



THE CITY OF

SAN DIEGO

SECURITY PACIFIC PLAZA • 1200 THIRD AVENUE • SUITE 1620
SAN DIEGO, CALIFORNIA 92101 TELEPHONE: (619) 236-6039

ECONOMIC
DEVELOPMENT
DIVISION

December 7, 1988

Richard Bracken, Executive Director
Green Hospital of Scripps Clinic
10666 N. Torrey Pines Road
La Jolla, CA 92037

Dear Mr. Bracken:

We appreciated the opportunity for City staff to meet with Glen Chong, David Kincaid and other members of your development team on December 7. This letter confirms the tentative agreements reached at that meeting.

It is understood that HCA Hospital Services of San Diego, Inc. will complete construction of the golf equipment maintenance facilities, and the nursery, consistent with the currently approved designs for these facilities. Further, HCA agreed that City costs for the design and construction of these facilities and the nursery will not exceed the maximum of \$335,000 in rent credits (plus interest) provided for by Section 8 of our lease agreement of February 8, 1988.

The City agrees to a lease commencement date of August 1, 1988, recognizing that the site was not sufficiently clear of other uses to enable commencement of construction at an earlier date. The City further agrees to a letter of credit from an institution acceptable to the City, rather than a construction bond as provided for in Section 6.7 of the lease. Finally, the City will refund \$7,144.80 of water capacity and sewer capacity fees paid by your construction contractor. The City Water Utilities Department has determined that the refund is authorized under Water Utilities Department Instruction 55.30, which provides for such refunds when water usage and sewage flow for a new facility will not exceed the usage and flow of the replaced facility.

We appreciate the understanding and cooperation of your development team and look forward to early occupancy of the new maintenance facilities.

CITY OF SAN DIEGO
ECONOMIC DEVELOPMENT DIVISION
☒ DIRECTOR
☐ DEPUTY MANAGER
☐ CHRON COPY (return to 51-B)
☐ ORIGINATOR (return to 51-B)

Please do not hesitate to call us if you believe we might be able to assist in any way as you proceed with completion of these facilities and the aerobic center.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Maureen A. Stapleton', written over a horizontal line.

Maureen A. Stapleton
Deputy City Manager

RDJ:MAS:pi

cc: David Kincaid
Glen Chong
D.J. McGrother

DJ63LT28.7/28.9

COPY

FLAT RATE LEASE

BETWEEN

LESSOR: CITY OF SAN DIEGO, a Municipal Corporation

and

LESSEE: HCA HOSPITAL SERVICES OF SAN DIEGO, INC.

DATED: FEB 08
_____, 1988

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DOCUMENT NO. 88-270316

FILED FEB 08 1988

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

CITY OF SAN DIEGO FLAT RATE LEASE
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**CITY OF SAN DIEGO
FLAT RATE LEASE**

THIS LEASE AGREEMENT ("Lease") is executed between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and HCA HOSPITAL SERVICES OF SAN DIEGO, INC., doing business as GREEN HOSPITAL OF SCRIPPS CLINIC, hereinafter called "LESSEE."

SECTION 1: USES

- 1.1. Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the CITY of San Diego, County of San Diego, State of California, described in Exhibit "A" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises" or "leased premises."
- 1.2. Uses. It is expressly agreed that for the first five (5) years of the lease term, the premises are leased to LESSEE solely and exclusively for the purposes of the development and operation of a Fitness, Sports and Health Center (the "CENTER"), with a food facility serving only patients, staff and guests of Scripps Clinic and Research Foundation ("Scripps"), for surface parking and/or a parking garage serving patrons and employees of Scripps, its adjacent facilities and the CENTER, and for such other related or incidental purposes as are (i) consistent with the uses existing on the remainder of the Scripps campus located adjacent to the premises and with the University Community Plan as it may be amended from time to time, and (ii) permitted by applicable zoning, and (iii) in accordance with the Development Plan. At any time after the fifth year of the lease term LESSEE may, at its sole discretion change the use of the CENTER to any other such use existing on the remainder of the campus, permitted by (i) applicable zoning and (ii) the Community Plan, and (iii) subject to compliance with Section 6.10 and Section 3.2 hereof; provided however any food facility must continue to be limited to serving only patients, staff and guests of Scripps and, provided further, that the premises will not be used as a hotel or motel or similar use.
- 1.3. Related Council Actions. By the granting of this Lease, neither CITY nor the Council of CITY is obligating itself or any other governmental agency, board or commission with regard to any other discretionary action re-

lating to development or operation of the premises. Discretionary action includes, but is not limited to, re-zonings, variances, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the leased premises. Notwithstanding the foregoing, CITY recognizes that it is in CITY's best interest to expedite the processing of all required approvals for LESSEE's development of the premises, and CITY will use its best efforts to do so.

1.4. Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold and enjoy the premises. CITY shall deliver possession of the premises to LESSEE at the commencement of the term, subject only to title exceptions as listed on Exhibit "B" attached hereto and as shown on final Subdivision Map No. 86-0679. If during the lease term, LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, then and in such events, LESSEE shall seek recovery from whatever applicable title insurance has been obtained by LESSEE.

1.5. Easements and Reservations.

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

The rights reserved herein by CITY shall be exercised in such manner and only in circumstances as will not unreasonably or materially interfere with LESSEE'S use of the premises, or the improvements thereon and CITY will reimburse LESSEE for all damages, if any, to the improvements (including landscaping) located on the leased premises resulting from CITY's exercising the rights reserved in this section. Such reimbursement may include without limitation a reduction in the rent proportionate

to the amount of physical damage as reasonably determined by the City Manager. CITY will pay the cost of maintenance and repair of all CITY installations made pursuant to these reserved rights. The provisions of this section are subject to the provisions of Section 6.3 hereinbelow.

SECTION 2: TERM

2.1. Commencement. The effective date of this Lease shall be the date on which this Lease is executed by the LESSEE and approved by the San Diego City Council. The term of this Lease shall be fifty-five (55) years commencing on May 1, 1988; however, such commencement shall not occur until such time as (i) the CITY is able to deliver possession of the property to LESSEE free and clear of all other uses and tenancies other than the CITY maintenance facility presently located on a portion of the premises, (ii) the LESSEE's obligation for payment of a Facility Benefit Assessment ("FBA") (which is a one-time payment obligation and non-recurring) for the premises (which assumes a 30,000 square foot building and which does not include the planned parking facility or any additional structures has been approved by the CITY in an amount not to exceed Three Hundred Five Thousand Dollars (\$305,000), and (iii) all other discretionary state and local approvals have been received for commencement of LESSEE's development of the premises other than the parking facility. (The date upon which the aforementioned conditions are satisfied shall be referred to as the "Commencement Date." LESSEE and CITY agree to confirm in writing the specific Commencement Date in a Memorandum of Lease when the aforementioned conditions have been met.) The LESSEE's FBA obligation may be increased by 4% on July 1, 1988 pursuant to the City's schedule if not paid by then and may be further increased by an additional 6% on July 1, 1989 pursuant to the City's schedule if not paid by then. If these conditions are not removed or satisfied by May 1, 1989, LESSEE may elect to terminate this Lease by written notice to the City Manager given no later than June 1, 1989. LESSEE's obligation to incur costs pursuant to Section 8.1 hereof, prior to the Commencement Date, is limited to preliminary design and site planning costs associated with obtaining discretionary governmental approvals. If construction of LESSEE's project on the premises is not substantially completed (defined as seventy-five percent (75%) completion) by May 1, 1992

then unless the construction has been delayed by one of the events described in Section 6.10, Unavoidable Delay, this Lease shall become null and void at the election of the CITY; provided, however, LESSEE may extend the date for substantial completion if LESSEE gives written notice to the CITY no later than May 1, 1992 that the improvements will be substantially completed no later than November 1, 1992. Unless the date for substantial completion of the improvements has been extended as provided above, the CITY may elect to terminate the Lease if it gives LESSEE written notice of such election no later than June 1, 1992. If the LESSEE has elected to extend the date for substantial completion as provided above, but the project is not substantially completed by November 1, 1992, the CITY may elect to terminate this Lease by written notice by December 1, 1992. If the Lease has commenced, but the building permit has not been obtained for reasons beyond the control of Lessee within three (3) months after the Commencement Date, then LESSEE can terminate this Lease and obtain a refund of any rents paid.

2.2. 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 Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease 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 hold-over tenancy at will.

2.3. Quitclaim and Surrender of LESSEE's Interest. On execution of this Lease, LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the premises, which shall be held by CITY subject to a fiduciary duty not to record or threaten to record the same except in the event of the expiration or earlier termination of this Lease. Such quitclaim shall be recorded only as a means of confirming CITY's title to the premises after expiration or termination of this Lease. In the event that CITY requires any subsequent quitclaim deed, LESSEE or its successor-in-interest shall deliver the same within five (5) days after receiving written demand therefor.

At the expiration or earlier termination of this Lease, LESSEE shall surrender the premises to CITY free and

clear of all liens and encumbrances, except those liens and encumbrances which existed on the date of execution hereof, and in a decent, safe and sanitary condition. In the case of termination of this Lease by CITY prior to the end of the specified lease term, any liens and encumbrances which remain of record must be approved in writing by the City Manager.

- 2.4. Surrender of Premises. At termination of this Lease for any reason, LESSEE shall execute, acknowledge and deliver to CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the 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 LESSEE's failure to execute this Lease provision, and the notice will be conclusive evidence of the termination of this Lease and all LESSEE's rights to the premises.

SECTION 3: RENT

- 3.1. Time and Place of Payment. Rent is due monthly in advance on or before the first day of each calendar month beginning with the Commencement Date. 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 the Office of the City Treasurer, City Operations Building, 1222 First Avenue, Third Floor, San Diego, California.

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

3.2. Rent.

- a. Rent Amount. During the first 10 years of this Lease, if the premises are used for the operation of the Fitness, Sports and Health Center (as defined in final Environmental Impact Report No. 86-0262 on file with the city) the rent, expressed in annual amounts is as follows:

<u>Year</u>	<u>Annual rate</u>	<u>Monthly Rate</u>
<u>88</u> 1	\$80,000	\$ 6,666.67
<u>89</u> 2	100,000	8,333.33
<u>90</u> 3	175,000	14,583.33
<u>91</u> 4	215,000	17,916.67
<u>92</u> 5	240,000	20,000.00
<u>93</u> 6	265,000	22,083.33
<u>94</u> 7	290,000	24,166.67
<u>95</u> 8	315,000	26,250.00
<u>96</u> 9	340,000	28,333.33
<u>97</u> 10	365,000	30,416.67

- b. Market Value Adjustments. In addition to said CPI adjustments described in Section 3.2c herein, at least six (6) months prior to the end of the tenth year following the Commencement Date of this Lease and at least six (6) months prior to the end of each ten-year period thereafter, the rent for the ensuing ten years, subject to the aforementioned CPI adjustments, shall be determined by multiplying the capitalization rate of ten percent (10%) by the fair market value of the leased premises as of the adjustment date. The fair market value of the leased premises shall be determined by an appraisal made by a professional independent real estate appraiser selected by mutual consent of the parties from the list of appraisers approved by CITY. In the event the parties cannot reach agreement upon selection of a mutually acceptable appraiser, CITY and LESSEE shall each select a professional independent real estate appraiser who in turn will select a third independent real estate appraiser, which third appraiser will be employed to make the appraisal of the fair market value of the premises and which value will be utilized to determine the adjusted rent previously described herein. In the event that the two selected appraisers fail to mutually select a third appraiser within thirty (30) days, then the

third appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his or her individual capacity, on prompt application by either CITY or LESSEE with notice thereupon 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 mutually selected or court-appointed third appraiser. CITY and LESSEE agree to accept and be bound by the valuation determined by the selected or appointed appraiser.

In establishing the fair market value of the premises, the appraiser shall consider the property as a fee simple absolute estate and as vacant and available for the then existing restricted uses. Financial information regarding the CENTER shall be furnished to the appraiser on a confidential basis and shall be considered by the appraiser in determining fair market value. A new annual rental value will then be computed by multiplying the capitalization rate of ten percent (10%) by the fair market value as defined above. Furthermore, at years 20, 30, 40, and 50 a similar appraisal will be performed and annual rent re-established.

If LESSEE chooses to change the use of the CENTER to another permissible use in accordance with Section 1.2, Uses, following the fifth year of the lease term, the fair market value of the leased premises shall be established by considering the property as fee simple absolute estate and as vacant and available for lease or sale for its highest and best use permissible under the zoning code and Community Plan for the area at the commencement of the remaining rental periods under review. The rent shall then be computed by multiplying the capitalization rate of ten percent (10%) by the fair market value of the premises. The rent so determined shall go into effect upon such change in use as described in Section 3.2c(3).

The date of value of the appraisal shall be the date of rental adjustment as hereinabove established. In the event the appraisal is not completed in time to permit the adjustment to be made upon the date specified, 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. Any deficiency shall be paid by LESSEE to CITY within thirty (30) days after determination of the new rental rate.

In no event shall the adjusted rent, as established by periodic appraisals, or an appraisal caused by a change in use, as provided for herein, be less than the rent in existence immediately prior to the adjustment date.

- c. (1) CPI Index Adjustments. Twelve and one-half (12-1/2) years following the Commencement Date of the Lease and every two and one-half (2-1/2) years thereafter during the lease term (except for the 20th, 30th, 40th and 50th years of the Lease, during which years the property will be reappraised to determine fair market value, Section 3.2b herein), the rent shall be adjusted to reflect increases in the Consumer Price Index ("CPI").

In no event, however, shall the CPI adjustment reflect an increase of greater than eight percent (8%) per year (i.e. no more than twenty percent (20%) for any two and one-half (2-1/2) year period).

The index used will be the CPI for "All Urban Consumers" for Los Angeles/Long Beach/Anaheim, California (1967 = 100). 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 the 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 Subsection c.(1), CPI Index Adjustments. Until the rent adjustment can be reasonably determined by the index method, LESSEE shall 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 CITY within thirty (30) days. In no event shall the adjusted rent as established by the CPI be less than 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 tenth (10th) anniversary of the Commencement Date of this Lease.

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 full 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, except for the CPI adjustments immediately following the 10th, 20th, 30th, 40th and 50th Lease years of this Lease or an adjustment based on a changed use. The "Base Figure" for those CPI adjustments shall be a 3-month average of CPI index figures. The three (3) months to be used to establish the average shall be the fourth, fifth, and sixth full months preceding the commencement of the 10th, 20th, 30th, 40th and 50th Lease years or an adjustment based on a changed use.

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)
Base Figure

Effective Rent x 1.14 = Adjusted Rent

The adjustment figure is then multiplied by the monthly rent from the preceding adjustment period to determine the new rent. 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).

(3) Change of Use. If LESSEE elects to substantially change the use of the leased premises after five (5) years from the Commencement Date but no more than seven and one-half (7 1/2) years therefrom, then the CPI adjustment shall occur two and one-half (2 1/2) years after such change in use. The adjustment shall be made by multiplying the monthly rent being paid immediately before the adjustment by a fraction the numerator of which is the average CPI figure for the fourth, fifth and sixth months preceding the change in use. For purposes of this paragraph, a substantial change in use shall mean (i) that two (2) of the following uses in the CENTER have been discontinued: fitness, sports and health, or (ii) that the majority portion of the leased premises is no longer devoted to any of the original CENTER uses.

- 3.3. Delinquent Rent. If LESSEE fails to pay the rent when due, LESSEE will pay, in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) (being a total of ten percent (10%)) which is hereby mutually agreed by the parties hereto to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs and the cost of servicing the delinquent account.
- 3.4. Development as Additional Consideration. LESSEE agrees that additional and substantial consideration for granting this Lease is LESSEE's obligation to develop the lease premises in accordance with the CITY-approved development plan, identified in Section 6.11, Development Plan, of this Agreement.
- 3.5. 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, that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall

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

SECTION 4: ASSIGNMENT; SUBLETTING; ENCUMBRANCE; ADDITIONAL CONSIDERATION TO CITY

- 4.1. Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants and conditions of this Lease, and, except as otherwise provided herein, all of the terms, covenants and conditions of this Lease shall apply to, benefit and bind the successors and assigns of the respective parties, jointly and individually.
- 4.2. Assignment and Subletting. LESSEE shall have the right at any time to assign this Lease or any interest therein, and may sublet the premises, or any part thereof, or any right or privilege appurtenant thereto to Scripps Clinic and Research Foundation, or any affiliate thereof, or to any affiliate of Hospital Corporation of America without the prior written consent of CITY and without payment of consideration. For purposes of this Lease, "Affiliate" shall mean an entity controlled by the LESSEE or a parent of LESSEE or any entity controlled by the LESSEE's parent. However, no such transfer to an Affiliate shall have the effect of increasing the base value from which net proceeds are determined for the purpose of computing the consideration payable to the CITY as hereinafter provided in the event of any future assignment or subletting to a non-affiliated entity.

CITY's consent shall not be withheld if LESSEE's proposed assignee is a Qualified Assignee. "Qualified Assignee", for the purpose of this Lease, is defined to mean an assignee, including, but not limited to, a Successor, whose financial capability and expertise is sufficient to perform the obligations of LESSEE under this Lease to the reasonable satisfaction of the City Manager, and is in good standing and of good general reputation within its respective business community, trade or industry. The Assignee shall assume all rights, duties and obligations of LESSEE under this Lease.

LESSEE and CITY agree that in the event of an assignment or subletting of the majority portion of the leased

premises and any improvements thereon to an entity other than an Affiliate, Scripps Clinic and Research Foundation or any affiliate thereof, LESSEE shall pay to CITY, five percent (5%) of the net proceeds of any such assignment or subletting. For purposes of calculating the payment to CITY, net proceeds shall be determined as the total proceeds minus any remaining previously unrecaptured balances of the following:

- i) any outstanding balance of prior or concurrent obligations against LESSEE's interest in the leased premises and the improvements thereon paid from the proceeds of the assignment or subletting; and
- ii) any transfer costs incurred in connection with the assignment or subletting, including, but not limited to, brokerage fees, fees paid to a lender, attorneys' fees, title and escrow costs, consultant, planning or engineering costs; and
- iii) any costs incurred in connection with improvements to the leased premises made in connection with the transfer; and
- iv) the original equity of LESSEE, its successors or assigns (defined for the purposes of this paragraph as the initial equity of LESSEE, or the then current LESSEE under this Lease computed from the date of contribution without addition of any interest thereon or reduction due to cash flow from operations); and
- v) any outstanding net cumulative operating deficits which have not been previously recaptured (other than from depreciation) incurred from the Commencement Date of the Lease, or incurred by the then Lessee since the assignment date of the Lease to that Lessee, as the term operating deficits is generally defined in the medical field or fitness industry, without interest thereon and without reduction for operating profits; and
- vi) any costs incurred by LESSEE for special assessments of any kind, for example, the Facilities Benefit Assessments, conditions and exactions imposed in conjunction with this

project and other project approvals, or any other fee, cost, assessment, or special tax imposed by any governmental entity (not including possessory interest taxes), including but not limited to, CITY with respect to the leased premises or the improvements thereon.

4.3. Financing and Encumbrance. LESSEE shall have the right at any time, and from time-to-time, to subject this Lease, its leasehold estate and any or all improvements thereon to a mortgage or deed of trust of an "Institutional Lender" (as defined below) as security for a loan or other obligations of LESSEE, provided that, prior to completion of the improvements contemplated by the Development Plan, the proceeds of any financing or refinancing shall be used exclusively for the development and construction of such improvements on the premises. After the completion of such development, LESSEE shall have the right, after notice to CITY, to finance or refinance its leasehold estate and any and all improvements thereon from time-to-time, provided that the indebtedness secured by LESSEE's estate hereunder shall not exceed eighty percent (80%) of LESSEE's estate as appraised in connection with any such loan. After the first twenty (20) years of the term of this Lease, the LESSEE may subject its leasehold estate and any improvements thereon to a mortgage or deed of trust in connection with a refinancing, provided that the eighty percent (80%) requirement stated above is met and provided further that the LESSEE shall pay CITY two and one half percent (2-1/2%) of the net proceeds of any such refinancing. Such notice shall contain all information necessary for CITY to compute any amount due CITY pursuant to this Section. For purposes of calculating the payment to CITY, net proceeds shall be determined as the total loan proceeds minus any remaining previously unrecaptured balance of the following:

- i) any prior obligations against LESSEE's interest in the leased premises and the improvements thereon paid from the proceeds of the refinancing; and
- ii) any financing costs incurred in connection with the refinancing, including but not limited to brokerage fees, fees paid to the lender, attorneys' fees, title and escrow costs; and

- iii) any proceeds from such refinancing expended in connection with improvements to the leased premises, including the purchase of any items of furniture, fixtures or equipment for the CENTER with a usable life in excess of three (3) years as determined in accordance with medical or fitness industry standards as the case may be; and
- iv) the original equity of LESSEE, its successors or assigns (defined for the purposes of this paragraph as the initial equity of LESSEE, or the then current LESSEE under this Lease computed from the date of contribution without addition of any interest thereon or reduction due to cash flow from operations) unless such equity has previously been recaptured in connection with any prior refinancing of the leased premises; and
- v) any outstanding operating deficits (other than from depreciation) incurred from the Commencement Date of the Lease, as that term is generally defined in the medical field or fitness industry, without interest thereon and without reduction for operating profits.

The phrase Institutional Lender shall include a Federal or State chartered bank or savings and loan association doing business in the State of California, or an insurance company, pension fund, mortgage brokerage company or a foreign bank, savings and loan association, or pension trust licensed or qualified to lend money in California.

4.4. Defaults and Remedies.

- a. Default. A default under this Lease shall occur in the event that:
 - (1) LESSEE shall default in the performance of any covenant or condition required by this Lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY or, if any such default is not curable within thirty (30) days, shall fail to commence to cure the default(s) within said thirty (30) day period and diligently pursue such cure to completion; or

- (2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law, if such involuntary proceeding or petition is not removed within ninety (90) days after it has been filed; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this Lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Section 4.4 Default and Remedies, hereof, 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(s) complained of, and the same mortgagee or beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

- b. Remedies. If the mortgagee or beneficiary shall be required to exercise its right to cure said default(s) through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that the default(s) may be expeditiously corrected:
 - a. CITY may correct said default(s) and charge the costs thereof to the account of LESSEE, which

charge shall be due and payable on the date that the rent is next due after presentation by CITY to LESSEE and mortgagee or beneficiary of a statement of said costs.

- b. CITY may correct said default(s) 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(s) or to pay the costs of correction performed by or at the direction of CITY.
- c. 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 costs 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(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this Lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default, and the default, if curable, is cured by such mortgagee or beneficiary, then this Lease shall not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease with all the rights, privileges and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to

assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.

- c. Abandonment by LESSEE. Even though LESSEE has breached the Lease and abandoned the premises, 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's delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY's acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or City staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, 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.

- 4.5. Eminent Domain. In the event the premises, the improvements thereon, or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, then both CITY and LESSEE may participate in such action or proceeding and the interests of CITY and LESSEE (or Leasehold Beneficiary) in the award and the effect of the taking upon this Lease shall be as follows:

- a. Partial Taking. In the event of such taking of only a part of the premises or the improvements thereon leaving the remainder of said premises or the improvements thereon in such location and in such form, shape and size as to be used effectively and practicably in the reasonable opinion of CITY and LESSEE for the conduct thereon of the operations permitted hereunder, this Lease shall terminate and end as to the portion of the premises or the improvements thereon so taken as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the premises or the improvements thereon not so taken, and the minimum rent shall be equitably abated.
- b. Substantial Taking. In the event of the taking of only a part of the premises or the improvements thereon, leaving the remainder of premises or the improvements thereon in such location, or in such form, shape or reduced size as to render the same not effectively and practicably usable in the reasonable opinion of CITY and LESSEE for the conduct thereon of the operations permitted hereunder, this Lease and all right, title and interest thereunder shall cease on the date title to said premises or the improvements thereon or the portion thereof so taken vests in the condemning authority.
- c. Total Taking. In the event the entire premises or the improvements thereon are taken, this Lease and all of the rights and obligations thereunder shall cease on the date title to said premises so taken vests in the condemning authority.
- d. Apportionment, Distribution of Award for Total or Substantial Taking. On a total or substantial taking, all sums, including damages and interest, awarded for the fee or the leasehold or both shall be paid to CITY to be held in trust and to be distributed and disbursed in the following order of priority:
- (1) First, all real and personal property taxes constituting a lien on LESSEE's interest in the premises and/or improvements thereon.
 - (2) Second, the balance due under any note and mortgage encumbering LESSEE's interest in the premises and/or any improvements thereon.

- (3) Third, to CITY, a sum equal to the value of the land taken (as opposed to the Improvements thereon) comprising the premises, valued as unimproved land, subject to this Lease.
 - (4) Fourth, to CITY, any expenses or disbursements reasonably paid or incurred by or on behalf of CITY for or in connection with the condemnation proceedings.
 - (5) Fifth, to LESSEE, any expenses or disbursements reasonably and necessarily incurred or paid by or on behalf of LESSEE for or in connection with the condemnation proceedings.
 - (6) Sixth, to CITY, the value of the reversionary interest in the Improvements based on the term remaining under the Lease.
 - (7) Seventh, to LESSEE, the balance of the award.
- e. Apportionment, Distribution of Award for Partial Taking. On a partial taking, all sums, including damages and interest, awarded for the fee title or the leasehold or both, shall be paid to CITY and shall be distributed and disbursed in the following order or priority:
- (1) First, to the cost of restoring any improvements located on the premises.
 - (2) Second, any sum due under any note and mortgage encumbering LESSEE's interest in the portion of the premises and/or any improvements thereon, as taken.
 - (3) Third, to CITY, a sum equal to the value of the land taken (as opposed to the improvements thereon) valued as unimproved land subject to this Lease.
 - (4) Fourth, to CITY, the value of the reversionary interest in the improvements taken based on the term remaining under the Lease.
 - (5) Fifth, to CITY, any expenses or disbursements reasonably and necessarily incurred or paid by or on behalf of CITY for or in connection with the condemnation proceedings.

- (6) Sixth, to LESSEE, any expenses or disbursements reasonably and necessarily incurred or paid by or on behalf of LESSEE for or in connection with the condemnation proceedings.
- (7) Seventh, to LESSEE, any residue.
- f. Transfer of Rights. Notwithstanding the foregoing provisions of this Section 4.5, CITY may, in its discretion and without affecting the validity and existence of this Lease, transfer its interests in the premises in lieu of condemnation to any authority, other than to CITY itself, entitled to exercise the power of eminent domain. In the event of such transfer by CITY, LESSEE shall retain whatever rights it may have hereunder to recover from the said authority the fair market value of LESSEE's interest in accordance with the provisions of this Lease.

SECTION 5: INSURANCE RISKS

- 5.1. LESSEE Indemnity. LESSEE shall at all times assume the defense of, 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 LESSEE's use or operation of the premises, including but not limited to expenses incurred in legal actions due to death, injury or damage that may be caused, directly or indirectly, by:
 - a. any unsafe or defective condition in or on the premises within LESSEE's control which may exist by reason of any act, omission or neglect or any use or occupation of the premises by LESSEE;
 - b. any operation, use or occupation conducted on the premises by LESSEE and within LESSEE's control;
 - c. any act, omission or negligence on the part of LESSEE, its employees, agents, sublessees, invitees or licensees in the repair, maintenance or operation of the CENTER; or

- d. any failure by LESSEE to comply or secure compliance with any of the Lease terms or conditions.
- 5.2. CITY Indemnity. CITY shall at all times indemnify protect and save LESSEE, and any of its boards, offices, 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 CITY's use of the premises or CITY activities on the premises in accordance with this Lease, or both, including expenses incurred in legal actions due to death, injury or damage to property.
- 5.3. Insurance. LESSEE shall provide evidence of, in the form of a copy of the policy and a Certificate of Insurance 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. Public liability and property damage insurance in the amount of not less than TWO MILLION DOLLARS (\$2,000,000.00) 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. Fire, extended coverage, and vandalism insurance on all insurable property on the premises in an amount equal to one hundred percent (100%) of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provisions reasonably satisfactory to CITY have been made in advance 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 CITY as an additional insured, protect CITY against any legal costs in defending claims and will not term-

inate without thirty (30) days' prior written notice to CITY. 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 upon 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 obtain any additional insurance required by CITY for new improvements in order to meet the requirements of this Lease.
- e. Certificate of Insurance. CITY agrees that LESSEE may provide a Certificate of Insurance from an insurance company licensed to do business in the State of California in full satisfaction of the requirements of this paragraph 5.3. Parthenon Insurance Company is a licensed insurer in the State of California, acknowledged by CITY as a wholly-owned subsidiary of Hospital Corporation of America, the parent of HCA Hospital Services of San Diego, Inc., and will initially be the company supplying such insurance.

- 5.4. Uninsured Damage or Destruction. In the event the improvements situated on the premises from time-to-time are damaged or destroyed by a hazard which LESSEE is not required to insure against by the terms of this Lease and if the cost of repairing such damage or destruction is more than ten percent (10%) of the full replacement value of the improvements situated on the premises at the time of such hazard, LESSEE shall be relieved of the obligation to repair, restore or reconstruct such improvements but may, at its election, perform such repair, restoration or reconstruction. In those cases where LESSEE has no obligation under this Lease to

repair or restore and LESSEE has not elected to restore, LESSEE may terminate this Lease by:

- a. Giving CITY notice of the damage or destruction promptly but not later than thirty (30) days after the event, detailing facts that qualify the casualty under this provision and stating LESSEE's intent to terminate.
- b. Curing or causing any monetary default to be cured within the applicable grace period.
- c. Continuing to make all payments when due as required by the provisions of this Lease up until termination.
- d. Paying in full any outstanding indebtedness incurred by LESSEE and secured by an encumbrance or encumbrances on the leasehold.
- e. Delivering possession of the premises to CITY and quitclaiming all right, title and interest in the premises upon, and promptly after, ceasing to do business on the premises.
- f. Causing to be discharged all liens and encumbrances resulting from any act or omission of LESSEE.
- g. Removing, if CITY so requires, all fixtures and improvements as specified in Section 6.9 relating to LESSEE's duty to remove fixtures and improvements upon termination or expiration of the lease term.
- h. Removing, at LESSEE's cost, all damaged property from the leased premises.

- 5.5. Waste, Damage or Destruction. LESSEE agrees to give notice to CITY of any fire or other casualty causing damage in excess of Twenty-five Thousand Dollars (\$25,000) that occurs on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1. Acceptance of Premises. By the time this Lease is signed, 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.
- 6.2. Entry for Inspection. CITY reserves and shall always have the right to enter the public portions of 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. Entry by CITY into non-public areas shall occur (1) during the normal business hours, (2) upon 24 hours' notice and (3) accompanied by an authorized representative of LESSEE. Such entry shall not unreasonably interfere with the operation of the premises and shall be conducted in such manner as to cause minimal disruption. CITY recognizes that LESSEE must operate in accordance with the rules and regulations established by the County, State and Federal agencies and is subject to inspection by such agencies to assure that the premises are in a decent, safe, healthy and sanitary condition.
- 6.3. Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises 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 in compliance with the Development Plan described in Section 6.11, Development Plan, and with all applicable laws.
- 6.4. Improvements/Alterations. LESSEE agrees that "major structural or architectural design alterations" to approved improvements, structures or installations may not be made on the premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld, subject to LESSEE's compliance with all laws and ordinances applicable to such alterations. CITY and LESSEE agree that (i) any interior mod-

ifications and (ii) any exterior alterations to existing buildings that do not cause a substantial change in architectural theme shall be deemed not to be "major structural or architectural design alterations" within the meaning of the preceding sentence and that such alterations do not require the prior written consent of CITY. LESSEE shall give CITY at least thirty (30) days prior written notice of LESSEE's intent to commence any material alterations in order to enable CITY to record and/or post a notice of nonresponsibility with respect to such work. This provision shall not relieve LESSEE of any obligation under this Lease to maintain the premises in a decent, safe, healthy and sanitary condition, including structural repair and restoration of damaged or worn improvements. LESSEE is authorized to and agrees to remove from the premises the existing driving range fencing on the premises. Such removal will be accomplished in a manner and timetable approved by CITY. CITY shall not be obligated by this Lease to make or assume any expense for any improvements, removals or other alterations. Anything, to the contrary herein notwithstanding, no such improvements or alterations shall be made in such a way as to interfere with CITY's right to maintain any CITY facilities on the leased premises.

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

6.6. Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations or repairs on or to the premises and the costs of defending against such claims, including reasonable attorneys' 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 ten (10) days of such filing either:

- a. Take all actions necessary to record a valid release of lien, or
- b. File with CITY at Lessee's election a bond, cash or other security acceptable to CITY sufficient to pay

in full all claims at all times of all persons seeking relief under the lien, whereupon LESSEE may contest any such claim and withhold or defer payment or pay under protest without such action constituting an event of default hereunder. In the event a final judgment has been rendered against LESSEE by a court of competent jurisdiction for the foreclosure of any lien arising from such claim and if LESSEE fails to pay such judgment or stay the execution of such judgment by lawful means, CITY shall have recourse to the security for such claim and may pay the same.

- 6.7. Construction Bond. With respect to any initial construction to be performed in connection with the General Development Plan and any alteration involving major structural or architectural design alterations as defined in Section 6.4, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be at Lessee's election in cash or may be a corporate surety bond or other security reasonably 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 uncompleted 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. CITY shall use its best efforts to obtain the best interest rates customarily available to be paid to LESSEE when the bond or other security is released.
- 6.8. Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within forty-eight (48) hours of notice thereof by CITY, or CITY may thereupon remove the item at LESSEE's cost.
- 6.9. Ownership of Improvements and Personal Property.
- a. All of the improvements constructed on the premises by LESSEE and all additions, alterations and repairs thereto constructed by LESSEE shall be owned by

LESSEE and shall be deemed a part of the realty until expiration of the term or sooner termination of this Lease. Any and all improvements, fixtures, structures and installations or additions to the premises (excluding trade fixtures) now existing or constructed on the premises by LESSEE shall at lease expiration or termination be deemed to be part of the premises and shall become, at CITY's option, CITY's property, free of all liens and claims, except as otherwise provided in this Lease.

- b. If CITY elects not to assume ownership of all or any improvements, fixtures, structures and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or one hundred eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE's sole cost on or before lease expiration or termination. Notwithstanding the foregoing, anytime during the last five (5) years of the lease term, LESSEE may by written notice require CITY to indicate within six (6) months after CITY's receipt of such written notice whether or not CITY requires LESSEE to remove the improvements, structures and installations on the premises upon expiration of the lease term. The failure of CITY to indicate within such 6-month time period whether or not LESSEE is to remove the improvements on the expiration of the lease term shall entitle LESSEE to leave the improvements in place at the expiration of the lease term. If LESSEE fails to remove any improvements, structures and installations within sixty (60) days after expiration or termination of the lease term, as directed, LESSEE agrees to pay CITY the full cost of any removal. If LESSEE learns during the last five (5) years of the lease term that it will be required to demolish and remove the improvements, then, notwithstanding anything to the contrary contained in this Lease, LESSEE shall be required to maintain and repair the improvements only to the extent necessary to avoid unsafe or unsanitary conditions and, in the single event of more than One Million Dollars (\$1,000,000) (adjusted by the CPI "all items" from the Lease Commencement Date) worth of damage or destruction to the improvements, during the last five (5) years of the lease term, LESSEE may terminate this Lease by written notice to CITY provided the debt of any leasehold mortgage is paid in full; provided, how-

ever, any debris resulting from such damage or destruction shall be removed by LESSEE, and the premises shall be put in a neat, safe and sanitary condition.

- c. LESSEE-owned machines, appliances, equipment (including 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 no later than ten (10) days after the expiration of the term will be considered abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE's expense.
- d. If any removal of such personal trade fixtures property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
- e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay the monthly pro rata portion of the Annual Minimum Rent to CITY at the rate in effect immediately prior to said expiration or termination until the removal is complete.
- f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its non-proprietary 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 property.

6.10. Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, litigation challenging the approvals relating to LESSEE's proposed development of the premises, or new legal action with respect to the same or other causes beyond the reasonable control of the party required to perform an act ("Force Majeure Events"), said party shall be excused from performing that act for the period equal to the period of the prevention or delay; provided, however, except as expressly set forth above, this provision shall not apply to obligations to pay rental as required pursuant to this Lease, except for rental due prior to completion of con-

struction of the CENTER (exclusive of any parking garage). In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay. Subject to the occurrence of Force Majeure Events, should LESSEE fail to obtain a Building Permit by one (1) year from the Commencement Date or to commence construction of the development within six (6) months after the issuance of the Building Permit, CITY may terminate this Lease by written notice to LESSEE. The City Manager may extend the date for commencement of construction for a period not to exceed six (6) months upon LESSEE's request in advance of the expiration of the initial six (6) month period after the issuance of the building permit, setting forth reasons acceptable to CITY why said period should be extended. In no event and despite any Force Majeure Event, shall the City Manager be obligated to extend the commencement date of construction beyond a total period of twelve (12) months following the issuance of the Building Permit. Except for delays caused by Force Majeure Events, in the event that construction is not completed within thirty (30) months following the date the Building Permit has been issued, CITY may terminate this Lease, in which event LESSEE shall be liable to CITY for all costs and expenses incurred by CITY arising from or related to entering into this Lease.

- 6.11. Development Plan. LESSEE agrees to develop the leased premises in accordance with the General Development Plan approved by the City Manager and filed in the Office of the City Clerk which plan is hereby incorporated by this reference. The City Manager shall act promptly on the approval of said plan or the detailing of any reasons for its non-approval. The Development Plan covers (including the parking structure the conceptual architectural design, materials of construction, elevations and colors of all structures, the plot plan of all structures and above ground improvements, a complete landscaping plan with species and sizes, the uses of the facilities, the schedule of development, the estimated construction costs and financing plan. The City Manager or his designee shall have the authority to authorize changes to the initial development plan. CITY acknowledges and agrees that LESSEE shall have the right to change the use of various portions of the CENTER, so long as the new uses are consistent with other uses on the remainder of the Scripps campus and with applicable

zoning, the Community Plan, and other regulations affecting the leased premises, in accordance with the provisions of this Lease including Section 1.2 and Section 3.2.

- 6.12. Limitation of LESSEE's Liability. From and after the completion of the improvements contemplated by the General Development plan, CITY expressly agrees that so long as LESSEE, or any approved successor or assignee of LESSEE's interest under this Lease, shall be a corporation, a trust, a partnership, a joint venture, an incorporated association or other form of business entity, the obligations incurred by LESSEE or such successor under this Lease shall not constitute personal obligations of the officers, directors, trustees, partners, joint venturers, members, stockholders or other principals or representatives thereof.

SECTION 7: GENERAL PROVISIONS

7.1. Notices.

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

City Manager
City Administration Building
202 "C" Street, M.S. 95
San Diego, CA 92101-4155
Attention: Property Director

with copies to the City Attorney Deputy in charge of advising the Property Department, or to any mortgagee, trustee or beneficiary as applicable at such appropriate address designated in writing by the respective party.

Notices to LESSEE shall not be effective until a copy of such notice, delivered in the same manner as notice to LESSEE, is delivered as follows:

Executive Director
Green Hospital of Scripps Clinic
10666 N. Torrey Pines Road
La Jolla, CA 92037
Attention: HCA Administrator

with copies to:

Hospital Corporation of America
One Park Plaza
P.O. Box 550
Nashville, TN 37202-0550
Attention: General Counsel

- b. Any party entitled or required to receive notice under this Lease may, by like notice, designate a different address to which notices shall be sent.
- 7.2. Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy and operation of the premises comply with all applicable laws, statutes, ordinances and regulations of City, County, State, and Federal Governments, at LESSEE's sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance or regulation.
- 7.3. CITY Approval. The approval or consent of CITY, wherever required in this Lease, shall mean the written approval or consent of the City Manager, unless otherwise specified, without need for further resolution by the City Council.
- 7.4. Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, 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.
- 7.5. 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.

- 7.6. Legal Fees. In the event of any litigation regarding this Lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.
- 7.7. 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.
- 7.8. Captions. 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.
- 7.9. Entire Understanding. This Lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys and the warranties, representations and covenants of the Lease itself. Each of the parties in this Lease agrees that no other party, agent or attorney of any other party has made any promise, representation or warranty whatsoever which is not contained in this Lease.
- The failure or refusal of any party to read the Lease or other documents, inspect the premises and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention or claim that might have been based on these actions. No modification, amendment or alteration of this Lease will be valid unless it is in writing and signed by all parties.
- 7.10. CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements or leases with consultants, vendors or lessees shall include a condition that the contract, agreement or lease shall be subject to termination by CITY if lessee, or with lessee's knowledge a contractor of lessee, employs an individual whom lessee either knows or had reason to know has participated (within the twelve (12) months immediately preceding such employment) in his/her capacity as a CITY officer or employee in negotiations with or otherwise

has had an influence on the recommendation made to the City Council in connection with the selection of the contractor of a lessee. It is not the intent of this policy that these provisions apply to members of the City Council.

- 7.11. Real Estate Broker's Commission. No broker's commission will be paid by CITY or LESSEE in connection with this Lease.
- 7.12. Corporate Authority. Each individual executing this Lease on behalf of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this Lease is binding upon the corporation in accordance with its terms and that LESSEE is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify LESSEE to do business in the state where the premises are situated.
- 7.13. Equal Opportunity. LESSEE agrees to abide by CITY's "Affirmative Action Program for LESSEES" as it exists on the date hereof. 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 made a 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 CITY for its Affirmative Action Program each year. Exhibit "D" "Equal Opportunity Program Requirements" and Exhibit "E" "Affirmative Action Plan" as attached hereto are hereby incorporated into this Lease.

SECTION 8: SPECIAL PROVISIONS

- 8.1. Golf Maintenance Facilities. As additional consideration for entering into this Lease, LESSEE agrees to demolish the existing golf maintenance facility and design and construct, at LESSEE's expense, a replacement primary facility easterly of the 17th hole, North Course, and a secondary facility in the vicinity of the 16th tee, South Course. Design and construction will include all pre-development costs, the buildings, other site improvements determined necessary by CITY, utility connections and an eight-foot sidewalk within the North Torrey Pines Road right-of-way adjacent to the primary mainten-

ance facility site and connecting to the northerly and southerly segments of the sidewalk to be constructed by the Torrey Pines Hotel Associates. LESSEE agrees to fund these removals and additions up to a maximum of Five Hundred Thousand Dollars (\$500,000), of which any funding greater than One Hundred Sixty-five Thousand Dollars (\$165,000) shall be credited by the CITY to the LESSEE in the form of Rent Credits. Such Rent Credits shall be applied to the rent schedule as contained in Section 3.2(a) (after a minimum of One Hundred Sixty-five Thousand Dollars (\$165,000) has been spent), starting in year one (1) and continuing in each successive year until such Rent Credits have been fully applied. In each year the amount of the Rent Credit shall be equal to the rent amount, until such time as the remaining Rent Credit balance is less than the stated rent, when the entire remaining balance shall be used in that year.

All costs for which a rent credit shall be given shall be supported by invoices or other supporting documentation satisfactory to the City Manager. Such invoices shall be delivered monthly beginning with the month after the first advance.

The remaining balance of the Rent Credit amount shall be adjusted yearly bearing interest at the prime rate (Bank of America reference rate) plus two percent (2%) calculated from the date advanced by LESSEE.

Interest will be computed on expenditures in excess of One Hundred Sixty-five Thousand Dollars (\$165,000), by the LESSEE on a monthly basis. On the one (1) year anniversary date of the first expenditure in excess of One Hundred Sixty-five Thousand Dollars the total amount of any Rent Credits (i.e. principal and accrued interest thereon) which have not been offset on the anniversary date will be calculated and interest thereon will be computed at the applicable rate on the date of the computation and that rate will apply to the Rent Credits on the anniversary adjustment date until they have been offset against rent or until they are recomputed on the next anniversary date. All current expenditures will be calculated on a monthly basis and interest will accrue on the amounts so expended on the date of such calculation.

- 8.2. CITY Access Through and Around Premises. CITY has heretofore used the premises for access to a golf equipment

maintenance facility and for access to the golf course to provide other essential services. While the need for such access will be reduced upon construction of a replacement primary maintenance facility adjacent to the North Course, CITY and LESSEE agree there will continue to be a need for access to the South Course for essential services, including but not limited to trash and waste removal, fire department access and for employees and deliveries to a secondary maintenance facility. Throughout the term of this Lease, LESSEE agrees to provide such access either through the premises or through LESSEE-controlled property adjacent to the premises in a manner reasonably satisfactory to the City Manager.

- 8.3. LESSEE First Right to Purchase. In the event CITY desires to sell its interest in the leased premises, together with any improvements owned by CITY situated on the leased premises, LESSEE shall be given the first right to purchase said interest and improvements at a mutually agreeable price. If LESSEE does not exercise such right to purchase, CITY shall not then sell or offer to sell its interest at a lower price without first re-offering LESSEE the right to purchase at such lower price.

SECTION 9: SIGNATURES

- 9.1. Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

9.2. Signature Page.

IN WITNESS WHEREOF, this Lease 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: FEB 08 1988

By: Donald Van Wanselle
Deputy City Manager
Assistant to

HCA HOSPITAL SERVICES OF SAN DIEGO,
INC. d/b/a Green Hospital of Scripps
Clinic

Date: Jan 26, 1988

By: Richard A. Brubaker
Its: Exec Director

By: _____

Its: _____

APPROVED AS TO FORM AND
LEGALITY THIS 23 DAY
OF February, 1988.

By: _____
JOHN W. WITT, City Attorney

By: [Signature]
Deputy City Attorney

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- 37 -

Q- 270316

9.2. Signature Page.

IN WITNESS WHEREOF, this Lease 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: FEB 08 1988

By: _____
Deputy City Manager

HCA HOSPITAL SERVICES OF SAN DIEGO,
INC. d/b/a Green Hospital of Scripps
Clinic

Date: Jan 26, 1988

By: *Olga M. P. P. P.*
Its: *Exec. Dir.*

By: _____
Its: _____

APPROVED AS TO FORM AND
LEGALITY THIS _____ DAY
OF _____, 1988.

By: _____
JOHN W. WITT, City Attorney

By: _____
Deputy City Attorney

LE119TMM
01012588

122:488EXH.A&B

JN: 488

4/14/86

EXHIBIT "A"

LEGAL DESCRIPTION

(HCA EXCEPTION)

ALL THOSE PORTIONS OF PUEBLO LOTS 1326 AND 1330 OF THE PUEBLO LANDS OF SAN DIEGO IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF BY JAMES PASCOE IN 1870, A COPY OF WHICH MAP WAS FILED IN THE OFFICE OF COUNTY RECORDER OF SAN DIEGO COUNTY NOVEMBER 14, 1921 AS MISCELLANEOUS MAP 36, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PUEBLO LOT 1325 OF SAID PUEBLO LANDS WHICH POINT IS THE COMMON CORNER OF PUEBLO LOTS 1325, 1326, 1330 AND 1331; THENCE NORTH 80° 31' 04" EAST 368.36 FEET TO POINT "A" AS DESCRIBED IN EXHIBIT "A" ATTACHED, SAID POINT "A" BEING A POINT IN THE WESTERLY RIGHT OF WAY LINE OF TORREY PINES ROAD, AS DEDICATED BY CITY OF SAN DIEGO ORDINANCE 7634 DATED MARCH 24, 1919 THENCE CONTINUING ALONG SAID WESTERLY RIGHT OF WAY LINE SOUTH 9° 28' 56" EAST 281.59 FEET TO THE NORTHEAST CORNER OF PARCEL 2 OF PARCEL MAP NO. 11723, FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER; THENCE ALONG THE BOUNDARY LINE OF SAID PARCEL 2, NORTH 82° 28' 46" WEST 207.13 TO AN ANGLE POINT IN SAID LINE; THENCE CONTINUING ALONG SAID BOUNDARY LINE SOUTH 7° 15' 05" EAST 200.84 FEET TO AN ANGLE POINT; THENCE SOUTH 84° 19' 48" WEST ALONG SAID BOUNDARY LINE TO

THE NORTHWEST CORNER THEREOF; THENCE LEAVING SAID BOUNDARY SOUTH 84° 19' 59" WEST 100.26 FEET TO A POINT IN THE EASTERLY LINE OF SAID PUEBLO LOT 1325 THAT BEARS SOUTH 0° 52' 34" WEST 488.90 FEET FROM THE POINT OF BEGINNING; THENCE NORTH 0° 52' 34" EAST 488.90 FEET TO THE POINT OF BEGINNING.

TORREY PINES INN

13929-CL

N 82° 32' 25" E 523.54'

N 82° 32' 25" E 42.90'

N 62° 26' 50" W 134.23'

N 07° 31' 23" W 399.47'

N 02° 48' 52" W 286.07'

PL 1331

P.O.B.

N 85° 05' 09" W 255.74'

N 80° 31' 04" E 368.98'

N 09° 28' 58" W 842.58'

N 09° 28' 58" W 201.59'

N 82° 28' 40" W 207.13'

S 71° 15' 05" E 200.84'

SCRIPPS
PM 11723

S 84° 19' 59" W 100.26'

S 84° 19' 48" W 137.75'

SCIENCE PARK ROAD

TORREY PINES ROAD

SCALE: 1" = 200'

PUEBLO
LANDSASTORIA
Center
Site

N 00° 52' 34" E 488.90'

HCA

EXHIBIT "A"

LEASE LINES

SHERATON HOTEL
TORREY PINES

APRIL 10, 1986

Prepared by:

James A. Hutchison & Assoc.

Civil Engineers

8324 Allison Ave., La Mesa, CA 92041

GENERAL DEVELOPMENT PLAN

The General Development Plan consists of:

- a. Plot Plan - For the Lease Premises.
- b. Development Schedule - For the Leasehold Improvements.
- c. Financial Plan - For funding the Project.
- d. Schematic Elevations - For Sports, Fitness and Health CENTER, other Leasehold Improvements, and the two (2) golf equipment maintenance facilities.
- e. Landscape Plan for the Leased Premises and the two (2) golf equipment maintenance facilities.
- f. Plot Plan for the two golf equipment maintenance facilities and the pedestrian paths within the North Torrey Pines Road right-of-way.
- g. Development Schedule for Improvements described in subparagraph f above.
- h. Plot plan for proposed future parking facilities.
- i. Landscape plan for improvement referred to in subparagraph f above.
- j. Estimated construction cost summary for improvements referred to in subparagraph a and f.
- k. Terms and conditions of Conditional Use Permit and Parcel Map.

Approved as to form and
legality:

Approved:

John W. Witt, City Attorney

James L. Spotts, Property Director

9.06S General Development Plan

EXHIBIT "C"

1

LE119TMM

Fitness, Health, and Sports Center
Estimated Cost Summary

Category -----	Cost Estimate -----
Pre-Development:	
Legal Fees/Consultants	\$32,000
Design and Construction:	
Demolition, removal, and construction of golf maintenance facilities	\$500,000
Other Testing/Misc. Construction	\$50,000
Construction (30,000 sq. ft.)	\$3,986,000
Contingency	\$113,073
Architect & Engineering Fees	\$266,146
Communications	\$200,738
City Review/Local Assessment (inc. FBA fees)	\$305,000
Materials Management:	
Equipment	\$400,000
Financing Costs (Insurance, Interim Interest, and Issuance Cost)	\$235,000
GRAND TOTAL	\$6,087,957 =====

NOTE: Project to be financed by HCA through equity and debt
instruments in effect at time of project commitment.

RECEIVED
CITY CLERK'S OFFICE

1988 FEB -8 AM 11:58

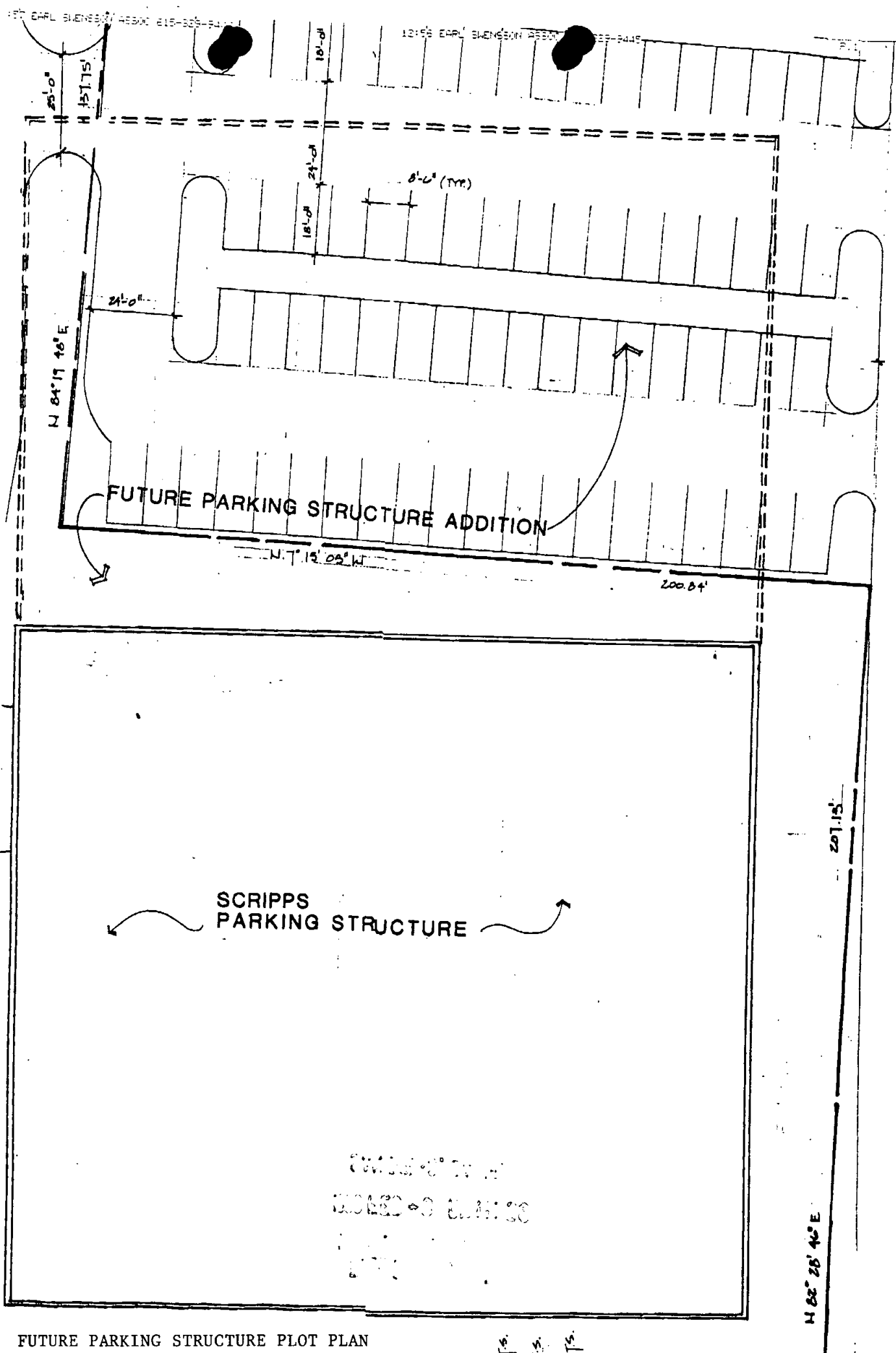
SAN DIEGO, CALIF.

Fitness, Health, and Sports Center
Estimated Development Schedule

Step -----	Estimated Date(s) -----	Estimated Month(s) -----
Land Lease Approval by City of San Diego	February, 1988	1
Coastal Commission Approval	February, 1988	1
Finalize Architectural Drawings for Center and Golf Maintenance Facilities	May, 1988	4
City Approval of Architectural Plans	July, 1988	6
Construction of Golf Maintenance Facilities	August, 1988- November, 1988	7-10
Construction of Center	August, 1988- August, 1989	7-19
Occupancy	September, 1989	20

APPROVED
15 FEBRUARY 1988
[Signature]

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SAN DIEGO, CALIF.



FUTURE PARKING STRUCTURE PLOT PLAN

1/1/15

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SAN DIEGO, CALIF.

EQUAL OPPORTUNITY PROGRAM REQUIREMENTS

A. PROPOSAL REQUIREMENTS AND CONDITIONS:

GENERAL -- The Bidder's attention is directed to the provisions for the requirements and conditions which must be observed in the preparation of the proposal form and the submission of the bid.

B. MINORITY AND WOMEN BUSINESS ENTERPRISE:

This Project is subject to CITY of San Diego Resolution No. R-262633 (adopted on March 4, 1985), entitled "Minority and Women Business Enterprise Program."

Bidders should be fully informed regarding the requirements of the City's "Minority and Women Business Enterprise Program." Particular attention is directed to the following matters:

1) "Minority Business Enterprise" means a business which is at least fifty-one percent (51%) owned and operated by one or more minorities. In the case of publicly-owned business, at least fifty-one percent (51%) of the stock must be owned and the business operated by minorities;

2) "Women-Owned Business Enterprise" means a business which is at least fifty-one percent (51%) owned and operated by women, or in the case of a publicly owned business, at least fifty-one percent (51%) of the stock must be owned and the business operated by women;

3) An MBE or WBE qualifies as such by any of the following methods:

- a) Being listed by the CITY as a Minority or Women Business Enterprise;
- b) Being listed in the State of California (CALTRANS) directory of Minority and Women contractors;
- c) Filling out the Self Certification Forms B-5(1) and B-5(2) attached to this proposal and having been found to meet the criteria of the CITY's program.

4) An MBE or WBE may participate as a Subcontractor, Joint Venture Partner with a Prime or Subcontractor, or Vendor of Materials or Supplies.

EXHIBIT "D"

5) An MBE or WBE Joint Venture Partner must be responsible for a clearly defined portion of the work to be performed, in addition to satisfying requirements for ownership and control.

6) An MBE or WBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.

7) Credit for trucking by MBEs and WBEs will be the amount to be paid when the MBE or WBE trucker will perform the trucking with his/her trucks, tractors and employees or when an MBE or WBE trucking broker has signed agreements with MBE or WBE truckers assuring that the trucking will be performed by MBE and WBE truckers, respectively.

8) Prior to award of any contract, the Low Bidder's MBE or WBE submittal will be reviewed to determine whether there has been a good faith effort to solicit and engage Subcontractors and Vendors who are Minority and Women Business Enterprises. The Bidder does not have to submit any information regarding his efforts if the percentage in dollar value of subcontracts awarded to Minority Business Enterprises is fifteen percent (15%) of the total value of the bid, and the percentage in dollar value of subcontracts awarded to Women-Owned Business Enterprises is five percent (5%) of the total dollar value of the bid. If the low bidder is a qualified MBE or WBE, the low bidder does not have to list MBE or WBE Subcontractors as appropriate. WBEs and MBEs currently listed in the CITY's directory are established and qualified. If the MBE or WBE Subcontractor who is listed on Form B-5(1) is in the CITY's directory, a check in the appropriate column is sufficient. If the Subcontractor is listed in any other governmental publication as a WBE or MBE, that information must be indicated on Form B-5(1).

9) Bidders are encouraged to utilize services offered by banks owned and controlled by Minorities and/or Women.

C. MBE AND WBE GOALS FOR THIS PROJECT:

The CITY of San Diego has established the following goals for Minority Business Enterprises (MBE) participation and for women Business Enterprises (WBE) participation for this Project:

Minority Business Enterprises (MBE)	15%
Women Business Enterprises (WBE)	5%

It is the Bidder's responsibility to make a sufficient portion of the work available to Subcontractors and Suppliers and to select

EXHIBIT "D"

2) If an MBE or WBE Subcontractor is unable to perform successfully and is to be replaced, the Contractor will be required to make good faith efforts to replace the original MBE or WBE Subcontractor with another MBE or WBE Subcontractor, and

3) The Bidder must list and clearly describe the portion of the work which will be done by each such Subcontractor. Only one (1) Subcontractor shall be listed for each portion.

A sheet for listing the subcontractors, as required by this section and the Subletting and Subcontracting Fair Practices Act, is included in the proposal. [B-5(1) and B-5(2).]

E. PERFORMANCE OF MBE AND WBE SUBCONTRACTORS AND SUPPLIERS.

The MBES and WBEs listed by the Contractor shall perform the work and supply the materials for which they are listed.

Authorization to utilize other forces may be requested for the following reasons:

1) The listed MBE or WBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract, when such written contract, based upon the general terms, conditions, plans and specifications for the Project, is presented by the Contractor.

2) The listed MBE or WBE becomes bankrupt or insolvent.

3) The listed MBE or WBE fails or refuses to perform his subcontract or furnish the listed materials.

4) The listed MBE or WBE Subcontractor fails or refuses to meet the bond requirements of the Contractor.

5) The work performed by the listed Subcontractor is substantially unsatisfactory and is not in substantial accordance with the plans and specifications, or the Subcontractor is substantially delaying or disrupting the progress of the work.

6) It would be in the best interest of the CITY.

The Contractor shall not be entitled to any payment for such work or material unless it is performed by the listed MBE or WBE or by other forces (including those of the Contractor), pursuant to prior written authorization of the Engineer.

EXHIBIT "D"

those portions of the work or material needs consistent with the available MBE and WBE Subcontractors and Suppliers so as to assure meeting the goal for MBE and WBE participation. It is the Bidder's responsibility to meet the goal of MBE and WBE participation or to provide information to establish good faith efforts to do so.

If the Bidder's bid does not list either MBE or WBE Subcontractors or Vendors in sufficient amounts to equal the goals established for the program, the Bidder may establish his or her good faith efforts by submitting supplementary information. Such information should include the following:

- 1) The names and dates of advertisement of each newspaper, trade paper and minority-focus paper in which a request for MBE and WBE participation in this Project was placed by the Bidder;

- 2) The names and dates of notices of all certified MBEs and WBEs solicited by direct mail for this Project;

- 3) The items of work for which the Bidder requested sub-bids or materials to be supplied by MBEs and WBEs;

- 4) The names of MBEs and WBEs who submitted bids for any of the work indicated in 3 above which were not accepted, the name of the Subcontractor or Supplier that was selected for that portion of work and the reasons for the Bidder's choice. (If the reason was price, give the price bid by the rejected MBE or WBE and the price bid by the selected Subcontractor or Supplier);

- 5) Assistance that the Bidder has extended to MBEs and WBEs identified in 4 above to remedy the deficiency in their sub-bids;

- 6) Any additional data to support a demonstration of good faith effort, such as contacts with MBE and WBE assistance agencies.

D. SUBCONTRACTING.

The "Subletting and Subcontracting Fair Practices Act" (Government Code Section 4100-4113, inclusive) requires Subcontractors to be listed in the Prime Contractor's proposal, prohibits the substitution of Subcontractors, except as therein authorized, and provides for penalties for violations of the Act. Bidders are cautioned that:

- 1) No substitution of a listed MBE or WBE Subcontractor shall be made at any time without the written consent of the City of San Diego, and

EXHIBIT "D"

F. PERFORMANCE OF MBE AND WBE JOINT VENTURERS.

All MBE and WBE Joint Venturers shall perform the work for which they are responsible unless prior written authorization is received from the Engineer.

Authorization to use other forces may be requested for the reasons listed in Section E above. The Contractor/Joint Venturer shall not be entitled to any payment for work listed to be performed by the MBE or WBE Joint Venturers which is not so performed unless prior written permission has been received from the Engineer.

G. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY.

1) Goals:

- a) Your attention is called to the "Equal Opportunity Clause" (Resolution No. 765092, filed on December 4, 1978, in the Office of the City Clerk, San Diego, California) and incorporated in the "Standard Federal Employment Opportunity Construction Contract Specifications (Executive Order 11246 - Document No. 769023, filed September 11, 1984, in the Office of the City Clerk, San Diego, California) which is applicable to all non-exempt City construction contracts and subcontracts of \$10,000 or more.
- b) The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

Minority Participation

<u>Time Period</u>	<u>Trades</u>	<u>Goal</u>
Until further notice	All	16.9%

Female Participation

<u>Time Period</u>	<u>Trades</u>	<u>Goal</u>
Until further notice	All	6.9%

These goals are applicable to all the Contractor's construction work (whether or not it is federal or federally assisted) performed in the covered area.

EXHIBIT "D"

The Contractor's compliance with the Executive Order shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the Specifications (Document No. 769023) and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed.

The hours of minority and female employment and training must be substantially uniform throughout the length of the contract and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations. Compliance with the goals will be measured against the total work hours performed.

- c) As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is the County of San Diego. The Contractor/Subcontractor must also comply with applicable federal and state laws relating to Equal Opportunity Employment, as well as any additional requirements imposed by the federal agency or agencies providing funds for this project.

H. SUBMITTALS.

The apparent low bidder on this project must submit the following to the City Engineering and Development Department's Contract Compliance Office, 1255 Caminito Centro, San Diego, California 92102 within five (5) working days after the bid opening:

- 1) Two copies of each of the following:
 - a) The crafts or trades which will perform work under the prime Contractor;
 - b) The names, addresses and telephone numbers of all Subcontractors, the dollar amount of each subcontract, and the crafts or trades which will perform work under each subcontract.
- 2) One (1) copy of the Affirmative Action Plan for the Contractor and each Subcontractor. The plan as set forth

EXHIBIT "D"

in Document No. 769023, Section B, Paragraphs 7a through 7p, is included in the proposal (Paragraph 3, EOP-8). If the plan is submitted in another format and is not acceptable, the Contractor and/or Subcontractor(s) shall have five (5) working days after notification to correct the plan as necessary to receive approval.

If the Contractor and/or any Subcontractor fails to comply with the time schedule set forth above or fails to receive approval of the final plan submitted, the apparent low bid may be declared non-responsive and the second low bidder contacted. Contractors and Subcontractors are encouraged to submit their Affirmative Action Plan during the bidding period (or any earlier time) and to obtain approval prior to the bid opening. Affirmative Action Plans, once submitted, should be kept current and in an approved status to expedite the contract award process.

I. REFERENCE SPECIFICATIONS.

Except as otherwise noted or specified, the work shall be done in accordance with the following Reference Specifications, which are on file in the office of the City Clerk:

1. STANDARD SPECIFICATION

<u>Document No.</u>	<u>Filed</u>	<u>Description</u>
768688	05-05-83	Standard Specifications for Public Works Construction, 1982 Edition, including Regional Standard Special Provisions, 1982 Edition and City of San Diego Standard Special Provisions.
769159	04-16-85	California Department of Transportation, Manual of Traffic Controls for Construction and Maintenance Work Zones, dated 1985.

2. STANDARD DRAWINGS

As listed on the detailed plans and specifications.

<u>Document No.</u>	<u>Filed</u>	<u>Description</u>
768710	06-22-83	CITY of San Diego Standard Drawings, including all Regional Standard Drawings.

EXHIBIT "D"

3. EQUAL OPPORTUNITY PROGRAM REQUIREMENTS

<u>Document No.</u>	<u>Filed</u>	<u>Description</u>
769023	09-11-84	Standard Federal Equal Employment Opportunity Construction Contract Specifications and the Equal Opportunity Clause.

NOTE: The Standard Federal Equal Employment Opportunity Contract Specifications and The Equal Opportunity Clause (\$1.00), Regional Standard Special Provisions (\$1.50), City of San Diego Standard Special Provisions (\$1.50) and San Diego City Standard Drawings, including San Diego Area Regional Standard Drawings (\$10.00), are available at the Engineering Records Center on the fourth floor of the City Operations Building, 1222 First Avenue, San Diego. The Manual of Traffic Controls for Construction and Maintenance Work Zones (\$1.59) is available at the local CALTRANS office, 2829 Juan Street, San Diego.

EXHIBIT "D"

8

LE119TMM

AFFIRMATIVE ACTION PLAN

CONTRACTOR: _____

STREET ADDRESS: _____

CITY, STATE, ZIP: _____

TELEPHONE NUMBER: _____

IRS/ID: _____

1) The Contractor named above is committed to a policy of Affirmative Action to ensure Equal Employment Opportunity in response to Executive Order 11246 and relevant requirements adopted by the City of San Diego.

2) The official designated by the named Contractor to be the Equal Employment Officer is: _____.

3) The named Contractor will document fully its affirmative actions, which will be at least as extensive as the following:

a) Ensure and maintain a working environment free of harassment, intimidation and coercion at all sites and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two (2) or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents and other on-site supervisory personnel are aware of, and carry out, the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available and maintain a record of the organizations' responses.

c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from the union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the

EXHIBIT "E"

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union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

l) Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m) Ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Equal Employment Opportunity policy and the Contractor's obligations under these Specifications are being carried out.

n) Ensure that all facilities and company activities are non-segregated, except that separate and single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female Construction Contractors and Suppliers, including circulation of solicitations to minority and female Contractor Associations and other business associations.

p) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's Equal

EXHIBIT "E"

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(R-88-1157)

RESOLUTION NUMBER R- 270316

ADOPTED ON FEB 08 1988

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 55-year lease agreement with HOSPITAL SERVICES OF SAN DIEGO, INC., to construct, operate and maintain a fitness, sports and health center (aerobics) and parking garage on 3.49 acres of City-owned property adjoining the Torrey Pines 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- 270316.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
11/24/87
Or.Dept:Prop.
Job:219211
R-88-1157
Form=r.none

Passed and adopted by the Council of The City of San Diego on FEB 08 1988
by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Abbe Wolfsheimer	☒	☐	☐	☐
Ron Roberts	☒	☐	☐	☐
Gloria McColl	☐	☐	☒	☐
H. Wes Pratt	☒	☐	☐	☐
Ed Struiksma	☐	☐	☒	☐
J. Bruce Henderson	☒	☐	☐	☐
Judy McCarty	☒	☐	☐	☐
Bob Filner	☒	☐	☐	☐
Mayor Maureen O'Connor	☐	☐	☒	☐

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California.

(Seal)

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

By Jana M. Martin Deputy.

Office of the City Clerk, San Diego, California

Resolution R-270316 Adopted FEB 08 1988
Number _____

Collins
21A

(R-88-1158)

RESOLUTION NUMBER R- **270317**

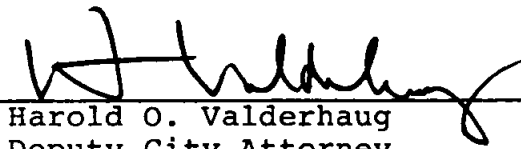
ADOPTED ON FEB 08 1988

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 ENVIRONMENTAL IMPACT REPORT EIR No.86-1041, in connection with a lease agreement with Hospital Services of San Diego, Inc. of 3.49 acres on Torrey Pines Mesa, 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 Report has been reviewed and considered by this Council.

BE IT FURTHER RESOLVED, that pursuant to California Public Resources Code, Section 21081, the City Council hereby adopts the findings made with respect to the feasibility of the mitigating measures and project alternatives and the statements of overriding considerations, if any, contained within the said ENVIRONMENTAL IMPACT REPORT EIR 86-1041.

APPROVED: John W. Witt, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
11/24/87
Or.Dept:Prop.
Job:219211
R-88-1158
Form=r.eir&fd

NOTICE OF DETERMINATION

TO: X County Clerk
County of San Diego
220 W. Broadway, MS C-11
San Diego, CA 92101

FROM: City of San Diego
Executive Complex
1010 Second Avenue, Suite 600
San Diego, CA 92101

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

EQD Number: 86-1041 State Clearinghouse Number: 87001405

Project Title: SCRIPPS FITNESS, SPORTS, AND HEALTH CLINIC

Project Location: Located in the University community on the west side of North Torrey Pines Road between Genesee Street and Callan Road.

Project Description: CITY LEASE and CONDITIONAL USE PERMIT to construct a 30,000 s.f. fitness/sports medicine center. The center would be one to two stories in height and would occupy a 3.49-acre, R1-5000 zoned site between Scripps Clinic (BACK)

This is to advise that The City of San Diego City Council on 2-8-88 approved the above described project and made the following (date) determinations:

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

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 X were, ___ were not, made pursuant to CEQA Guidelines Section 15091.
5. (EIR only) A Statement of Overriding Considerations X was, ___ 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, Sixth Floor, 1010 Second Avenue, Suite 600, San Diego, CA 92101.

Analyst: Ruggels

Telephone: (619) 236-6768

Filed by:

Jena Martin
Signature

Deputy City Clerk
Title

Project Description (cont.) and the proposed Sheraton Torrey Pines Hotel. The project would provide for 150 on-grade parking spaces. Included in the fitness/sports medicine center are a gym/aerobic room, offices, class rooms, treatment rooms, strength/training room, a total of 520 lockers, a restaurant to seat 50, and a lap pool. The project also includes the removal of an existing maintenance shed and the placement of a secondary maintenance shed near the South Course, 16th tee.