, California, on 12-6-82.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By *Barbara Berridge*

Deputy

(Rev. 5/79)

bb

FAIRBANKS COUNTRY CLUB
PRO-FORMA ANALYSIS
9/81
(000 Omitted)

	Project Total	1982 4th	Tentative Map 1983 1st	1983 2nd	1983 3rd	Start Construction 1983 4th	1984 1st	1984 2nd	1984 3rd	1984 4th	Construction Complete 1985 1st	1985 2nd
REVENUES:												
Membership Purchases	\$17,550			100	125	125	106	119	182	257	4,061	1,825
COSTS:						750	750					
River Diversion & Control	1,500						500	500				
San Dieguito Road Expansion	1,000							400	500	500	400	
Golf Course	1,800						250	250	250	250		
Tree Planting	1,000									100	100	
Fencing	200								1,000	1,000	1,000	
Clubhouse	3,000							200		150		
Offsites & Parking	350										450	
Landscape - Hard & Soft	450									100	100	
Tennis Facility	200										50	
Swimming Pool & Jacuzzi	50										50	
Other Recreation	50									250	250	
Maintenance Facilities	500										200	
Golf Carts & Other Equipment	200										400	300
Marketing	3,088	100	100	100	100	200	200	200	200	400	250	
Maintenance Subsidy	1,000										40	40
WI/SD Overhead	1,029		40	40	40	40	40	40	40	40	40	
Legal, Insurance, Other	200		50				50				50	
Finance Cost	-											
TOTAL COST	\$15,617	100	190	140	140	990	1,790	1,590	1,990	2,790	3,340	340
Net Cash In(Out)	1,933	(100)	(190)	(40)	(15)	(865)	(1,684)	(1,471)	(1,808)	(2,533)	721	1,485
LOAN DETAIL:												
Beginning Balance	0	0	105	300	355	388	1,272	3,020	4,642	6,682	9,549	9,305
Draws	8,845	100	190	40	15	865	1,684	1,471	1,808	2,533	(721)	(1,485)
Fay-offs	(10,778)										477	465
Finance Cost (@ 20%)	4,077	5	5	15	18	19	64	151	232	334	9,305	8,285
Ending Balance	2,144	105	300	355	388	1,272	3,020	4,642	6,682	9,549		

<u>1985</u> <u>3rd</u>	<u>1985</u> <u>4th</u>	<u>1986</u> <u>1st</u>	<u>1986</u> <u>2nd</u>	<u>1986</u> <u>3rd</u>	<u>1986</u> <u>4th</u>	<u>1987</u> <u>1st</u>	<u>1987</u> <u>2nd</u>	<u>1987</u> <u>3rd</u>	<u>1987</u> <u>4th</u>	<u>1988</u> <u>1st</u>	<u>1988</u> <u>2nd</u>
2,100	1,200	1,225	2,400	2,400	400	175	175	175	175	175	50

300	100	50	100	100	25	25	25	25	25	13	
250		250		250							
40	40	40	40	40	40	40	40	40	40	40	189
		50									
<u>590</u>	<u>140</u>	<u>390</u>	<u>140</u>	<u>390</u>	<u>65</u>	<u>65</u>	<u>65</u>	<u>65</u>	<u>65</u>	<u>53</u>	<u>189</u>
1,510	1,060	835	2,260	2,010	335	110	110	110	110	122	(139)
8,285	7,189	6,488	5,977	4,016	2,207	1,982	1,971	1,960	1,948	1,935	1,910
											139
(1,510)	(1,060)	(835)	(2,260)	(2,010)	(335)	(110)	(110)	(110)	(110)	(122)	
414	359	324	299	201	110	99	99	98	97	97	95
7,189	6,488	5,977	4,016	2,207	1,982	1,971	1,960	1,948	1,935	1,910	2,144

FAIRBANKS COUNTRY CLUB

PRO-FORMA ANALYSIS

9/81

(000 Omitted)

Membership Revenues	<u>\$17,550</u>	<u>100%</u>
River Diversion	\$ 1,500	8.6%
San Dieguito Road Expansion	1,000	5.7%
Golf Course	1,800	10.3%
Tree Planting	1,000	5.7%
Fencing	200	1.1%
Clubhouse	3,000	17.1%
Offsites & Parking	350	1.9%
Landscape - Hard & Soft	450	2.6%
Tennis Facility	200	1.1%
Swimming Pool	50	.3%
Other Recreation	50	.3%
Maintenance Facilities	500	2.9%
Golf Carts & Other Equipment	200	1.1%
Marketing	3,088	17.6%
Maintenance Subsidy	1,000	5.7%
WI/SD Overhead	877	5.0%
Legal, Insurance, Other	200	1.1%
Finance Cost	<u>4,077</u>	<u>23.2%</u>
TOTAL	\$19,542	111.3%
Loss	(\$ 1,992)	(11.3%)

FAIRBANKS COUNTRY CLUB

PRO-FORMA ANALYSIS

9/81

ASSUMPTIONS:

Membership Revenues - See attached detail.

River Diversion - Engineer's estimate at 9/81 -	Rip Rap	500,000
	Excavation	340,000
	Other	660,000

San Dieguito Road - Engineer's estimate at 9/81

Golf Course - 18 holes @ \$100,000 per hole

Tree Planting - 20,000 trees @ \$50 each, includes labor and equipment

Fencing - 9,600 ln. ft. @ \$21/ft.

Clubhouse - 20,000 sq. ft. @ \$150/ft., includes furniture, carpets, equipment, etc.

Offsites & Parking - Per 1/15/81 pro-forma, prepared by Joe Davis, attached.

Landscape - Per 1/15/81 pro-forma (Joe's), attached.

Tennis Facility - 8 courts @ \$25,000 each.

Swimming Pool - Per 1/15/81 pro-forma (Joe's), attached.

Other recreation - Arbitrary allocation

Maintenance Facilities - Building 5,000 sq. ft. @ 40 ft. =	\$200,000
Equipment (3 tractors (\$20,000 ea),	
3 trucks (\$6,000 ea), greens mowers,	
gang mowers, hand equipment,	
mechanics tools, etc.)	300,000
	<u>\$500,000</u>

Golf Carts & Other Equipment - 25 carts @ \$5,000 each	\$125,000
spare parts & related equip.	75,000
	<u>\$200,000</u>

Marketing - 15% of membership revenues

Maintenance Subsidy - \$1,000,000 based on analysis in 6/81 pro-forma

WI/SD Overhead - 5% of membership revenues

Legal, Insurance, Other - Arbitrary allocation

Finance Cost - See loan detail section, assume 17% prime & 3 loan.

DAOE # 2

CONDITIONAL USE PERMIT NO. 10-644-0
CITY COUNCIL

This Conditional Use Permit is granted by the City Council of The City of San Diego to THE CITY OF SAN DIEGO, "Owner," and to WATT INDUSTRIES/SAN DIEGO, INC., "Permittee," for the purposes and under the terms and conditions as set out herein, pursuant to the authority contained in Section 101.0507 of the San Diego Municipal Code.

1. Permission is hereby granted to Owner/Permittee to construct and operate a 27-hole golf course, country club and support facilities, and construct a flood control channel, on a 402 acre site described as a portion of Rancho San Dieguito and portions of Sections 4 through 9, Township 14 South, Range 3 West, located south of Via de la Valle, one mile east of I-5, in the Fairbanks Country Club Specific Plan area, in the FW and A-1-10 Zones.

2. The facility shall consist of the following:

- a. a 27-hole golf course;
- b. a country club;
- c. a driving range;
- d. 11 unlighted tennis courts;
- e. a flood control channel;
- f. off-street parking;
- g. accessory uses as may be determined incidental and approved by the Planning Director.

DOCUMENT NO. 10-644-0
FILED 1-31-83
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

3. No fewer than 370 off-street parking spaces shall be maintained on the property in the approximate location shown on Exhibit "A," dated October 11, 1982, on file in the office of the Planning Department. Parking spaces shall be consistent with Division 8 of the Municipal Code and shall be permanently maintained and not converted for any other use. Parking spaces and aisles shall conform to Planning Department standards. Parking areas shall be marked

4. Prior to the issuance of any building permits, a final subdivision map or maps shall be recorded on the property and the site zoned A-1-1.

5. Prior to the issuance of any sign permits, a comprehensive sign plan shall be submitted for Planning Director approval.

6. Enclosed storage of potentially noxious or toxic materials used in the maintenance of the course and servicing of equipment must be provided so that no pollution of the San Dieguito River or adjacent properties shall occur. These materials shall include, but shall not be limited to, fertilizers, pesticides and hydrocarbon fuels.

7. There shall be no outdoor storage of merchandise, materials, equipment or other goods to a height greater than that of any building, wall, landscaping screening, fence or gate enclosing the storage area.

8. A ten-foot high chain link fence, with close mesh screening shall be constructed along portions of the golf course

boundary, adjacent to San Dieguito Road, as shown on Exhibit "A" dated October 11, 1982. Location of the fence shall be determined by the final layout of the golf course.

9. All outdoor lighting shall be so shaded and adjusted that the light is directed to fall only on the same premises as light sources are located.

10. Parking lots, walkways and drives shall have ramps and easy access to buildings.

11. The golf course facilities shall be maintained in a litter free condition. The applicant shall have plans for regular maintenance program with permanent personnel. All water hazards and other bodies of water shall be maintained so as not to create a pest nuisance or health hazard. Sand traps shall be raked free of grass and leaves.

12. The golf course and country club facilities shall have sufficient liability insurance for any accidents or damage that could occur from activity within the Conditional Use Permit area.

13. A fire sprinkler plan for the country club facilities shall be approved by the City Fire Department prior to the issuance of building permits.

14. The design of the flood channel shall be approved both by the Engineering and Development Department and the Planning Director. It should be designed to be as natural appearing as possible with a minimum use of exposed rip-rap. The design of the channel shall be compatible with all flood control concepts

approved as part of the San Dieguito River Valley Study. In addition, the channel shall be designed so as to adequately dissipate flood waters exiting the property to the west.

15. The Owner/Permittee shall be responsible for the landscaping and maintenance of the flood channel and all other open space facilities within the Conditional Use Permit area.

16. No permit for construction and operation of any facility shall be granted nor shall any activity authorized by this permit be conducted on the premises until:

a. The Owner/Permittee signs and returns the permit to the Planning Department;

b. The Conditional Use Permit is recorded in the office of the County Recorder.

If the signed permit is not received by the Planning Department within 90 days of the Planning Commission decision or within 30 days of a City Council decision, the permit shall be void.

17. Before issuance of any building permits, complete grading and building plans shall be submitted to the Planning Director for approval. Plans shall be in substantial conformity to Exhibit "A" dated October 11, 1982, on file in the office of the Planning Department. No change, modifications or alterations shall be made unless appropriate applications for amendment of this permit shall have been granted.

18. This Conditional Use Permit must be used within 18 months after the date of City approval or the permit shall be void. An extension of time may be granted as set forth in Section 101.0507 of the Municipal Code.

19. Construction and operation of the approved use shall comply at all times with the regulations of this or any other governmental agencies.

20. After establishment of the project, the property shall not be used for any other purposes unless:

- a. Authorized by the Planning Commission; or
- b. The proposed use meets every requirement of the zone existing for the property at the time of conversion; or
- c. The permit has been revoked by the City.

21. This Conditional Use Permit may be revoked by the City if there is a material breach or default in any of the conditions of this permit. A revocation may be requested by the Owner/Permittee. Revocation of this Conditional Use Permit may be initiated by the City or the Owner/Permittee. The Planning Director shall set the revocation for a public hearing before the Planning Commission, as provided in Section 101.0506 or Section 101.0507 of the Municipal Code. An appeal from the decision of the Planning Commission may be taken to the City Council within ten (10) days after the decision is filed with the City Clerk. The Clerk shall set this matter for a public hearing before the City Council as provided in Section 101.0506 or Section 101.0507 of the Municipal Code.

22. This Conditional Use Permit is a covenant running with the lands and shall be binding upon Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out.

23. Prior to the issuance of any building permits, detailed golf course landscaping plans, club house landscaping, perimeter fencing, lights for the tennis courts and golf driving range shall be approved by the Planning Commission.

24. Prior to the installation of any loudspeakers, such facilities shall be submitted for Planning Commission approval. Adopted by the Council of The City of San Diego on October 11, 1982.

AUTHENTICATED BY

Mayor of The City of San Diego, California

City Clerk of The City of San Diego, California

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss

On this _____ day of _____, 19____,
before me the undersigned, a Notary Public in and for said
County and State, residing therein, duly commissioned and
sworn, personally appeared PETE WILSON, known to me to be
the Mayor, and CHARLES G. ABDELNOUR, known to me to be the City
Clerk of The City of San Diego, the municipal corporation
that executed the within instrument and known to me to be the
persons who executed the within instrument on behalf of the
municipal corporation therein named, and acknowledged to me
that such municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and
official seal, in the County of San Diego, State of California,
the day and year in this certificate first above written.

(Notary stamp)

CAT. NO. NN00737
TO 1945 CA (7-82)
(Corporation)

 TITLE INSURANCE
AND TRUST
A TICO COMPANY

County
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STATE OF CALIFORNIA
COUNTY OF San Diego } ss.

On January 28, 1983 before me, the undersigned, a Notary Public in and for
said State, personally appeared Joseph D. Davis
personally known to me or proved to me on the basis
of satisfactory evidence to be the person who executed
the within instrument as the
President, and

_____ personally known to me or
proved to me on the basis of satisfactory evidence to be
the person who executed the within instrument as the
Secretary of the Corporation
that executed the within instrument and acknowledged
to me that such corporation executed the within instru-
ment pursuant to its by-laws or a resolution of its
board of directors.

WITNESS my hand and official seal.

Signature

Diene E. Thatcher



(This area for official notarial seal)

1887

RECEIVED
CITY CLERK'S OFFICE
1983 OCT 12 11:50 AM
(R-84-479 REV. 1)
SAN DIEGO, CALIF. *gcw*

RESOLUTION NUMBER R- 259343

Adopted on SEP 27 1983

BE IT RESOLVED, by the Council of The City of San Diego as follows:

That the acceptance by the City Manager of that grant deed of WATT INDUSTRIES/SAN DIEGO, INC., a California corporation, executed in favor of The City of San Diego, bearing date of September 19, 1983, a copy of which deed is on file in the Office of the City Clerk as Document No. RR- 259343, granting to said City Lots 1, 2, 4, 9 and 10 of FAIRBANKS COUNTRY CLUB UNIT NO. 1, subject to the conditions and restrictions in the grant deed relating to utilization of the property for open space and related purposes for a period ending December 31, 2044, as more particularly described in said deed, be, and the same is hereby approved.

That the City Clerk is authorized and directed to forward the deed, and a certified copy of this resolution, attested by him under seal, to the Engineering Department for further handling.

APPROVED: John W. Witt, City Attorney

By *H. O. Volderhaug* (For)
Harold O. Volderhaug, Deputy

HOV:ps
9/15/83
Revised 9/21/83
Or.Dept:E&D
T.M.83-0355
W.O.830218
Form=r.deedr

1888

Passed and adopted by the Council of The City of San Diego
on SEP 27 1983, by the following vote:

YEAS: Cleator, McColl, Jones, Struiksmas, Murphy, Martinez, Mayor Hedgecock.

NAYS: Mitchell, Gotch.

NOT PRESENT: None.

AUTHENTICATED BY:

ROGER HEDGECOCK
Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(SEAL)

By MAYDELL L. PONTECORVO, Deputy.

I HEREBY CERTIFY that the above and foregoing is a full,
true and correct copy of RESOLUTION NO. R- 259343

passed and adopted by the Council of The City of San Diego,
California, on SEP 27 1983.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(SEAL)

By Maydell L. Pontecorvo, Deputy.

RECORDING REQUESTED BY

1878

382964

RECORDED IN
OFFICIAL RECORDS
OF SAN DIEGO COUNTY, CA.

1983 OCT 24 PM 2:21

VERA L. LYLE
COUNTY RECORDER

CITY CLERK

202 "C" ST.

SAN DIEGO CA

92101

MAIL TAX STATEMENTS TO

NO FEE

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Corporation Grant Deed

486-073-01

TO 1921 CA (12-74)

THIS FORM FURNISHED BY TICOR TITLE INSURERS

A.P.N.

The undersigned grantor(s) declare(s):

Documentary transfer tax is \$ none.

() computed on full value of property conveyed, or

() computed on full value less value of liens and encumbrances remaining at time of sale.

() Unincorporated area: () City of _____, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, WATT INDUSTRIES/SAN DIEGO, INC.

a corporation organized under the laws of the State of California

hereby GRANTS to

THE CITY OF SAN DIEGO, a municipal corporation

the following described real property in the City of San Diego
County of San Diego, State of California:

See legal description of property granted hereby set forth on Exhibit "A" attached hereto and by this reference made a part hereof.

The covenants, conditions and restrictions set forth on Exhibit "B" attached hereto are by this reference made a part hereof.

RESERVING THEREFROM, until December 31, 2044, as a mineral interest and not as a royalty interest, all of the minerals of every kind, including, but not limited to, all oil, gas, hydrocarbons and associated substances in, under or that may be extracted, produced and saved from said real property but without the right of entry to the surface of said real property or the top 500 feet of the subsurface of said real property for the purposes of exploring for, developing and removing such materials.

In Witness Whereof, said corporation has caused its corporate name and seal to be affixed hereto and this instrument to be executed by its _____ Vice _____ President and _____ Assistant _____ Secretary thereunto duly authorized.

Dated: September 19, 1983

WATT INDUSTRIES/SAN DIEGO, INC.

STATE OF CALIFORNIA

COUNTY OF San Diego

} SS.

On September 19, 1983 before me, the undersigned, a Notary Public in and for said State, personally appeared Stephen C. Gamesknown to me to be the _____ Vice _____ President, and Robert Mincer

Asst. _____ Secretary of the Corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the within Instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature

Diane E. ThatcherBy [Signature] Vice PresidentBy [Signature] Assistant Secretary

(This area for official notarial seal)

Title Order No. _____

Escrow or Loan No. _____

MAIL TAX STATEMENTS AS DIRECTED ABOVE

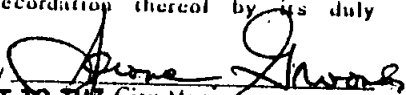
EXHIBIT "A" TO GRANT DEED

Lots 1, 2, 4, 9 and 10 of Map No. 10730 of
FAIRBANKS COUNTRY CLUB NO. 1 filed in the
Office of the County Recorder of San Diego
County, on SEPTEMBER 29, 1983

This is to certify that the interest in real property conveyed
by this instrument to the City of San Diego, a municipal
corporation, is hereby accepted by the undersigned officer
on behalf of the City of San Diego, pursuant to authority
conferred by Resolution No. 198686, adopted by the Council
of the City of San Diego on December 18, 1969, and the
grantee consents to recordation thereof by its duly
authorized officer.

Dated 9-27-83

By



ASSISTANT TO THE City Manager

AFTER RECORDING, MAIL TO CITY CLERK

R- 259343

EXHIBIT "B" TO GRANT DEED

BY THE CONVEYANCE AND ACCEPTANCE of this Grant Deed, WATT INDUSTRIES/SAN DIEGO, INC., a California corporation ("Grantor") and THE CITY OF SAN DIEGO, a municipal corporation ("Grantee"), declare, covenant and agree as follows:

1. Grantor is the owner, owns an interest in or is a partner of a partnership which is the owner (or formerly was such owner) of that certain real property located in the City of San Diego, County of San Diego, California, more particularly described as follows:

Lots 1 through 18, inclusive, of Parcel Map No. 12638 filed in the Office of the County Recorder of San Diego County on March 25, 1983

("Benefited Land").

2. Pursuant to that certain Percentage Lease between Grantor and Grantee approved by San Diego City Council Resolution No. R-257594 on December 6, 1982 ("Lease"), the real property conveyed by this Grant Deed consists of (a) premises leased for the purpose of constructing and maintaining a country club, golf course and related activities, more particularly described as follows:

Lot 2 of Map No. 10730 of FAIRBANKS COUNTRY CLUB NO. 1 filed in the Office of the County Recorder of San Diego County on SEPT. 29, 1983

("Country Club"), and (b) real property contiguous to the Country Club to be preserved and maintained as "Open Space" areas, more particularly described as follows:

Lots 1, 4, 9 and 10 of Map No. 10730 of FAIRBANKS COUNTRY CLUB NO. 1 filed in the Office of the County Recorder of San Diego County on SEPT. 29, 1983.

The Open Space is referred to herein as the "Affected Land", and, pursuant to the Lease, is to be maintained by Grantor.

3. The Affected Land is presently designated open space and as floodway zone, floodplain fringe zone and Agricultural zone (A-1-1) by the City of San Diego Progress Guide and General Plan, the Fairbanks Country Club Specific Plan and the City of San Diego's zoning maps.

4. Grantee for and on behalf of itself, and on behalf of each successive owner, during its, his, her or their ownership of any portion of the Affected Land herein granted by Grantor to Grantee, and each person having any interest in the Affected land derived through any such owner, covenants, and agrees that it, he, she or they:

(a) Shall keep and preserve the Affected Land as Open Space in a natural condition as near as possible, or may permit it to be utilized for any or all of the following purposes and no others:

(i) All agricultural uses relating to the growing, harvesting, processing or selling of field or grain crops, fruit and vegetables;

(ii) Passive non-commercial recreational uses (e.g., picnicking, walking, hiking, and similar activities), and reasonable support facilities, including any restrooms and parking facilities as may be reasonably required, for such uses;

(iii) Active non-commercial recreational uses not involving large assemblages of people or automobiles, nor involving the use of motor-driven machines or vehicles (e.g., equestrian activities, jogging, frisbee, and similar activities).

(b) Shall, notwithstanding any other provision hereof, prevent any of the following purposes, uses and activities from being conducted upon the Affected Land:

(i) Apiaries;

(ii) Aviaries;

(iii) Parking lots which are designated and intended to serve facilities located on the Affected Land other than as specifically allowed above;

(iv) Single-family dwellings;

(v) Churches, schools or day care facilities;

(vi) Public utility substations;

(vii) Raising, killing or dressing of livestock, poultry, fowl, rabbits or any other animal;

(viii) Airways, taxiways and pads of heliports and helistops;

(ix) Establishments or enterprises involving large assemblages of people or automobiles, including, but not limited to, recreational facilities publicly or privately operated;

(x) Fairgrounds;

(xi) Natural resources development and utilization, including, but not limited to, extracting, processing, storing, selling and distributing sand, gravel, rock, clay, decomposed granite and soil, and the manufacturing, producing, processing, storing, selling and distributing of asphaltic concrete, Portland Cement concrete, concrete products and clay products;

(xii) Racetracks;

(xiii) Travel trailer parks together with incidental facilities for the convenience of occupants;

(xiv) Dams and reservoirs;

(xv) Ground water replenishment works, including, but not limited to, diversion dams, percolation beds, spreading grounds and injection wells; provided, however, that desiltation facilities are expressly permitted to be built and maintained upon the Affected Land;

(xvi) Accessory buildings, other than as may be specifically allowed hereinabove, and uses customarily incidental to any of the above uses, including, but not limited to:

(A) The boarding and lodging of farm or other employees;

(B) Construction and maintenance of living quarters for farm or other employees with or without their immediate families;

(C) Lighted signs, commercial signs or unlighted signs, single-faced or double-faced exceeding 12 square feet in area for each face;

(xvii) Any other use similar in character to the uses, including accessory uses, enumerated in this section and inconsistent with the purpose and intent of this deed restriction.

5. (a) Grantee or its successors shall permit no use of the Affected Land in violation of the provisions hereof. In the event any use is contemplated which is not specifically permitted by the terms of this document, such use shall not be allowed without Grantee having first obtained Grantor's (or Grantor's successors') written consent thereto. Grantor or its successors shall not unreasonably withhold such consent. If Grantor or its successors disapprove a contemplated use, such disapproval shall be in writing and shall specify, with reasonable particularity, the reason(s) for such disapproval. If Grantor or its successors fail either to so approve or disapprove such contemplated use within thirty (30) days after the same have been submitted to Grantor or its successors, it shall be conclusively presumed that Grantor or its successors have approved such use. Such submission shall be deemed effective if Grantee submits its written request for consent to Grantor, or its corporate successors, and any homeowners associations in the Benefited Land area and posts signs describing such proposed use in at least twenty (20) locations reasonably calculated to give adequate notice of such proposed use to all of Grantor's successors.

(b) Grantor and Grantee agree that in the event of a dispute between them or their successors with respect to whether Grantor or its successors have unreasonably withheld their approval of a contemplated use submitted in accordance with the foregoing, they shall submit any such dispute to arbitration in accordance with the following provisions:

(i) Within fifteen (15) days after the written demand by either of the parties for arbitration, each of the

parties shall choose an arbitrator and give the other written notice of such choice, or in case of the failure of either party so to do, the other party shall have the right to appoint an arbitrator to represent the defaulting party. The two arbitrators thus appointed (in either manner) shall select and appoint in writing a third arbitrator and give written notice thereof to Grantor and Grantee or their successors, or if within ten (10) days after the appointment of said second arbitrator, the two arbitrators shall fail to appoint a third, then either party shall have the right to make application to the Superior Court of San Diego County to appoint such third arbitrator.

(ii) The three arbitrators so appointed (in either manner) shall promptly fix a convenient time and place for hearing the matter to be arbitrated and shall give written notice thereof to each party at least ten (10) days prior to the date so fixed. The hearing date shall be set for not more than sixty (60) days from the date of the demand for arbitration unless it is necessary to apply to the Superior Court for appointment of a third arbitrator. In such latter event, the hearing date shall be set for not more than thirty (30) days after the date such third arbitrator is so appointed. The arbitrators shall, within ten (10) business days after the hearing, render their decision with respect to whether Grantor or its successors have unreasonably withheld their approval of a contemplated use submitted to them.

(iii) The decision or award of the majority of the arbitrators shall be final and nonappealable except that upon the satisfaction of the conditions set forth in Section 1286.4 of the California Code of Civil Procedure, the decision or award of the majority of the arbitrators may be vacated upon the grounds set forth in Section 1286.2 of said Code of Civil Procedure. Further, any decision or award of the majority of the arbitrators may, upon satisfaction of the conditions set forth in Section 1286.8 of the Code of Civil Procedure, be corrected in accordance with the provisions of Section 1286.6 of said Code of Civil Procedure.

(iv) If two of the three arbitrators first appointed as aforesaid shall fail to reach an agreement in the determination of the matter in question, the same shall be decided by three new arbitrators, who shall be appointed and shall proceed in the same manner and within the same time frame, as hereinabove set forth, and said process shall be repeated until a decision is finally reached by two of the three arbitrators selected.

(v) Each party shall pay the costs and fees of the arbitrator chosen by such party and shall pay one-half of such costs and fees of the third arbitrator.

(c) Neither Grantor nor its successors shall be liable in damages to anyone on whose behalf a contemplated use is submitted for approval. Every person who submits a contemplated use for approval, either directly or through Grantee, agrees that he, she or it will not bring any action or suit against Grantor or its successors to recover any such damages.

6. Notwithstanding any other provision hereof, for a period of ten (10) years following the date of execution of this Grant

Deed, Grantor, or its successors, shall have the right to acquire easements from Grantee, at no cost, for utilities and public right of way required by governmental agencies, including Grantee, to serve the Benefited Land.

7. Notwithstanding any other provision hereof, Grantee shall have the right to establish underground utility easements upon the Affected Land provided said easements do not adversely affect or interfere with Open Space or Golf Course activities conducted on the Country Club portion of the deeded property.

8. Notwithstanding any other provision hereof, Grantor reserves the right to relocate all or a portion of Via de la Valle upon the Affected Land upon the request of Grantee's City Engineer.

9. Notwithstanding any other provision hereof, Grantor reserves a water utility easement in gross, in, over, under and across the Affected Land and the Benefited Land, to serve the Country Club, for the purpose of importing water from public or private sources to benefit the Country Club. However, in exercising its rights under this provision, Grantor will not unreasonably interfere with Grantee's use of, nor the open space nature of, the Affected Land.

10. Notwithstanding any other provision hereof, Grantor shall be permitted to build and maintain upon the Affected Land no more than five (5) signs promoting and advertising Olympic Games and/or Grantor's real property development upon the Benefited Land and the Country Club portion of the deeded property. The locations, style and design of such signs shall be at Grantor's sole discretion, subject to applicable City ordinances, as shall the period of time during which such signs, or any of them, shall remain erected. In no event, however, shall any such signs remain erected after ten (10) years from the date of execution of this Grant Deed.

11. Monetary damages for the breach of the covenants contained herein are declared to be inadequate and Grantee or its successors may be enjoined by any court of competent jurisdiction from commencing or proceeding with the construction of any improvements to, or permitting any use upon, the Affected Land which are in violation of the covenants set forth herein, or, if an improvement is constructed, may be ordered by any court of competent jurisdiction to remove such improvements.

12. Each successive owner, during its, his, her or their ownership, of any portion of the Affected Land, and each person having any interest in the Affected land derived through any such owner, shall be bound hereby for the benefit of the Benefited Land. Each successive owner, during its, his, her or their ownership, of any portion of the Benefited land, and each person having any interest in the Benefited Land derived through the Grantor, shall be benefited by the covenants contained herein, it being intended that the burden and benefit of the covenants shall run with the land.

13. Any violation of the covenants herein contained shall be deemed to be a continuing violation hereof and no delay in the delivery of any notice of any violation hereof or in the enforcement of any rights or the seeking of any remedies provided hereunder shall constitute, or be deemed to constitute, a waiver of

the right to give such notice, enforce such right or seek such remedy at any time after the occurrence of such violation.

14. Except in the event of arbitration in accordance with Paragraph 5 above, if any owner(s) of the Affected Land or the Benefited land commences litigation for the judicial interpretation, enforcement or rescission hereof, the prevailing party shall be entitled to a judgment against the other for an amount equal to reasonable attorney's fees and other costs incurred.

15. The covenants herein contained are for the benefit of the Benefited Land and have been made with the intent of satisfying the requirements of Section 1468 of the California Civil Code.

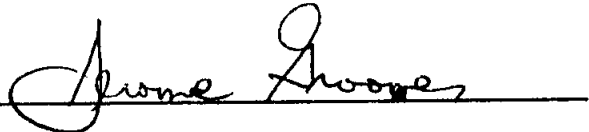
16. In the event any term, covenant, condition, provision or agreement herein contained is held to be invalid, void or otherwise unenforceable by any court of competent jurisdiction, the invalidity of any such term, covenant, condition, provision or agreement shall in no way affect the validity of any other term, covenant, condition, provision or agreement herein contained.

17. So long as WATT INDUSTRIES/SAN DIEGO, INC., a California corporation, its successors or assigns, or any partnership of which WATT INDUSTRIES/SAN DIEGO, INC. is a partner, owns any portion of the Benefited Land, and THE CITY OF SAN DIEGO, a municipal corporation, owns any portion of the Affected Land, the provisions contained within this Exhibit "B" to this Grant Deed may be terminated or amended by an instrument in writing executed by both and recorded in the Office of the County Recorder of San Diego County, California, without the need for approval by any other owner of any portion of the Benefited Land or the Affected Land. The term "successors or assigns" as used in this Paragraph only, shall mean the named corporation or any person or entity hereafter acquiring all of the then existing assets of the same by purchase, liquidation, merger or reorganization.

GRANTEE hereby accepts the above covenants, conditions and restrictions to this Grant Deed. These covenants, conditions and restrictions shall terminate and be of no further force or effect at 11:59 p.m. on December 31, 2044.

THE CITY OF SAN DIEGO

By

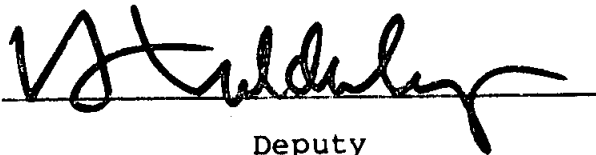


ASSISTANT TO THE City Manager

APPROVED as to form and legality this 27 day of September, 1983.

JOHN W. WITT, City Attorney

By



Deputy

F-2085

RR- 259343
DOCUMENT NO. _____
FILED SEP 27 1983
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Deed of Watt Industries/San Diego,
Inc., to City of San Diego.

1886

ESTOPPEL CERTIFICATE

The undersigned, the City of San Diego, a California municipal corporation (the "Lessor"), and Watt Industries/San Diego, Inc., a California corporation (the "Lessee"), hereby certify as follows for the benefit of Fairbanks Ranch Country Club, Inc., a California nonprofit corporation ("FRCC"), as an inducement to FRCC to acquire from Fairbanks Founders, Ltd., a California Limited Partnership, and Lessee, the assets of Fairbanks Ranch Country Club:

1. Lessor is the lessor and Lessee is the lessee under that certain Percentage Lease (the "Lease") dated as of December 6, 1982, executed by Lessor and by Lessee, filed for recordation in the Office of the County Recorder of San Diego County, California, on October 24, 1983 as of Document 83-382965.
2. The Lease, the Development Agreement dated September 8, 1983 between Lessee and Lessor, the Subdivision Agreement dated September 12, 1983 between Lessee and Lessor, and the Conditional Use Permit 10-644-0 dated January 31, 1983, issued by Lessor to Lessee, Planned Residential Permit 20-252-0 dated July 22, 1982, and miscellaneous Land Development Permits are to the best of our knowledge the only agreements in effect between Lessor and Lessee respecting the property, such agreements containing the entire agreement of the parties in that respect and there are no amendments, modifications or supplements thereto.
3. Lessor is now the lessor and Lessee is now the lessee under the Lease, and such Lease is in full force and effect.
4. Lessor has not sent any notice of default under said Lease to Lessee, nor has Lessor received from Lessee any notice that it is in default under said Lease, and Lessor has no present knowledge of any facts which would give rise to a breach or default by either party under said Lease.
5. Lessor knows of no counterclaim or offset presently existing in favor of Lessor against Lessee arising out of the Lease.
6. The Lease is for a term beginning September 27, 1983 and ending sixty-one (61) years thereafter, subject to extension as provided in the Lease.
7. The initial rent of Three Thousand Dollars (\$3,000) under the Lease has been paid to Lessor and, to the best of our knowledge, no rent is presently delinquent under the Lease.
8. Lessor and Lessee hereby certify that they have no knowledge of any violation of any law, ordinance, or governmental rule or regulation on or relating to the premises covered by the Lease and have not received any notification from any federal, state, or municipal authority having jurisdiction over the premises alleging that any such violation exists.

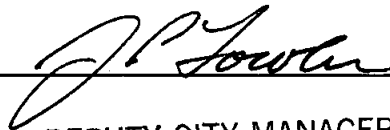
9. This Estoppel Certificate shall inure to the benefit of FRCC and its successors and assigns.

IN WITNESS WHEREOF, the undersigned have executed this Estoppel Certificate as of the 30 day of January 1986.

LESSOR:

THE CITY OF SAN DIEGO

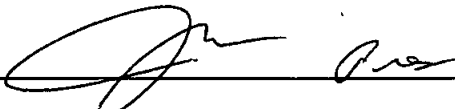
By


DEPUTY CITY MANAGER

LESSEE:

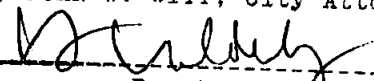
WATT INDUSTRIES/SAN DIEGO, INC.

By



APPROVED as
to form by JOHN W. WITT, City Attorney

By

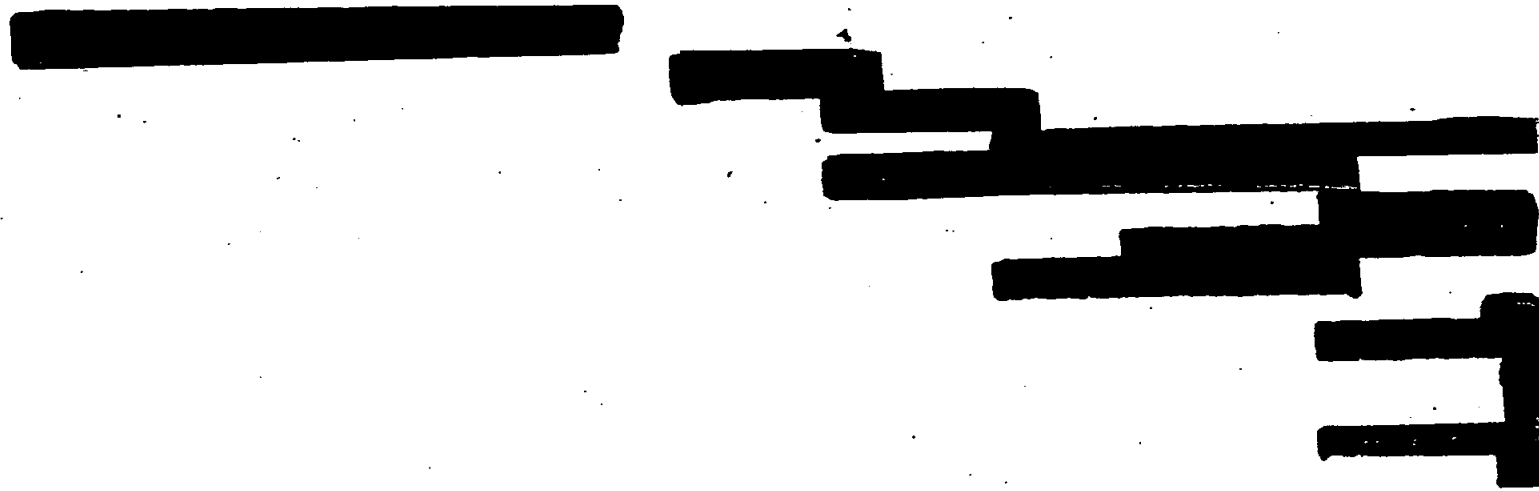

Deputy City Attorney

RJC:jw(108-1)
1-29-86

FAIRBANKS COUNTRY CLUB DEVELOPMENT SCHEDULE

<u>Project Total</u>	<u>1982 4th</u>	<u>Tentative Map</u>			<u>Start Construction</u>			<u>Construction Complete</u>		
		<u>1983 1st</u>	<u>1983 2nd</u>	<u>1983 3rd</u>	<u>1983 4th</u>	<u>1984 1st</u>	<u>1984 2nd</u>	<u>1984 3rd</u>	<u>1984 4th</u>	<u>1985 1st</u>

Architecture
 Engineering
 River Diversion & Control
 San Dieguito Road Expansion
 Golf Course
 Tree Planting
 Fencing
 Clubhouse
 Offsites & Parking
 Landscape - Hard & Soft
 Tennis Facility
 Swimming Pool & Jacuzzi
 Other Recreation
 Maintenance Facilities
 Golf Carts & Other Equipment



DOCUMENT NO. *RR-25759A-2*
 FILED DEC 6 1982
 OFFICE OF THE COUNTY CLERK
 SALT LAKE CITY, UT

FAIRBANKS COUNTRY CLUB
PRO-FORMA ANALYSIS
9/81
(000 Omitted)

	Project Total	1982 4th	Tentative Map 1983 1st	1983 2nd	1983 3rd	Start Construction 1983 4th	1984 1st	1984 2nd	1984 3rd	1984 4th	Construction Complete 1985 1st	1985 2nd
REVENUES:												
Membership Purchases	\$17,550			100	125	125	106	119	182	257	4,061	1,825
COSTS:												
River Diversion & Control	1,500					750	750					
San Dieguito Road Expansion	1,000						500	500			400	
Golf Course	1,800						250	400	500	500		
Tree Planting	1,000							250	250	250	100	
Fencing	200									100	100	
Clubhouse	3,000							200	1,000	1,000	1,000	
Offsites & Parking	350									150		
Landscape - Hard & Soft	450										450	
Tennis Facility	200									100	100	
Swimming Pool & Jacuzzi	50									50	50	
Other Recreation	50									250	250	
Maintenance Facilities	500										200	
Golf Carts & Other Equipment	200										400	300
Marketing	3,088	100	100	100	100	200	200	200	200	400	250	
Maintenance Subsidy	1,000										40	40
WI/SD Overhead	1,029		40	40	40	40	40	40	40	40	50	
Legal, Insurance, Other	200		50				50					
Finance Cost	-											
TOTAL COST	\$15,617	100	190	140	140	990	1,790	1,590	1,990	2,790	3,340	340
Net Cash In(Out)	1,933	(100)	(190)	(40)	(15)	(865)	(1,684)	(1,471)	(1,808)	(2,533)	721	1,485
LOAN DETAIL:												
Beginning Balance	0	0	105	300	355	388	1,272	3,020	4,642	6,682	9,549	9,305
Draws	8,845	100	190	40	15	865	1,684	1,471	1,808	2,533		
Pay-offs	(10,778)										(721)	(1,485)
Finance Cost (@ 20%)	4,077	5	5	15	18	19	64	151	232	334	477	465
Ending Balance	2,144	105	300	355	388	1,272	3,020	4,642	6,682	9,549	9,305	8,285

<u>1985</u> <u>3rd</u>	<u>1985</u> <u>4th</u>	<u>1986</u> <u>1st</u>	<u>1986</u> <u>2nd</u>	<u>1986</u> <u>3rd</u>	<u>1986</u> <u>4th</u>	<u>1987</u> <u>1st</u>	<u>1987</u> <u>2nd</u>	<u>1987</u> <u>3rd</u>	<u>1987</u> <u>4th</u>	<u>1988</u> <u>1st</u>	<u>1988</u> <u>2nd</u>
2,100	1,200	1,225	2,400	2,400	400	175	175	175	175	175	50

300	100	50	100	100	25	25	25	25	25	13	
250		250		250							
40	40	40	40	40	40	40	40	40	40	40	189
		50									
<u>590</u>	<u>140</u>	<u>390</u>	<u>140</u>	<u>390</u>	<u>65</u>	<u>65</u>	<u>65</u>	<u>65</u>	<u>65</u>	<u>53</u>	<u>189</u>
1,510	1,060	835	2,260	2,010	335	110	110	110	110	122	(139)

8,285	7,189	6,488	5,977	4,016	2,207	1,982	1,971	1,960	1,948	1,935	1,910
(1,510)	(1,060)	(835)	(2,260)	(2,010)	(335)	(110)	(110)	(110)	(110)	(122)	139
414	359	324	299	201	110	99	99	98	97	97	95
7,189	6,488	5,977	4,016	2,207	1,982	1,971	1,960	1,948	1,935	1,910	2,144

FAIRBANKS COUNTRY CLUB

PRO-FORMA ANALYSIS

9/81

(000 Omitted)

Membership Revenues	<u>\$17,550</u>	<u>100%</u>
River Diversion	\$ 1,500	8.6%
San Dieguito Road Expansion	1,000	5.7%
Golf Course	1,800	10.3%
Tree Planting	1,000	5.7%
Fencing	200	1.1%
Clubhouse	3,000	17.1%
Offsites- & Parking	350	1.9%
Landscape - Hard & Soft	450	2.6%
Tennis Facility	200	1.1%
Swimming Pool	50	.3%
Other Recreation	50	.3%
Maintenance Facilities	500	2.9%
Golf Carts & Other Equipment	200	1.1%
Marketing	3,088	17.6%
Maintenance Subsidy	1,000	5.7%
WI/SD Overhead	877	5.0%
Legal, Insurance, Other	200	1.1%
Finance Cost	<u>4,077</u>	<u>23.2%</u>
TOTAL	\$19,542	111.3%
Loss	(\$ 1,992)	(11.3%)

FAIRBANKS COUNTRY CLUB

PRO-FORMA ANALYSIS

9/81

ASSUMPTIONS:

Membership Revenues - See attached detail.

	Rip Rap	500,000
River Diversion - Engineer's estimate at 9/81 -	Excavation	340,000
	Other	660,000

San Dieguito Road - Engineer's estimate at 9/81

Golf Course - 18 holes @ \$100,000 per hole

Tree Planting - 20,000 trees @ \$50 each, includes labor and equipment

Fencing - 9,600 ln. ft. @ \$21/ft.

34,000 Clubhouse - 20,000 sq. ft. @ \$150/ft., includes furniture, carpets, equipment, etc.

Offsites & Parking - Per 1/15/81 pro-forma, prepared by Joe Davis, attached.

Landscape - Per 1/15/81 pro-forma (Joe's), attached.

6 courts Tennis Facility - 8 courts @ \$25,000 each. + 6 to come

Swimming Pool - Per 1/15/81 pro-forma (Joe's), attached.

Other recreation - Arbitrary allocation

6,400 Maintenance Facilities - Building 5,000 sq. ft. @ 40 ft. = \$200,000
Equipment (3 tractors (\$20,000 ea),
3 trucks (\$6,000 ea), greens mowers,
gang mowers, hand equipment,
mechanics tools, etc.)

300,000

\$500,000

Golf Carts & Other Equipment - 25 carts @ \$5,000 each \$125,000
spare parts & related equip. 75,000

\$200,000

Marketing - 15% of membership revenues

Maintenance Subsidy - \$1,000,000 based on analysis in 6/81 pro-forma

WI/SD Overhead - 5% of membership revenues

Legal, Insurance, Other - Arbitrary allocation

Finance Cost - See loan detail section, assume 17% prime & 3 loan.

TENNIS
FAC
2400 sq
6 courts

September 8, 1983

DEVELOPMENT AGREEMENT

THE CITY OF SAN DIEGO

AND

WATT INDUSTRIES/SAN DIEGO, INC.

Paul E. Robinson, Esq.
McDONALD, HECHT & SOLBERG
1100 Financial Square
600 "B" Street
San Diego, California 92101
(619) 239-3444

DEVELOPMENT AGREEMENT
Government Code Sections 65864-65869.5

THIS AGREEMENT is entered into this _____, 1983, between WATT INDUSTRIES/SAN DIEGO, INC., a California corporation, (hereinafter "Property Owner") and THE CITY OF SAN DIEGO, a municipal corporation organized and existing under the laws of the State of California (hereinafter "City").

RECITALS:

This Agreement is predicated upon the following facts:

A. The City of San Diego, a charter city, is authorized pursuant to Government Code §§ 65864-65869.5 to enter into binding development agreements with persons having legal or equitable interest in real property for the development of such property in order to establish certainty in the development process. The City further enters into this Development Agreement pursuant to its charter and self-rule powers and San Diego Municipal Code §§ 105.0101 et seq;

B. On March 30, 1982, the San Diego City Council (hereinafter "City Council") approved a San Diego City General Plan Amendment, a Specific Plan on file in the Office of the City Clerk as Document No. 256124, a Planned Residential Development Permit (PRD No. 20-252-0), a Tentative Map (T.M. No. 02-199, later revised T.M. No. 83-0335, May 31, 1983), and a Conditional Use Permit (C.U.P. No. 10-644-0) for Property Owner's project known as Fairbanks Country Club (hereinafter "Project");

C. One of the conditions of approval of Revised T.M. No. 83-0335 is as follows:

"Council approval of the final map of Unit 1 shall be contingent upon Council approval of a development agreement to provide for this development's share of the costs of the future construction of El Camino Real and the bridge, construction of future traffic signal systems in the area, and other area-wide required improvements or facilities that are not provided through the subdivision process."

D. The parties desire to enter into this Development Agreement relating to the real property, as described herein, in conformance with the provisions of the Government Code in order to achieve the development of recreational and residential land uses and the provision of public services, public uses and urban infrastructure, all in the promotion of the health, safety and general welfare of the City of San Diego;

E. In complying with said above stated condition of Revised T.M. No. 83-0335, Property Owner and City have negotiated this Agreement to ensure Property Owner's participation in the financing and future construction of certain required capital facilities for the area of City where the Project is located;

F. Property Owner and City have mutually agreed to enter into a Development Agreement and proceedings have been taken in accordance with City's rules and regulations;

G. On _____, 1983, the Planning Commission of The City of San Diego, after giving notice pursuant to Government Code §§ 65854, 65854.5 and 65856, held a public hearing on Property Owner's application for the Development Agreement. The City Council of the City, after providing public notices required by law, similarly held a public hearing on _____, 1983;

H. The City Council has found that the Development Agreement is consistent with the Progress Guide and General Plan, the Community Plan, as well as all other applicable policies and regulations of The City of San Diego;

I. On _____, 1983, the City Council adopted Ordinance No. _____ (New Series) approving the Development Agreement with the Property Owner and the ordinance thereafter took effect on _____, 1983.

NOW, THEREFORE, the parties hereto agree:

1. Definitions. In this Agreement, unless the context otherwise requires:

(a) "Project" is the development as represented by a Specific Plan on file in the Office of the City Clerk as Document No. 256124, PRD No. 20-252-0, C.U.P. No. 10-644-0, and Revised T.M. No. 83-0335 approved by City.

(b) "Property Owner" means the person, persons or entity having a legal or equitable interest in the Real Property as described in Paragraph 3 and includes the Property Owner's successors in interest. For the purposes of this Agreement, the term Property Owner shall not include City.

(c) "Real Property" is the real property referred to in Paragraph 3.

2. Exhibits. The following documents are referred to in this Agreement, attached and made a part by this reference:

<u>Designation</u>	<u>Description</u>	<u>Referred to in Paragraph</u>
A	Real Property and Map	3
B	Planned Residential Develop- ment Permit No. 20-252-0	9
C	A-1-1 Zone	9
D	Subdivision Agreement	10
E	Public Facilities Required for Fairbanks Country Club	11, 12, 13, 14
F	Schedule of Apportionment of Total Fees	11, 12, 15

3. Description of Real Property. The Real Property which is the subject of this Agreement is approximately 785 acres in area and is located East of El Camino Real, between San Dieguito Road and Via de la Valle, and is more particularly described in Exhibit "A."

4. Interest of Property Owner. Property Owner represents that it has a legal interest in the Real Property and that all other persons, except City, holding legal or equitable interests in the Real Property are to be bound by the Agreement.

5. Binding Effect of Agreement. The burdens of this Agreement bind and the benefits of the Agreement inure to the parties' successors in interest.

6. Relationship of Parties. It is understood that the contractual relationship between the City and Property Owner is such that Property Owner is an independent contractor and not an agent of the City.

7. Assignment. The rights and obligations of Property Owner under this Agreement may be transferred or assigned, provided such transfer or assignment is made as a part of the transfer, assignment, sale or lease of all or a portion of the Real Property. Any such transfer, except to City, or assignment shall be subject to the provisions of this Agreement and the control and limitations contained herein. During the term of this Agreement, any such assignee or transferee shall observe and perform all of the duties and obligations of Property Owner contained in this Agreement as such duties and obligations pertain to the portion of the Real Property so transferred or assigned.

Property Owner shall give to the City a notice within thirty (30) days after any such sale, assignment or transfer.

8. Hold Harmless. Property Owner agrees to and shall hold City, its officers, agents, employees and representatives harmless from liability for damage or claims for damage for personal injury including death and claims for property damage which may arise from the direct or indirect operations of the Property Owner or those of his contractor, subcontractor, agent, employee or other person acting on his behalf which relate to the Project. Property Owner agrees to and shall defend City and its officers, agents, employees and representatives from actions for damages caused or alleged to have been caused by reason of Property Owner's activities in connection with the Project.

This hold harmless agreement applies to all damages and claims for damages suffered or alleged to have been suffered by reason of the operations referred to in this Paragraph, regardless of whether or not City prepared, supplied, or approved plans or specifications or both for the Project.

9. Specific Restrictions on Development of Real Property. The San Diego City Progress Guide and General Plan, the Specific Plan approved March 30, 1982, and on file with the Office of the City Clerk as Document No. 256124, Planned Residential Development Permit No. 20-252-0, attached as Exhibit "B" and the A-1-1 Zone, attached as Exhibit "C", comprise the regulations and policies under which the Project will be developed. These plans, in conjunction with PRD No. 20-252-0 and A-1-1 Zone, as of the effective date of this Agreement, will control the permitted uses of the Real Property, the maximum density (intensity of use) of the Real Property, the maximum size of each of the proposed buildings and the maximum height for the proposed buildings. These controls, as of the effective date of this Agreement, shall continue for the term of this Agreement.

10. Public Improvement Facilities and Services. Property Owner and its successors in interest, except City, agree to provide the public improvements, facilities and services as required by the Subdivision Agreement for the Project as described on Exhibit "D" attached hereto.

11. Capital Facilities Financing. In addition to the public improvements, facilities and services described in Paragraph 10 above, Property Owner and its successors in interest, except City, agree to pay its fair share to construct needed capital facilities described in Exhibit "E." Said fair and reasonable share has been agreed upon by the parties and is described in Exhibit "F" as a "Schedule of Apportionment of Total Fees."

The parties recognize that the construction of the public facilities as described in Exhibit "E" is dependent upon many variables. The City shall use its best efforts to construct the facilities described in Exhibit "E" to this Agreement, or any revision of Exhibit "E" as they reflect the actual cashflow, status of development, or other factors.

The parties also recognize that if City Council makes certain changes to S.F.728, one of the capital facilities described in Exhibit "E," which reduce the required contributions by Watt, appropriate amendments to this Agreement will be sought by Watt pursuant to Section 8 herein.

12. Balloon Payment. If at the expiration or prior termination of this Agreement, Property Owner has not paid its pro rata share of the costs necessary to construct the capital facilities as described in Exhibit "E," Property Owner shall pay the remaining amount necessary to complete its pro rata share of the total costs. This amount shall equal the total number of dwelling units not built times the existing fees described in Exhibit "F."

13. Alternative Means to Finance Capital Facilities. In order to finance capital facilities as described in Exhibit "E," City will use its best efforts to collect like or similar fees, to those which are being paid by Property Owner pursuant to this Agreement, from other property owners in the North City Area, so that Property Owner will not be placed in an unfair, disadvantageous or non-competitive situation. Said best efforts shall include, but not be limited to, the imposition of the same or similar condition, to the extent permitted by law, for discretionary approvals as that imposed on Revised T.M. No. 83-0335, as set forth above in Paragraph C of the Recitals.

14. Moratoriums. If City is unable to satisfy itself that City is capable of financing the needed capital facilities, as described in Exhibit "E," and thus must declare a development moratorium until such time as the financing for said facilities is approved, Property Owner shall be exempt from this limited moratorium due to the fact that Property Owner, by this Agreement, will pay or already has paid its fair share of the costs of the facilities described in Exhibit "E." Nothing in this Agreement waives City's general police powers to declare a development moratorium for other purposes.

15. Payment of Fees. The fees as described in Paragraph 11 above shall be paid to City by Property Owner or its successors in interest, at the time building permits for the Project are issued by City. The total fees, as described in Paragraph 11 above, shall be apportioned on a Equivalent Dwelling Unit (EDU)

basis according to the schedule shown in Exhibit "F." Upon the payment of fees, by Property Owner or its successors in interest, for a lot or lots, City shall release said lot or lots from the obligations of this Agreement by recording a release of lien for said lot or lots.

The fees as set forth in Exhibit "F," which have not been paid, shall increase during the term of this Agreement according to the schedule described in Exhibit "F."

16. Effect of Agreement on Land Use Regulations.

(a) The rules, regulations and official policies governing permitted uses of the Real Property, the density of the Real Property, the design, improvement and construction standards and specifications applicable to development of the Real Property are those rules, regulations and official policies in effect upon the commencement of the term of this Agreement. Property Owner, by this Agreement, is vested with the right to develop the Project pursuant to said rules, regulations and official policies. Said vested right shall continue in effect for the term of this Agreement.

(b) The City may, hereafter, during the term of this Agreement apply only such newer, modified rules, regulations, ordinances, laws, general or specific plans, and official policies which are not in conflict with those in effect on the date of this Agreement and application of which would not prevent development in accordance with provisions of this Agreement regarding permitted use and permitted density of development. However, this section shall not preclude the application to development of the Real Property of changes in City laws, regulations, plans or policies specifically mandated and required by changes in state or federal laws or regulations. In the event such changes in state or federal laws prevent or preclude compliance with one or more provisions of this Agreement and its implementation, the parties agree to take appropriate action pursuant to Paragraph 17 of this Agreement.

(c) Any application, processing or inspection fees, and improvement standards as set forth in the City subdivision regulations, building codes, or construction standards and specifications now existing or hereafter in existence, shall apply to the development pursuant to this Agreement provided that: (i) such fees, standards and specifications are applicable to substantially all applications for construction or building permits for private projects in the City or apply to all public works within the City; and (ii) their application to the development of the Real Property is prospective only as to applications for building and other development permits or approvals of tentative sub-

division maps not yet accepted for processing; and (iii) their application shall not prevent development in accordance with the provisions of this Agreement with regard to permitted uses and permitted density.

17. Cooperation in Securing Governmental Permits/Conflicts of Laws. The City shall cooperate with Property Owner in the securing of all permits which may be required by the City or any other governmental agency. In the event that state or federal laws or regulations enacted after this Agreement has been entered into or the action or inaction of any other affected governmental jurisdiction prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City, the parties shall:

(a) Provide the other party with written notice of such state or federal restriction, provide a copy of such regulation or policy and a statement of conflict with the provisions of this Agreement;

(b) The parties shall, within thirty (30) days, meet and confer in good faith in a reasonable attempt to modify or suspend this Agreement to comply with such federal or state law or regulation.

Thereafter, regardless of whether the parties reach an agreement on the effect of such federal or state law or regulation upon this Agreement, the matter shall be scheduled for hearing before the Council. Ten (10) days written notice of such hearing shall be given, pursuant to Government Code § 65854.5 and San Diego Municipal Code § 105.0104. The Council, at such hearing, shall determine the exact modification or suspension which shall be necessitated by such federal or state law or regulation. Property Owner, at the hearing, shall have the right to offer testimony. Any modification or suspension shall be taken by the affirmative vote of not less than a majority of the authorized voting members of the Council. Any suspension or modification may be subject to judicial review in conformance with Paragraph 24 of this Agreement.

18. Default, Remedies and Termination.

(a) General Provisions. In the event of default or breach of this Agreement or of any of its terms or conditions, the party alleging such default or breach shall give the breaching party not less than thirty (30) days Notice of Default in writing, measured from the date of certified mailing, specifying the nature of the alleged default, and, where appropriate, the manner and period of time in which said default may be satisfactorily cured. During any period of curing, the party charged

shall not be considered in default for the purposes of termination or institution of legal proceedings. If the default is cured then no default shall exist and the noticing party shall take no further action.

After proper notice and the expiration of said cure period, the noticing party to this Agreement, at its option, may institute legal proceedings pursuant to Paragraph 24 hereof or give Notice of Intent to Terminate this Agreement pursuant to Government Code § 65868. Following Notice of Intent to Terminate, the matter shall then be scheduled for consideration and review by the City Council, within thirty (30) days, in the manner set forth in California Government Code §§ 65865.1, 65867 and 65868, as amended.

Following consideration of the evidence presented before the City Council, either party alleging a default by the other party may, at its option, give written Notice of Termination of this Agreement to the other party by certified mail. Written Notice of Termination of this Agreement shall be effective immediately upon certified mailing to the defaulting party.

Failure to delay in giving notice of default pursuant to this section shall not constitute a waiver of any default. Except as otherwise expressly provided in this Agreement, any failure or delay by the other party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

(b) Default by Property Owner. The City shall, at least every twelve (12) months during the term hereof, review the good faith substantial compliance of Property Owner with the terms of this Agreement. Such periodic review may result in amendment or termination of this Agreement, provided a default has been established under the terms of this Agreement.

The City shall to such an extent as is practical deposit in the mail to Property Owner a copy of staff reports and related exhibits concerning contract performance of a minimum of thirty (30) calendar days prior to any such review or action upon the Development Agreement by the Planning Commission or the City Council. Upon request by Property Owner, Property Owner shall be permitted an opportunity to be heard orally and in writing regarding its performance under the Agreement before each appropriate Commission or City Council at any required review of action on the Development Agreement.

Pursuant to Government Code § 65865.1, as amended, Property Owner shall have the duty to demonstrate its good faith compliance with the terms of this Agreement at such periodic reviews. The parties recognize that this Agreement and the documents incorporated herein could be deemed to contain thousands of requirements (i.e., construction standards, landscape standards, etc.) and that evidence of each and every requirement would be a wasteful exercise of the parties' resources. Accordingly, Property Owner shall be deemed to have satisfied its duty of demonstration when it presents evidence on its good faith and substantial compliance with the provisions of the Specific Plan on file in the Office of the City Clerk as Document No. 256124, the A-1-1 Zone, and further information concerning the uses, number, types, densities and sizes of structures completed and of any reservations and dedications to the City. Either party may address any requirement of this Agreement. Provided, however, that the City shall provide thirty (30) days written notice to Owner of any requirement it desires to be addressed. If, at any time of hearing an issue not previously identified in writing is required to be addressed by the City, the hearing at the request of either party shall be continued to afford sufficient time for analysis and preparation.

(c) Default by City. In the event that the City defaults on this Agreement, the City agrees that Property Owner or its successors in interest shall not be further obligated to perform under the terms of this Agreement, as of the date of said default by City.

(d) Enforced Delay and Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are demonstrated to be due to acts of God, war, or omissions of the City or other governmental agencies, or other causes beyond the control of the Property Owner. An extension of time in writing for any such cause shall be granted for the period of the enforced delay, or longer as mutually agreed upon, which period shall commence to run from the time of commencement of cause.

19. Amendment or Cancellation of Agreement. This Agreement may be amended from time to time or cancelled entirely by the mutual consent of the parties hereto and only in the same manner as its adoption by an ordinance as set forth in Government Code §§ 65867, 65867.5 and 65868, and Municipal Code § 105.0109. The term "this Agreement" or "Development Agreement" herein shall include any such amendment properly approved and executed.

20. Enforcement. Unless amended or cancelled as provided herein, this Agreement is enforceable by any party to it not-

withstanding a change in the applicable General or Specific Plan, zoning, subdivision or building regulations adopted by City which alter or amend the rules, regulations or policies governing permitted uses of the land, density, design, improvement and construction standards and specifications.

21. Project is a Private Undertaking. It is specifically understood and agreed to by and between the parties hereto that the Project is a private development; that the City has no interest in or responsibility for or duty to any third party concerning any improvements until such time and only until such time that the City accepts by deed of dedication the same pursuant to the provisions of this Agreement or in connection with the various subdivision map approvals; that Property Owner shall have full power over and exclusive control of the Project herein described subject to the limitations and obligations of Property Owner under this Agreement and enforcement of this Agreement by the City and subject to the ownership rights of City pursuant to a Corporation Grant Deed recorded on _____, 1983, as File/Page No. _____, in the office of the San Diego County Recorder.

22. Administrative Costs. Property Owner agrees that a reasonable amount of the fees, described in Paragraph 11 above, may be used by the City to offset administrative costs incurred by the City in administering this Agreement.

23. Applicable Laws/Attorneys Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any action be brought in any court of competent jurisdiction, the prevailing party in such action shall be entitled to all attorneys fees, court costs and necessary disbursements in connection with such litigation.

24. Institution of Legal Action. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to enforce any covenants or agreements herein or to enjoin any threatened or attempted violation thereof; to recover damages for any default; or to obtain any other remedies consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of San Diego, State of California, or in the Federal District Court in the Southern District of California.

25. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid. Notice required to be given to City shall be addressed as follows:

The City of San Diego
City Administration Building
202 "C" Street, ____ Floor
San Diego, California 92101
Attention: _____

Notices required to be given to Property Owner shall be addressed as follows:

Watt Industries/San Diego, Inc.
16236 San Dieguito Road
P.O. Box 8086
Rancho Santa Fe, California 92067
Attention: Joseph D. Davis

A party may change the address by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

26. Rules of Construction and Miscellaneous Terms.

(a) The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory, "may" is permissive.

(b) If there is more than one signer of this Agreement their obligations are joint and several.

(c) The time limits set forth in this Agreement may be extended by mutual consent of the parties in accordance with the procedures for adoption of an agreement.

27. Duration of Agreement. This Agreement shall expire on December 31, 2003. Upon the expiration of this Agreement, the parties or their successors in interest may enter into a new Development Agreement on terms and conditions negotiated at that time.

28. Incorporation of Recitals. The Recitals are specifically incorporated into this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties on the day and year first above written.

I hereby approve the form
and legality of the foregoing
Agreement this ____ day of
____, 1983.

JOHN W. WITT, City Attorney

THE CITY OF SAN DIEGO

By _____

Attest: _____

By _____

Chief Deputy City Attorney

Approved as to form:

Paul E. Robinson

WATT INDUSTRIES/SAN DIEGO, INC.

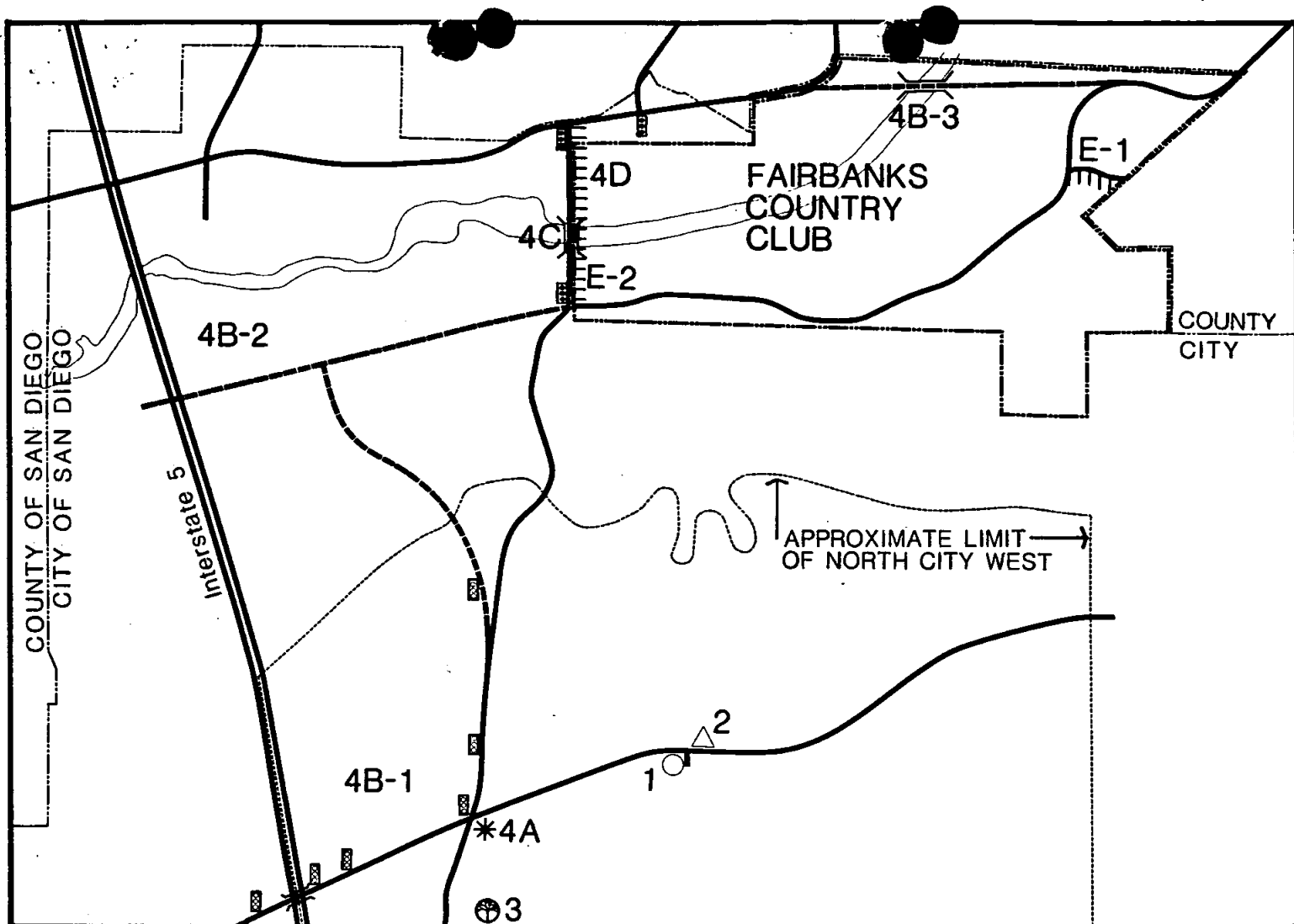
By *[Signature]*

By *[Signature]*

EXHIBIT "A"

Legal Description

A Portion of Rancho San Dieguito and Portions of Sections 4, 5, 6, 7, 8, and 9, Township 14 South, Range 3 West, San Bernardino Base Meridian, and as more particularly shown on Parcel Map No. 12638.



INDEX TO FACILITIES

1. Library
2. Fire Station
3. Community Park
4. Major Transportation Facilities
 - A. Park & Ride
 - B. I-5 Access
 - B-1
 - B-2
 - B-3
 - C. El Camino Real Bridge
 - D. Local Traffic Signals
 - E. Major Street Improvements
 - E-1 Widening of Camino Santa Fe
 - E-2 Widening of El Camino Real

LEGEND



FAIRBANKS COUNTRY CLUB

8819-L June 14, 1983

No Scale



EXHIBIT "B"

PLANNED RESIDENTIAL DEVELOPMENT PERMIT NO. 20-252-0
PLANNING DIRECTOR

This Planned Residential Development Permit is granted by the Planning Director of The City of San Diego to WATT INDUSTRIES, a California Corporation, "Permittee," and MAR DEL PROPERTIES, a General Partnership, "Owner," for the purposes and under the terms and on the conditions as set out herein pursuant to the authority contained in Section 101.0900 of the Municipal Code of The City of San Diego.

1. Permission is hereby granted to "Owner/Permittee" to construct and operate a Planned Residential Development located east of El Camino Real, southerly and easterly of Via de la Valle, more particularly described as portions of Sections 4 through 9, T14S, R3W, SBBM in the proposed A-1-1 Zone.
2. The Planned Residential Development shall include and the term "Project" as used in the Planned Residential Development shall mean the total of the following facilities:
 - a. 341 units.
 - b. Off-street parking.
 - c. Incidental accessory uses as may be determined and approved by the Planning Director.
 - d. Recreational facilities.
3. Prior to the issuance of any building permits the accompanying rezoning shall be approved by City Council and a final subdivision map or maps shall be recorded on the subject property.
4. An open space easement shall be granted and shown on said map on all areas not shown for building sites.
5. Not less than 1,092 parking spaces or at a ratio of 3.2:1 shall be provided. Each of the parking spaces shall be permanently maintained and not converted for any other use at any time. Each subsequent owner shall be informed of this requirement through the C.C. and R's. Each space shall be maintained on the subject property in the approximate location as shown on Exhibit "A" dated October 7, 1981. Areas and driveways shall be surfaced with not less than 2 inch A.C. or its equivalent and each parking space shall be marked. Parking spaces and aisles shall conform to Planning Department standards. No charge shall be made at any time for use of these off-street parking spaces.

6. Exterior radio or television antennas shall be prohibited; however, one master antenna may be permitted for the project. The installation of any underground CATV cable in any public rights-of-way within or adjacent to the project shall require either a license or franchise with the City prior to such installation.

7. No building additions shall be permitted unless approved by the Planning Director. Patio covers shall be permitted only if they are consistent with the architecture of the dwelling unit and have been approved by the Home Owners Association.

8. No manufactured slope shall be steeper than a ratio of 2:1.

9. The applicant shall post a copy of the approved Permit in the sales office for consideration by each prospective buyer.

10. Any sales office or temporary sales signs advertising the subdivision shall be approved by the Planning Director and shall be consistent with the criteria established by the A-1-1 Zone.

11. Sidewalks shall be provided from each unit to sidewalk within the dedicated right-of-way, and if the sidewalks are contiguous to the curb of private streets, a five-foot general utility easement must be provided behind this walk.

12. If private streets are proposed, such streets shall be named and begin with appropriate terms such as "Caminito," "Ruelle," or "Row."

13. Public refuse collection shall not be permitted unless approved by the Director of General Services.

14. All private streets shall be improved to the requirements set forth by the Engineering and Development Director.

15. No parking shall be permitted on any private streets except in approved locations.

16. Delete Condition No. 4 of the General Conditions for Planned Residential Development Permits, and in its stead substitute the following: "This Planned Residential Development Permit must be utilized within 24 months after the effective date of the concurrent A-1-1 rezoning Case No. 5-81-076. Failure to utilize subject Permit within 24 months will automatically void the same, unless an extension of time has been granted by the Planning Director as set forth in the Municipal Code."

17. The Permittee shall comply with the General Conditions for Planned Residential Developments attached hereto and made a part hereof.

18. This Planned Residential Development shall be constructed prior to sale to individual owners to ensure that all development is consistent with the conditions and exhibits submitted to and approved by the Planning Director.

APPROVED by the Planning Director of The City of San Diego on October 7, 1981.

FINDINGS

1. The proposed use will fulfill an individual and/or community need and will not adversely affect the General Plan or the community plan. The Planning Director believes that this finding can be met. The Precise Plan Amendment shows this area for one dwelling unit per acre consistent with the A-1-1 Zone. This proposed PRD results in slightly less than one dwelling unit per acre.
2. The proposed use, because of conditions that have been applied to it, will not be detrimental to the health, safety, and general welfare of persons residing or working in the area and will not adversely affect other property in the vicinity. The Planning Director believes that this finding can be met. The applicant is providing access from San Dieguito Road and Via de la Valle. All slopes will be revegetated. The Engineering and Development Department has indicated that there is adequate access for vehicular traffic and emergency vehicles as well as public facilities being available.
3. The proposed use will comply with the relevant regulations in the Municipal Code. The Planning Director believes that this finding can be met. The applicant is providing 355 acres of open space where 219 would be required. In addition, the applicant is providing 157 acres of usable open space where 109 acres is the minimum required.

GENERAL CONDITIONS FOR PLANNED RESIDENTIAL DEVELOPMENT PERMITS

1. Prior to the issuance of any building permits, complete grading and building plans (including signs) shall be submitted to the Planning Director for approval. Plans shall be in substantial conformity with Exhibit "A," dated October 7, 1981, on file in the office of the Planning Department. The property shall be developed in accordance with the approved grading and building plans except where regulations of this or other governmental agencies require deviation therefrom. Prior to and subsequent to the completion of the project, no changes, modifications or alterations shall be made unless and until appropriate applications for amendment of this permit shall have been approved and granted.
2. Prior to the issuance of any grading or building permits, a complete landscaping plan, including a permanent watering system, shall be submitted to the Planning Director for approval. Said plans shall be in substantial conformity with Exhibit "A," dated October 7, 1981, on file in the office of the Planning Department. Approved planting shall be installed prior to the issuance of an occupancy permit on any building. Such planting shall not be modified or altered unless and until this permit shall have been amended to permit such modification or alteration.
3. All outdoor lighting shall be so shaded and adjusted that the light therefrom is directed to fall only on the same premises where such light sources are located.
4. This Planned Residential Development Permit must be utilized within 24 months after the effective date thereof. Failure to utilize subject permit within 24 months will automatically void the same unless an extension of time has been granted by the Planning Director, as set forth in Section 101.0900 of the Municipal Code. The effective date of this permit shall be the day following the day on which the appeal period expires unless an appeal to the Planning Commission or City Council is filed pursuant to Municipal Code. If an appeal is filed, the effective date of the permit shall be the seventh day following action by the Planning Commission on an appeal or if an appeal of the Planning Commission is filed, the effective date of the permit shall be the day on which the City Council acts to refuse to hear the appeal or, having heard the appeals, acts to approve the permit.
5. Construction and operation of the approved use shall comply at all times with the regulations of this or other governmental agencies.
6. This Planned Residential Development Permit shall not be final until the fifteenth day following the decision of the

Planning Director and is subject to appeal to the Planning Commission and City Council as provided for in Section 101.0900 of the Municipal Code of The City of San Diego.

7. No Development shall commence nor shall any permit for construction be issued until the following events shall have occurred:

- a. Permittee shall have agreed to each and every condition hereof by having this Planned Residential Development Permit signed within 90 days of the Director's decision. In no event shall this condition be construed to extend the time limitation as set forth in Condition 4 above, i.e. the time commences to run on the date that the Planning Director granted this Planned Residential Development Permit.
- b. This Planned Residential Development Permit executed as indicated shall have been recorded in the office of the County Recorder.

8. After the establishment of the project as provided herein, the subject property shall not be used for any other purposes unless specifically authorized by the Planning Director.

9. The property included within this Planned Residential Development shall be used only for the purposes and under the terms and conditions as set forth in this permit unless specifically authorized by the Planning Director or the permit shall have been revoked by The City of San Diego.

10. In addition to any other remedy provided by law, any breach in any of the terms or conditions of this permit or any default on the part of the Permittee or its successors in interest, shall be deemed a material breach hereof, and this Planned Residential Development Permit may be cancelled or revoked. Cancellation or revocation of this Planned Residential Development Permit may be instituted by the City or Permittee. The Planning Director may cancel or revoke this permit with that decision appealable to the Planning Commission. Public notice will be provided as in Section 101.0900. An appeal from the decision of the Planning Commission may be taken to the City Council within seven (7) days after the decision is filed with the City Clerk. The Clerk shall set this matter for public hearing before the City Council giving the same notice as provided in Section 101.0900.

11. This Planned Residential Development Permit shall inure to the benefit of and shall constitute a covenant running with the lands, and the terms, conditions and provisions hereof shall be binding upon Permittee and any successor or successors thereto, and the interests of any successor shall be subject to each and every condition herein set out.

SEC. 101.0404

A-1 - AGRICULTURAL ZONES

A. PURPOSE AND INTENT

The purpose of adopting this section of the San Diego Municipal Code and creating permanent A-1 (Agricultural) Zones is to provide appropriate zoning, with well-defined uses, of areas which are rural in character, and presently may be zoned for agricultural purpose, only on an interim basis; it is the intention of the City Council that the A-1-1, A-1-5, A-1-10 Zones be applied to undeveloped areas not yet ready for urbanization usage and awaiting development, those areas where agricultural usage may be reasonably expected to persist or areas designated as open space in the General Plan.

B. PERMITTED USES

In a zone designated by the symbol "A-1", followed by a number, the number shall determine in acres the minimum area of a lot in that zone, and on which no building or improvement, or portion thereof, shall be erected, constructed, converted, established, altered or enlarged, nor shall any premises be used except for one or more of the following purposes:

1. Single-family dwellings.
2. Churches.
3. Private stables.
4. All agricultural uses, except the maintaining, raising feeding or keeping of swine; provided that any dairy or the maintaining, raising, feeding, or keeping of ten or more domestic animals (as defined in Municipal Code SEC. 44.0318) is located on premises containing five or more acres.
5. Public utility substations.
6. Killing and dressing of poultry, fowl, or rabbits raised on the premises, provided that any building so used shall be not less than 50 feet from any property line.
7. Commercial riding, training, or boarding horse stable, provided that such stable shall be located on a lot containing not less than five acres.

8. Harvesting, processing, or selling of crops produced on the same premises.
9. One stand exclusively of wood frame construction (except the floor), and not exceeding 300 square feet in gross floor area, for the display and sale of agricultural crops produced on the same premises.
10. Accessory buildings and uses customarily incidental to any of the above uses, including:
 - a. The boarding and lodging of not more than four farm employees;
 - b. Construction and maintenance of living quarters for five or more farm employees with or without their immediate families, provided that not more than one such building shall be located on any parcel of land and further provided that said parcel shall contain a minimum of ten acres;
 - c. Signs, single-faced or double-faced, unlighted, not over 12 square feet in area for each face, shall be permitted on each lot as follows:
 - (1) One sign limited to the name, address and occupation of the occupant, and
 - (2) One sign pertaining only to the sale of products raised on the premises, and
 - (3) One sign offering the premises for sale or lease.
11. Any enterprises or businesses which, in the opinion of the Planning Commission, are similar in character to the uses herein enumerated in this section and are clearly within the intent and purpose of this zone. Such finding shall be final unless an appeal in writing is filed with the City Clerk, by the owner of the property or the owner of surrounding property affected by the proposed uses, within ten days from the date of action by the Commission. In the event of such appeal, the City Clerk shall cause the matter to be presented to the City Council as soon as is practical, and the Council shall make the final determination.

C. PERMITTED DENSITY

1. Lot Area per Dwelling Unit.

- a. In zone A-1-1, a minimum of one acre for each dwelling unit;
- b. In zone A-1-5, a minimum of five acres for each dwelling unit;
- c. In zone A-1-10, a minimum of ten acres for each dwelling unit.

2. Minimum Floor Area.

Each dwelling hereafter converted, constructed, erected, or moved in zones A-1-1, A-1-5, and A-1-10 shall have a minimum living floor area, including walls, but excluding garage, of 650 square feet.

D. PROPERTY DEVELOPMENT REGULATIONS

No building or portion thereof shall be erected, constructed, converted, established, altered, enlarged, or used on any lot in zones A-1, unless the lot and building shall comply with the following requirements and special provisions:

1. Minimum Lot Dimensions.

- a. Area - one acre in zone A-1-1; five acres in zone A-1-5; ten acres in zone A-1-10.
- b. Street Frontage - 100 feet in zone A-1-1, except that such frontage may be reduced at the end of a street dedication where no provision is made for its future extension, to a minimum of 60 percent of the required frontage; 200 feet in zones A-1-5 and A-1-10.
- c. Width - 100 feet in zone A-1-1, except that the front 25 percent of a lot abutting the end of a street dedication where no provision is made for its future extension may be tapered to coincide with the street frontage; 200 feet in zones A-1-5 and A-1-10.
- d. Depth - 200 feet.

- e. A lot existing upon the effective date of this zone which does not comply with these minimum lot dimensions may be used as permitted herein, subject to all other requirements of this section.

2. Minimum Yard Spaces.

- a. Front - 25 feet in depth.
- b. Side - each 20 feet in width, except that on any lot of record upon the effective date of this section, which lot is less than the required width, such sideyards may be reduced to a minimum of ten percent of the lot width, or five feet whichever is the greater.
- c. Rear - 25 feet in depth.

3. Height Limit.

The above front, side, and rear yards, including lots of record less than the required width, shall be increased by ten feet for each story that the building exceeds two stories or 30 feet in height.

- 4. Maximum Lot Coverage - in zones A-1-1, A-1-5, and A-1-10 shall be 20 percent of the lot area. Structures used to provide shade areas for growing crops, such as greenhouses and agricultural shade structures, shall not be included for the purpose of determining lot coverage.

E. OFFSTREET PARKING REQUIREMENTS

1. Church.

For a church there shall be provided on the same premises one automobile parking space for each five seats, or for each 35 square feet of floor area, where seats are not fixed, in the nave of said church. Twenty inches of a bench shall constitute one seat.

2. Size.

Each required parking space shall not be less than nine feet in width, and 20 feet in length, exclusive of aisles, driveways, ramps, columns, office or work area. All aisles, driveways, and parking spaces shall have a clear vertical height of not less than seven feet.

3. Access.

Each required parking space shall open directly upon an aisle or driveway of such width and design as to provide safe and efficient means of vehicular access to such parking space. All required parking facilities shall have convenient access to a public street or alley.

4. Surfacing.

All required driveways and parking areas shall be plainly marked, and improved with not less than two inches of asphaltic concrete or its equivalent.

5. Location.

Off-street parking spaces which are open to the sky may be located in any yard except required front yards, and except areas lying between a public street and a setback line.

F. SPECIAL PROVISIONS

1. Setbacks Adjacent to Partial Streets and Alleys.

No building or structure shall be erected or maintained on a lot which abuts a street or alley having only a portion of its required width dedicated and where no part of such dedication would normally revert to said lot if the street or alley were vacated, unless the yards provided and maintained in connection with such building or structure have a width or depth of that portion of the lot needed to complete the street or alley width, plus the width or depth of the yards required on the lot by this article, if any. This section applies whether this article requires lots or not. The Planning Commission upon request, shall determine the required street or alley width, in accordance with subdivision standards as set forth in Article 2, Chapter X of this Code.

2. Setbacks Adjacent to Major Streets.

No building or structures, except fences shall be erected, constructed, converted, established, altered, and/or enlarged on any premises closer than 76 feet from the centerline of a major street, as shown on the adopted plan for major streets and/or as such plan may be amended or adopted in the future.

(Amended by Ord. 8706 N.S., effective 9-15-62)

(Amended by Ord. 11729 N.S., effective 1-9-76; shade structures not covered)

EXHIBIT "D"

SUBDIVISION IMPROVEMENT AGREEMENT

THIS AGREEMENT is made by THE CITY OF SAN DIEGO, a municipal corporation, herein called "City," and

WATT INDUSTRIES/SAN DIEGO, INC.
a California corporation
16236 San Dieguito Road
P.O. Box 8086
Rancho Santa Fe, CA 92067

herein called "Subdivider."

RECITALS

A. Subdivider is about to present to the Council of The City of San Diego, for approval and recordation, a final subdivision map of a proposed subdivision to be known as

FAIRBANKS COUNTRY CLUB UNIT NO. 1

pursuant to provisions of the Subdivision Map Act of the State of California; and in compliance with the provisions of Chapter X, Article 2 of the San Diego Municipal Code relating to the filing, approval and recordation of subdivision maps.

B. The Code provides that before the final map is approved by the Council of City, Subdivider must either have installed and completed all of the public improvements and land development work required by the Code to be installed in subdivisions before final maps of subdivisions are approved by the Council for purpose of recording in the Office of the County Recorder of San Diego County, or as an alternative thereof, that Subdivider shall enter into an agreement with City, secured by an approved improvement security to insure the performance of the work pursuant to the requirements of Chapter X, Article 2 of the San Diego Municipal Code, agreeing at its own expense to install and complete, free of liens, all of the public improvements and land development work required in the subdivision within a definite period of time prescribed by the Council.

C. Subdivider, in consideration of the approval and recordation of this map by the Council, desires to enter into this agreement wherein it is provided that the Subdivider will install and complete at its own expense, all the public improvement work required by City in connection with the proposed subdivision and will deliver to City an improvement security as approved by the City Attorney.

D. A tentative map of the subdivision has previously been approved, subject to the requirements and conditions contained in Resolution 4428 passed and adopted on July 7, 1983 and any amendments thereto.

E. Complete Plans and Specifications for the construction, installation and completion of the public improvement work have been prepared and approved by the City Engineer, as shown on Drawing
Nos. 20850-1-D thru 20850-118-D
20852-1-D thru 20852-5-D

and have been filed of record in the office of the City Clerk on

as Document No. A copy of said
Plans and Specifications is also on file in the office of the City
Engineer.

F. The subdivision deposits as required have been posted, and the Subdivider agrees to pay or post additional costs or deposits, if any, as specified in the Code.

G. An estimate of the cost of constructing public improvements and land development according to Plans of Specifications has been made by

BARRY BENDER
5620 Friars Rd.
San Diego, CA 92110
Rick Engineering Company

and has been approved by City, which estimate is attached hereto, marked "Exhibit A" and made a part hereof.

H. It is necessary that certain lot and boundary monuments be installed after the public improvement work has been completed, but prior to final acceptance by City; an estimate has been prepared and approved by

BARRY BENDER
5620 Friars Rd.
San Diego, CA 92110
Rick Engineering Company

to guarantee payment as set forth in Section 66496 of the Government Code. Said estimate is attached hereto, marked "Exhibit B" and made a part hereof.

NOW, THEREFORE, in consideration of the approval and recordation by the City Council of the final map of this subdivision, and other valuable consideration, Subdivider and City agree as follows:

1. Subdivider shall:

a. Comply with all the requirements of the tentative map resolution, and any amendments thereto.

b. Complete at its own expense, to the satisfaction and approval of the City Engineer, all of the public improvement and land development work required in and adjoining the subdivision.

c. Furnish the necessary materials therefore, all in strict conformity with the Plans and Specifications on file in the office of the City Clerk, which document is incorporated herein and made a part of this agreement.

d. Complete the improvement under this contract on or before the second anniversary date of the Council approval of this agreement.

e. Install all monuments within thirty days after the completion and acceptance of the improvements by the City Engineer.

2. If any of the public improvement work contemplated by this agreement is to be constructed or installed on land not owned by Subdivider, no construction or installation shall be commenced prior to the dedication and acceptance by City of appropriate easements.

3. If any land development or grading is to be performed on property not included within the boundaries of this proposed subdivision, letters of permission from the owners of such property shall be submitted to the City prior to the commencement of said grading or land development.

4. Simultaneously with the execution of this agreement, Subdivider shall furnish and deliver to City an approved improvement security in the sum of Five Million Three Hundred Thirty Five Thousand Three Hundred Fifty Nine and no/100 dollars

(\$5,335,359.00)

which security shall guarantee the faithful performance of this contract and is attached hereto, marked "Exhibit C" and made a part hereof.

5. If the public improvements are not completed within the time agreed herein, the sums provided by the improvement security whether cash bond or otherwise may be used by City for the completion of all or any part of the public improvements in accordance with specifications contained herein, or at the discretion of the City Council, the City may rescind this agreement in whole or in part.

6. The entire amount of the improvement security, or any balance thereof, not required for payment, shall be released to Subdivider, or its successors in interest pursuant to the terms of the improvement security upon recordation of a Notice of Completion, provided that all of the following conditions are satisfied:

a. Certification of completion by the City Engineer of items "a" through "e" of Paragraph 1.

b. Certification by the City Engineer and the City Auditor that all costs are fully paid.

c. Certification by the City Engineer that all required quitclaims and as-built plans have been submitted and approved or bonded for.

7. Nothing contained in this agreement shall preclude City from expending moneys pursuant to agreements concurrently or previously executed between the parties, or from entering into agreements with Subdividers for the apportionment of costs of water and sewer mains pursuant to the provisions of the Code of City providing therefore, nor shall anything herein stated commit City to any such apportionment.

8. Until such time as all improvements are fully completed and accepted by City, Subdivider will be responsible for the care, maintenance of and any damage to the streets, alleys, easements, water and sewer lines within the proposed subdivision.

9. Acceptance of the work on behalf of City shall be made by the City Manager. Such acceptance shall not constitute a waiver of defects by City.

10. Subdivider agrees to and acknowledges that the City, or any officer or employee thereof, shall not be liable for any injury to persons or property occasioned by reason of the acts or omissions of Subdivider, its agents or employees, in the performance of this Agreement. Subdivider further agrees to indemnify, protect and hold harmless City, its officials and employees, from any and all claims, demands, causes of action, liability or loss of any sort because of, or arising out of acts or omissions of Subdivider, its agents or employees, in the performance of this Agreement, including: claims, demands, causes of action, liability or loss because of, or arising out of, the design or construction of the improvements; provided, however, that the approved improvement security shall not be required to cover the provisions of this paragraph. Said indemnification and agreement to hold harmless shall extend to injuries to persons and damages to or taking of property resulting from the design or construction of said subdivision and the public improvements as provided herein, and shall extend to

damages to or a taking of property of adjacent property owners as a consequence of the diversion of waters resulting from the design, construction or maintenance of drainage systems, streets or other improvements. Acceptance by the City of the improvements shall not constitute an assumption by the City of any responsibility for such damage or taking. City shall not be an insurer or surety for the design or construction of the subdivision pursuant to the approved improvements plans; nor shall any officer or employee thereof be liable or responsible for any accident, loss or damage happening or occurring during the construction of the work or improvement, as specified in this Agreement, except as it may be shown that said officer or employee specifically directed that said work or improvement be accomplished in a manner contrary to the wishes and desires of Subdivider, and the Subdivider has filed a written objection with the City Engineer. Provisions of this section shall remain in full force and effect for ten (10) years following acceptance of the improvements by the City.

11. The Subdividers, and each of them, during the entire life of this agreement, shall secure and maintain a policy or policies of public liability and property damage insurance in the amount of \$500,000, combined single limit per occurrence, and shall furnish the City with a certificate showing that this liability and property damage insurance is in effect and that The City of San Diego is named in said policy as an additional named insured. Written notification must be provided to the City 30 days prior to cancellation of the certificate.

12. In the event that suit is brought upon this contract by City to enforce the terms hereof, City shall be entitled to a reasonable sum for attorney's fees.

13. Sale or other disposition of this property will not relieve Subdivider from the obligations set forth herein.

14. No work pursuant to this agreement shall commence until a notice to proceed has been issued by the City Engineer. The notice to proceed will not be issued before the map is recorded. It is the responsibility of the Subdivider to notify the City of the date of the recording. The map shall be recorded by the Subdivider within 30 calendar days from the date of adoption of a resolution by the City Council approving the map and authorizing this agreement or, in the event the map is not so recorded this agreement shall be subject to being declared null and void by the City Council.

IN WITNESS WHEREOF, this agreement is executed by The City of San Diego, acting by and through its City Manager, pursuant to Resolution No. _____ authorizing such execution, and by Subdivider.

Dated this _____ day of _____, 19____.

THE CITY OF SAN DIEGO,
a municipal corporation

By _____

WATT INDUSTRIES/SAN DIEGO, INC.
a California corporation

By _____

By _____

NOTE: NOTARY ACKNOWLEDGEMENTS
MUST BE ATTACHED - PER
CIVIL CODE, SEC. 1180 et seq.

Improvement Completion Date: On or before the second
anniversary date of Council approval of this agreement.

IMPROVEMENT SECURITY

Form of: Performance Bond Nos. OC-300495 (\$1,065,000.00, Public Improvements)
OC-300492 (\$824,710.00, Public Improvements)
OC-300496 (\$677,270.00, Public Improvements)
OC-300491 (\$554,486.00, Public Improvements)
OC-300493 (\$795,827.00, Public Improvements)
OC-300494 (\$1,112,071.00, Public Improvements)
OC-300511 (\$305,995.00, Hairpin Realignment of
El Camino Real)

Agency: James Econn & Company
4262 Campus Drive
Newport Beach, CA 92660

Amount: TOTAL: \$5,335,359.00

June 28, 1983

EXHIBIT "E"

PUBLIC FACILITIES
REQUIRED FOR
FAIRBANKS COUNTRY CLUB

The following described projects are public facilities required by development in the North City area including Fairbanks Country Club.

1. **Library** - A 10,000 square foot library will be provided within North City West in the Town Center. The library will include the entire cost of building, furnishings and books.
2. **Fire Station** - A 3,000 square foot station will be provided within North City West on Del Mar Heights Road near the Torrey Pines High School. The costs include the building and apparatus.
3. **Community Park** - A 17-acre park will be provided within North City West in the Town Center area. This includes a recreation building, pool and related facilities.
4. **Major Transportation Facilities** -
 - A. **Park & Ride** - 120-car park & ride facility will be provided within North City West in the Town Center.
 - B. **I-5 Access** -
 - B-1 - The Del Mar Heights Road/I-5 interchange bridge widening and six traffic signals from I-5 east along Del Mar Heights Road to El Camino Real and North on El Camino Real to the North City West boundary.
 - B-2 - The proposed San Dieguito Road/I-5 interchange facilities.
 - B-3 - The proposed SF-728 bridge and road across the San Dieguito River along the northern boundary of Fairbanks Country Club.
 - C. **El Camino Real Bridge** - A 24-foot wide bridge is proposed for the north bound lanes of the future 98-foot wide El Camino Real to cross the San Dieguito River along the western boundary of Fairbanks Country Club.

June 28, 1983

D. Local Traffic Signals - Three (3) traffic signals are proposed in the area of Fairbanks Country Club; the intersection of El Camino Real and San Dieguito Road, the intersection of El Camino Real (south) and Via de la Valle, and the intersection of El Camino Real (north) and Via de la Valle.

E. Major Street Improvements -

E-1 - The widening of Camino Santa Fe onsite from 49 feet to the ultimate 98-foot right-of-way. This includes paving and drainage facilities.

E-2 - The widening of El Camino Real onsite and offsite westerly along the Fairbanks Country Club boundary. This road will provide the north bound 49 feet of the ultimate 98-foot right-of-way. This includes grading, paving, and drainage facilities.

5. Major Sewer Facilities - This project shall be ultimately served by a Satellite Wastewater Reclamation Plant in the San Dieguito Valley with connection to the San Elijo Ocean Outfall for disposal of seasonal and excess flows. The San Dieguito Conceptual Wastewater Study submitted to the City of San Diego by Lowery & Associates in May of 1983, has identified those facilities which are required: Wastewater Reclamation Plant; reclaimed water distribution facilities; San Dieguito land outfall, pump station and forcemain to ocean outfall; and expansion of the San Elijo Ocean Outfall.

6. Major Water Transmission Facilities - No major facilities are proposed to be paid for by this Development Agreement. All water for this development is to be provided by the Olivenhain Municipal Water District at this time.

The public facilities listed in this Exhibit represent a best estimate of size and location of said facilities. These may be modified pursuant to the required public hearing process.

June 28, 1983

FACILITIES COST ANALYSIS

The following project costs are based on the North City West costs as outlined in the North City West Public Facilities Financing Plan dated April, 1982. The Equivalent Dwelling Unit (EDU) projections are derived from the North City West Facilities Benefit Assessment, Phase I, dated April, 1982.

The Fairbanks Country Club Project is composed of two types of development; residential (single-family detached housing) and commercial (golf course, clubhouse). The following equivalent dwelling unit cost analysis will be developed with the clubhouse included. The clubhouse contributions will be computed on a commercial equivalent. The clubhouse facilities and parking requirements equal a 3.5-acre commercial development site. The costs attributed to the clubhouse will be derived by subtracting the smaller cost per EDU figure with the clubhouse from the larger cost per EDU figure without the clubhouse and multiplied by the total number of residential dwelling units to equal the total cost for the clubhouse contribution.

1. **Library** - Based on North City West costs and equivalent dwelling unit estimates for Phase I of North City West, plus the Fairbanks Country Club EDU estimates.

With Clubhouse and Without Clubhouse:

Total cost of \$1,935,000 ÷ Total EDU of (8,181 (NCW) + 341 (FCC)) = \$227.06/EDU

2. **Fire Station** - Based on North City West costs and EDU estimates for Phase I of North City West, plus the Fairbanks Country Club EDU estimates.

With Clubhouse:

Total cost of \$615,000 ÷ Total EDU of (9,780 (NCW) + 373 (FCC)) = \$60.57/EDU

Without Clubhouse:

Total cost of \$615,000 ÷ Total EDU of (9,780 (NCW) + 341 (FCC)) = \$60.76/EDU

3. **Community Park** - Based on North City West costs and EDU estimates for Phase I of North City West, plus the Fairbanks Country Club EDU estimates.

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With Clubhouse and Without Clubhouse:

Total Cost of \$7,635,000 ÷ Total EDU of (8,181 (NCW) + 341 (FCC)) = \$895.92/EDU

It should be noted that Fairbanks Country Club is overall a low-density project with considerable open space and five on-site recreational areas. It can therefore be expected that this project will probably place less burden on park facilities than the typical North City West project.

4. **Major Transportation Facilities** - Based on North City West costs and EDU estimates, plus Fairbanks Country Club EDU estimates and the design capacities of the related facilities.

A. Park & Ride -

With Clubhouse and Without Clubhouse:

Total Cost of \$519,000 ÷ Total EDU of (8,181 (NCW) + 341 (FCC)) = \$60.90/EDU

B. I-5 Access - Costs of Project B-1, Del Mar Heights Rd.

With Clubhouse:

Total Cost of \$3,480,000 (Bridge Widening) + \$600,000 (6 traffic signals) ÷ Total EDU of 12,751 (NCW) + 418 (FCC) = \$309.82/EDU

Without Clubhouse:

Total Cost of \$4,080,000 ÷ Total EDU of (12,751 (NCW) + 341 (FCC)) = \$311.64/EDU

Design capacities for projects B-2 and B-3, the San Dieguito Road Interchange and SF-728 river crossing respectively are based on ADT capacities per Council Policy 600-4. San Dieguito Road would have a maximum ADT of 25,000 as a four-lane major street, and SF-728 would have a maximum ADT of 30,000 as a four-lane primary arterial street. The Fairbanks Country Club Final EIR indicates that a single-family unit yields 11 trips per day, therefore, the EDU design capacities for a major street is $25,000 \div 11 = 2,272$ EDU and for a primary arterial street is $30,000 \div 11 = 2,727$ EDU. The EIR also assigns a total of 4,250 daily trips attributed to the Fairbanks Country Club Project, with 66% going to the west and 33% going to the east.

June 28, 1983

Costs of Project B-2, San Dieguito Road Interchange -
Based on 1984 construction costs.

With Clubhouse:

Total Cost of \$300,000 ÷ Total EDU of 2,272 (Design Capacity) = \$132.04/EDU x (4,250 Daily Trips ÷ 11 DT/EDU x 66%) = \$33,670.20 Total FCC Share - 418 EDU = \$80.55/EDU

Without Clubhouse:

\$33,670.20 Total FCC Share ÷ 341 EDU = \$98.74/EDU

Costs of Project B-3, SF-728 river crossing based on 1984 construction costs.

With Clubhouse:

Total Cost of \$3,000,000 ÷ Total EDU of 2,727 (Design Capacity) = \$1,100.11/EDU x (4,250 DT ÷ 11 DT/EDU x 33%) = \$140,264.03 Total FCC Share ÷ 418 EDU = \$335.56/EDU

Without Clubhouse:

\$140,264.03 Total FCC Share ÷ 341 EDU = \$411.33/EDU

Only one project will be needed to serve the North City area, i.e. Project B-2 or Project B-3. Therefore, Fairbanks Country Club's share is only for one of the projects. Use Project B-3 costs of \$335.56/EDU with Clubhouse and \$411.33/EDU without clubhouse.

C. El Camino Real Bridge - Based on 1984 Construction Costs.

With Clubhouse:

Total Cost of \$1,100,000 ÷ Total EDU of 2,272 (Design Capacity) = \$484.15/EDU x (4,250 DT ÷ 11 DT/EDU x 66%) = \$123,458.25 Total FCC Share ÷ 418 EDU = \$295.35/EDU

Without Clubhouse:

\$123,458.25 Total FCC Share ÷ 341 EDU = \$362.05/EDU

D. Local Traffic Signals (3) - Based on 1984 Construction Costs

With Clubhouse:

Total Cost of \$300,000 ÷ Total EDU of 2,272 (Design Capacity) = \$132.04/EDU x (4,250 DT ÷ 11 DT/EDU x 66%) = \$33,670.20 Total FCC Share ÷ 418 EDU = \$80.55/EDU

June 28, 1983

Without Clubhouse:

\$33,670.20 Total FCC Share ÷ 341 EDU = \$98.74/EDU

E. Major Street Improvements - Based on 1984 Construction Costs

Camino Santa Fe = \$145,000

El Camino Real (East Half) = \$453,000

Total: \$598,000

With Clubhouse and Without Clubhouse:

Total Cost of \$598,000 ÷ Total EDU of 341 (FCC) =
\$1,753.67/EDU

The Major Transportation Facilities covered here do not include facilities constructed as part of the subdivision process. Substantial amounts of major streets on-site are constructed and will become a part of the community circulation system.

Total Major Transportation Facilities With Clubhouse =
\$2,835.85/EDU

Total Major Transportation Facilities Without Clubhouse =
\$2,998.33/EDU

5. **Major Sewer Facilities - Based on the San Dieguito Conceptual Wastewater Study, May 1983 by Lowery & Associates:** The cost per EDU with or without the Clubhouse included shall be \$1,125.00. Said sum shall be collected in addition to any other sewer charge or fee imposed upon the area at time of collection by the City of San Diego.

June 28, 1983

SUMMARY

<u>FACILITY</u>	<u>WITH CLUBHOUSE</u> <u>COST/EDU</u>	<u>WITHOUT CLUBHOUSE</u> <u>COST/EDU</u>
1. Library	\$ 227.06	\$ 227.06
2. Fire Station	60.57	60.76
3. Community Park	895.92	895.92
4. Major Transportation Facilities	2,835.85	2,998.33
5. Major Sewer Facilities	1,125.00	1,125.00
Subtotal	\$5,144.40	\$5,307.07
Processing, Contingencies, & Incidentals @ 10% =	514.44	530.71
Total	\$5,658.84	\$5,837.78
Use	\$5,660.00	\$5,840.00

Fairbanks Country Club Clubhouse Contribution:

$(\$5,660.00 - \$5,840.00/\text{EDU}) \times 341 \text{ EDU} = \$61,380.00$
 $\$61,380.00 \div 3.5 \text{ Acres} = \$17,537.00/\text{Acre}$

The maximum Fairbanks Country Club Clubhouse contribution will be \$61,380.00 based on 3.5 acres.

The Improvement Contributions listed are required as development proceeds*at the end of the 20-year term of this agreement. If the situation arose where the developer has not paid for 341 dwelling units to the City, then the City will receive \$1,930,060 (1984 Dollar) minus the total amount paid to complete the required Improvements contribution. The final payment for the improvements may be paid by the developer prior to termination of this agreement.

Therefore, in fiscal year 1984 Fairbanks Country Club Contributions will be:

Single-Family (Detached House) = \$5,660.00/Unit

Commercial/Recreation Acre = \$17,537.00/Acre

* and at any event

June 28, 1983

SCHEDULE OF APPORTIONMENT OF TOTAL FEES FOR RESIDENTIAL DEVELOPMENT

FISCAL YEAR	COST/EDU	PROJECTED NO. OF EDU/YR	TOTAL PAYMENT/YR	CUMULATIVE PAYMENTS
1984	5660	17	96220	96220
1985	5943	17	101031	197251
1986	6240	17	106083	303334
1987	6552	17	111387	414720
1988	6880	17	116956	531676
1989	7224	17	122804	654480
1990	7585	17	128944	783424
1991	7964	17	135391	918815
1992	8362	17	142161	1060976
1993	8781	17	149269	1210245
1994	9220	17	156732	1366977
1995	9681	17	164569	1531546
1996	10165	17	172797	1704343
1997	10673	17	181437	1885780
1998	11206	17	190509	2076289
1999	11767	17	200034	2276324
2000	12355	17	210036	2486360
2001	12973	17	220538	2706898
2002	13621	17	231565	2938463
2003	14303	17	243143	3181606
2004	15018	1	15018	3196624

An inflation factor of 5% per year was used in the above calculations.

June 28, 1983

EXHIBIT "F"

SCHEDULE OF APPORTIONMENT OF

TOTAL FEES

<u>JULY FISCAL YEAR</u>	<u>SINGLE FAMILY DWELLING UNIT</u>	<u>COMMERCIAL/ RECREATION ACRE</u>
1984	5660	17537
1985	5943	18414
1986	6240	19335
1987	6552	20301
1988	6880	21316
1989	7224	22382
1990	7585	23501
1991	7964	24676
1992	8362	25910
1993	8781	27206
1994	9220	28566
1995	9681	29994
1996	10165	31494
1997	10673	33069
1998	11206	34722
1999	11767	36458
2000	12355	38281
2001	12973	40195
2002	13621	42205
2003	14303	44315
2004	15018	46531

1. An inflation factor of 5% was used in the above calculation.
2. the maximum acreage for Fairbanks Country Club Clubhouse contribution is 3.5 acres.
3. Fees are paid at issuance of a building permit.

COPY

#3

JOINT EXERCISE OF POWERS AGREEMENT BETWEEN
THE COUNTY OF SAN DIEGO AND THE CITIES OF
DEL MAR, ESCONDIDO, POWAY, SAN DIEGO AND SOLANA BEACH
CREATING THE SAN DIEGUITO RIVER VALLEY REGIONAL OPEN SPACE PARK
JOINT POWERS AUTHORITY

THIS AGREEMENT is hereby made by and between the COUNTY OF SAN DIEGO, a political subdivision of the State of California, and the cities of DEL MAR, ESCONDIDO, POWAY, SAN DIEGO, and SOLANA BEACH, municipal corporations, which shall individually or collectively be referred to as "Public Agencies".

R E C I T A L S

A. Public Agencies are each empowered, pursuant to California Government Code Section 6500, et seq., to exercise their common powers jointly by agreement, including the powers to acquire and hold property, to undertake overall planning for and to plan and design public facilities and appurtenances for park purposes, and to develop, operate and maintain parks.

B. Public Agencies agree that it is their goal to create, preserve and enhance the San Dieguito River Valley Regional Open Space Park (hereinafter referred to as "Park") for the benefit of the public.

C. Public Agencies agree that a local agency shall be created to provide a coordinated program for the acquisition, planning, design, plan implementation, operation and maintenance of the Park and such other activities related thereto as determined by this Joint Powers Authority to be appropriate.

NOW, THEREFORE, in consideration of the recitals and mutual obligations of the Public Agencies as herein expressed, the Public Agencies agree as follows:

1. PURPOSE. This agreement is made pursuant to the provisions of Article 1, Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with Section 6500), relating to the joint exercise of powers common to public agencies. Public Agencies each possess the powers referred to in the recitals hereof. The purpose of this agreement is to exercise those powers jointly to acquire, plan, design, improve, manage, operate and maintain the San Dieguito River Valley Regional Open Space Park which is described in the SANDAG Focused Planning Area map, Attachment A hereto, as amended in accordance with the terms of this agreement, which is hereby incorporated by reference as if fully set forth herein. Such purposes are to be accomplished and said common power exercised in the manner hereinafter set forth. The goals of the Public Agencies are to exercise such powers in order to:

(a) Preserve land within the focused planning area of the San Dieguito River Valley as a regional open space greenbelt and park system that protects the natural waterways and the natural and cultural resources and sensitive lands, and provides compatible recreational opportunities that do not damage sensitive lands.

DOCUMENT NO. PR-273718

FILED JUN 12 1989

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

(b) Provide a continuous and coordinated system of preserved lands with a connecting corridor of walking, equestrian, and bicycle trails, encompassing the San Dieguito River Valley from the ocean to the river's source.

2. TERM. This agreement shall become effective immediately upon approval by the last of the Public Agencies, and shall continue in full force and effect so long as any two Public Agencies agree to continue as members or for twenty-five years, which ever occurs first. At the end of the twenty-five year term, Public Agencies may act to continue this agreement in full force and effect for an additional fifty years. Public Agencies shall provide ninety days notice of intent to withdraw from the Joint Powers Authority.

3. CREATION OF INDEPENDENT AGENCY. Pursuant to Section 6507 of the California Government Code, there is hereby created a public entity known as the "San Dieguito River Valley Regional Open Space Park Joint Powers Authority" herein called "Authority" and said Authority shall be an entity separate and apart from the Public Agencies.

4. BOUNDARIES. The boundaries of the territory within which Authority shall exercise its powers shall be those described in Attachment A. Said boundaries may be amended by Authority subject to concurrence by the Public Agencies within whose jurisdiction the proposed boundary change lies.

5. BOARD. Authority shall be governed by a board to be known as the "San Dieguito River Valley Regional Open Space Park Board (hereinafter called "Board"). Each member shall serve in his/her individual capacity as a member of the Board. The membership of the Board shall be as follows:

(a) Two (2) elected members of the governing bodies of the County of San Diego and the City of San Diego appointed by their respective governmental bodies.

(b) One (1) elected member of the City Councils of the cities of Del Mar, Escondido, Poway and Solana Beach appointed by their respective councils.

(c) The Chairperson of the San Dieguito Citizens Advisory Committee.

The elected members shall serve at the pleasure of their appointing authority. Each member shall have an alternate which may act in his/her absence. Alternates shall be chosen in the same manner as regular members except that the alternate to the Chairperson of the San Dieguito Citizens Advisory Committee shall be the Vice Chairperson of that Committee. Any vacancy shall be filled in the same manner as described herein for appointment.

The Board shall select its own Chairperson and Vice Chairperson from among the members.

6. MEETINGS OF THE BOARD.

(a) Regular Meetings. The Board shall conduct regular meetings at least annually and such other times as the Board shall direct or the bylaws specify.

(b) Ralph M. Brown Act. All meetings of the Board, including, without limitation, regular, adjourned regular, and special meetings shall be called, noticed, held, and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the California Government Code).

(c) Quorum. A majority of Board members shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time. The affirmative vote of at least a majority of the members available in the quorum shall be required for any act of the Board other than adjournment.

7. RULES OF THE BOARD. The Board may adopt, from time to time, bylaws, rules, and regulations as may be required for the conduct of its meetings and the orderly operation of Authority; and copies and amendments thereto shall be filed with the Public Agencies.

8. STANDING COMMITTEE. The Board shall appoint a standing committee to be known as the San Dieguito Citizens Advisory Committee which shall be advisory to the Board. The Committee shall have a Chairperson selected by the Board and a Vice Chairperson selected by the Committee subject to the concurrence of the Board.

9. OFFICERS AND EMPLOYEES OF AGENCY.

(a) Staff. The Public Agencies and the San Diego Association of Governments will staff Authority, until such time as Authority acts to hire or appoint permanent staff.

(b) Executive Director. The Board may appoint an Executive Director who shall have such duties as prescribed by the Board.

(c) Treasurer. The Treasurer of the Authority shall be the duly appointed and active Treasurer of the County of San Diego serving ex-officio as Treasurer of Authority. The Treasurer shall receive, have the custody of and disburse funds upon the warrant or check-warrant of Auditor pursuant to the accounting procedures set forth in Section 15 hereof, and shall make the disbursements required by this agreement or to carry out any of the provisions or purposes of this agreement. The Treasurer may invest Authority funds in accordance with general law. All interest collected on Authority funds shall be accounted for and posted to the account of such funds.

(d) Auditor. The Auditor of the Authority shall be the duly appointed and acting Auditor of the County of San Diego serving ex-officio as Auditor of Authority. The Auditor shall draw warrants or check-warrants against the funds of Authority in the Treasury when the demands are approved by the Board, or such other persons as may be specifically designated for that purpose. Any fees paid to Auditor for performance of said services shall not be greater than those normally paid by other entities receiving similar services.

(e) Experts and Other Employees. Authority may employ such other officers, employees, consultants, advisors, and independent contractors as it may determine necessary.

(f) Authority shall cause such of its officers and employees to be bonded as required by Auditor.

10. POWERS OF AUTHORITY. Authority shall have the powers:

(a) To acquire, hold and dispose of property by any legal method for Park purposes, to undertake overall planning for and to plan and design the Park, and to take any and all actions necessary to accomplish these powers. Decisions by Authority to acquire or dispose of real property shall be subject to prior approval of the Public Agencies wherein the property to be acquired or disposed of lies. Prior to acquisition or disposal of real property within the Park by Public Agencies, they shall refer the proposed transaction to Authority for review and recommendation. However, failure of a Public Agency to so refer a transaction shall not affect its validity.

(b) To establish guidelines for and advise Public Agencies on appropriate land uses within the Park.

(c) To review and comment on development proposals submitted to Public Agencies which are within or have an impact on the Park.

(d) To improve, manage, operate and maintain the Park.

(e) To make and enter into contracts and agreements to carry out its activities.

(f) To employ agents and employees.

(g) To sue and be sued in its own name.

(h) Pursuant to California Government Code Section 6509, the powers of Authority shall be subject to those legal restrictions which the County of San Diego has upon the manner of exercising said power.

11. OPERATION AND MAINTENANCE. Authority shall provide for operation and maintenance of the Park. For an initial period, as determined by Authority, Authority shall contract with the County of San Diego through its Department of Parks and Recreation to operate and maintain the Park. Authority shall audit and evaluate County's performance after said initial period and as necessary to determine whether the County should continue to perform this function.

12. CONDITIONAL POWERS. Subject to unanimous agreement of Public Agencies, Authority shall have the power to issue bonds and levy assessments under any assessment district act or impact fee provisions authorized by State law.

13. BUDGET. Authority shall prepare and adopt an annual budget prior to the beginning of each fiscal year. The "fiscal year" for Authority shall be co-terminous with that of the County.

14. FUNDING.

(a) Authority shall fund its activities by and is authorized to expend Satellite Wagering Funds which are available to Authority to carry out its activities.

(b) Authority is empowered to make applications for and receive grants from governmental or private sources for its activities.

(c) Public Agencies may, but shall not be required to contribute money, office space, furnishings, equipment, supplies, or services as may be necessary.

(d) Authority may receive gifts, donations, bequests and devises of all kinds and descriptions, and perform any and all legal acts in regard thereto as may be necessary or advisable to advance the objects and purposes of the Authority and to apply the principal and interest of such gifts, donations, bequests and devises as may be directed by the donor, or as the Board of the Authority may determine in the absence of such direction.

(e) Authority may collect and expend revenues generated from Park operations and activities.

15. FUNDS DEPOSITED IN COUNTY TREASURY. The Treasury of County shall be the depository of the funds of Authority and the Treasurer shall receive and have custody of Authority funds.

16. RECORDS AND ACCOUNTS - CHARGE FOR SERVICES.

(a) Authority shall be strictly accountable for all funds.

(b) Authority shall cause to be kept proper books of records and accounts in which a complete and detailed entry shall be made of all its transactions, including all receipts and disbursements. Accounting systems shall be established and maintained consistent with State laws and rules and regulations of the State Controller as required by Auditor. Said books shall be subject to inspection at any reasonable time by the duly authorized representatives of Public Agencies.

(c) Authority shall cause a single annual audit of the accounts and records of Authority to be performed as provided in Sections 6505, 6505.1 and 6505.5 of the California Government Code. Within eight (8) months after close of each fiscal year, a financial statement for such fiscal year shall be provided to the Public Agencies.

(d) The County of San Diego shall determine the charges, if any, to be made against Authority for the services of the Treasurer, the Auditor and other County officers and employees.

17. LIABILITY OF PARTIES. Pursuant to the authority of Section 6508.1 of the California Government Code, the debts, liabilities, or obligations, of Authority shall be solely the debts, liabilities and obligations of Authority and not the Public Agencies.

18. DISPOSITION OF ASSETS. At the termination of this agreement, all property of Authority, both real and personal, including all funds on hand, after payment of all liabilities, costs, expenses, and charges validly incurred under this agreement, shall be returned to the respective Public Agencies as nearly as possible in proportion to the contributions, if any, made by each.

19. NOTICES. Notices hereunder shall be sufficient if delivered to:

COUNTY OF SAN DIEGO (Address)

CITY OF DEL MAR (Address)

CITY OF ESCONDIDO (Address)

CITY OF POWAY (Address)

CITY OF SAN DIEGO (Address)

CITY OF SOLANA BEACH (Address)

20. MISCELLANEOUS. The paragraph headings herein are for convenience only and are not to be construed as modifying or governing the language in the paragraph referred to. This agreement is made in the State of California, under the Constitution and laws of such State and is to be so construed.

21. OPERATING MEMORANDA. To preserve a reasonable degree of flexibility, many parts of this agreement are stated in general terms. It is understood that there will be operating memoranda executed and amended from time to time which may further define the rights and obligations of the parties hereto.

22. SUCCESSORS. This agreement shall be binding upon and shall inure to the benefit of the successors to the Public Agencies.

23. PARTIAL INVALIDITY. If any one or more of the terms, provisions, promises, covenants, or conditions of this agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, and conditions of this agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

24. FILING OF NOTICE OF AGREEMENT. Within 30 days after this agreement becomes effective pursuant to paragraph 2 above, the SANDAG Executive Director shall file with the Secretary of State the Notice of Agreement required by Government Code Section 6503.5.

IN WITNESS WHEREOF, this agreement is executed by the City of Escondido, the City of Poway, and the City of San Diego, acting by and through their City Managers, pursuant to Resolutions No. 89-193, No. 89-072, and No. 273718 respectively, by the City of Del Mar and City of Solana Beach acting by and through their City Managers, pursuant to Minute action of April 10, 1989, Item 9N-1-c (confirmed by Resolution No. 89-49) and Minute action of May 1, 1989, Item 7, respectively, and by the County of San Diego, acting by and through the County Board of Supervisors, pursuant to Minute Order No. 56, authorizing such execution.

Dated this 12th day of June, 1989

CITY OF SAN DIEGO

By: [Signature]

City Manager

Approved as to form and legality

this 15 day of Aug, 1989

JOHN W. WITT, City Attorney

By: [Signature]

Deputy City Attorney

CITY OF SOLANA BEACH

By: Michael W. Huse

~~ASSISTANT TO THE~~ City Manager

CITY OF DEL MAR

By: [Signature]

City Manager

CITY OF POWAY

By: [Signature]

City Manager

CITY OF ESCONDIDO

By: [Signature]

City Manager

COUNTY OF SAN DIEGO

By: [Signature]

Clerk of the Board of Supervisors

Approved and/or authorized by the Board
of Supervisors of the County of San Diego

5-1-89

[Signature] A. Nelson

Clerk of the Board of Supervisors

LEGAL DESCRIPTION

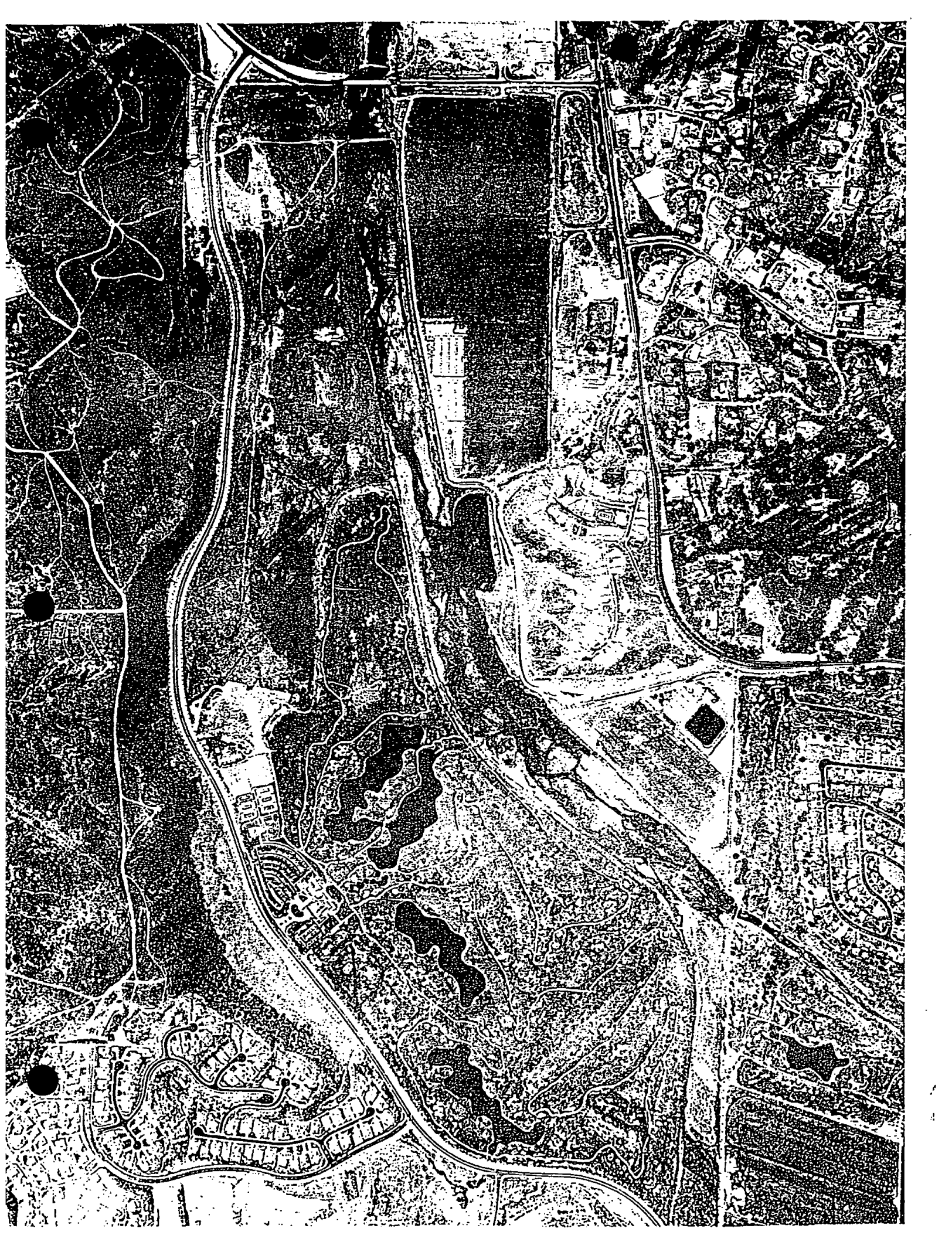
All that portion of Lot 2 of Fairbanks Country Club Unit No. 1, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 10730, filed in the Office of the County Recorder of San Diego County, September 29, 1983, being more particularly described as follows:

(To Be Determined By Survey)

PTC:rc

04/02/96

I:\WPO\1996\CRAWFORD\LD-FAIRB:WPD



RESOLUTION NUMBER R-_____

ADOPTED ON _____

BE IT RESOLVED, by the Council of The City of San Diego, as follows: That the sale of approximately 193 acres of land presently zoned A-1-1 and presently leased to Fairbanks Ranch Country Club, Inc., for use as a golf course, is hereby authorized.

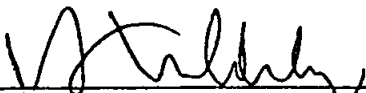
BE IT FURTHER RESOLVED, that the above described property, also known as portion of Lot 2, Fairbanks Country Club Unit No. 1, Map 10730, is surplus to City needs and has an appraised fair market value of \$3.86 million.

BE IT FURTHER RESOLVED, that, in consideration for \$4 million, which shall be deposited into the City Capital Outlay Fund, the City Manager is hereby authorized to execute a standard form grant deed granting said property to Fairbanks Ranch Country Club, Inc.

BE IT FURTHER RESOLVED, that no broker's commission shall be paid by the City in connection with this transaction.

APPROVED: JOHN W. WITT, City Attorney

By



Harold O. Valderhaug
Deputy City Attorney

HOV:cdk
04/02/96
Or.Dept:REA
Aud.Cert:
R-96-1192
Form=r-t

RECORDING REQUESTED BY

1878

382964

RECORDED IN
OFFICIAL RECORDS
OF SAN DIEGO COUNTY, CA.

1983 OCT 24 PM 2:21

VERA L. LYLE
COUNTY RECORDER

CITY CLERK
202 "C" ST.
SAN DIEGO CA
92101

MAIL TAX STATEMENTS TO

NO FEE

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Corporation Grant Deed

486-073-01

TO 1921 CA (12-74)

THIS FORM FURNISHED BY TICOR TITLE INSURERS

A.P.N.

The undersigned grantor(s) declare(s):

Documentary transfer tax is \$ none

() computed on full value of property conveyed, or

() computed on full value less value of liens and encumbrances remaining at time of sale.

() Unincorporated area: () City of _____, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, WATT INDUSTRIES/SAN DIEGO, INC.

a corporation organized under the laws of the State of California

hereby GRANTS to

THE CITY OF SAN DIEGO, a municipal corporation

the following described real property in the City of San Diego
County of San Diego, State of California:

See legal description of property granted hereby set forth on Exhibit "A" attached hereto and by this reference made a part hereof.

The covenants, conditions and restrictions set forth on Exhibit "B" attached hereto are by this reference made a part hereof.

RESERVING THEREFROM, until December 31, 2044, as a mineral interest and not as a royalty interest, all of the minerals of every kind, including, but not limited to, all oil, gas, hydrocarbons and associated substances in, under or that may be extracted, produced and saved from said real property but without the right of entry to the surface of said real property or the top 500 feet of the subsurface of said real property for the purposes of exploring for, developing and removing such materials.

In Witness Whereof, said corporation has caused its corporate name and seal to be affixed hereto and this instrument to be executed by its _____ Vice _____ President and _____ Assistant _____ Secretary thereunto duly authorized.

Dated: September 19, 1983

WATT INDUSTRIES/SAN DIEGO, INC.

STATE OF CALIFORNIA

COUNTY OF San Diego

SS.

On September 19, 1983 before me, the undersigned, a Notary Public in and for said State, personally appeared Stephen C. Games, known

to me to be the _____ Vice _____ President, and Robert Mincer known to me to be

Asst. Secretary of the Corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the within Instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature

Diane E. Thatcher

By [Signature] Vice President
By [Signature] Assistant Secretary



(This area for official notarial seal)

Title Order No. _____

Escrow or Loan No. _____

MAIL TAX STATEMENTS AS DIRECTED ABOVE

1879

EXHIBIT "A" TO GRANT DEED

Lots 1, 2, 4, 9 and 10 of Map No. 10730 of
FAIRBANKS COUNTRY CLUB NO. 1 filed in the
Office of the County Recorder of San Diego
County, on SEPTEMBER 29, 1983

This is to certify that the interest in real property conveyed
by this instrument to the City of San Diego, a municipal
corporation, is hereby accepted by the undersigned officer
on behalf of the City of San Diego, pursuant to authority
conferred by Resolution No. 198686, adopted by the Council
of the City of San Diego on December 18, 1969, and the
grantee consents to recordation thereof by its duly
authorized officer.

Dated 9-27-83 By [Signature]
ASSISTANT TO THE City Manager

AFTER RECORDING, MAIL TO CITY CLERK

R- 259343

EXHIBIT "B" TO GRANT DEED

BY THE CONVEYANCE AND ACCEPTANCE of this Grant Deed, WATT INDUSTRIES/SAN DIEGO, INC., a California corporation ("Grantor") and THE CITY OF SAN DIEGO, a municipal corporation ("Grantee"), declare, covenant and agree as follows:

1. Grantor is the owner, owns an interest in or is a partner of a partnership which is the owner (or formerly was such owner) of that certain real property located in the City of San Diego, County of San Diego, California, more particularly described as follows:

Lots 1 through 18, inclusive, of Parcel Map No. 12638 filed in the Office of the County Recorder of San Diego County on March 25, 1983

("Benefited Land").

2. Pursuant to that certain Percentage Lease between Grantor and Grantee approved by San Diego City Council Resolution No. R-257594 on December 6, 1982 ("Lease"), the real property conveyed by this Grant Deed consists of (a) premises leased for the purpose of constructing and maintaining a country club, golf course and related activities, more particularly described as follows:

Lot 2 of Map No. 10730 of FAIRBANKS COUNTRY CLUB NO. 1 filed in the Office of the County Recorder of San Diego County on SEPT. 29, 1983

("Country Club"), and (b) real property contiguous to the Country Club to be preserved and maintained as "Open Space" areas, more particularly described as follows:

Lots 1, 4, 9 and 10 of Map No. 10730 of FAIRBANKS COUNTRY CLUB NO. 1 filed in the Office of the County Recorder of San Diego County on SEPT. 29, 1983.

The Open Space is referred to herein as the "Affected Land", and, pursuant to the Lease, is to be maintained by Grantor.

3. The Affected Land is presently designated open space and as floodway zone, floodplain fringe zone and Agricultural zone (A-1-1) by the City of San Diego Progress Guide and General Plan, the Fairbanks Country Club Specific Plan and the City of San Diego's zoning maps.

4. Grantee for and on behalf of itself, and on behalf of each successive owner, during its, his, her or their ownership of any portion of the Affected Land herein granted by Grantor to Grantee, and each person having any interest in the Affected land derived through any such owner, covenants, and agrees that it, he, she or they:

(a) Shall keep and preserve the Affected Land as Open Space in a natural condition as near as possible, or may permit it to be utilized for any or all of the following purposes and no others:

(i) All agricultural uses relating to the growing, harvesting, processing or selling of field or grain crops, fruit and vegetables;

(ii) Passive non-commercial recreational uses (e.g., picnicking, walking, hiking, and similar activities), and reasonable support facilities, including any restrooms and parking facilities as may be reasonably required, for such uses;

(iii) Active non-commercial recreational uses not involving large assemblages of people or automobiles, nor involving the use of motor-driven machines or vehicles (e.g., equestrian activities, jogging, frisbee, and similar activities).

(b) Shall, notwithstanding any other provision hereof, prevent any of the following purposes, uses and activities from being conducted upon the Affected Land:

(i) Apiaries;

(ii) Aviaries;

(iii) Parking lots which are designated and intended to serve facilities located on the Affected Land other than as specifically allowed above;

(iv) Single-family dwellings;

(v) Churches, schools or day care facilities;

(vi) Public utility substations;

(vii) Raising, killing or dressing of livestock, poultry, fowl, rabbits or any other animal;

(viii) Airways, taxiways and pads of heliports and helistops;

(ix) Establishments or enterprises involving large assemblages of people or automobiles, including, but not limited to, recreational facilities publicly or privately operated;

(x) Fairgrounds;

(xi) Natural resources development and utilization, including, but not limited to, extracting, processing, storing, selling and distributing sand, gravel, rock, clay, decomposed granite and soil, and the manufacturing, producing, processing, storing, selling and distributing of asphaltic concrete, Portland Cement concrete, concrete products and clay products;

(xii) Racetracks;

F. 2085

RR- 259343

DOCUMENT NO.

FILED SEP 27 1983

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

, Deed of Watt Industries/San Diego,
Inc., to City of San Diego.

1885

(xiii) Travel trailer parks together with incidental facilities for the convenience of occupants;

(xiv) Dams and reservoirs;

(xv) Ground water replenishment works, including, but not limited to, diversion dams, percolation beds, spreading grounds and injection wells; provided, however, that desiltation facilities are expressly permitted to be built and maintained upon the Affected Land;

(xvi) Accessory buildings, other than as may be specifically allowed hereinabove, and uses customarily incidental to any of the above uses, including, but not limited to:

(A) The boarding and lodging of farm or other employees;

(B) Construction and maintenance of living quarters for farm or other employees with or without their immediate families;

(C) Lighted signs, commercial signs or unlighted signs, single-faced or double-faced exceeding 12 square feet in area for each face;

(xvii) Any other use similar in character to the uses, including accessory uses, enumerated in this section and inconsistent with the purpose and intent of this deed restriction.

5. (a) Grantee or its successors shall permit no use of the Affected Land in violation of the provisions hereof. In the event any use is contemplated which is not specifically permitted by the terms of this document, such use shall not be allowed without Grantee having first obtained Grantor's (or Grantor's successors') written consent thereto. Grantor or its successors shall not unreasonably withhold such consent. If Grantor or its successors disapprove a contemplated use, such disapproval shall be in writing and shall specify, with reasonable particularity, the reason(s) for such disapproval. If Grantor or its successors fail either to so approve or disapprove such contemplated use within thirty (30) days after the same have been submitted to Grantor or its successors, it shall be conclusively presumed that Grantor or its successors have approved such use. Such submission shall be deemed effective if Grantee submits its written request for consent to Grantor, or its corporate successors, and any homeowners associations in the Benefited Land area and posts signs describing such proposed use in at least twenty (20) locations reasonably calculated to give adequate notice of such proposed use to all of Grantor's successors.

(b) Grantor and Grantee agree that in the event of a dispute between them or their successors with respect to whether Grantor or its successors have unreasonably withheld their approval of a contemplated use submitted in accordance with the foregoing, they shall submit any such dispute to arbitration in accordance with the following provisions:

(i) Within fifteen (15) days after the written demand by either of the parties for arbitration, each of the

parties shall choose an arbitrator and give the other written notice of such choice, or in case of the failure of either party so to do, the other party shall have the right to appoint an arbitrator to represent the defaulting party. The two arbitrators thus appointed (in either manner) shall select and appoint in writing a third arbitrator and give written notice thereof to Grantor and Grantee or their successors, or if within ten (10) days after the appointment of said second arbitrator, the two arbitrators shall fail to appoint a third, then either party shall have the right to make application to the Superior Court of San Diego County to appoint such third arbitrator.

(ii) The three arbitrators so appointed (in either manner) shall promptly fix a convenient time and place for hearing the matter to be arbitrated and shall give written notice thereof to each party at least ten (10) days prior to the date so fixed. The hearing date shall be set for not more than sixty (60) days from the date of the demand for arbitration unless it is necessary to apply to the Superior Court for appointment of a third arbitrator. In such latter event, the hearing date shall be set for not more than thirty (30) days after the date such third arbitrator is so appointed. The arbitrators shall, within ten (10) business days after the hearing, render their decision with respect to whether Grantor or its successors have unreasonably withheld their approval of a contemplated use submitted to them.

(iii) The decision or award of the majority of the arbitrators shall be final and nonappealable except that upon the satisfaction of the conditions set forth in Section 1286.4 of the California Code of Civil Procedure, the decision or award of the majority of the arbitrators may be vacated upon the grounds set forth in Section 1286.2 of said Code of Civil Procedure. Further, any decision or award of the majority of the arbitrators may, upon satisfaction of the conditions set forth in Section 1286.8 of the Code of Civil Procedure, be corrected in accordance with the provisions of Section 1286.6 of said Code of Civil Procedure.

(iv) If two of the three arbitrators first appointed as aforesaid shall fail to reach an agreement in the determination of the matter in question, the same shall be decided by three new arbitrators, who shall be appointed and shall proceed in the same manner and within the same time frame, as hereinabove set forth, and said process shall be repeated until a decision is finally reached by two of the three arbitrators selected.

(v) Each party shall pay the costs and fees of the arbitrator chosen by such party and shall pay one-half of such costs and fees of the third arbitrator.

(c) Neither Grantor nor its successors shall be liable in damages to anyone on whose behalf a contemplated use is submitted for approval. Every person who submits a contemplated use for approval, either directly or through Grantee, agrees that he, she or it will not bring any action or suit against Grantor or its successors to recover any such damages.

6. Notwithstanding any other provision hereof, for a period of ten (10) years following the date of execution of this Grant

Deed, Grantor, or its successors, shall have the right to acquire easements from Grantee, at no cost, for utilities and public right of way required by governmental agencies, including Grantee, to serve the Benefited Land.

7. Notwithstanding any other provision hereof, Grantee shall have the right to establish underground utility easements upon the Affected Land provided said easements do not adversely affect or interfere with Open Space or Golf Course activities conducted on the Country Club portion of the deeded property.

8. Notwithstanding any other provision hereof, Grantor reserves the right to relocate all or a portion of Via de la Valle upon the Affected Land upon the request of Grantee's City Engineer.

9. Notwithstanding any other provision hereof, Grantor reserves a water utility easement in gross, in, over, under and across the Affected Land and the Benefited Land, to serve the Country Club, for the purpose of importing water from public or private sources to benefit the Country Club. However, in exercising its rights under this provision, Grantor will not unreasonably interfere with Grantee's use of, nor the open space nature of, the Affected Land.

10. Notwithstanding any other provision hereof, Grantor shall be permitted to build and maintain upon the Affected Land no more than five (5) signs promoting and advertising Olympic Games and/or Grantor's real property development upon the Benefited Land and the Country Club portion of the deeded property. The locations, style and design of such signs shall be at Grantor's sole discretion, subject to applicable City ordinances, as shall the period of time during which such signs, or any of them, shall remain erected. In no event, however, shall any such signs remain erected after ten (10) years from the date of execution of this Grant Deed.

11. Monetary damages for the breach of the covenants contained herein are declared to be inadequate and Grantee or its successors may be enjoined by any court of competent jurisdiction from commencing or proceeding with the construction of any improvements to, or permitting any use upon, the Affected Land which are in violation of the covenants set forth herein, or, if an improvement is constructed, may be ordered by any court of competent jurisdiction to remove such improvements.

12. Each successive owner, during its, his, her or their ownership, of any portion of the Affected Land, and each person having any interest in the Affected land derived through any such owner, shall be bound hereby for the benefit of the Benefited Land. Each successive owner, during its, his, her or their ownership, of any portion of the Benefited land, and each person having any interest in the Benefited Land derived through the Grantor, shall be benefited by the covenants contained herein, it being intended that the burden and benefit of the covenants shall run with the land.

13. Any violation of the covenants herein contained shall be deemed to be a continuing violation hereof and no delay in the delivery of any notice of any violation hereof or in the enforcement of any rights or the seeking of any remedies provided hereunder shall constitute, or be deemed to constitute, a waiver of

the right to give such notice, enforce such right or seek such remedy at any time after the occurrence of such violation.

14. Except in the event of arbitration in accordance with Paragraph 5 above, if any owner(s) of the Affected Land or the Benefited land commences litigation for the judicial interpretation, enforcement or rescission hereof, the prevailing party shall be entitled to a judgment against the other for an amount equal to reasonable attorney's fees and other costs incurred.

15. The covenants herein contained are for the benefit of the Benefited Land and have been made with the intent of satisfying the requirements of Section 1468 of the California Civil Code.

16. In the event any term, covenant, condition, provision or agreement herein contained is held to be invalid, void or otherwise unenforceable by any court of competent jurisdiction, the invalidity of any such term, covenant, condition, provision or agreement shall in no way affect the validity of any other term, covenant, condition, provision or agreement herein contained.

17. So long as WATT INDUSTRIES/SAN DIEGO, INC., a California corporation, its successors or assigns, or any partnership of which WATT INDUSTRIES/SAN DIEGO, INC. is a partner, owns any portion of the Benefited Land, and THE CITY OF SAN DIEGO, a municipal corporation, owns any portion of the Affected Land, the provisions contained within this Exhibit "B" to this Grant Deed may be terminated or amended by an instrument in writing executed by both and recorded in the Office of the County Recorder of San Diego County, California, without the need for approval by any other owner of any portion of the Benefited Land or the Affected Land. The term "successors or assigns" as used in this Paragraph only, shall mean the named corporation or any person or entity hereafter acquiring all of the then existing assets of the same by purchase, liquidation, merger or reorganization.

GRANTEE hereby accepts the above covenants, conditions and restrictions to this Grant Deed. These covenants, conditions and restrictions shall terminate and be of no further force or effect at 11:59 p.m. on December 31, 2044.

THE CITY OF SAN DIEGO

By *June Hoover*
ASSISTANT TO THE City Manager

APPROVED as to form and legality this 27 day of September, 1983.

JOHN W. WITT, City Attorney

By *John W. Witt*
Deputy

1887

RESOLUTION NUMBER R- 259343

Adopted on SEP 27 1983

RECEIVED
CITY CLERK'S OFFICE
1983 OCT 12 11:50 AM
(R-84-1219 REV. 1)
SAN DIEGO, CALIF.

BE IT RESOLVED, by the Council of The City of San Diego as follows:

That the acceptance by the City Manager of that grant deed of WATT INDUSTRIES/SAN DIEGO, INC., a California corporation, executed in favor of The City of San Diego, bearing date of September 19, 1983, a copy of which deed is on file in the Office of the City Clerk as Document No. RR- 259343, granting to said City Lots 1, 2, 4, 9 and 10 of FAIRBANKS COUNTRY CLUB UNIT NO. 1, subject to the conditions and restrictions in the grant deed relating to utilization of the property for open space and related purposes for a period ending December 31, 2044, as more particularly described in said deed, be, and the same is hereby approved.

That the City Clerk is authorized and directed to forward the deed, and a certified copy of this resolution, attested by him under seal, to the Engineering Department for further handling.

APPROVED: John W. Witt, City Attorney

By C. M. Fitzgerald (For)
Harold O. Valderhaug, Deputy

HOV:ps
9/15/83
Revised 9/21/83
Or. Dept: E&D
T.M. 83-0355
W.O. 830218
Form=r.deedr

1888

Passed and adopted by the Council of The City of San Diego
on SEP 27 1983, by the following vote:

YEAS: Cleator, McColl, Jones, Struiksma, Murphy, Martinez, Mayor Hedgecock.

NAYS: Mitchell, Gotch.

NOT PRESENT: None.

AUTHENTICATED BY:

ROGER HEDGECOCK
Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(SEAL)

By MAYDELL L. PONTECORVO, Deputy.

I HEREBY CERTIFY that the above and foregoing is a full,
true and correct copy of RESOLUTION NO. R- 259343
passed and adopted by the Council of The City of San Diego,
California, on SEP 27 1983.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(SEAL)

By Maydell L. Pontecorvo, Deputy.

(R-96-1358)

RESOLUTION NUMBER R-_____

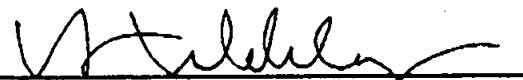
ADOPTED ON _____

BE IT RESOLVED, that an open space easement is hereby established over all of Lots 1, 4, 9 and 10, Fairbanks Country Club Unit No. 1, Subdivision Map 10730, and over all that portion of Lot 2 other than the approximately 17 acre portion of said lot which was previously excluded from the open space easement created on Subdivision Map 10730, and that no further above-ground buildings or structures shall be allowed to be constructed on such lots without the prior written approval of the City Manager, and then only if the City Manager determines that such building or structure does not significantly or adversely affect the open space character of the property; such lots shall be kept in a generally open or natural condition; in addition, this open space easement shall not create any rights in the public to enter onto such property and any public use of the property shall be subject to absolute control by the fee owners of the subject lots; further, that underground utilities may be installed within such open space areas, but only on the condition that the surface

be returned to its pre-existing condition upon installation of its facilities.

PROVED: JOHN W. WITT, City Attorney

By



Harold O. Valderhaug
Chief Deputy City Attorney

HOV:cdk
05/03/96
Or.Dept:REA
Aud.Cert:
R-96-1358
Form=r-t