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OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

THE CITY OF SAN DIEGO

FAIRBANKS POLO CLUB

LEASE OUTLINE

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CITY OF SAN DIEGO

THIS LEASE AGREEMENT is executed between the CITY OF SAN DIEGO, a municipal corporation, herein called "CITY," and Fairbanks Polo Club, a California nonprofit corporation, hereinafter called "LESSEE."

SECTION 1: USES

1.01 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 in Section 10.01 herein. Said real property is hereinafter called the "premises".

1.02 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of construction and operation of a polo facility; for the instruction in polo for beginning, intermediate and advanced players; polo games and matches; boarding of horses and training of horses; and for such other related or incidental purposes as may be first approved in writing by the City Manager and Watt Industries/ San Diego, Inc., or its successor, and for no other purpose.

LESSEE shall not allow any activity on the premises which would involve large assemblages of people or automobiles. LESSEE specifically acknowledges that leasehold uses are restricted in accordance with the deed from Watt Industries/ San Diego, Inc., to the CITY recorded October 24, 1983, as Reception No. 259343 in the County Recorder's Office of San Diego County and LESSEE agrees to use premises in such a manner as not to violate the restrictions contained in said deed.

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

1.03 Related Council Actions. By the granting of this lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the premises. Discretionary action includes, but is not limited to rezonings, variances,

environmental clearances or any other governmental agency approvals which may be required for the development and operation of the leased premises.

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

1.05 Easements and Reservations.

- a. CITY hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the premises. LESSEE shall have the right, at LESSEE'S sole cost, to develop and use on the lease premises all natural water necessary to carry out the purpose of this lease, but it is expressly agreed that said water shall be used only on the leased premises. LESSEE agrees that, upon termination of this agreement, it will leave any wells developed or used on the lease premises during the term of this lease in good order and condition and that the casing shall be left in place.
- b. CITY reserves the right to grant and use easements or establish and use rights-of-way over, under, along and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY will

pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

Notwithstanding the foregoing paragraph, the CITY may remove, without payment to LESSEE or its sublessees for its business or physical damage to its property, the area required for the right-of-way for roadway SF 728 from the premises should it be necessary. Further, CITY shall reduce the rent for the premises in proportion to the area so removed for said roadway. In the event the removal of property does not leave sufficient area suitable for LESSEE'S uses, LESSEE shall have the option to cancel the lease effective as of the first day of the month in which such removal occurs.

- 1.06 Competent Management. Throughout the term of this lease agreement, LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a polo facility and an equestrian center (if approved and developed) and related activities in a fiscally responsible manner.
- 1.07 Hours of Operation. Hours of operation are subject to prior approval by the City Manager or his authorized representative.
- 1.08 Rates and Charges. All charges for merchandise and services or facilities on said premises shall be subject to prior written approval by the City Manager or his authorized representative.
- 1.09 Political Activities. The leased property shall be used exclusively for the purposes specified in Section I, USES, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.
- 1.10 Public Use. The general public shall not be wholly or permanently excluded from any portion of the premises. LESSEE may develop reasonable restrictions for the facility use provided they are consistent with the rights of the general public, and are designed to allow the LESSEE to use the premises for the purposes specified herein. LESSEE agrees that all activities conducted on the premises will be as stated in Section 1.02, Uses, of this lease.

LESSEE shall, at all times during the lease term, maintain a CITY-approved sign identifying the property as City-owned and available for public use consistent with the terms of this lease. The sign shall be installed by the LESSEE at a location agreeable to CITY.

SECTION 2: TERM

- 2.01 Commencement. The term of this agreement shall be 26 years commencing on the first day of the calendar month following execution by the City Manager. "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager.
- 2.02 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 2.03 Quitclaim and Surrender of LESSEE'S Interest. On execution of this lease, the LESSEE shall deliver to the CITY a quitclaim deed in recordable form quitclaiming all its rights in the premises. CITY may record such deed only on the expiration or earlier termination of this lease. In the event the CITY requires any subsequent quitclaim deed, the LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor.

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

- 2.04 Surrender of Premises. At termination of this lease for any reason, LESSEE shall execute, acknowledge and deliver to the CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the leasehold premises. The premises shall be delivered free and clear of all liens and encumbrances, and in a decent, safe and sanitary condition.

If LESSEE fails or refuses to deliver the required deed, the CITY may prepare and record a notice reciting the LESSEE'S failure to execute this lease provision and the notice will be conclusive evidence of the termination of this lease and all LESSEE rights to the premises.

SECTION 3: RENT

POLO FACILITY

- 3.01 Place of Payment. Rent is due monthly in advance on or before the first day of each calendar month. All monthly rents will be prorated during the first and final months of any rental period in order to achieve payment on the first day of each calendar month. Checks should be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 2289, San Diego, California 92112-4165 or delivered to 1222 First Avenue, Third Floor, San Diego, California.

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

3.02 Rent.

- a. Rent Amount. The initial rent for the first year shall be \$1,000 per month. The rent for the second year shall be \$2,100 per month.
- b. (1) CPI Index Adjustments. On the first day of the third year following the effective date of the lease and on the first day of each lease year thereafter during the lease term, the rent shall be adjusted to reflect increases in the Consumer Price Index (CPI).

The index used will be the CPI for "All Urban Consumers" for Los Angeles/Long Beach/Anaheim, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's Comprehensive Official Index most comparable to aforesaid index. If a rental adjustment is calculated using an index from a different base year than 1967, which equaled a base figure of 100 for the CPI, the base figure used will

first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of CITY and LESSEE. If the parties cannot agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor, notwithstanding continued reference herein to "CPI" in any event.

Regardless of the index publication dates, the effective date of the rent adjustment is as specified in this Section 3.02, b.(1). Until the rent adjustment can be reasonably determined by the index method, LESSEE will continue to make payments at the existing rental rate. When the adjustment is determined, the balance of rents due at the adjusted rate will be paid to the CITY within thirty (30) days. In no event shall the adjusted rent as established by the Consumer Price Index be less than the rent in existence immediately prior to the adjustment date and in no event shall such adjusted rent be more than six and one-half percent (6.5%) of the rent in existence immediately prior to the adjustment date.

(2) Index Adjustment Computation. The rent for each rental period following the adjustment, until the next adjustment or other rental determination as provided herein, shall be determined prior to the date of adjustment by multiplying the rent which is effective immediately prior to said adjustment by the "adjustment figure" established as follows:

The "adjustment figure" shall be established by dividing the "current index" by the "base figure", both as defined herein:

The "base figure" for the first such adjustment shall be a three-month average of index figures published by said CPI using the fourth, fifth and sixth full months preceding the effective date of this agreement.

To illustrate, if the lease began in May, the CPI figures for November (sixth month), December (fifth month) and January (fourth month) preceding May would be averaged to establish the base figure (Example 1).

The "current index" shall be a three-month average of index figures published by said CPI. The three months to be used to establish said average shall be the fourth, fifth and sixth months preceding the adjustment date.

The "base figure" for each successive adjustment shall be the "current index" figure used in the last preceding adjustment period (Example 2).

Example 1

Current Index $\frac{121}{110} = 1.10$ (Adjustment Figure)
Base Figure

Effective Rent x 1.10 = Adjusted Rent

Example 2

Current Index $\frac{138}{121} = 1.14$ (Adjustment Figure)
Based Figure

Effective Rent x 1.14 = Adjusted Rent

The adjustment figure is then multiplied by the monthly rent from the preceding adjustment period and the new rent is determined. Using the foregoing examples, if the rent is now \$1,000 per month, after the first adjustment it will be \$1,100 per month (\$1,000 x 1.10). In the second adjustment it will be \$1,254 per month (\$1,100 x 1.14).

- c. Additional Rent. In addition to the rent specified in Subsection 3.02(a) herein (as adjusted), on or before 60 days after the end of each lease year, LESSEE shall remit to CITY ten percent (10%) of its gross income from the polo facility in excess of ten times the rent paid during the previous lease year.

Example:

The annual rent is \$25,200 per year. Say LESSEE'S gross income is \$300,000, then, the percentage rent due CITY would be calculated as follows:

Gross Income	\$300,000
Less 10 times the annual rent for the polo facility	\$252,000
	\$ 48,000
Percentage due CITY	x .10
Additional rent equals	\$ 4,800

RENT - - EQUESTRIAN CENTER (if approved and developed)

3.03 Minimum Rent.

- a. Minimum Rent. In the event City Council approves of the development of an equestrian center at a future date on a portion of the premises, CITY and LESSEE agree that the then effective minimum rent for the entire premises (approximately 80 usable acres) will be apportioned 75 percent to the polo facility and 25 percent to the equestrian center. The initial annual minimum rent for the equestrian center shall be established by multiplying .25 by the then effective annual minimum rent for the entire premises. The annual minimum rent shall become effective upon commencement of the operation (defined as when LESSEE begins to solicit business or receive revenue from its equestrian center).

If the minimum rent for the equestrian center is greater than the percentage rent as required herein below, on a calendar month basis, then 1/12 of the annual minimum rent is required to be paid for that month. Minimum rents are to be paid in monthly installments on or before the day of the calendar month when percentage rents are due pursuant to Section 3.04.

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

- b. Minimum Rent Adjustment. Effective at the beginning of the first day of the sixth lease year after the equestrian center operation commences and at the beginning of each two and one-half period thereafter during the term,

the annual minimum rent shall be eighty percent (80%) of the annual average of actual rents paid or accrued during the two years preceding the adjustment date. Said annual minimum rent shall then be divided by twelve (12) to establish the new monthly minimum rent. It is recognized that such adjustments shall be calculated by CITY upon completion of payments due for the preceding rental period in order to determine the amount of the adjustments to be effective on the dates stated herein. Until such calculations are completed, LESSEE shall continue paying monthly minimum rents at the prior rate. Any additional rents determined by the adjustment to be due for the months previously paid at the prior rate shall be paid to CITY within thirty (30) days following written notice. In no event shall any such minimum rent adjustment result in a decrease in the minimum rent requirement in effect immediately prior to the adjustment date.

- c. Percentage Rents. Percentage rents for the equestrian center will be calculated on a calendar-month basis and will consist of the following percentages of the gross income resulting from the use of the premises:

<u>Percentages</u>	<u>Business Activities</u>
Ten Percent (10%)	All activities except sale of horses not owned by LESSEE and income from vending machines.
Twenty-five Percent (25%)	Of commissions or any other compensation paid to LESSEE or sublessees for the right to install or operate coin-operated vending, game or service machines or devices on the premises, including telephones, or 10% of the gross income of any such coin-operated machines or devices owned, rented or leased by LESSEE or sublessees for use on the premises.
Ten Percent (10%)	Of actual commissions received for brokerage of horses.

The City Manager in his sole discretion, may approve another percentage rate or flat rate of rent for each other incidental service or operation supplementary to the permitted use(s) set forth under Uses, hereof as may be approved in writing by the City Manager prior to commencement of such other service(s) or operation(s). Provided, however, any activity conducted on the premises without prior approval by the City Manager shall be subject to the requirements of Section 3.09, UNAUTHORIZED USE CHARGE, hereof.

- d. Percentage Rate Adjustment. At least four months prior to the end of the tenth year following the equestrian center's commencement of operations, the parties hereto, by mutual consent or through appraisal as hereinafter set forth, will adjust the percentage rates of LESSEE'S gross income attributable to the equestrian center to be paid CITY effective upon the first day of the eleventh year following commencement of operations. Said adjustment will be made to the degree necessary to provide a fair rental to CITY as determined by the City Manager and LESSEE, taking into consideration the criteria set forth in paragraph e. below. In the event that such adjustment is not made by mutual consent prior to two months before the end of said ten-year period, then the parties hereto will refer the matter to appraisal under the terms hereinafter set forth.
- e. Percentage Rate Appraisal. In the event the parties do not agree upon the amount of adjustment to said percentage rates as provided for in the previous section, then the adjustment shall be determined by a qualified professional independent real estate appraiser selected by mutual consent of the parties to this agreement from the list of appraisers approved by the CITY. In the event the parties do not reach agreement as to selection of a mutually acceptable appraiser, then CITY and LESSEE will each select a qualified professional independent real estate appraiser who in turn will select a third qualified professional independent real estate appraiser who will be employed to set the percentage rates to be applied to LESSEE'S gross income for the ensuing period until the next percentage rate adjustment. In the event a mutually acceptable third appraiser is not agreed upon between the two selected appraisers within ten days, then the third appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his individual capacity, upon application by either CITY or LESSEE with prior notice thereof to the other party. In the event that the

Superior Court Judge declines to make the appointment, the parties hereto agree that the third appraiser shall be promptly determined in accordance with the rules of the American Arbitration Association. Said third appraiser shall complete the assignment within sixty (60) days of appointment. Each party shall pay the cost of its own selected appraiser and both CITY and LESSEE agree to equally share the cost of the third mutually selected or court appointed appraiser or appraiser appointed through arbitration. CITY and LESSEE agree to accept and be bound by the percentage rates determined by the appraiser selected or appointed to complete the assignment.

In establishing the percentage rates for the items under controversy, the appraiser shall consider the CITY'S property as a fee simple absolute estate, as vacant and available for a full lease term equal to the initial full term of this lease on the open market for the authorized purposes of this lease at the commencement of the rental period under review. The appraiser will be guided by prevailing market percentage rates for similar operations primarily within the Southern California area, if available. In the event the appraisal is not completed in time to permit the percentage adjustment to be made, LESSEE agrees to continue to pay rent in accordance with the then existing lease rates and the adjustment, when determined, will be retroactive to said effective date of rental adjustment as hereinabove established. Any deficiency shall be paid by LESSEE to CITY within sixty (60) days after determination of the new percentage rate(s). In no event, however, shall any rent adjustment result in any decrease in any percentage rental rate.

3.04 Payment Procedure. On or before the last day of the calendar month following the calendar month in which the gross income subject to rents was earned, LESSEE will provide CITY with a correct statement from the equestrian center together with a payment of rent on all applicable gross receipts in a form selected by CITY. The statement will be signed by LESSEE or its sublessee or an authorized agent, attesting to the accuracy thereof, which shall be legally binding upon LESSEE or its sublessees. Each statement will indicate or include as to the equestrian center:

- a. One-twelfth of the annual minimum rent until the full annual rent is achieved in any lease year.
- b. Total gross receipts for the subject month, itemized as to business categories for which separate percentage

rents are established. A gross receipts breakdown of each business conducted on the premises must be included when a reported category shows gross income to be from more than one business operation.

- c. The percentage rental due the CITY, computed and totaled.
- d. The accumulated total of all rents previously paid for the current lease year.
- e. Payment in the greater of the two following amounts:
One-twelfth of the annual minimum rent or the total percentage rent due CITY computed as described in this section.

3.05 Gross Income. "Gross income or receipts" as used in this lease shall include all income resulting from the polo facility and the equestrian center (if approved and developed) from whatever source derived whether received or to become due. Gross income shall include, but not be limited to, income from membership sales (except as provided in Section 3.06 herein), dues, all fees paid by members of LESSEE, brokerage commissions, fees and proceeds retained by LESSEE in the transfer of a membership or sale of a membership in LESSEE. Provided, however, gross income shall not include federal, state or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by LESSEE in computing gross income. Gross income shall not include refunds for goods returned for resale on the premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of LESSEE or its sublessee. The percentage rent shall be calculated and paid by LESSEE on the basis of said gross income whether the income is received by LESSEE or by any sublessee, permittee or licensee, or their agents and all gross income received by any sublessee, permittee, licensee or other party as a result of occupancy of said premises or the operation thereof shall be regarded as gross income of LESSEE for the purpose of calculating the percentage rent hereunder required to be paid by LESSEE to CITY, except as may be otherwise specified by or pursuant to this lease. Notwithstanding the above, income received by any licensee or permittee as a result of any activity that occurs without the LESSEE's knowledge or consent shall not be regarded as gross income of LESSEE.

3.06 Exclusions from Gross Income for Capital Expenditures.

On or before sixty (60) days after the end of each lease year, LESSEE shall provide to CITY all vouchers, receipts, and invoices documenting the total cost of Capital Expenditures (defined to be those expenditures set forth in Exhibit B herein) incurred by LESSEE during the preceding lease year. Notwithstanding the provisions of Section 3.05 above, income received by LESSEE from membership sales shall not be included in Gross Income for purposes of calculating the percentage rent due under Section 3.02(c) above, except to the extent that such income received by LESSEE (a) during any single lease year exceeds the total cost of Capital Expenditures incurred by LESSEE during that same lease year, or (b) exceeds a cumulative total of \$750,000 at any time during the term of the lease. In the event that the total cumulative income from membership sales over the term of the lease exceeds \$750,000, all income in excess of \$750,000 shall be deemed gross income for the remainder of the term of the lease.

3.07 Inspection of Records.

- a. Records. LESSEE and any sublessee, permittee, or licensee shall, at all times during the lease term, keep or cause to be kept true and complete books, records and accounts of all financial transactions in the operation of the polo facility and the equestrian center (if approved and developed) and financial transactions resulting from the use of the premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices or other documents as necessary to allow CITY to easily determine the total gross income.

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

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

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

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

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

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

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

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

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

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

3.08 Delinquent Rent and Audit Fees. If the LESSEE fails to pay the rent when due, the LESSEE will pay in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, the LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)] which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

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

- 3.09 Unauthorized Use Charge. LESSEE will pay CITY twenty percent (20%) of the gross receipts for any service or use that is not permitted by this lease. This payment is subject to the due date provided in this lease for rental payments, and the provision for delinquent rent. The existence of the twenty percent (20%) charge in this clause and the payment of this charge or any part of it, does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the leased premises.

SECTION 4: ASSIGNMENT

- 4.01 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants and conditions of this lease and, except as otherwise provided herein, all of the terms, covenants and conditions of this lease shall apply to, benefit and bind the successors and assigns of the respective parties, jointly and individually.
- 4.02 Assignment and Subletting. Subject to prior CITY approval in each instance, LESSEE may assign this lease and any interest herein and may sublease any portion hereof to an assignee or sublessee who has, in the opinion and in the sole and absolute discretion of the City Manager, the financial capability and overall competence to successfully operate the assigned or subleased portion of the premises in a manner at least comparable to the operations of LESSEE. This lease and any interest herein shall not be assignable by operation of law without the written consent of the CITY. "Assignment," for the purposes of this clause shall include any transfer of any ownership interest in this lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners, or principals.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions and provisions of this agreement which are applicable to the rights acquired. The City Manager may require, as a condition to approval of any sublease or assignment, that the proposed sublessee or assignee pay additional rent to CITY to equal the full fair market rent justifiable at the date of such proposed sublease or assignment and that this lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current.

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

Any subsequent encumbrances on the premises or on any permanent improvements thereon must first have the approval, in writing, of the City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the premises. Provided, however, after the premises are fully developed in accordance with said development plan to the satisfaction of the City Manager, proceeds from refinancing or from such subsequent encumbrances may be used to reduce LESSEE'S equity so long as there is also substantial benefit to the CITY therefrom. The City Manager shall have the sole and absolute discretion to approve or disapprove any such proposed subsequent encumbrance, including but not limited to amending the lease to provide then current rents and provisions.

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

Any default, foreclosure or sale pursuant to said deed of trust, mortgage or other security instrument, shall be invalid with respect to this lease without prior notice thereof to and approved by CITY. Upon prior approval by CITY, said mortgagee or beneficiary may assign this lease to its nominee, if nominee is a reputable, qualified and financially responsible person in the opinion of CITY. Any deed of trust, mortgage or other security instrument shall be subject to all of the

terms, covenants and conditions of this lease and shall not be deemed to amend or alter any of the terms, covenants or conditions hereof.

4.04 Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors;

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

In the event that there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default or defaults complained of, and the mortgagee or beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

- b. Remedies. If the mortgagee or beneficiary shall be required to exercise its right to cure said default or defaults through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that the default or defaults may be expeditiously corrected:
- (1) CITY may correct said default or defaults and charge the costs thereof to the account of the LESSEE, which charge shall be due and payable on the date that the rent is next due after presentation by CITY to LESSEE and mortgagee or beneficiary of a statement of said costs.
 - (2) CITY may correct said default or defaults and may pay the costs thereof from the proceeds of any insurance fund held by CITY, CITY and LESSEE or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or defaults or to pay the costs of correction performed by or at the direction of CITY.
 - (3) CITY may terminate this lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE agrees to assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related obligations by CITY. CITY may, as an alternative, substitute for the terminated LESSEE a new LESSEE reasonably satisfactory to the mortgagee or beneficiary. Any reasonable cost incurred by CITY in releasing to a new tenant shall be the responsibility of the terminated LESSEE, and LESSEE hereby agrees to reimburse CITY for any such costs.

Should the default or defaults be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold whose qualifications as an assignee have been approved by CITY shall have the absolute right to substitute itself to the estate of the LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default and the default, if curable, is cured by such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, the CITY expressly

consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges and obligations of the LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.

- c. Abandonment by LESSEE. Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder, including, but not limited to, the right to recover the rent as it becomes due, plus damages.
- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. The CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or the CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but the CITY shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

4.05 Eminent Domain. If all or part of the premises is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of the CITY and LESSEE (or beneficiary or mortgagee), will be as follows:

- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

- b. In the event of a partial taking, if, in the opinion of the CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. In the event of a partial taking, if, in the opinion of the CITY, the remainder of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession of the condemning authority, whichever occurs first, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the premises taken.
- d. Award. All monies awarded in any such taking shall belong to CITY whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to, LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- e. Transfer. CITY has the right to transfer the CITY'S interests in the premises, in lieu of condemnation, to any authority entitled to exercise the power of eminent domain. If a transfer occurs, the LESSEE shall retain its possessory interest in the fair market value of any improvements placed on the premises in accordance with this lease.
- f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 5: INSURANCE RISKS/SECURITY

- 5.01 Indemnity. LESSEE at all times shall relieve, indemnify, protect and save CITY and any and all of its boards, officers, agents and employees harmless from any and all claims and demands, actions, proceedings, losses, liens, costs, judgments, civil fines and penalties of any nature whatsoever in regard to or resulting from the use of the premises, including, but not limited to, expenses incurred in legal actions, death, injury or damage that may be caused directly or indirectly by:

- a. Any unsafe or defective condition in or on the premises of any nature whatsoever which may exist by reason of any act, omission, neglect, or any use or occupation of the premises,
- b. Any operation, use or occupation conducted on the premises,
- c. Any act, omission or negligence on the part of LESSEE, its employees, agents, sublessees, invitees, licensees; or
- d. Any failure by LESSEE to comply or secure compliance with any of the lease terms or conditions.

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

- a. Public liability and property damage insurance in the amount of not less than ONE MILLION DOLLARS (\$1,000,000) COMBINED SINGLE LIMIT LIABILITY with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties, from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE, on or in connection with the use or operation of the premises.
- b. Fire, extended coverage and vandalism insurance policy on all insurable property on the premises, in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY or LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with the Encumbrance section hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.
- c. Conditions. All insurance policies will name the CITY as an additional insured, protect the CITY against any legal costs in defending claims and will not terminate without sixty (60) days' prior written notice to the CITY. All insurance companies must be satisfactory to the CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be

in force on commencement of all authorized construction on the premises and full applicable Fire Insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.

- d. Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to acquire any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- e. Accident Reports. LESSEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.
- f. Failure to Comply. If the LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer or insurers and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

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

- 5.03 Waste, Damage or Destruction. LESSEE agrees to give notice to the CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash and rubbish in a manner satisfactory to the CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage, or at the CITY'S option, LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to the CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage using for either purpose the insurance proceeds as set forth in Section 5.02, Insurance, hereof.

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

- 5.04 Security Deposit. A security deposit shall be paid to the CITY by LESSEE in the sum of One Thousand Dollars (\$1,000) on or before the effective date of this lease. All or any portion of the principal sum shall be available unconditionally to CITY for correcting any default or breach of this lease by LESSEE, LESSEE'S successors or assigns, or for payment of expenses incurred by CITY as a result of LESSEE'S failure to faithfully perform all terms, covenants and conditions of this lease.

The security deposit shall take one of the forms set out below:

- a. Cash. Cash deposits shall be deposited with CITY and CITY shall not be liable to LESSEE for any interest thereon. Provided further, any interest earned by CITY from such deposit or redeposit shall be and remain the property of CITY.

- b. An instrument(s) of credit from one or more financial institutions, subject to regulation and insurance by the state or federal government, pledging that the funds are on deposit and guaranteed for payment, and agreeing that any or all shall be paid to CITY or order upon demand by CITY.

The financial institution and the form of any instrument pledging the funds must be approved by the CITY.

LESSEE will maintain the required security deposit throughout the lease term and for ninety (90) days thereafter unless previously released by the CITY. Failure to do so shall be considered a default and is grounds for immediate termination of this lease.

In the event CITY utilizes all or any portion of the security deposit, LESSEE shall reimburse the deposit within ten (10) days of notice from CITY to bring the security deposit up to the full specified amount.

The security or any balance thereof will be returned to the LESSEE within ninety (90) days following expiration or termination of this lease, provided LESSEE has faithfully complied with all terms, covenants and conditions hereof.

The security deposit may be increased by CITY proportionate to any increased performance or rental liability of LESSEE upon sixty (60) days' prior written notice from CITY of such required increase.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.01 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations and observations in making this lease. LESSEE further acknowledges that the premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises and that LESSEE does not hold CITY responsible for any defects in the premises. Further, LESSEE acknowledges that the premises lie within the floodplain of the San Dieguito River and is subject to inundation, the existence of reservations contained in the deed from Watt Industries/San Diego, Inc., to the City, the existence and location of easements encumbering the premises, that the property does not have frontage along or access

rights to El Camino Real and that CITY has made no representations regarding the availability of water for use on the premises.

- 6.02 Entry and Inspection. CITY reserves and shall always have the right to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy and sanitary condition, CITY shall have the right, after ten (10) days' written notice to LESSEE, to have any necessary maintenance work done 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 said premises in a decent, safe, healthy and sanitary condition. Further, if at any time the CITY determines that said premises are not in a decent, safe, healthy and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy and sanitary. Said bond shall be in an amount adequate in the opinion of the CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.
- 6.03 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises (including litter and weed abatement) throughout the term. LESSEE will make all repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy and sanitary condition satisfactory to the CITY and in compliance with the Development Plan described in Section 6.12 hereof and with all applicable laws.
- 6.04 Improvements/Alterations. No improvements, structures or installations shall be constructed within the premises and the premises may not be altered by the LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures or installations may not be made on the premises without prior written approval by the City Manager and Watt Industries/San Diego, Inc., or its successors and such approval shall not be unreasonably withheld. This provision shall not relieve the LESSEE of any obligation under this lease to maintain the premises in decent, safe, healthy and sanitary condition, including structural repair and restoration of damaged or worn improvements.

The CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.

- 6.05 Utilities. LESSEE agrees to order, obtain and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground.
- 6.06 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY, prior to commencement of said construction a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the incomplete construction shall be removed and the premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.
- 6.07 Liens. LESSEE will at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations or repairs on or to the premises, and the costs of defending against such claims, including reasonable attorney's fees.
- If improvements, alterations or repairs are made to the premises by LESSEE or by any party other than CITY and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:
- a. Take all actions necessary to record a valid release of lien, or
 - b. File with CITY a bond, cash, or other security acceptable to CITY, sufficient to pay in full all claims of all persons seeking relief under the lien.
- 6.08 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments and fees assessed or levied upon LESSEE or the premises including the land, any buildings, structures, machines, equipment, appliances or other improvements or property of any nature whatsoever, erected, installed or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and agrees that this lease may create a possessory interest subject to

property taxation and that the LESSEE may be subject to the payment of taxes levied on such interest and that LESSEE shall pay all such possessory interest taxes.

LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due the CITY.

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

6.10 Ownership of Improvements and Personal Property.

- a. LESSEE shall have the right to remove any and all its improvements, trade fixtures, structures and installations or additions to the premises constructed on the premises by LESSEE at lease termination or expiration except for landscaping, irrigation systems, the club house, storage facilities and perimeter fencing which shall be deemed to be part of the premises and shall become at CITY'S option the CITY'S property, free of all liens and claims except as otherwise provided in this lease.
- b. If the CITY elects not to assume ownership of all or any improvements, trade fixtures, structures and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or 180 days prior to expiration and the LESSEE shall remove all such improvements, structures and installations as directed by the CITY at LESSEE'S sole cost on or before lease expiration or termination. If the LESSEE fails to remove any improvements, structures and installations as directed, the LESSEE agrees to pay CITY the full cost of any removal.
- c. LESSEE-owned machines, appliances, equipment (other than trade fixtures) and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become the CITY'S property free of all claims and liens, or CITY may at its option remove said items at LESSEE'S expense.
- d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.

- e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require rental by LESSEE to CITY at the rate in effect immediately prior to said expiration or termination.
- f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said premises upon expiration or termination of this lease, then CITY shall have the first right to acquire or purchase said personal property.

6.11 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY claim the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.

6.12 Development Plan. LESSEE agrees to develop the leased premises in accordance with the General Development Plan approved by the City Manager and Watt Industries/San Diego, Inc., and filed in the Office of the City Clerk which plan is hereby incorporated by this reference. The general contents and provisions of the development plan are described in Exhibit A hereto. The City Manager or his designee shall have the authority to authorize changes to the plan upon concurrence from Watt Industries/San Diego, Inc., or its successor, provided that the basic concept may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk. Failure by LESSEE to comply with the General Development Plan shall constitute a major default and subject this lease to termination by CITY.

SECTION 7: GENERAL PROVISIONS

7.01 Notices

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

IF TO CITY:

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

IF TO LESSEE:

Fairbanks Polo Club
P.O. Box 2388
La Jolla, CA 92038

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

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

7.02 Compliance with Law. LESSEE will at all times in the construction, maintenance, occupancy and operation of the premises, comply with all applicable laws, statutes, ordinances and regulations of the CITY, County, State and Federal Government, at LESSEE'S sole cost and expense. In addition, LESSEE will comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.

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

7.04 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, national origin, age or physical handicap in LESSEE'S use of the premises, including, but not limited to, the providing of goods,

services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment.

- 7.05 Equal Opportunity. LESSEE agrees to abide by the CITY'S Affirmative Action Program for LESSEES as it exists or is amended to the extent that the program is applicable to this lease. A copy of the program effective as of the date of this lease is on file in the City Clerk's Office and by this reference is part hereof. The program's goal is the attainment of employment for minorities and women in all areas of employment, in a total percentage as established by the CITY for its Affirmative Action Program each year.
- 7.06 Partial Invalidity. If any term, covenant, condition or provision of this lease is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.07 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney's fees.
- 7.08 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.09 Captions. The lease Table of Contents, section headings and captions for various articles and paragraphs shall not be held to define, limit, augment or describe the scope, content or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. The LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties in respect to the leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties, representations and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent or attorney of any other party has made any promise, representation or warranty whatsoever, which is not contained in this lease. The failure or refusal of any party to read the lease or other documents, inspect the premises and obtain legal or other advice relevant to this transaction, constitutes a waiver of any objection, contention or claim that might have been based on these actions. No modification, amendment or alteration of this lease will be valid unless it is in writing and signed by all parties.

- 7.11 CITY Employee Participation Policy. It is the policy of the CITY that all CITY contracts, agreements or leases with consultants, vendors or LESSEES shall include a condition that the contract, agreement or lease shall be unilaterally and immediately terminated by the CITY if the contractor or LESSEE employs an individual who within the twelve months immediately preceding such employment did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.
- 7.12 Bylaws. Membership in LESSEE'S organization shall be open to anyone meeting the requirements of its rules and bylaws. All restrictions, rules, bylaws, and fees, if any, and changes thereto proposed by LESSEE'S organization shall, before being put into effect, be submitted to and receive the written approval of the City Manager. Bylaws shall be on file in the office of the Property Department prior to CITY execution of this lease.

SECTION 8: CONDITIONS SUBSEQUENT

- 8.01 Termination of Lease. In the event that any of the following should occur, and upon thirty (30) days written notice by LESSEE to CITY, LESSEE'S obligations under the terms of this lease shall become voidable by LESSEE or may be suspended by LESSEE for a period of time to be agreed upon by the parties:
- a. LESSEE determines that water is not available to irrigate the leased premises at a cost less than thirty percent (30%) of the annual minimum rent. (Cost shall mean the aggregate cost of purchasing water and pumping water from on-site wells.)
 - b. LESSEE cannot obtain public liability insurance as required by Section 5.02 herein or cannot obtain said insurance at a cost less than thirty percent (30%) of the annual minimum rent.
 - c. Flooding occurs which causes material damages to the premises. In the event that LESSEE opts to terminate the lease under this provision, LESSEE shall: (a) pay to CITY its pro rata share of rent due as calculated to the date that the material damage occurs, and (b) remove, at LESSEE's expense, any debris on the premises occasioned by damage to the facilities on the premises. In the event that the LESSEE decides to continue operations of

the Polo Club despite material damage caused by flooding, the rent shall be reduced in proportion to the extent of the damage until such time as the Polo Club facilities are restored as provided in Section 5.03.

- d. LESSEE loses access to the premises, for reasons over which LESSEE has no control, from either Via de la Valle or El Camino Real for a period of time exceeding thirty (30) days.

8.02 Water Service. The CITY of San Diego does not presently have a water service system to furnish water to LESSEE. The CITY, however, does have an existing temporary water service agreement with Santa Fe Irrigation District (hereinafter referred to as District) which can be amended to provide water to the premises. CITY will seek an amendment to the water service agreement with the District provided LESSEE agrees to the following:

- a. LESSEE shall bear all costs of securing temporary water service from the District including, but not limited to: an amendment of the agreement between CITY and District, payment of all applicable fees to District and construction of temporary connection to District facilities and their removal when required.
- b. LESSEE shall connect to CITY's water system at the request of the City Manager on or before June 30, 1993. LESSEE shall bear all costs of connecting to CITY's water system for:
 - (1) Payment of all applicable fees (including, but not limited to, water capacity changes, reimbursement and connection fees) at the time of the connection; and
 - (2) Construction of all on-site and off-site water facilities as required by the CITY's Water Utilities Department from new subdivisions in the area at the time of connection.
- c. LESSEE may, within 90 days after the request of CITY to connect to CITY's water system, cancel this lease if the terms, conditions and costs of such connection are unacceptable to LESSEE.

SECTION 9: SIGNATURES

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

THE CITY OF SAN DIEGO

Date _____

3-31-86

By

By *J. P. Fowler*
Deputy City Manager

City Manager

LESSEE: FAIRBANKS POLO CLUB

Date _____

3-14-86

By


President

President

By


Secretary

Secretary

APPROVED as to form and legality this 31 day of March, 1986

Date

By

By W. H. [Signature]
City Attorney
Deputy

City Attorney

RJC:baa(6)61
3-6-86

10.01 Legal Description

That portion of Lot No. 1 of Fairbanks Country Club Unit No. 1, according to Map thereof No. 10730, in the City of San Diego, filed in the Office of the County Recorder of the County of San Diego, State of California, described as follows:

Beginning at the Northerly terminus of the West line of said Lot 1; thence South $89^{\circ}02'46''$ East along the boundary of Lot 1 a distance of 2,668.58 feet; thence North $00^{\circ}36'06''$ East 20.00 feet; thence South $89^{\circ}57'49''$ East 175.32 feet; thence South $00^{\circ}55'54''$ West 246.03 feet; thence South $65^{\circ}34'37''$ East 227.34 feet; thence North $29^{\circ}55'09''$ East 611.49 feet; thence South $72^{\circ}03'30''$ East 587.57 feet; thence North $74^{\circ}40'00''$ East 128.58 feet; thence North $23^{\circ}11'55''$ East 106.62 feet; thence North $12^{\circ}54'09''$ West 232.88 feet; thence North $46^{\circ}58'30''$ West 143.63 feet; thence South $86^{\circ}23'17''$ West 301.60 feet; thence North $19^{\circ}19'23''$ East 163.19 feet; thence North $23^{\circ}08'51''$ West 190.26 feet; thence North $29^{\circ}08'26''$ East 12.54 feet to the beginning of a non-tangent 849.00-foot radius curve concave Northwesterly, a radial line to said point bears South $28^{\circ}24'52''$ East; thence Northeasterly along the arc of said curve through a central angle of $23^{\circ}43'57''$, a distance of 351.66 feet; thence leaving said curve along a non-tangent line North $41^{\circ}16'49''$ East 63.42 feet to the beginning of a non-tangent 540.00-foot radius curve concave Northwesterly, a radial line to said point bears South $48^{\circ}43'11''$ East; thence Northeasterly, along the arc of said curve through a central angle of $32^{\circ}41'21''$, a distance of 308.09 feet; thence leaving said curve along a non-tangent line South $87^{\circ}36'22''$ East 1,474.63 feet; thence leaving the boundary of said Lot 1 South $42^{\circ}52'00''$ West 850.00 feet; thence South $41^{\circ}20'34''$ West 522.34 feet to the beginning of a tangent 3,135.00-foot radius curve concave Northwesterly; thence Southwesterly along the arc of said curve through a central angle of $21^{\circ}38'43''$, a distance of 1,184.34 feet; thence leaving the arc of said curve along a radial line to said curve North $27^{\circ}00'43''$ West 154.26 feet; thence North $53^{\circ}39'49''$ West 120.00 feet; thence South $80^{\circ}40'46''$ West 96.25 feet; thence South $25^{\circ}51'38''$ West 95.00 feet; thence South $59^{\circ}28'51''$ West 105.00 feet; thence North $66^{\circ}12'16''$ West 80.00 feet; thence South $82^{\circ}40'21''$ West 275.00 feet to the beginning of a tangent 175.00-foot radius curve concave Easterly; thence Southerly along the arc of said curve through a central angle of $94^{\circ}23'35''$, a distance of 288.31 feet; thence South $11^{\circ}43'14''$ East 132.00 feet; thence South $78^{\circ}16'46''$ West 1,186.00 feet to the beginning of a tangent 2,930.00-foot radius curve concave Northerly; thence Westerly along the arc of said curve through a central angle of $09^{\circ}12'35''$, a distance of 470.97 feet, thence leaving the arc of said curve along a non-tangent line South $83^{\circ}52'53''$ West 553.67 feet to a line which is parallel with and 10.00 feet North of the South line of said Lot 1; thence North $89^{\circ}28'00''$ West a distance of 625.91 feet to the West line of said Lot 1; thence along said West line North $00^{\circ}24'12''$ West 722.48 feet and North $01^{\circ}31'23''$ East 404.64 feet to the Point of Beginning, except that portion of Lot 1 dedicated for Via De La Valle by City Council Resolution 262466.

10.02 General Development Plan

The General Development Plan consists of:

- a. Plot Plan
- b. Development Schedule
- c. Financial Plan
- d. Schematic Elevations
- e. Landscape Plan
- f. Others as applicable

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

EXHIBIT "B"

FAIRBANKS POLO CLUB

COST PROJECTION *

<u>DEVELOPMENT COSTS</u>	<u>PHASE I</u>	<u>PHASE II</u>	<u>TOTAL</u>
Design & Engineering	\$20,000	\$ 10,000	\$ 30,000
Irrigation System:			
Engineering	5,000	3,000	8,000
2" Meter		3,375	3,375
4" Meter	14,500		14,500
Water Blending Facility	20,000		20,000
Extend Pipe to East Field		15,000	15,000
Well Approx. 300 ft.	60,000	30,000	90,000
Main Line/Pump Station	40,000	8,000	48,000
8 Side Role Sprinkler Lines	23,000	10,000	33,000
Purchase Grass Stolens	60,000	22,000	82,000
Planting Grass	20,000	10,000	30,000
Grading	35,000	18,125	53,125
Entrance	8,000		8,000
Road & Culverts	15,000	10,000	25,000
Landscaping, Draining, Irrigation	30,000	20,000	50,000
Fencing	25,000	10,000	35,000
Water Distribution Systems	20,000	15,000	35,000
Utilities Improvements	15,000	10,000	25,000
Clubhouse		125,000	125,000
Storage Facilities	10,000	10,000	<u>20,000</u>

Total Development Costs and
Capital Improvements

\$750,000

*The costs shown above are estimates. LESSEE shall receive full credit for actual expenditures which may exceed line-item estimates provided that actual expenditures for other line-items are commensurately below the estimated costs for those items and provided further that the total development and capital improvement costs claimed pursuant to Section 3.06 herein do not exceed a total of \$750,000 during the lease term.

JPB
JAC
ABC

**Addendum to Lease Agreement Between the City of San Diego, Lessor,
and Fairbanks Polo Club, Lessee**

Whereas, the City Council during its hearing of the Fairbanks Polo Club Lease requested that certain provisions be added to the agreement concerning public access and construction of permanent structures on the premises.

Now, therefore, City and Fairbanks Polo Club agree to incorporate the attached Exhibit "C" concerning public access regulations into the lease agreement. Also, Fairbanks Polo Club will be required to obtain City Council approval prior to construction of any permanent structures (such as the Club House) on the leasehold premises, except as otherwise provided in the lease.

In witness whereof, this addendum is executed by City, acting by and through its City Manager, and by Lessee, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date 8-25-86

By [Signature]
Deputy City Manager

FAIRBANKS POLO CLUB

Date 7-29-86

By [Signature]
Harry A. Collins

By [Signature]
Chris A. Collins

APPROVED AS TO FORM AND LEGALITY THIS 20 DAY OF August, 1986.

By [Signature]
Deputy City Attorney

RJC:st(108-2)
7-16-86

EXHIBIT "C"

PUBLIC ACCESS REGULATIONS

(1) During the first 18 months of the Lease Term, the Polo Club shall be permitted to restrict or prohibit public access to any and all areas of the Polo Club site. This temporary restrictive period is needed to insure that the grass for the polo fields is allowed to fully mature. Fencing, posting signs, chaining access roads, and any other means reasonably necessary to control pedestrian, horse, and vehicular traffic on the Polo Club site shall be allowed during this period; provided, however, that the Public Trail (indicated in red on the site plan attached hereto as Exhibit "A" and incorporated herein by reference) shall remain open to the public at all times.

(2) At such time as the grass on those polo fields developed during Phase I has matured such that polo matches may be played on the fields, the following regulations shall govern public access to the Polo Club site:

(a) The Public Trail (shown in red on Exhibit "A") shall remain open to the public at all times.

(b) The polo field areas (shown in yellow on Exhibit "A") shall be open to the public during daylight hours for passive uses (i.e., spectating, picnicking) which do not interfere with use of the Polo Fields by Polo Club members practicing or playing polo nor with maintenance, planting, watering, or other normal operations of the Polo Club. The Polo Club may reasonably direct the public to designated areas to provide a safety buffer between the public and the operations of the Polo Club. Spectators at the polo matches or practices shall be granted priority of use over other members of the public. Public access to the Polo Club site shall be prohibited after daylight hours.

(c) Only Polo Club members and their invitees shall be allowed to play polo on the Polo Club facilities. Equestrian use of the Polo Club site by non-members shall not be permitted.

(d) Unless specifically authorized by the Polo Club, motorized vehicles shall be allowed only where designated or directed by Polo Club management.

(e) Due to safety considerations, certain areas of the Polo Club site must necessarily be limited to use by Polo Club members and invitees only. Accordingly, those areas shown in blue and brown on Exhibit "A" shall be reserved for horse-related activities (e.g., corrals, barns, exercise facilities, etc.). The public shall not be permitted in these areas without prior authorization from the Polo Club.

(f) Notwithstanding any of the above, the Polo Club reserves the right to restrict public access to the Polo Club site during certain special events (e.g., charity fund-raisers sponsored by the Polo Club, charity fund-raisers sponsored by groups other than the Polo Club, tournaments, etc.). Such restrictions may be necessary in order to insure that only ticketed spectators are allowed to attend the special events.

(g) No animals, other than horses and seeing-eye dogs, shall be allowed on the Polo Club premises without prior authorization from the Polo Club.

(h) The Polo Field in the northeast corner of the Polo Club site (to be developed during Phase II) shall not be open to public access until a road is built on the site to access the field. At such time as the road is provided, public access shall be governed by the provisions above.

(i) The areas designated for particular uses on the color coded site plan attached hereto as Exhibit "A" may be subject to change as the plans for the Polo Club evolve.

*Collins 503
Property*

(R-86-1729)

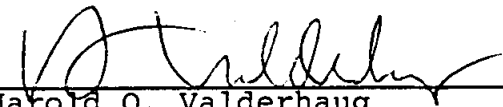
RESOLUTION NUMBER R- 265268

ADOPTED ON MAR 17 1986

BE IT RESOLVED, by the Council of The City of San Diego, 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 FAIRBANKS POLO CLUB, a California nonprofit corporation, for City-owned open space property north of the Fairbanks Country Club Golf Course, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR- 265268.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
03/11/86
Or.Dept:Prop.
Job:218154
R-86-1729
Form=r.none

*Property 503
Collins*
(R-86-1734)

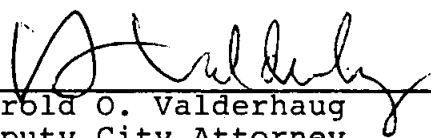
RESOLUTION NUMBER R- 265269

ADOPTED ON MAR 17 1986

BE IT RESOLVED, by the Council of The City of San Diego that it be, and it is hereby certified, that the information contained in FINAL NEGATIVE DECLARATION NO. EQD 85-0785 in connection with the Fairbanks Polo Club lease of City-owned property north of the Fairbanks Country Club Golf Course, on file in the office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970, as amended, and the State guidelines thereto, and that said Declaration has been reviewed and considered by this Council.

APPROVED: John W. Witt, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
03/14/86
Or.Dept:Prop.
R-86-1734
Form=r.neg

NOTICE OF DETERMINATION

TO: X County Clerk
County of San Diego
220 W. Broadway
San Diego, CA 92101

FROM: City of San Diego
City Administration Building
202 "C" Street
San Diego, CA 92101

— Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

EQD Number: EQD 85-0785

State Clearinghouse Number: _____
(If submitted to Clearinghouse)

Project Title: FAIRBANKS POLO CLUB - City Lease Agreement

Project Location: In the Floodplain Fringe at the corner of Via de la Valle and El Camino Real in the Fairbanks Ranch Specific Plan Area (Lot 1, Blk. #1, Fairbanks Country Club Subdivision, Map #10730)

Project Description: Development of a polo facility which will include polo fields, a club house, portable corrals and pasture areas.

This is to advise that The City of San Diego City Council on March 17, 1986 approved the above described project and made the following (date) determinations:

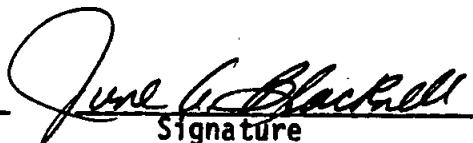
1. The project in its approved form will, X will not, have a significant effect on the environment.
2. An Environmental Impact Report was prepared for this project and certified pursuant to the provisions of CEQA.
- X A Negative Declaration was prepared for this project pursuant to the provisions of CEQA. Resolution R-265269.

Record of project approval may be examined at the address above.

3. Mitigation measures were, X were not, made a condition of the approval of the project.
4. (EIR only) Findings were, X were not, made pursuant to CEQA Guidelines Section 15091.
5. (EIR only) A Statement of Overriding Considerations was, X was not, adopted for this project.

It is hereby certified that the final environmental report, including comments and responses, is available to the general public at the office of the Environmental Quality Division, Fifth Floor, 202 "C" Street, San Diego, CA 92101.

Date Received for Filing: _____


Signature

Deputy City Clerk

Title

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

MAR 17 1986

by the following votes:

YEAS: Wolfsheimer, Cleator, McColl, Struiksma, McCarty,
Martinez.

NAYS: Jones, Gotch.

NOT PRESENT: Npne.

VACANT: Mayor.

AUTHENTICATED BY:

ED STRUIKSMA

Deputy Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Deigo, California

By JUNE A. BLACKNELL

Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true
and correct copy of RESOLUTION NO. R- 265268 passed and

adopted by the Council of The City of San Deigo, California, on

MAR 17 1986

CHARLES G. ABDELNOUR

City Clerk of The City of San Deigo, California

(SEAL)

By

June A. Blacknell

Deputy

REVISED OPERATING MEMORANDUM
BETWEEN
CITY OF SAN DIEGO (LESSOR)
RANCHO SANTA FE POLO CLUB (LESSEE)

legil
CURRENT

RECITALS

WHEREAS, the City of San Diego (City) and Fairbanks Polo Club, the predecessor to Rancho Santa Fe Polo Club (Club), entered into a lease agreement for City-owned property described in City Clerk Document No. 265268, filed March 17, 1986.

WHEREAS, the City placed the lease agreement in default on June 3, 1993 because of accrued rent deficiencies, due in part to a dispute between the parties as to the interpretation of certain terms and conditions of the lease.

WHEREAS, the City and Club originally entered into an Operating Memorandum on or about June 26, 1995 to clarify the definition of certain terms and conditions in the lease and to provide a mutually agreeable plan to resolve the rental deficiency caused by conflicting interpretations of the terms of the lease.

WHEREAS, subsequent to the original Operating Memorandum agreement, the Club has incurred an additional amount of underpaid rent for the period January 1, 1995 through December 31, 1995 in the amount of \$20,953.17 as determined by City Audit Report dated April 26, 1996.

WHEREAS, the purpose of this REVISED OPERATING MEMORANDUM is to restate the rights and obligations contained in the original Operating Memorandum, add new obligations relating to repayment of the additional amount of underpaid rent, and supersede the original OPERATING MEMORANDUM.

NOW THEREFORE, THE FOLLOWING IS A RESTATEMENT OF THE RIGHTS AND OBLIGATION CONTAINED IN THE ORIGINAL OPERATING MEMORANDUM. The City and Club agree:

A. "Founding Memberships" shall be considered loans to the Club and not membership sales for the purpose of calculating Gross Income under Section 3.05 of the lease to the extent that they meet both of the following criteria:

1. The Founding Memberships shall be evidenced by an accompanying note payable from the Club to the Founding Member in an amount corresponding to the Membership fee.

2. Founding Memberships shall only be considered loans to the extent of the principal amount which is repaid to the Founding Member prior to expiration or termination of the lease.

B. If, at the expiration or termination of the lease there are any Founding Membership loans still outstanding, the amount of their then existing principal balances shall be reclassified as Gross Income and the applicable percentage rent on such balances shall be due the City. To ensure payment to the City of any percentage rent that is due under the reclassification of the loan balances, the Club shall obtain a performance bond in favor of the City. Said bond will be provided to the City five years prior to the expiration of the lease term and shall be in an amount sufficient to cover the percentage rent that would be due on the principal balance of all Founding Membership loans still outstanding five years prior to expiration of the lease.

C. Taking into consideration the exclusion of Founding Memberships from Gross Income in calculating the percentage rent, there still remains an undisputed amount of \$183,470.12 in deficient rent, (less the \$72,406.50 credit specified in Section 4.a below if the option to deduct the amount is utilized), owed the City for the period April 1, 1986 through December 31, 1994.

In addition to their normal monthly rental payments, the Club agrees to the following payment plan to pay the City the undisputed amount of deficient rent stated above:

1. Starting with the rent payment due January 1, 1995 and continuing for 36 months, the Club shall pay the additional sum of \$1,000 per month to be applied totally toward the reduction of the principal amount of the deficient rent mentioned in Section 3 above, for a total of \$36,000. This payment shall remain in effect whether or not "Special Event" proceeds described in Section 3.c. below, or the \$72,406.50 credit mentioned in Section 4.a. below, are used to accelerate the reduction of the overall balance owed.

2. Starting with the rent payment due January 1, 1998, the additional payment toward the reduction of the deficient rent shall be increased to a monthly payment amount, including principal and interest at a rate of 6% per annum, interest in arrears, on the unpaid balance, which will fully amortize the then remaining unpaid balance over the next 36 month period.

3. The Club may propose individual "Special Events" designed specifically to produce revenue to reduce the amount of the rental deficiency owed the City and to help

payoff an existing loan to Wells Fargo Bank. Each individual event will be subject to City approval and it will be the sole responsibility of the Club to obtain all permits and approvals that may be necessary to comply with Division 2, Section 22.0207 of the San Diego Municipal Code. The gross proceeds received by the Club from the event would be allocated as follows:

- a) 20% to the Club to offset expenses incurred to produce the event.
- b) 40% to Wells Fargo Bank to reduce the balance of an existing loan on the property.
- c) 40% to the City toward the reduction of the current rental deficiency.

At such time as the existing Wells Fargo Bank loan is paid off, the gross proceeds to the Club from any subsequent special events, under this provision, shall be allocated 20% to the Club and 80% to the City until the rental deficiency is paid in full.

D. Section 3.06 of the lease agreement states that up to \$750,000 in capital improvement expenditures (Capital Expenditures) by the Club can be used to offset gross income from membership sales for the purpose of calculating percentage rent due under Section 3.02(c) of the lease agreement. It was originally contemplated that the major capital improvements would take place in the same year as the membership sales and be offset on a dollar for dollar basis for the year. Instead, Founding Membership loans were used to construct the majority of the improvements in advance of membership sales and as of December 31, 1994, the Club has a balance of \$724,065 in Capital Expenditure exemptions they are still entitled to and have been unable to use. To allow the Club to use the balance of the originally agreed upon \$750,000 in Capital Expenditures exemptions, the parties agree as follows:

That, the Club may use the \$724,065 Capital Expenditure exemption balance as a \$72,406.50 ($\$724,065 \times \text{percentage rent rate of } 10\%$), credit toward the reduction of the undisputed rental deficiency of \$183,470.12 as mentioned above.

AS OF THIS DATE, THE CLUB HAS ALREADY TAKEN THIS CREDIT AND NO FURTHER CREDIT FOR CAPITAL EXPENDITURES IS AUTHORIZED.

NOW THEREFORE, SUBSEQUENT TO THE ABOVE TERMS OF AGREEMENT WHICH WERE STATED IN THE ORIGINAL OPERATING MEMORANDUM, the City and Club agree to the following:

E. In addition to all above obligations, the Club has incurred an additional amount of underpaid rent for the period January 1, 1995 through December 31, 1995, in the amount of \$20,953.17 as determined by City Audit Report dated April 26, 1996.

1. In addition to all other normal and previously agreed to monthly rental payments, the Club will adopt the following payment plan to pay the City the additional \$20,953.17 of deficient rent as follows:

a) Starting with, separate from and in addition to any other rent payments due August 1, 1996 and continuing for 17 months or until paid in full, an additional payment to amortize the audit deficiency of \$20,953.17 referred to above, including principal and interest at a rate of 6% per annum, interest in arrears on the unpaid balance, shall be paid monthly.

b) The outstanding balance of the \$20,953.17 audit deficiency can be paid in full at any time without penalty or additional interest. Furthermore a final payment in lump sum of the outstanding audit deficiency balance shall be made prior to January 1, 1998.

c) Any and all payments made by the Polo Club towards said \$20,953.17 audit deficiency prior to execution of this agreement, shall be placed in a trust account by the City. Once this agreement is executed : funds received prior to August 1, 1996 will be applied to reduce the principle balance; funds received after August 1, 1996 up to the time of execution of this agreement, shall be applied towards reduction of principal and payment of accrued interest.

d) At the time of execution of this agreement, City will calculate and invoice Club for payments to be made based on remaining audit deficiency balance, less advance payments, as per terms in E.1.a., b., and c. above.

e) The last payment is to be made in any event, on remaining balance at due date, on December 1, 1997.

We hereby agree to the terms and conditions of the above described REVISED OPERATING MEMORANDUM.

CITY OF SAN DIEGO

Dated: 1/10/97

By Jane E. Vickers
Jane E. Vickers
Acting Deputy Director

RANCHO SANTA FE POLO CLUB

Dated: 10/28/96

By D. L. L. Chairman

By C. K. P. Smith, Pres.

APPROVED AS TO FORM AND LEGALITY THIS 7 DAY OF November 1996

By H. O. Valderhaug
Harold O Valderhaug
Head Deputy City Attorney

MFW:dcj
8/29/96
I:\WFO\1996\WIGGINS\POLO.OM2

See Page 2

OPERATING MEMORANDUM
BETWEEN
CITY OF SAN DIEGO (LESSOR)
RANCHO SANTA FE POLO CLUB (LESSEE)

RECITALS

WHEREAS, the City of San Diego (City) and Fairbanks Polo Club, the predecessor to Rancho Santa Fe Polo Club (Club), entered into a lease agreement for City-owned property described in City Clerk Document No. 265268, filed March 17, 1986.

WHEREAS, the City placed the lease agreement in default on June 3, 1993 because of accrued rent deficiencies, due in part to a dispute between the parties as to the interpretation of certain terms and conditions of the lease.

WHEREAS, the purpose of this memorandum is to clarify the definition of certain terms and conditions in the lease and to provide a mutually agreeable plan to resolve the rental deficiency caused by conflicting interpretations of the terms of the lease.

NOW THEREFORE, the City and Club agree as follows:

1. "Founding Memberships" shall be considered loans to the Club and not membership sales for the purpose of calculating Gross Income under Section 3.05 of the lease to the extent that they meet both of the following criteria:

a. The Founding Memberships shall be evidenced by an accompanying note payable from the Club to the Founding Member in an amount corresponding to the Membership fee.

b. Founding Memberships shall only be considered loans to the extent of the principal amount which is repaid to the Founding Member prior to expiration or termination of the lease.

2. If, at the expiration or termination of the lease there are any Founding Membership loans still outstanding, the amount of their then existing principal balances shall be reclassified as Gross Income and the applicable percentage rent on such balances shall be due the City. To ensure payment to the City of any percentage rent that is due under the reclassification of the loan balances, the Club shall obtain a performance bond in favor of the City. Said bond will be provided to the City five years prior to the expiration of the lease term and shall be in an amount sufficient to cover the percentage rent that would be due on the principal balance of all Founding Membership loans still outstanding five years prior to expiration of the lease.

3. Taking into consideration the exclusion of Founding Memberships from Gross Income in calculating the percentage rent, there still remains an undisputed amount of \$183,470.12 in deficient rent, (less the \$72,406.50 credit specified in Section 4.a. below if the option to deduct the amount is utilized), owed the City for the period April 1, 1986 through December 31, 1994.

Agreement - Settling
out long standing
rent deficiency
caused by
WHEREAS Founding
Memberships were
loans on Gross
Income.
See 6-7795

In addition to their normal monthly rental payments, the Club will adopt the following payment plan to pay the City the undisputed amount of deficient rent stated above:

a. Starting with the rent payment due January 1, 1995 and continuing for 36 months, the Club shall pay the additional sum of \$1,000 per month to be applied totally toward the reduction of the principal amount of the deficient rent mentioned in Section 3 above, for a total of \$36,000. This payment shall remain in effect whether or not "Special Event" proceeds described in Section 3.c. below, or the \$72,406.50 credit mentioned in Section 4.a. below, are used to accelerate the reduction of the overall balance owed.

b. Starting with the rent payment due January 1, 1998, the additional payment toward the reduction of the deficient rent shall be increased to a monthly payment amount, including principal and interest at a rate of 6% per annum, interest in arrears, on the unpaid balance, which will fully amortize the then remaining unpaid balance over the next 36 month period.

c. The Club may propose individual "Special Events" designed specifically to produce revenue to reduce the amount of the rental deficiency owed the City and to help payoff an existing loan to Wells Fargo Bank. Each individual event will be subject to City approval and it will be the sole responsibility of the Club to obtain all permits and approvals that may be necessary to comply with Division 2, Section 22.0207 of the San Diego Municipal Code. The gross proceeds received by the Club from the event would be allocated as follows:

- 1) 20% to the Club to offset expenses incurred to produce the event.
- 2) 40% to Wells Fargo Bank to reduce the balance of an existing loan on the property.
- 3) 40% to the City toward the reduction of the current rental deficiency.

At such time as the existing Wells Fargo Bank loan is paid off, the gross proceeds to the Club from any subsequent special events, under this provision, shall be allocated 20% to the Club and 80% to the City until the rental deficiency is paid in full.

4. Section 3.06 of the lease agreement states that up to \$750,000 in capital improvement expenditures (Capital Expenditures) by the Club can be used to offset gross income from membership sales for the purpose of calculating percentage rent due under Section 3.02(c) of the lease agreement. It was originally contemplated that the major capital improvements would take place in the same year as the membership sales and be offset on a dollar for dollar basis for the year. Instead, Founding Membership loans were used to construct the majority of the improvements in advance of membership sales and as of December 31, 1994, the Club has a balance of \$724,065 in Capital Expenditure exemptions they are still entitled to and have been unable to use. To allow the Club to use the balance of the originally agreed upon \$750,000 in Capital Expenditures exemptions, the parties agree as follows:

a. That, the Club may use the \$724,065 Capital Expenditure exemption balance as a \$72,406.50 (\$724,065 X percentage rent rate of 10%), credit toward the reduction of the undisputed rental deficiency of \$183,470.12 as mentioned above.

We hereby agree to the terms and conditions of the above described operating memorandum.

CITY OF SAN DIEGO

Dated: 6/26/95

By RJ Collins
Robert J. Collins, Deputy Director
Real Estate Assets Department

RANCHO SANTA FE POLO CLUB

Dated: 6/21/95

By [Signature]
Chairman

By _____

APPROVED AS TO FORM AND LEGALITY THIS 22 DAY OF June 1995.

By [Signature]
Chief Deputy City Attorney

SAC:sac(6/14/95)

REVISED OPERATING MEMORANDUM
BETWEEN
CITY OF SAN DIEGO (LESSOR)
RANCHO SANTA FE POLO CLUB (LESSEE)

Legal
CURRENT

RECITALS

WHEREAS, the City of San Diego (City) and Fairbanks Polo Club, the predecessor to Rancho Santa Fe Polo Club (Club), entered into a lease agreement for City-owned property described in City Clerk Document No. 265268, filed March 17, 1986.

WHEREAS, the City placed the lease agreement in default on June 3, 1993 because of accrued rent deficiencies, due in part to a dispute between the parties as to the interpretation of certain terms and conditions of the lease.

WHEREAS, the City and Club originally entered into an Operating Memorandum on or about June 26, 1995 to clarify the definition of certain terms and conditions in the lease and to provide a mutually agreeable plan to resolve the rental deficiency caused by conflicting interpretations of the terms of the lease.

WHEREAS, subsequent to the original Operating Memorandum agreement, the Club has incurred an additional amount of underpaid rent for the period January 1, 1995 through December 31, 1995 in the amount of \$20,953.17 as determined by City Audit Report dated April 26, 1996.

WHEREAS, the purpose of this REVISED OPERATING MEMORANDUM is to restate the rights and obligations contained in the original Operating Memorandum, add new obligations relating to repayment of the additional amount of underpaid rent, and supersede the original OPERATING MEMORANDUM.

NOW THEREFORE, THE FOLLOWING IS A RESTATEMENT OF THE RIGHTS AND OBLIGATION CONTAINED IN THE ORIGINAL OPERATING MEMORANDUM. The City and Club agree:

A. "Founding Memberships" shall be considered loans to the Club and not membership sales for the purpose of calculating Gross Income under Section 3.05 of the lease to the extent that they meet both of the following criteria:

1. The Founding Memberships shall be evidenced by an accompanying note payable from the Club to the Founding Member in an amount corresponding to the Membership fee.

2. Founding Memberships shall only be considered loans to the extent of the principal amount which is repaid to the Founding Member prior to expiration or termination of the lease.

B. If, at the expiration or termination of the lease there are any Founding Membership loans still outstanding, the amount of their then existing principal balances shall be reclassified as Gross Income and the applicable percentage rent on such balances shall be due the City. To ensure payment to the City of any percentage rent that is due under the reclassification of the loan balances, the Club shall obtain a performance bond in favor of the City. Said bond will be provided to the City five years prior to the expiration of the lease term and shall be in an amount sufficient to cover the percentage rent that would be due on the principal balance of all Founding Membership loans still outstanding five years prior to expiration of the lease.

C. Taking into consideration the exclusion of Founding Memberships from Gross Income in calculating the percentage rent, there still remains an undisputed amount of \$183,470.12 in deficient rent, (less the \$72,406.50 credit specified in Section 4.a below if the option to deduct the amount is utilized), owed the City for the period April 1, 1986 through December 31, 1994.

In addition to their normal monthly rental payments, the Club agrees to the following payment plan to pay the City the undisputed amount of deficient rent stated above:

1. Starting with the rent payment due January 1, 1995 and continuing for 36 months, the Club shall pay the additional sum of \$1,000 per month to be applied totally toward the reduction of the principal amount of the deficient rent mentioned in Section 3 above, for a total of \$36,000. This payment shall remain in effect whether or not "Special Event" proceeds described in Section 3.c. below, or the \$72,406.50 credit mentioned in Section 4.a. below, are used to accelerate the reduction of the overall balance owed.

2. Starting with the rent payment due January 1, 1998, the additional payment toward the reduction of the deficient rent shall be increased to a monthly payment amount, including principal and interest at a rate of 6% per annum, interest in arrears, on the unpaid balance, which will fully amortize the then remaining unpaid balance over the next 36 month period.

3. The Club may propose individual "Special Events" designed specifically to produce revenue to reduce the amount of the rental deficiency owed the City and to help

payoff an existing loan to Wells Fargo Bank. Each individual event will be subject to City approval and it will be the sole responsibility of the Club to obtain all permits and approvals that may be necessary to comply with Division 2, Section 22.0207 of the San Diego Municipal Code. The gross proceeds received by the Club from the event would be allocated as follows:

- a) 20% to the Club to offset expenses incurred to produce the event.
- b) 40% to Wells Fargo Bank to reduce the balance of an existing loan on the property.
- c) 40% to the City toward the reduction of the current rental deficiency.

At such time as the existing Wells Fargo Bank loan is paid off, the gross proceeds to the Club from any subsequent special events, under this provision, shall be allocated 20% to the Club and 80% to the City until the rental deficiency is paid in full.

D. Section 3.06 of the lease agreement states that up to \$750,000 in capital improvement expenditures (Capital Expenditures) by the Club can be used to offset gross income from membership sales for the purpose of calculating percentage rent due under Section 3.02(c) of the lease agreement. It was originally contemplated that the major capital improvements would take place in the same year as the membership sales and be offset on a dollar for dollar basis for the year. Instead, Founding Membership loans were used to construct the majority of the improvements in advance of membership sales and as of December 31, 1994, the Club has a balance of \$724,065 in Capital Expenditure exemptions they are still entitled to and have been unable to use. To allow the Club to use the balance of the originally agreed upon \$750,000 in Capital Expenditures exemptions, the parties agree as follows:

That, the Club may use the \$724,065 Capital Expenditure exemption balance as a \$72,406.50 (\$724,065 X percentage rent rate of 10%), credit toward the reduction of the undisputed rental deficiency of \$183,470.12 as mentioned above.

AS OF THIS DATE, THE CLUB HAS ALREADY TAKEN THIS CREDIT AND NO FURTHER CREDIT FOR CAPITAL EXPENDITURES IS AUTHORIZED.

NOW THEREFORE, SUBSEQUENT TO THE ABOVE TERMS OF AGREEMENT WHICH WERE STATED IN THE ORIGINAL OPERATING MEMORANDUM, the City and Club agree to the following:

E. In addition to all above obligations, the Club has incurred an additional amount of underpaid rent for the period January 1, 1995 through December 31, 1995, in the amount of \$20,953.17 as determined by City Audit Report dated April 26, 1996.

1. In addition to all other normal and previously agreed to monthly rental payments, the Club will adopt the following payment plan to pay the City the additional \$20,953.17 of deficient rent as follows:

a) Starting with, separate from and in addition to any other rent payments due August 1, 1996 and continuing for 17 months or until paid in full, an additional payment to amortize the audit deficiency of \$20,953.17 referred to above, including principal and interest at a rate of 6% per annum, interest in arrears on the unpaid balance, shall be paid monthly.

b) The outstanding balance of the \$20,953.17 audit deficiency can be paid in full at any time without penalty or additional interest. Furthermore a final payment in lump sum of the outstanding audit deficiency balance shall be made prior to January 1, 1998.

c) Any and all payments made by the Polo Club towards said \$20,953.17 audit deficiency prior to execution of this agreement, shall be placed in a trust account by the City. Once this agreement is executed : funds received prior to August 1, 1996 will be applied to reduce the principle balance; funds received after August 1, 1996 up to the time of execution of this agreement, shall be applied towards reduction of principal and payment of accrued interest.

d) At the time of execution of this agreement, City will calculate and invoice Club for payments to be made based on remaining audit deficiency balance, less advance payments, as per terms in E.1.a., b., and c. above.

e) The last payment is to be made in any event, on remaining balance at due date, on December 1, 1997.

We hereby agree to the terms and conditions of the above described REVISED OPERATING MEMORANDUM.

CITY OF SAN DIEGO

Dated: 1/10/97

By Jane E. Vickers
Jane E. Vickers
Acting Deputy Director

RANCHO SANTA FE POLO CLUB

Dated: 10/28/96

By J. L. ... Chairman

By Chas. P. ... Pres.

APPROVED AS TO FORM AND LEGALITY THIS 7 DAY OF November 1996

By Harold O Valderhaug
Harold O Valderhaug
Head Deputy City Attorney

MFW:dcj
8/29/96
I:\WFO\1996\WIGGINS\POLO.OM2

OPERATING MEMORANDUM
BETWEEN
CITY OF SAN DIEGO (LESSOR)
RANCHO SANTA FE POLO CLUB (LESSEE)

Agreement - Setting
out long standing
rent deficiency
caused by
whether Founding
Memberships were
loans or Gross
Income.
Sec 6.7.95

RECITALS

WHEREAS, the City of San Diego (City) and Fairbanks Polo Club, the predecessor to Rancho Santa Fe Polo Club (Club), entered into a lease agreement for City-owned property described in City Clerk Document No. 265268, filed March 17, 1986.

WHEREAS, the City placed the lease agreement in default on June 3, 1993 because of accrued rent deficiencies, due in part to a dispute between the parties as to the interpretation of certain terms and conditions of the lease.

WHEREAS, the purpose of this memorandum is to clarify the definition of certain terms and conditions in the lease and to provide a mutually agreeable plan to resolve the rental deficiency caused by conflicting interpretations of the terms of the lease.

NOW THEREFORE, the City and Club agree as follows:

1. "Founding Memberships" shall be considered loans to the Club and not membership sales for the purpose of calculating Gross Income under Section 3.05 of the lease to the extent that they meet both of the following criteria:

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2. If, at the expiration or termination of the lease there are any Founding Membership loans still outstanding, the amount of their then existing principal balances shall be reclassified as Gross Income and the applicable percentage rent on such balances shall be due the City. To ensure payment to the City of any percentage rent that is due under the reclassification of the loan balances, the Club shall obtain a performance bond in favor of the City. Said bond will be provided to the City five years prior to the expiration of the lease term and shall be in an amount sufficient to cover the percentage rent that would be due on the principal balance of all Founding Membership loans still outstanding five years prior to expiration of the lease.

3. Taking into consideration the exclusion of Founding Memberships from Gross Income in calculating the percentage rent, there still remains an undisputed amount of \$183,470.12 in deficient rent, (less the \$72,406.50 credit specified in Section 4.a. below if the option to deduct the amount is utilized), owed the City for the period April 1, 1986 through December 31, 1994.

NOTE!

A/D

1-10-97

This
Document
Has
been
Superseded

In addition to their normal monthly rental payments, the Club will adopt the following payment plan to pay the City the undisputed amount of deficient rent stated above:

a. Starting with the rent payment due January 1, 1995 and continuing for 36 months, the Club shall pay the additional sum of \$1,000 per month to be applied totally toward the reduction of the principal amount of the deficient rent mentioned in Section 3 above, for a total of \$36,000. This payment shall remain in effect whether or not "Special Event" proceeds described in Section 3.c. below, or the \$72,406.50 credit mentioned in Section 4.a. below, are used to accelerate the reduction of the overall balance owed.

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a. That, the Club may use the \$724,065 Capital Expenditure exemption balance as a \$72,406.50 (\$724,065 X percentage rent rate of 10%), credit toward the reduction of the undisputed rental deficiency of \$183,470.12 as mentioned above.

We hereby agree to the terms and conditions of the above described operating memorandum.

CITY OF SAN DIEGO

Dated: 6/26/95

By RJ Collins
Robert J. Collins, Deputy Director
Real Estate Assets Department

RANCHO SANTA FE POLO CLUB

Dated: 6/21/95

By [Signature]
Chairman

By _____

APPROVED AS TO FORM AND LEGALITY THIS 22 DAY OF June 1995.

By [Signature]
Chief Deputy City Attorney

SAC:sac(6/14/95)



THE CITY OF

SAN DIEGO

REAL ESTATE ASSETS DEPARTMENT, MAIL STATION 51-A

CIVIC CENTER PLAZA, 1200 THIRD AVENUE, SUITE 1700

SAN DIEGO, CALIFORNIA 92101-4199 TELEPHONE: (619) 236-6020

FAX: (619) 236-6706

PLEASE SIGN & RETURN

January 10, 1995

File: Leases - Rancho Santa Fe Polo Club

Mr. Harry A. Collins, Chairman
Rancho Santa Fe Polo Club
P.O. Box 2388
La Jolla, CA 92038

Re: Lease Agreement Default - Rancho Santa Fe Polo Club

Dear Mr. Collins:

The Rancho Santa Fe Polo Club lease has now been in default for over 1 1/2 years for non-payment of contractual rent due under the terms of the lease for the period 1986-1992. According to City records the unpaid balance is now approximately \$218,000. A portion of the unpaid rent has been disputed by Rancho Santa Fe Polo Club as having been loans to the Club rather than membership fees which would be considered income for rent purposes. However, both the City and Rancho Santa Fe Polo Club agree that a substantial portion of the unpaid rent is actually due the City as rent generated from income on items not actually in dispute.

Even though the Club is paying its current monthly rental obligations, negotiations regarding rent due under the audit deficiency need to conclude in the immediate future or the matter must be turned over to the Treasurer's Office for collection.

In order to demonstrate Rancho Santa Fe Polo Club's good faith in working to bring the negotiations to a conclusion, I would propose that:

1. On the first of each month until the dispute has been resolved or turned over to the Treasurer's Office, Rancho Santa Fe Polo Club, in addition to their normal rent payment, shall send in a separate check in the amount of \$1,000.00 made payable to the City Treasurer. This additional check shall be sent to the City of San Diego, Real Estate Assets Department, Attn: S. Cervený, 1200 Third Avenue, Suite 1700, San Diego, CA 92101. The check will be placed in our trust account.



DIVERSITY:
BRINGS US ALL TOGETHER

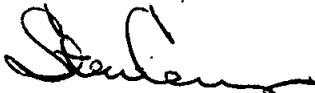
2. The funds placed in the trust account will be considered good faith funds toward the reduction of the undisputed portion of the deficient rent and shall in no way be considered to have established a repayment plan for the deficient rent owed.
3. Establishing the good faith payments shall not restrict the Real Estate Assets Department's right to turn the account over to the Treasurer's Office for collection, if required to do so by another department, or if the Real Estate Assets Department feels no mutually agreeable resolution can be reached.

Mr. Collins, if the directors agree with this plan, please have the authorized individual sign below indicating the Club's agreement and return a signed copy to me. The first payment for January shall be due upon signing and the payments shall continue monthly in advance until resolution of the matter by mutual agreement between the parties or as changed by the Treasurer's Office if the account is turned over for collection.

As I mentioned on the phone today, in order to give proper consideration to your proposal submitted December 21, 1994, we need to have the Auditor's Office do an update audit of the Club's records for the period January 1, 1993 - December 31, 1994.

If you have any questions please give me a call at 236-6066.

Sincerely,



Stewart A. Cerveney
Property Agent

SAC/dcj-c

I:\WP0\CERVENY\L-RNCHO.WPD

cc: Robert J. Collins
Susan Drake - Auditor's Office
Hal Valderhaug - City Attorney's Office
Susan Taylor - Lease Billing Supervisor

The Rancho Santa Fe Polo Club is in agreement with the above proposal and will begin paying the good faith payments starting January 1, 1995.

Dated: 1/13/95 Rancho Santa Fe Polo Club

By: [Signature]

RECORDING REQUESTED BY

1878

32964

RECORDED IN
OFFICIAL RECORDS
OF SAN DIEGO COUNTY, CA.

1983 OCT 24. PM 2:21

VERA L. LYLE
COUNTY RECORDER

*Deed to
open space lots
and golf course lot
in Fairview
Country Club
Unit No. 1*

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
THE CITY OF SAN DIEGO, a municipal corporation

hereby GRANTS to

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 } SS.
COUNTY OF San Diego

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. _____

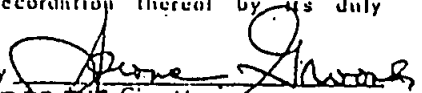
EXHIBIT "A" TO GRANT DEED

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 *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 *W. J. Widdows*
Deputy

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO

Name
Street
Address
City &
State

MAIL TAX STATEMENTS TO

Name
Street
Address
City &
State

VIA De la Jalle
EL Camino Real

Doc. No. <u>RR-259343</u>	Date Filed <u>SEP 27 1983</u>
Resol. No. <u>R-259343</u>	Date Adpt. <u>SEP 27 1983</u>
COUNTY RECORDERS' INFORMATION	
File/Page No. <u>83-382964</u>	
Date <u>10-24-83</u>	
Series _____	Book _____

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Corporation Grant Deed

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

EXHIBIT "A" TO GRANT DEED

Lots 1, 2, 4, 9 and 10 of Map No. 10776 of
FAIRBANKS COUNTRY CLUB NO. 1 filed in the
Office of the County Recorder of San Diego
County, on Dec 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 _____
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. _____ of FAIRBANKS COUNTRY CLUB NO. 1 filed in the Office of the County Recorder of San Diego County on _____

("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. _____ of FAIRBANKS COUNTRY CLUB NO. 1 filed in the Office of the County Recorder of San Diego County on _____.

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 _____

City Manager

APPROVED as to form and legality this ____ day of _____, 19__.

JOHN W. WITT, City Attorney

By _____

Deputy

RECORDING REQUESTED BY

1878

82964

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

THIS FORM FURNISHED BY TICOR TITLE INSURERS

TO 1921 CA (12-74)

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
THE CITY OF SAN DIEGO, a municipal corporation

hereby GRANTS to

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

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. Thatcher

By

By

Vice President

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 [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;

(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 *Jerome Hoover*
ASSISTANT TO THE City Manager

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

JOHN W. WITT, City Attorney

By *W. J. Widdling*
Deputy