

DUPLICATE

TORREY PINES MUNICIPAL GOLF
COURSE PRO SHOP, DRIVING RANGE
AND CART RENTAL

THE CITY OF SAN DIEGO

Percentage Lease

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LEASE OUTLINE

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CITY OF SAN DIEGO
PERCENTAGE LEASE

THIS LEASE AGREEMENT is executed between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and _____, hereinafter called "LESSEE."

SECTION 1: USES

1.01 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, known as the pro shop, driving range and cart storage areas of the Torrey Pines Municipal Golf Course, and by this reference made part of this agreement. Said real property is hereinafter called the "premises" or "leased premises," as shown on attached Exhibit A.

1.02 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of the operation and maintenance of a professional golf shop, golf driving range, power and pull cart rental concession, providing golf instruction, repair, sale and rental of golf equipment and supplies, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

LESSEE covenants and agrees to use the premises for each of the above-specified purposes and to diligently conduct the business thereon to produce the most gross income that can be reasonably expected. Failure to continuously use the premises for said purposes, or the use of the premises for purposes not expressly authorized herein, shall be grounds for termination by CITY.

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

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

1.05 Easements and Reservations.

- a. CITY hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the premises.
- 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.
- d. CITY reserves the right to relocate or make modifications to the driving range, pro shop, golf cart storage facility or any other physical structure on the premises.

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

1.06 Competent Management. Throughout the term of this Lease Agreement, LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of the golf course facilities as specified in this lease and related activities in a fiscally responsible manner.

SECTION 2: TERM

- 2.01 Commencement. The term of this agreement shall be twenty-five (25) years commencing on the first day of the calendar month following execution by the City Manager, or the first day of the calendar month following the City's possession of the premises subsequent to the exercising of the Wansa Option, whichever date or event shall last occur. If both events have not occurred by December 31, 1988, this lease shall not commence and shall be of no force or effect whatsoever. CITY, however, agrees to use its best good faith efforts to obtain possession in a timely manner subsequent to an exercise of the Wansa Option. "Lease year" as used in this lease shall mean the 12-month period immediately following the commencement of the term.
- 2.02 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 2.03 Quitclaim and Surrender of LESSEE'S Interest. On execution of this lease, LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the premises. CITY may record such deed only on the expiration or earlier termination of this lease. In the event that CITY requires any subsequent quitclaim deed, LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor.
- At the expiration or earlier termination of this lease, LESSEE shall surrender the premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the date of execution hereof, and in a decent, safe and sanitary condition. In the case of termination of this lease by CITY prior to the end of the specified lease term, any liens and encumbrances must be approved in writing by the City Manager.
- 2.04 Right of Termination. In addition to CITY'S remedies for default in this lease, LESSEE agrees that six months prior to the expiration of the first five years of this lease, and six months prior to the expiration of each succeeding five years, City, upon resolution of its City Council setting forth its desire to do so, shall have the right to terminate this lease, subject to the following conditions:

Conditions for Termination:

1. Failure to maintain physical facilities in a "first-class" manner.
2. Failure to promote Torrey Pines and its golf tournaments, i.e., Andy Williams/San Diego Open.
3. Once new facilities are open, failure to meet projected rent levels as projected in the Vincent/McKee Proposal.

In the case of deficiencies, these must be specific and be submitted to LESSEE in writing six (6) months prior to each five year increment. The lessee would then have time to make the required corrections. If, in the opinion of the CITY, these deficiencies have not been corrected within the prescribed time, an arbitrator, agreed upon by both parties would be selected to make the final decision.

If the LESSEE is found at fault, the CITY shall have the right to cancel the lease under the following conditions:

1. Refund of the unamortized portion of the pro shop interior construction cost as defined in Condition 6.07, and the initial consideration as defined in Condition 3.03.
2. Purchase golf car fleet at current depreciated market value, and
3. Purchase all "Torrey Pines" logo merchandise at current market value.

If arbitration sides with the LESSEE, the CITY would incur all said arbitration expenses and would not be eligible for a grievance claim for a five-year period.

SECTION 3: RENT

- 3.01 Place of Payment. All rents required herein must be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 2289, San Diego, California, 92112-4165.

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. LESSEE assumes all risk of loss and late payment charges if payments are made by mail, or if postmarks are illegible, in which case the payment shall be deemed paid upon actual receipt by the City Treasurer.

3.02 Rent.

- a. Minimum Rent. The annual minimum rent established for the first three (3) years following the effective date of this lease is Two Hundred Thousand Dollars (\$200,000) which is payable at the rate of Sixteen Thousand Six Hundred and Sixty-seven Dollars (\$16,667) per month.

If the minimum rent is greater than the percentage rent, on a calendar month basis, then the minimum rent is required to be paid for that month. Minimum rents are to be paid in monthly installments on or before the day of the calendar month when percentage rents are due pursuant to Section 3.03.

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

- b. Minimum Rent Adjustment. Effective on the first day of the first month following the initial three-year period of this lease and at the beginning of each four-year period thereafter during the term, the annual minimum rent shall be eighty percent (80%) of the annual average of actual rents paid or accrued during the three (3) years preceding the adjustment date. Said annual minimum rent shall then be divided by twelve (12) to establish the new monthly minimum rent. It is recognized that such adjustments shall be calculated by CITY upon completion of payments due for the preceding rental period in order to determine the amount of the adjustment to be effective on the dates stated herein. Until such calculations are completed, LESSEE shall continue paying monthly minimum rents at the prior rate. Any

additional rents determined by the adjustment to be due for the months previously paid at the prior rate shall be paid at the prior rate shall be immediately paid to CITY. In no event shall any such minimum rent adjustment result in a decrease in the minimum rent requirement in effect immediately prior to the adjustment date.

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

Thirty Percent (30%) of all gross income from the rental of motorized golf carts (electric & gas), and pull carts.

Seven Percent (7%) of all gross income from pro shop sales.

Seven Percent (7%) of all gross income from the rental and repair of golf clubs.

Thirty Percent (30%) of all gross income derived from the use of the driving range.

Five Percent (5%) of all gross income from golf instructions performed by the LESSEE or any employees or licensees of the LESSEE.

Ten Percent (10%) of all other income from any source derived from the use of the premises.

Fifty Percent (50%) of commissions or any other compensation paid to LESSEE or its sublessees, permittees, or licensees for the right to install or operate coin-operated vending, game, or service machines or devices on the premises, including telephones, 10% of the gross income of any such coin-operated machines or devices owned, rented, or leased by LESSEE, whether such machines are maintain and operated by LESSEE or by sublessees of use on the premises.

The City Manager in his sole discretion, may approve another percentage rate or flat rate of rent for each other incidental service or operation supplementary to the permitted use(s) set forth under Use, hereof as may be approved in writing by the City Manager prior to commencement of such other service(s) or operation(s). Provided, however, any activity conducted on the

premises without prior approval by the City Manager shall be subject to the requirements of Section 3.07, UNAUTHORIZED USE CHARGE, hereof.

- d. Percentage Rate Adjustment. At least four (4) months prior to the end of the tenth year of the term of this agreement and each subsequent ten-year period, the parties hereto, by mutual consent or through appraisal as hereinafter set forth, will adjust the percentage rates of LESSEE'S gross income to be paid CITY effective upon the first day of the succeeding ten-year period. Said adjustment will be made to the degree necessary to provide a fair rental to CITY as determined by the City Manager and LESSEE, taking into consideration the criteria set forth in Paragraph e below. In the event that such adjustment is not made by mutual consent prior to two (2) months before the end of said ten-year periods, then the parties hereto will refer the matter to appraisal under the terms hereinafter set forth.
- e. Percentage Rate Appraisal. In the event the parties do not agree upon the amount of adjustment to said percentage rates as provided for in the previous section, then the adjustment shall be determined by a qualified professional independent real estate appraiser selected by mutual consent of the parties to this agreement from the list of appraisers approved by CITY. In the event the parties do not reach agreement as to selection of a mutually acceptable appraiser, then CITY and LESSEE shall each select a qualified professional independent real estate appraiser who in turn will select a third qualified professional independent real estate appraiser, which third appraiser who will be employed to set the percentage rates to be applied to LESSEE'S percentage rate adjustment. In the event a mutually acceptable third appraiser is not agreed upon between the two selected appraisers within ten (10) days, then the third appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his individual capacity, upon application by either CITY or LESSEE with prior notice thereof to the other party. Said third appraiser shall complete the assignment within sixty (60) days of appointment. Each party shall pay the cost of its own selected appraiser and both CITY and LESSEE agree to equally share the cost of the third mutually selected or court-appointed appraiser. CITY and LESSEE agree to accept and be bound by the percentage rates determined by the appraiser selected or appointed to complete the assignment. IN NO EVENT, HOWEVER, SHALL ANY RENT

ADJUSTMENT RESULT IN ANY DECREASE IN ANY PERCENTAGE
RENTAL RATE.

In establishing the percentage rates for the items under controversy, the appraiser shall consider CITY'S property as a fee simple absolute estate, as vacant and available for a full lease term equal to the initial full term of this lease on the open market for the authorized purposes of this lease at the commencement of the rental period under review. The appraiser will be guided by prevailing market percentage rates for similar operations primarily within the Southern California area, if available. In the event the appraisal is not completed in time to permit the percentage adjustment to be made upon the applicable commencement of the ten-year period, LESSEE agrees to continue to pay rent in accordance with the then existing lease rates and the adjustment, when determined, will be retroactive to said effective date of rental adjustment as hereinabove established. Any deficiency shall be paid by LESSEE to CITY within sixty (60) days after determination of the new percentage rate(s).

- 3.03 Initial Consideration. The amount of Initial Consideration to purchase this lease is Four Hundred Thousand Dollars (\$400,000), and is payable by LESSEE as follows: One Hundred Thousand Dollars (\$100,000) within 30 days of the Lease Agreement signed by the City Manager, and Three Hundred Thousand Dollars (\$300,000) within 30 days of the City's notification to exercise the Option Agreement to acquire the existing leasehold interest.
- 3.04 Payment Procedure. On or before the last day of the calendar month following the calendar month in which the gross income subject to rents was earned, LESSEE will provide CITY with a correct statement together with a payment of rent on all applicable gross receipts in a form selected by CITY. The statement will be signed by LESSEE or its authorized agent, attesting to the accuracy thereof, which shall be legally binding upon LESSEE. Each statement will indicate or include:
- a. One-twelfth of the annual minimum rent until the full annual rent is achieved in any lease year.
 - b. Total gross receipts for the subject month, itemized as to business categories for which separate percentage rents are established. A gross receipts breakdown of each business conducted on the premises must be included when a reported category shows gross income to be from more than one business operation.

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

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

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

3.05 Gross Income. "Gross income or receipts" as used in this lease, shall include all income resulting from occupancy of the leased premises from whatever source derived whether received or to become due. Provided, however, gross income shall not include federal, state or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by LESSEE in computing gross income. Gross income shall not include refunds for goods returned for resale on the premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of LESSEE. The percentage rent shall be calculated and paid by LESSEE on the basis of said gross income whether the income is received by LESSEE or by any sublessee, permittee or licensee, or their agents, and all gross income received by any sublessee, permittee, licensee, or other party as a result of occupancy of said premises or the operation thereof shall be regarded as gross income of LESSEE for the purpose of calculating the percentage rent hereunder required to be paid by LESSEE to CITY, except as may be otherwise specified by or pursuant to this lease.

3.06 Inspection of Records.

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

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

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

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

- b. Financial Statements. Within sixty (60) days after the end of each lease year as previously established herein, LESSEE will, at its expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of rents paid CITY for the year are classified according to the categories of business established for any percentage rental and for any other business conducted on or from the premises. Said statement shall be signed by LESSEE or its authorized agent, attesting to the accuracy thereof, which shall be legally binding upon LESSEE.
- c. Right to Inspect. All LESSEE'S books of account, records and supporting documentation, as described under Section 3.05a. Records will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. Said books and records shall be maintained separate from all other accounts not relating to the leased premises. The CITY, at its

discretion, shall have the right to inspect and audit the business of LESSEE, its agents, sublessees, concessionaires and licensees operating on and in connection with the premises as necessary and appropriate for CITY to determine the amounts of rent due CITY in compliance with the requirements of this lease.

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

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

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

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

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

- 3.07 Delinquent Rent and Audit(s) Fees. If LESSEE fails to pay the rent when due, LESSEE will pay in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional 5 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.

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

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

- 3.09 Development as Additional Consideration. LESSEE agrees that as 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 6.12, and Exhibit B, Development Plan, of this agreement.

SECTION 4: ASSIGNMENT

4.01 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants and conditions of this lease and, except as otherwise provided herein, all of the terms, covenants and conditions of this lease shall apply to, benefit and bind the successors and assigns of the respective parties, jointly and individually.

4.02 Assignment and Subletting. Subject to prior CITY approval in each instance, LESSEE may assign this lease any any interest therein and may sublease any portion hereof to an assignee or sublessee who has, in the opinion and in the sole and absolute discretion of the City Manager, the financial capability and overall competence to successfully operate the assigned or subleased portion of the premises in a manner at least comparable to the operations of LESSEE. This lease and any interest herein shall not be assignable by operation of law without the written consent of the CITY.

"Assignment," for the purposes of this clause shall include any transfer of any ownership interest in this lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners or principals.

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

4.03 Encumbrance. Subject to prior consent by CITY, which shall not be unreasonably withheld, LESSEE may encumber this lease, its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security instrument to assure the payment of a promissory note or notes of LESSEE, upon the express condition that the net proceeds of such loan or loans be devoted exclusively to the purpose of developing the leased premises in accordance with a Development Plan to be approved by the City Manager. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to

the following: off-site improvements for service of the premises; on-site improvements; escrow charges; premiums for hazard insurance, or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest and commissions; and architectural, engineering and attorney's fees and such other normal expenses incidental to such construction.

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

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

Any default, foreclosure or sale pursuant to said deed of trust, mortgage or other security instrument, shall be invalid with respect to this lease without prior notice thereof to and approved by CITY. Such approval shall not be unreasonably withheld. Upon prior written approval by CITY, said mortgagee or beneficiary may assign this lease to its nominee, if nominee is a reputable, qualified and financially responsible person or entity in the opinion of CITY. Any deed of trust, mortgage or other security instrument shall be subject to all of the terms, covenants and conditions of this lease and shall not be deemed to amend or alter any of the terms, covenants or condition hereof.

This section is subject to all other provisions of this lease, including the provisions of Section 4.04 below.

4.04 Defaults and Remedies.

a. Default. In the event that:

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

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

In the event that there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(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:

- (1) 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.
- (2) 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.
- (3) CITY may terminate this lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE agrees to assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related obligations by CITY. CITY may, as an alternative, substitute for the terminated LESSEE a new LESSEE reasonably satisfactory to the mortgagee or beneficiary. Any reasonable 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 property, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.
- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

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

- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

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

SECTION 5: INSURANCE RISKS/SECURITY

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

- a. any unsafe or defective condition in or on the premises of any nature whatsoever which may exist by reason of any act, omission, neglect, or any use or occupation of the premises;

- b. any operation, use, or occupation conducted on the premises;
- c. any act, omission, or negligence on the part of LESSEE, its employees, agents, sublessees, invitees, licensees; or
- d. any failure by LESSEE to comply or secure compliance with any of the lease terms or conditions.

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

- a. Public liability and property damage insurance in the amount of not less than TWO MILLION DOLLARS (\$2,000,000) Combined Single Limit Liability. 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 legal liability, in the minimum amount of ONE MILLION DOLLARS (\$1,000,000), fire coverage for contents and vandalism insurance policy on all insurable property on the premises, in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY or LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with the Encumbrance section hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.
- c. Conditions. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of

each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.

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

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

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

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

- 5.04 Security Deposit. A security deposit shall be paid to the CITY by LESSEE in the sum of One Hundred Thousand Dollars (\$100,000) on or before the commencement date of this lease. All or any portion of the principal sum shall be available unconditionally to CITY for correcting any default or breach of this lease by LESSEE, LESSEE'S successors or assigns, or for payment of expenses incurred by CITY as a result of LESSEE'S failure to faithfully perform all terms, covenants and conditions of this lease.

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

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

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

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

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

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

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

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

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.01 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this lease. LESSEE further acknowledges that the premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises, and that LESSEE does not hold CITY responsible for any defects in the premises. It is intended that new premises (pro shop, driving range and cart storage area) will be constructed by the Sheraton Hotel in the near future. LESSEE agrees to relocate to the new premises upon their completion at no cost to the Sheraton Hotel or CITY, and will comply with the provisions of Section 6.07 and the Development Plan as described in Exhibit B of this lease.

- 6.02 Entry and Inspection. CITY reserves and shall always have the right to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.
- 6.03 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 satisfactory to the CITY and with all applicable laws.
- 6.04 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.
- 6.05 Utilities. Except for such installation or utilities as CITY herein expressly agrees to provide, LESSEE agrees to order, obtain, and pay all utilities necessary for operation of the premises. All utilities will be installed underground.

6.06 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the 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.

6.07 Pro Shop Interior Construction. Proposer shall assume the full responsibility for the design, construction, including all applicable permits and licenses, and total cost of the interior of the proposed new pro shop, subject to the prior approval of the City Manager in accordance with Section 6.04 hereof. Within one (1) week of the completion of the exterior shell of the new pro shop, LESSEE'S contractor shall commence physical interior construction.

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

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

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

6.09 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and agrees that

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

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

- 6.10 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 24 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.

6.11 Ownership of Improvements and Personal Property.

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

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

6.12 Development Plan. See attached Exhibit B.

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

SECTION 7: GENERAL PROVISIONS

7.01 Notices

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

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

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

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

- 7.02 Compliance with Law. LESSEE 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.
- 7.03 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.
- 7.04 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age, or physical handicap in LESSEE'S use of the premises, including, but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
- 7.05 Affirmative Action. LESSEE agrees to abide by CITY'S Affirmative Action Program for LESSEES as it exists or is amended to the extent that the program is applicable to this lease. A copy of the program effective as of the date of this lease is on file in the City Clerk's Office and by this reference is part hereof. The program's goal is the attainment of employment for minorities and women in all areas of employment, in a total percentage as established by CITY for its Affirmative Action Program each year.
- 7.06 Partial Invalidity. If any term, covenant, condition, or provision of this lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.07 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney's fees.

- 7.08 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.09 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.10 Schedule of Prices. All prices of merchandise, equipment and services of LESSEE and its sublessees shall be comparable with prices of like merchandise, equipment and services offered in the San Diego area. All prices charged by LESSEE and its sublessees shall be approved in writing by City Manager; provided, however, that LESSEE and its sublessees shall not be required to sell any merchandise at a loss.
- 7.11 Operation of Facilities. A regular schedule of days and hours of operation shall be established by LESSEE to best serve the public. The days and hours of operation of LESSEE'S concession shall be the same as the days and hours of operation of the Torrey Pines Municipal Golf Course, unless otherwise required by the City Manager upon occasions of special events. Such schedule shall diligently and in a creditable manner furnish services to the public in conformity with all applicable rules and regulations of the City of San Diego. LESSEE shall maintain and have fully operational a minimum of 140 golf carts at all times during the entire term of this lease.
- LESSEE shall maintain a fully-stocked pro shop, with merchandise appropriate to the intent of this lease and consistent with Section 1.02 Uses. hereof to the satisfaction of the City Manager.
- LESSEE shall perform in the capacity of or shall engage a full-time qualified Call "A," P.G.A. golf professional and shall employ an adequate number and quality of personnel as necessary to diligently and creditably provide a high standard of services, in the opinion of the City Manager.
- 7.12 Warranty. The CITY does not warrant that said premises are suitable for the purposes for which they are leased as stated herein.

- 7.13 Pro Shop Inventory Purchase. LESSEE shall purchase the existing pro shop merchandise inventory, providing that subject inventory is of marketable quality, and that subject purchase price is at present LESSEE'S "cost," with proper receipts to substantiate cost. It is mutually agreed that the CITY shall not participate in, nor be responsible for, subject purchase. Any failure to consummate subject inventory purchase shall not invalidate, nor postpone the commencement of the lease with the City of San Diego. This paragraph is subject to amendment or deletion at the sole discretion of the parties hereto and shall not constitute or create a third party beneficiary. The owner of the existing pro shop inventory shall have no rights as a result of this provision and if LESSEE is unable to complete a purchase of the pro shop inventory on reasonable terms, the City Manager may, at his sole discretion, waive the requirements of this paragraph.
- 7.14 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.
- 7.15 CITY First Right to Purchase. In the event LESSEE desires to dispose of its interest in this lease, together with any of its interest in improvements, trade fixtures and furnishings owned by LESSEE on the leased premises, CITY shall be given the first right to purchase said interest and improvements at a mutually agreeable price. If CITY does not exercise such right to purchase, LESSEE shall not then sell or offer to sell its interest at a lower price without first reoffering to CITY the right to purchase at such lower price.
- 7.16 Real Estate Broker's Commission. No broker's commission will be paid by the CITY in connection with this lease.
- 7.17 Tournament Cooperation. It is expressly understood that the annual P.G.A. Tournament, currently called the Sheraton Lehman Bros. Andy Williams Open is conducted on the premises. The LESSEE agrees to cooperate with the tournament's sponsors, the organizing entity (presently the Century Club), the Torrey Pines Inn, the City of San Diego, and any other entity directly connected with this tournament. Subject cooperation pertains to the uses and the premises, and related services performed, covered under this lease and any amendments to this lease.

7.18 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.

SECTION 8: SIGNATURES

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

THE CITY OF SAN DIEGO

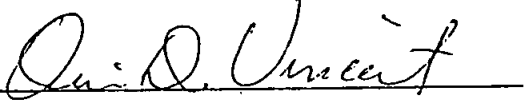
Date 8/4/87

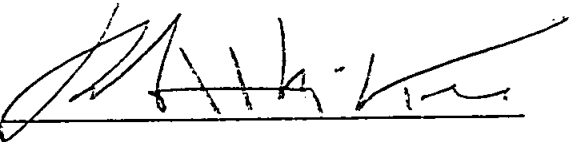
By 
Deputy City Manager

LESSEE:

VINCENT-McKEE SPORTS, INC.

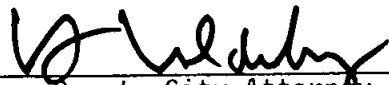
Date 7/3/87

By 

By 

APPROVED as to form and legality this 5 day of August, 1987.

JOHN W. WITT, City Attorney

By 
Deputy City Attorney

LDL:baa(4)61
6-4-87

9.01 EXHIBIT B - DEVELOPMENT PLAN

9.02 LESSEE IMPROVEMENTS

STATE OF CALIFORNIA
COUNTY OF San Diego

ss. ✓

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On December 17, 1987, before me, the undersigned, a Notary Public in and for said State, personally appeared WILLIAM WANSA andX X X X X X X X X X X X X X X X, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within instrument asX X X X X X President and X X X X X X Secretary, on behalf of WANSA ENTERPRISES, INC.,

the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature M P Kelly

(This area for official notarial seal)

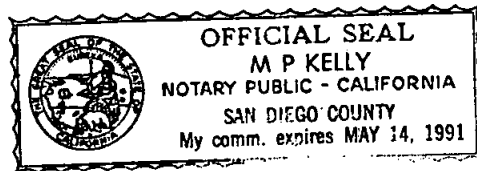
STATE OF CALIFORNIA
COUNTY OF San Diego

ss.

On December 17, 1987, before me, the undersigned, a Notary Public in and for said State, personally appeared WILLIAM P. SHANNAHAN X X X X X X andX X X X X X X X X X X X X X X X, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within instrument as X X X X X XX X X X X X President and X X X X X X Secretary, on behalf of WANSA ENTERPRISES, INC.

the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature M P Kelly

(This area for official notarial seal)

RECORDING REQUESTED BY
TICOR TITLE INSURANCE COMPANY OF CALIFORNIA

292

RECORDED IN
OFFICIAL RECORDS
OF SAN DIEGO COUNTY, CA

1987 DEC 18 PM 3:59

VERA L. LYLE
COUNTY RECORDER

WHEN RECORDED, MAIL TO:

City of San Diego
Property Department (M.S. 51-A)
Security Pacific Plaza
1200 Third Avenue, Suite 1700
San Diego, CA 92101

CORPORATE QUITCLAIM DEED

APN 760-103-42

RF	
AR	
MG	
UF	NO FEE
OC	
TXPD	

The undersigned grantor declares there is no documentary transfer tax.

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, WANSa ENTERPRISES, INC., a corporation organized under the laws of the State of California, hereby REMISES, RELEASES AND QUITCLAIMS to THE CITY OF SAN DIEGO, a municipal corporation, in the County of San Diego, State of California, the following described real property in the City of San Diego, County of San Diego, State of California:

All right, title and interest in and to the real property described on Exhibit "A" attached hereto, including, but not limited to, all interest of WANSa ENTERPRISES, INC., a California corporation, in the leasehold estate created by the lease agreement between THE CITY OF SAN DIEGO, Lessor, and WANSa ENTERPRISES, INC., Lessee, dated June 1, 1976, which leasehold estate is being conveyed pursuant to an option and right of entry agreement between the parties, recorded October 4, 1985 as Instrument 85-368613 in the Clerk's Office of the County of San Diego.

WANSa ENTERPRISES, INC.,
a California corporation

Dated: 12/17/87

By: William Wansa
President

Dated: 12/17/87

By: William Shumaker
Secretary

This instrument filed for record by Ticor Title Insurance Company as an accommodation only. It has not been examined as to its execution or as to its effect upon the title.

RJC:baa-w(3)108
12-9-87

This is to certify that the interest in real property conveyed by this instrument to the City of San Diego, a municipal corporation, is hereby accepted by the undersigned officer on behalf of the City of San Diego, pursuant to authority conferred by Resolution No. 250320, adopted by the Council of the City of San Diego on October 1, 1979, and the grantee consents to recordation thereof by its duly authorized officer.

Dated 12/16/87 By [Signature]
City Manager

AFTER RECORDING, MAIL TO CITY CLERK

EXHIBIT A

The land referred to herein is situated in the State of California, County of San Diego, and is described as follows:

PARCEL 1

All that portion of Pueblo Lot 1331 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 the 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 1331 which corner is the common corner of Pueblo Lots 1330, 1331, 1333 and 1334; thence South 00°22'50" West 1155.24 feet to a point; thence South 89°55'53" West 200.00 feet to the TRUE POINT OF BEGINNING; thence continuing South 89°55'53" West 230.00 feet; thence at right angles North 0°04'07" West 120.00 feet; thence North 89°55'53" East 230.00 feet; thence South 0°04'07" East 120.00 feet to the TRUE POINT OF BEGINNING.

PARCEL 2

All those portions of Pueblo Lots 1325, 1326, 1330 and 1331 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 the 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 which is the common corner of Pueblo Lots 1325, 1326, 1330 and 1331; thence along the common line of Pueblo Lots 1325 and 1331 North 89°05'09" West 255.74 feet; thence leaving said common line North 2°48'32" West 285.07 feet; thence North 7°31'23" West 399.47 feet; thence North 6°28'50" West 134.23 feet to a point that bears South 82°32'25" West 42.90 feet from the Southwest corner of the property described in that certain lease agreement executed October 2, 1961, filed in the Office of the City Clerk of the City of San Diego as Document 629873, the boundaries of which are set out on City Engineer's Drawing 13929-CL on file in the Office of the City Engineer of the City of San Diego; thence North 82°32'25" East 42.90 feet to said Southwest corner; thence continuing along the South line of said property described in said lease agreement North 82°32'25" East to the Southeast corner of last said property; said point also 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 along said Westerly right-of-way line South 9°28'56" East 842.58 to a Point "A"; thence South 80°31'04" West 368.36 feet to the Point of Beginning.

PARCEL 3

All those portions of Pueblo Lots 1325, 1326, 1330 and 1331 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 the 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 which is the common corner of Pueblo Lots 1325, 1326, 1330 and 1331; thence South 00°52'34" West 466.90 feet; thence North 84°19'59" East 100.26 feet to an angle point in the boundary of Parcel 2 of Parcel Map 11723, as filed in the Office of the County Recorder of San Diego County; thence along said boundary North 84°19'48" East 137.75 feet; North 7°15'05" West 200.84 feet; thence North 82°28'46" East 207.13 feet to 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 along said Westerly right-of-way line North 9°28'56" West 281.59 feet; thence South 80°31'04" West 368.36 feet to the Point of Beginning.

RECORDING REQUESTED BY
CITY OF SAN DIEGO

DOC # 2003-0704383

RECORDING REQUESTED BY:

City of San Diego, California

JUN 16, 2003 8:00 AM

WHEN RECORDED MAIL TO:

Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660
Attn: E. Kurt Yeager

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER

FEES: 0.00

OC: NA



2003-0704383

[Space above for Recorder's use.]

This document is recorded for the benefit of the City of San Diego and recording is fee-exempt under § 27383 of the Government Code.

43p
OCNA
CON
HIF
33010088-413

FACILITIES LEASE

by and between

SAN DIEGO FACILITIES AND EQUIPMENT LEASING CORPORATION, as Lessor

and

CITY OF SAN DIEGO, as Lessee

Dated as of June 1, 2003

\$17,425,000

CITY OF SAN DIEGO

2003 CERTIFICATES OF PARTICIPATION

(1993 BALBOA PARK/MISSION BAY PARK REFUNDING)

(c) Payment of Net Proceeds. The Net Proceeds of such rental interruption insurance shall be paid to the Trustee and deposited (1) in the Reserve Fund to make up any deficiencies therein, and (2) deposited in the Lease Payment Fund, to be credited towards the payment of the Lease Payments in the order in which such Lease Payments come due and payable.

Section 5.5. Title Insurance. The City shall obtain and, throughout the Term of this Lease, maintain or cause to be maintained title insurance on the Property, in the form of an CLTA title policy (with western regional exceptions), in an amount equal to the aggregate principal amount of the Certificates and Additional Certificates Outstanding, issued by a company of recognized standing, duly authorized to issue the same, payable to the Trustee for the benefit of the Owners, subject only to Permitted Encumbrances. Said policy or policies shall insure the City's leasehold estate hereunder in the Property, subject only to Permitted Encumbrances. All Net Proceeds received under said policy or policies shall be deposited with the Trustee and applied as provided in Section 7.01 of the Trust Agreement. So long as any of the Certificates and Additional Certificates remain Outstanding, each policy of the title insurance obtained pursuant hereto or required hereby shall provide that all proceeds thereunder shall be payable to the Trustee for the benefit of the Certificate Owners and the owners of any Additional Certificates. Such policy of title insurance, including the endorsements thereto, shall be in form and substance acceptable to the Insurer. The Net Proceeds of such insurance shall be applied as provided in Section 6.1.

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Section 5.6. General Insurance Provisions.

(a) Form of Policies. All policies of insurance required to be procured and maintained pursuant to this Lease and any statements of self-insurance shall be in a form certified by an insurance agent, broker or consultant to the City to comply with the provisions hereof. All such policies shall provide that the City shall give the Trustee thirty (30) days' notice of each expiration, any intended cancellation thereof or reduction of the coverage provided thereby. Each policy of insurance required to be procured and maintained pursuant to Section 5.3 (regarding casualty and theft insurance), Section 5.4 (regarding rental interruption insurance) and Section 5.5 (regarding title insurance) shall provide that all proceeds thereunder shall be payable to the Trustee for the benefit of the Owners.

(b) Payment of Premiums. The City shall pay or cause to be paid when due the premiums for all insurance policies required by this Lease, and shall promptly furnish or cause to be furnished to the Trustee a certificate to such effect, as described in paragraph (d) below.

(c) Protection of the Trustee. The Trustee shall not be responsible for the sufficiency or adequacy of any insurance herein required and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the Trustee.

(d) Evidence of Insurance. The City shall cause to be delivered to the Trustee and the Insurer annually on or before August 1 a certificate stating that the insurance policies required by this Lease are in full force and effect.

(e) Self Insurance. The City may only elect to self insure pursuant to Sections 5.1 and 5.2 hereof (the City may elect to self-insure for purposes of Section 5.3, but only to the extent of insurance provided by a California joint powers authority) if and to the extent such self-insurance method or plan of protection shall afford reasonable protection to the Corporation and the Trustee, in

Corporation and the Trustee with the opinion of an Independent Counsel acceptable to the Corporation, to the effect that, by nonpayment of any such items, the interest of the Corporation in such portion of the Property will not be materially endangered and that the Property will not be subject to loss or forfeiture. Otherwise, the City shall promptly pay such taxes, assessments or charges or make provisions for the payment thereof in form satisfactory to the Corporation. The Corporation will cooperate fully in such contest, upon the request and at the expense of the City.

Section 7.8. Modification of the Property.

(a) **Additions, Modifications and Improvements.** The City shall, at its own expense, have the right to make additions, modifications, and improvements to any portion of the Property if such improvements are necessary or beneficial for the use of such portion of the Property. All such additions, modifications and improvements shall thereafter comprise part of the Property and be subject to the provisions of this Lease. Such additions, modifications and improvements shall not in any way damage any portion of the Property or cause it to be used for purposes other than those authorized under the provisions of State and federal law or in any way which would impair the State tax-exempt status or the exclusion from gross income for federal income tax purposes of the interest with respect to the Certificates; and the Property, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is not substantially less than the value of the Property immediately prior to the making of such additions, modifications and improvements.

(b) **No Liens.** Except for Permitted Encumbrances, the City will not permit any mechanic's or other lien to be established or remain against the Property for labor or materials furnished in connection with any additions, modifications or improvements made by the City pursuant to this Section; provided that if any such lien is established and the City shall first notify or cause to be notified the Corporation of the City's intention to do so, the City may in good faith contest any lien filed or established against the Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and shall provide the Corporation with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to the Trustee (as assignee of the Corporation). The Corporation will cooperate fully in any such contest, upon the request and at the expense of the City.

(c) **Replacements, Redevelopment and Renovation.** The City shall, at its own expense, have the right to make replacements, redevelopment or renovation of all or a portion of the Property if the following conditions precedent are satisfied:

(i) The City receives an opinion of Special Counsel, a copy of which the City shall furnish to the Corporation and the Trustee, that (1) such replacement does not adversely affect the federal income tax exclusion or the State tax-exempt status of the interest with respect to the Certificates, and (2) the Lease will remain the legal, valid, binding and enforceable obligation of the City;

(ii) In the event such replacement, redevelopment or renovation would result in the temporary abatement of Lease Payments as provided in Section 4.10 hereof the City shall have notified the Insurer and any rating agency then providing a rating on the Certificates and shall deposit moneys with the Trustee in advance for payment of Lease Payments from special funds of the City or other moneys, the application of which would not, in the opinion of Special Counsel (a

copy of which shall have been delivered to the Trustee), result in such Lease Payments constituting indebtedness of the City in contravention of the Constitution and laws of the State;

(iii) The City shall certify to the Trustee that it has sufficient funds to complete such replacement, redevelopment or renovation; and

(iv) In the case of replacement or redevelopment, the City and the Trustee receive an independent appraisal from a California certified general appraiser that the annual fair rental value of the replacements will be at least equal to the annual fair rental value of the Property immediately prior to such replacement or redevelopment.

Section 7.9. Encumbrances; Alternative Financing Methods.

(a) Encumbrances. Except as provided in this Article VII (including without limitation Section 7.8 hereof and this Section 7.9), the City shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, liens, charges, encumbrances or claims, as applicable, on or with respect to the Property, other than Permitted Encumbrances and other than the respective rights of the Corporation and the City as herein provided. Except as expressly provided in this Article VII, the City shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible, if the same shall arise at any time; provided that the City may contest such liens if it desires to do so. The City shall reimburse the Corporation for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

(b) Alternative Financing Methods. Notwithstanding the foregoing, the City may create or suffer to create any mortgage, pledge, liens, charges, encumbrances or claims upon the Property or any improvements thereto, provided that (1) any such mortgage, pledge, liens, charges, encumbrances or claims shall at any time while any of the Certificates remain Outstanding be and remain subordinate in all respects to the Site Lease and Lease and any security interest given to the Trustee for the benefit of the Owners and (2) the City shall have first delivered to the Trustee an opinion of Special Counsel substantially to the effect that such mortgage, pledge, liens, charges, encumbrances or claims would not result in the inclusion of the interest with respect to the Certificates in the gross income of the owners of the Certificates for purposes of federal income taxation or impair the State tax-exempt status of such payments.

Section 7.10. Corporation's Disclaimer of Warranties. THE CORPORATION MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE CITY OF THE PROPERTY, OR ANY PORTION THEREOF. THE CITY ACKNOWLEDGES THAT THE CITY IS LEASING THE PROPERTY AS IS. In no event shall the Corporation be liable for incidental, indirect, special or consequential damages, in connection with or arising out of this Lease, the Site Lease, the Assignment Agreement or the Trust Agreement for the existence, furnishing, functioning or the City's use and possession of the Property.

Section 7.11. The City's Right to Enforce Warranties of Vendors or Contractors. The Corporation hereby irrevocably appoints the City its agent and attorney-in-fact during the Term of this Lease, so long as the City shall not be in default hereunder, to assert from time to time whatever claims and rights, including without limitation, warranty claims, claims for indemnification and

claims for breach of any representations, respecting the Property which the Corporation may have against any vendor or contractor. The City's sole remedy for the breach of any such warranty, indemnification or representation shall be against the vendor or contractor with respect thereto, and not against the Corporation, nor shall such matter have any effect whatsoever on the rights and obligations of the Corporation with respect to this Lease, including the right to receive full and timely Lease Payments and all other payments due hereunder. The City shall be entitled to retain any and all amounts recovered as a result of the assertion of any such claims and rights. The Corporation shall, upon the City's request and at the City's expense, do all things and take all such actions as the City may request in connection with the assertion of any such claims and rights.

Section 7.12. Substitution or Release of the Property.

(a) The City shall have the right to substitute alternate real property for any portion of the Property described in Exhibit B or C hereto or to release a portion of the Property from the lien of this Lease by providing the Trustee with a supplement to this Lease substantially in the form attached as Exhibit C hereto and by satisfying the conditions set forth in paragraphs (i) through (viii) of this Section 7.12. All costs and expenses incurred in connection with such substitution or release shall be borne by the City. Notwithstanding any substitution pursuant to this Section, there shall be no reduction in or abatement of the Lease Payments due from the City hereunder as a result of such substitution. No substitution or release shall be permitted hereunder unless:

(i) the City provides prior written notice thereof to the Insurer together with a certificate that the substituted real property has an equivalent or greater useful life as the Property to be released and that the useful life of the substituted Property exceeds the remaining term of the Lease Payments hereunder;

(ii) an independent California Certified General or equivalent certified real estate appraiser selected by the City finds (and delivers a certificate to the City and the Trustee setting forth its findings) that the substituted real property has a fair rental value greater than or equal to the fair rental value of the Property to be released so that the Lease Payments payable by the City pursuant to the Lease will not be abated;

(iii) the City obtains or causes to be obtained an CLTA title insurance policy (with western regional exceptions) with respect to the substituted property, with an endorsement so as to be payable to the Trustee for the benefit of the Owners, showing no prior liens thereon other than Permitted Encumbrances. Such policy shall comply with Section 5.5 hereof, shall be in a form satisfactory to the Insurer, the Trustee and the Corporation, shall be in the amount equal to the principal component of Lease Payments attributable to the substituted property, and shall insure the leasehold interest or the fee simple interest of the Corporation or the City, as applicable, to the substituted property;

(iv) the City provides the Corporation and the Trustee with an opinion of Special Counsel that such substitution does not cause, in and of itself, the interest evidenced and represented by the Certificates to be included in gross income for federal income tax purposes;

(v) the City shall give, or cause to be given, any notice of the occurrence of such substitution required to be given pursuant to the Continuing Disclosure Agreement;

(vi) upon the substitution of any real property and improvements thereon for all or a portion of the Property then existing, the City, the Corporation and the Trustee shall execute and the City shall record with the office of the County Recorder, County of San Diego, California, any document necessary to reconvey to the City the portion of the Property being substituted and to include the substituted real property and/or improvements thereon as all or a portion of the Property;

(vii) the City shall certify to the Trustee and the Insurer that the substituted property is of approximately the same degree of essentiality to the City as the portion of the Property being replaced; and

(viii) the Trustee shall receive the Insurer's prior written consent to such substitution (which consent shall not be unreasonably withheld), and shall provide a copy of such notice to S&P.

Section 7.13. Compliance with Law, Regulations, Etc.

(a) The City has, after due inquiry, no knowledge and has not given or received any written notice indicating that the past or present use of the Property or any practice, procedure or policy employed by it in the conduct of its business materially violates any applicable law, regulation, code, order, rule, judgment or consent agreement, including, without limitation, those relating to zoning, building, use and occupancy, fire safety, health, sanitation, air pollution, ecological matters, environmental protection, hazardous or toxic materials, substances or wastes, conservation, parking, architectural barriers to the handicapped, or restrictive covenants or other agreements affecting title to the Property (collectively, "Laws and Regulations"). Without limiting the generality of the foregoing, neither the City nor to the best of its knowledge, after due inquiry, any prior or present owner, tenant or subtenant of the Property has, other than as set forth in subsections (a) and (b) of this Section or as may have been remediated in accordance with Laws and Regulations, (i) used, treated, stored, transported or disposed of any material amount of flammable explosives, polychlorinated biphenyl compounds, heavy metals, chlorinated solvents, cyanide, radon, petroleum products, asbestos, methane, radioactive materials, pollutants, hazardous materials, hazardous wastes, hazardous, toxic, or regulated substances or related materials, as defined in CERCLA, RCRA, CWA, CAA, TSCA and Title III, and the regulations promulgated pursuant thereto, and in all other Environmental Regulations applicable to the City, the Property or the business operations conducted by the City thereon (collectively, "Hazardous Materials") on, from or beneath the Property, (ii) pumped, spilled, leaked, disposed of, emptied, discharged or released (hereinafter collectively referred to as "Release") any material amount of Hazardous Materials on, from or beneath the Property, or stored any material amount of petroleum products at the Property in underground storage tanks.

(b) Excluded from the representations and warranties in subsection (a) hereof with respect to Hazardous Materials are those Hazardous Materials in those amounts ordinarily found in the inventory of the City's buildings, the use, treatment, storage, transportation and disposal of which has been and shall be in compliance with all Laws and Regulations.

(c) No portion of the Property located in an area of high potential incidence of radon has an unventilated basement or subsurface portion which is occupied or used for any purpose other than the foundation or support of the improvements to the Property.

governmental lien for the recovery of environmental cleanup or removal costs. To the extent that the City is strictly liable under any Environmental Regulation, its obligation to the Owners and the other indemnitees under the foregoing indemnification shall likewise be without regard to fault on its part with respect to the violation of any Environmental Regulation which results in liability to any indemnitee. The obligations and liabilities under this Section 7.14(c) shall survive the payment and satisfaction of all Certificates or resignation or removal of the Trustee.

(d) The City shall conform to and carry out a reasonable program of maintenance and inspection of all underground storage tanks, and shall maintain, repair, and replace such tanks only in accordance with Laws and Regulations, including but not limited to Environmental Regulations.

Section 7.15. Condemnation of Property. The City hereby covenants and agrees, to the extent it may lawfully do so, that, except as described in Section 6 of the Site Lease, so long as any of the Certificates remain outstanding and unpaid, the City will not exercise the power of condemnation with respect to the Property. The City further covenants and agrees, to the extent it may lawfully do so, that if for any reason the foregoing covenant is determined to be unenforceable or if the City shall fail or refuse to abide by such covenant and condemns the Property, then the appraised value of the Property shall not be less than the greater of: (i) if the Certificates are then subject to optional prepayment, the principal and interest components of the Certificates outstanding through the date of their prepayment, or (ii) if the Certificates are not then subject to optional prepayment, the amount necessary to defease the Certificates to the first available prepayment date in accordance with the Trust Agreement.

ARTICLE VIII

ASSIGNMENT, SUBLEASING AND AMENDMENT

Section 8.1. Assignment by the Corporation. Except as provided herein, in the Trust Agreement and the Assignment Agreement, the Corporation will not assign this Lease to any other person, firm or corporation so as to impair or violate the representations, covenants and warranties contained in Section 2.2 hereof.

Section 8.2. Assignment and Subleasing by the City.

(a) Assignment. This Lease may be assigned by the City, with the consent of the Insurer (which consent shall not be unreasonably withheld), so long as such assignment does not, in the opinion of Special Counsel, adversely affect the State tax-exempt status or the exclusion from gross income for federal income tax purposes of the interest with respect to the Certificates or affect the validity of this Lease. In the event that this Lease is assigned by the City, the obligation to make Lease Payments hereunder shall remain the obligation of the City.

(b) Sublease. The City may sublease all or any portion of the Property, with the consent of the Trustee (as assignee of the Corporation) and the Insurer, subject to all of the following conditions:

(i) This Lease and the obligation of the City to make Lease Payments and Additional Payments hereunder shall remain obligations of the City; and

(ii) The City shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to the Corporation, the Trustee and the Insurer a true and complete copy of such sublease;

(iii) No sublease by the City shall cause the Property to be used for a purpose other than a governmental or proprietary function authorized under the provisions of the laws of the State; and

(iv) The City shall furnish to the Corporation, the Trustee and the Insurer, an opinion of Special Counsel to the effect that the sublease will not cause the interest due with respect to the Certificates to be subject to State personal income tax or adversely affect the exclusion from gross income for federal income tax purposes of such amounts.

Section 8.3. Amendments and Modifications. This Lease may be amended or any of its terms modified with the written consent of the Insurer, the City and the Trustee (as assignee of the Corporation), in accordance with Article X of the Trust Agreement.

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

Section 9.1. Events of Default Defined. The following shall be "events of default" under this Lease and the terms "events of default" and "default" shall mean, whenever they are used in this Lease, any one or more of the following events:

(a) Payment Default. Failure by the City to pay any Lease Payment required to be paid hereunder by the corresponding Lease Payment Date; and

(b) Covenant Default. Failure by the City to observe and perform any warranty, covenant, condition or agreement on its part to be observed or performed herein or otherwise with respect hereto or in the Trust Agreement or in the Site Lease, other than as referred to in clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Corporation, the Insurer, the Trustee, or the Owners of not less than twenty percent (20%) in aggregate principal amount of Certificates then Outstanding; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Corporation, the Insurer or such Owners, as the case may be, shall not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the City within the applicable period and diligently pursued until the default is corrected, except that such grace period shall not exceed 60 days without the prior written consent of the Insurer.

(c) Bankruptcy or Insolvency. The filing by the City of a case in bankruptcy, or the subjection of any right or interest of the City under this Lease to any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the federal bankruptcy code, as amended, or under any similar act which may hereafter be enacted.

EXHIBIT A

SCHEDULE OF LEASE PAYMENTS WITH RESPECT TO SITE A TORREY PINES NORTH GOLF COURSE

<u>Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Payment</u>
10/23/03	\$ 370,000.00	\$ 52,788.56	\$ 422,788.56
04/23/04		69,060.00	69,060.00
10/23/04	940,000.00	69,060.00	1,009,060.00
04/23/05		62,010.00	62,010.00
10/23/05	1,300,000.00	62,010.00	1,362,010.00
04/23/06		51,610.00	51,610.00
10/23/06	1,320,000.00	51,610.00	1,371,610.00
04/23/07		41,050.00	41,050.00
10/23/07	1,355,000.00	41,050.00	1,396,050.00
04/23/08		13,950.00	13,950.00
10/23/08	1,395,000.00	13,950.00	1,408,950.00
04/23/09		--	--
10/23/09	0.00	--	--
04/23/10		--	--
10/23/10	0.00	--	--
04/23/11		--	--
10/23/11	0.00	--	--
04/23/12		--	--
10/23/12	0.00	--	--
04/23/13		--	--
10/23/13	0.00	--	--
04/23/14		--	--
10/23/14	0.00	--	--
04/23/15		--	--
10/23/15	0.00	--	--
04/23/16		--	--
10/23/16	0.00	--	--
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10/23/17	0.00	--	--
04/23/18		--	--
10/23/18	0.00	--	--
04/23/19		--	--
10/23/19	0.00	--	--
04/23/20		--	--
10/23/20	0.00	--	--
04/23/21		--	--
10/23/21	0.00	--	--
04/23/22		--	--
10/23/22	0.00	--	--
04/23/23		--	--
10/23/23	0.00	--	--
Total	\$ 6,680,00.00	\$ 528,148.56	\$ 7,208,148.56

2568

EXHIBIT B

LEGAL DESCRIPTION OF THE PROPERTY

THAT REAL PROPERTY IN THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO DESCRIBED AS FOLLOWS:

SITE A — TORREY PINES NORTH GOLF COURSE

ALL THOSE PORTIONS OF PUEBLO LOTS 1323, 1324, 1325, 1326, 1330, 1331, 1332 AND 1333 OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH MAP WAS FILED IN THE OFFICE OF THE 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 WHICH POINT IS THE COMMON CORNER OF PUEBLO LOTS 1325, 1326, 1330 AND 1331; THENCE ALONG THE COMMON LINE OF PUEBLO LOTS 1325 AND 1326 SOUTH 0° 52' 34" WEST 466.91 FEET; THENCE LEAVING SAID COMMON LINE NORTH 84° 19' 55" EAST 100.26 FEET; TO AN ANGLE POINT IN THE WESTERLY BOUNDARY OF PARCEL 2 OF PARCEL MAP 11723, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY; THENCE ALONG THE WESTERLY BOUNDARY OF SAID PARCEL 2 AND PARCEL 1 OF SAID PARCEL MAP 11723, AS FOLLOWS:

SOUTH 2° 13' 10" EAST 501.21 FEET (REC. SOUTH 2° 15' 05" EAST 501.05 FEET AS PER PARCEL MAP 11723); SOUTH 2° 13' 07" EAST 930.66 FEET (REC. SOUTH 2° 14' 46" EAST 930.75 FEET AS PER PARCEL MAP 11723); SOUTH 20° 55' 12" EAST 228.50 FEET (REC. SOUTH 20° 57' 51" EAST 228.50 FEET AS PER PARCEL MAP 11723); SOUTH 2° 24' 04" EAST 37.71 FEET (REC. SOUTH 2° 27' 18" EAST 37.72 FEET AS PER PARCEL MAP 11723) TO THE NORTHWEST CORNER OF MAP 8395 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID MAP 8395 AND ALONG THE WEST LINE OF PARCEL MAP 8317 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY AS FOLLOWS:

SOUTH 2° 30' 36" EAST 653.74 FEET (REC. SOUTH 2° 31' 41" EAST 653.73 FEET AS PER MAP 8395); SOUTH 1° 31' 50" EAST 783.98 FEET (REC. SOUTH 01° 32' 54" EAST 783.98 FEET AS PER MAP 8395) TO AN ANGLE POINT IN THE NORTHERLY BOUNDARY OF PARCEL MAP 9813 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY; THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL MAP 9813 SOUTH 82° 30' 36" WEST 312.84 FEET (REC. SOUTH 82° 32' 17" WEST 312.81 FEET AS PARCEL MAP 9813) TO THE NORTHWEST CORNER OF SAID PARCEL MAP 9813 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY; THENCE SOUTH 1° 37' 46" EAST 214.52 FEET (REC. SOUTH 1° 37' 28" EAST 214.52 FEET AS PER PARCEL MAP 9813); THENCE NORTH 87° 30' 54" WEST 553.97 FEET; THENCE NORTH 72° 42' 22" WEST 900.02 FEET; THENCE NORTH 57° 39' 12" WEST 478.39 FEET; THENCE NORTH 14° 56' 25" WEST 960.43 FEET; THENCE NORTH 87° 57' 20" EAST 606.05 FEET TO A POINT ON THE BOUNDARY LINE OF RECORD OF SURVEY NO. 7528 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 2, 1971 AS FILE NO. 71-

280790, SAID POINT BEING ALSO THE NORTHWESTERLY TERMINUS OF THAT COURSE SHOWN AS SOUTH 81° 38' 47" EAST 274.63 FEET; THENCE ALONG THE BOUNDARY OF SAID RECORD OF SURVEY NO. 7528; THENCE SOUTH 81° 38' 47" EAST 274.63 FEET; THENCE NORTH 40° 35' 18" EAST 404.38 FEET; THENCE NORTH 82° 21' 52" WEST 398.88 FEET; THENCE NORTH 1° 40' 38" WEST 484.82 FEET; THENCE NORTH 36° 40' 34" EAST 505.23 FEET; THENCE NORTH 53° 18' 54" EAST 288.09 FEET; THENCE NORTH 10° 13' 27" WEST 273.02 FEET; THENCE NORTH 69° 19' 18" WEST 410.14 FEET; THENCE NORTH 25° 31' 22" EAST 634.37 FEET; THENCE SOUTH 88° 03' 54" WEST 518.85 FEET; THENCE SOUTH 20° 25' 46" WEST 771.87 FEET; THENCE SOUTH 37° 25' 21" WEST 501.95 FEET; THENCE NORTH 47° 34' 50" WEST 485.30 FEET; THENCE NORTH 7° 36' 15" WEST 1,121.01 FEET; THENCE NORTH 13° 25' 13" EAST 312.69 FEET TO A POINT HEREIN DESIGNATED AS POINT "A"; THENCE CONTINUING NORTH 13° 25' 13" EAST 222.44 FEET; THENCE NORTH 33° 25' 01" EAST 629.00 FEET; THENCE NORTH 61° 25' 23" EAST 1,035.79 FEET; THENCE NORTH 22° 49' 15" WEST 473.77 FEET; THENCE NORTH 87° 12' 04" WEST 244.11 FEET; THENCE SOUTH 58° 10' 02" WEST 1,378.63 FEET; THENCE NORTH 6° 23' 50" WEST 235.14 FEET; THENCE NORTH 21° 45' 30" WEST 652.59 FEET; THENCE NORTH 7° 23' 47" EAST 574.67 FEET; THENCE NORTH 66° 39' 53" EAST 390.14 FEET; THENCE SOUTH 83° 50' 56" EAST 824.93 FEET; THENCE NORTH 82° 24' 11" EAST 620.02 FEET; THENCE NORTH 8° 36' 03" WEST 519.49 FEET; THENCE NORTH 68° 35' 39" WEST 334.93 FEET; THENCE SOUTH 69° 23' 43" WEST 409.92 FEET; THENCE NORTH 30° 36' 27" WEST 440.00 FEET; THENCE NORTH 47° 23' 17" EAST 629.59 FEET; THENCE NORTH 37° 22' 36" EAST 850.07 FEET; THENCE NORTH 80° 11' 49" EAST 413.95 FEET; THENCE SOUTH 34° 38' 52" EAST 291.07 FEET; THENCE SOUTH 20° 41' 15" EAST 513.88 FEET; THENCE LEAVING THE BOUNDARY OF SAID RECORD OF SURVEY NO. 7528 SOUTH 8° 53' 06" EAST 603.05 FEET; THENCE SOUTH 25° 24' 51" WEST 209.07 FEET; THENCE SOUTH 7° 11' 16" EAST 913.76 FEET; THENCE SOUTH 8° 45' 47" EAST 241.03 FEET; THENCE SOUTH 7° 38' 59" EAST 960.24 FEET; THENCE SOUTH 17° 53' 18" WEST 70.36 FEET; THENCE SOUTH 30° 18' 01" WEST 36.00 FEET; THENCE SOUTH 2° 28' 33" EAST 118.73 FEET TO AN INTERSECTION IN THE NORTH LINE OF THE PROPERTY DESCRIBED IN THAT CERTAIN LEASE AGREEMENT EXECUTED OCTOBER 2, 1961, FILED IN THE OFFICE OF THE CITY CLERK AS DOCUMENT 629873, THE BOUNDARIES OF WHICH ARE SET OUT ON CITY ENGINEER'S DRAWING 13929-CL ON FILE IN THE OFFICE OF THE CITY ENGINEER, SAID POINT OF INTERSECTION BEING 148.99 FEET EASTERLY ALONG SAID NORTH LINE FROM THE NORTHWEST CORNER OF SAID LEASE PROPERTY; THENCE ALONG SAID NORTHERLY LINE SOUTH 87° 31' 27" WEST 148.99 FEET (REC. SOUTH 89° 55' 53" WEST PER ENGINEER'S DRAWING 13929-CL); THENCE ALONG THE WESTERLY LINE OF SAID LEASE PROPERTY SOUTH 7° 27' 57" EAST 32.20 FEET (RECORD SOUTH 5° 03' 32" EAST PER ENGINEERS DRAWING 13939-CL) TO A POINT HEREIN DESIGNATED AS POINT "B"; THENCE CONTINUING SOUTH 7° 27' 57" EAST 520.42 FEET (RECORD SOUTH 5° 03' 32" EAST PER ENGINEER'S DRAWING 13929-CL) TO THE SOUTHWEST CORNER OF SAID LEASE LAND; SOUTH 82° 32' 38" WEST 42.90 FEET; THENCE SOUTH 6° 28' 42" EAST 134.23 FEET; THENCE SOUTH 7° 31' 25" EAST 399.47 FEET; THENCE SOUTH 2° 48' 31" EAST 285.07 FEET; THENCE SOUTH 89° 05' 12" EAST 255.74 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION OF SAID LAND IF ANY LYING WITHIN THE PROPERTY DEEDED FROM THE CITY OF SAN DIEGO TO THE State of California RECORDED MAY 7, 1959 AS DOCUMENT NO. 91431 IN BOOK 7647, PAGE 475 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE ABOVE MENTIONED POINT "A"; THENCE NORTH 72° 06' 54" EAST 511.82 FEET; THENCE NORTH 73° 03' 36" EAST 587.14 FEET; THENCE NORTH 70° 06' 15" EAST 1,059.56 FEET; THENCE NORTH 82° 32' 03" EAST 103.52 FEET TO THE ABOVE MENTIONED POINT "B" BEING THE TERMINUS OF SAID LINE.

AND ALSO EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE ABOVE MENTIONED POINT "B"; THENCE NORTH 7° 27' 57" WEST 32.20 FEET; THENCE SOUTH 33° 42' 26" WEST 13.82 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 2° 10' 32" WEST 22.92 FEET; THENCE NORTH 86° 52' 30" EAST 6.97 FEET; THENCE NORTH 2° 08' 17" WEST 15.01 FEET; THENCE SOUTH 89° 34' 46" WEST 6.81 FEET; THENCE NORTH 2° 25' 21" WEST 56.31 FEET; THENCE NORTH 86° 44' 46" EAST 6.87 FEET; THENCE NORTH 2° 13' 13" WEST 14.97 FEET; THENCE SOUTH 88° 28' 37" WEST 6.77 FEET; THENCE NORTH 2° 31' 39" WEST 22.90 FEET; THENCE SOUTH 87° 52' 20" WEST 64.37 FEET; THENCE NORTH 3° 38' 15" WEST 5.83 FEET; THENCE SOUTH 88° 24' 26" WEST 19.43 FEET; THENCE SOUTH 2° 26' 47" EAST 6.33 FEET; THENCE SOUTH 87° 35' 10" WEST 17.10 FEET; THENCE SOUTH 3° 34' 05" EAST 25.87 FEET; THENCE SOUTH 84° 48' 20" WEST 2.10 FEET; THENCE SOUTH 2° 27' 41" EAST 79.86 FEET; THENCE SOUTH 68° 43' 13" EAST 1.02 FEET; THENCE SOUTH 1° 59' 34" EAST 25.60 FEET; THENCE NORTH 90° 00' 00" EAST 17.55 FEET; THENCE SOUTH 2° 19' 13" EAST 6.18 FEET; THENCE NORTH 87° 13' 47" EAST 19.24 FEET; THENCE NORTH 0° 25' 25" EAST 6.27 FEET; THENCE NORTH 87° 55' 21" EAST 64.27 FEET TO THE TRUE POINT OF BEGINNING.

SITE B — BALBOA PARK HOUSE OF CHARM

THAT PORTION OF THE LAND DESIGNATED "CITY PARK RESERVATION," WHICH LIES WITHIN THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MISCELLANEOUS MAP THEREOF NO. 36, BY JAMES PASCOE, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, BEING A PORTION OF PUEBLO LOT 1135 AND PUEBLO LOT 1136 OF SAID PUEBLO LAND ACCORDING TO MISCELLANEOUS MAP THEREOF NO. 35, BY CHARLES H. POOLE, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE BASIS OF BEARING FOR THIS DESCRIPTION IS NAD 83 HORIZONTAL COORDINATE VALUES FOR CONTROL POINTS GPS 0047 AND GPS 0048 WERE DETERMINED BY GPS PROCEDURES.

COMMENCING AT CITY OF SAN DIEGO HORIZONTAL CONTROL STATION "GPS 0048", BEING A LEAD AND DISK STAMPED "GPS 0048", HAVING A NORTH AMERICAN DATUM OF 1983 VALUE OF NORTHING 1846535.61 AND EASTING 6284662.10; THENCE NORTH 09° 52' 43" EAST, 581.78 FEET TO AN 1" IRON PIPE "GPS 0047" WITH A DISK STAMPED "GPS 0047"; THENCE ALONG SAID LINE SOUTH 09° 52' 43" WEST DISTANT THEREON 17.22 FEET; THENCE NORTH 89° 53' 58" WEST 101.75 FEET TO THE TRUE POINT OF BEGINNING; THENCE ALONG THE PROLONGATION OF SAID LINE 139.08 FEET; THENCE SOUTH 00° 06' 02" WEST 100.46 FEET; THENCE NORTH 89° 53' 58" WEST 15.36

EXHIBIT C
LEASE SUPPLEMENT FORM

There is hereby subjected to the terms of that certain Facilities Lease, dated as of June 1, 2003, by and between the San Diego Facilities and Equipment Leasing Corporation and the City of San Diego (the "City") the following items which shall comprise a portion of the Property, as defined therein:

Description of Substituted Property

[Insert Description]

Cost

I, the City Representative, hereby certify that:

- (1) the fair rental value (based on the attached appraisal by an independent real estate appraiser) and the useful life of the above-described portion of the Property at least equals the fair rental value and the useful life of the portion of the Property for which it was substituted;
- (2) the above-described portion of the Property will be used by the City for authorized public purposes and can be leased under the provisions of the Lease and the Government Code;
- (3) the above-described portion of the Property is currently owned by the City; and
- (4) the above-described portion of the Property is of approximately the same degree of essentiality to the City as the portion of the Property being replaced.

I, the City Representative, hereby certify that the portion of the Property being substituted is free and clear of all liens or claims of others, except for Permitted Encumbrances referred to in the Lease.

CITY OF SAN DIEGO

By: [signature]
City Representative

2
5
7
5

MEMORANDUM OF UNDERSTANDING
Between the City of San Diego and the
Torrey Pines Club Corporation

This MEMORANDUM OF UNDERSTANDING is executed between the CITY OF SAN DIEGO, hereinafter called "CITY", and Torrey Pines Club Corporation, hereinafter called "LESSEE", in order to clarify provisions of LEASE AGREEMENT, Document RR-267979.

CITY and LESSEE mutually desire to improve the operation and revenues of the Torrey Pines Golf Course and related facilities. This MEMORANDUM OF UNDERSTANDING is intended to clarify changes in office space to be used by CITY, and operations that effect cart and golf school revenues.

1. OFFICE SPACE. LESSEE shall permit CITY to have free use of the following office space located on the north side of the Clubhouse building that is leased by LESSEE:

- a.) The office on the northeast corner of the building formerly used by the LESSEE's Head Golf Professional approximately 20' x 12'.
- b.) The office space on the north side of the building formerly used by the LESSEE's administrative personnel approximately 20' x 30'.

CITY shall permit the LESSEE to have free use of the office space approximately 20' x 16', formerly used by the CITY's Golf Course Manager and Business Manager.

2. CARTS. CITY will require the use of golf carts for all private, non-City sponsored tournaments effective January 1, 1992. City-sponsored tournaments include the following:

- a.) Men's Club events;
- b.) Women's Club events;
- c.) San Diego Men's Golf Championship tournament;
- d.) San Diego Women's Golf Championship tournament;
- e.) San Diego Senior's Golf Championship tournament;
- f.) PGA, LPGA, SPGA sponsored events;
- g.) College and high school golf team events;
- h.) Junior Golf sponsored events.

3. GOLF INSTRUCTIONAL PLAYING ROUNDS. LESSEE desires to institute and offer an enhanced golf instructional program. In order to facilitate playing instructional rounds on the golf course, CITY will make available to the LESSEE tee reservations under the following stipulations:

- a.) CITY will block out weekday tee reservations for specified times on a daily basis. The number of tee times will not exceed fifteen (15) for longer weekdays of the year (April through October) and twelve (12) tee times for shorter weekdays (November through May).

- b.) The total number of weekday tee times reserved for the golf school will be reduced on a prorated basis whenever a tournament is scheduled or the course is closed. For example, tee times normally allotted for a particular weekday, at particular times, would not be available to the golf school if a tournament booking occupies those times.
- c.) CITY will block out no more than ten (10) tee reservations for weekends (average 5 per day) except when courses are closed due to inclement weather, maintenance, or major tournaments that use both courses.
- d.) LESSEE will book tee times with CITY for all instructional rounds at least eight (8) days in advance.
- e.) A professional instructor will accompany one or two foursomes.
- f.) LESSEE agrees to cancel tee times at least 24 hours in advance. LESSEE will pay green fees for any golf instructional reservations not cancelled 24 hours in advance.
- g.) CITY will not reserve more than two consecutive tee times for the golf school.
- h.) All playing lessons will be charged the County resident 18-hole rate.
- i.) CITY will prepare a schedule of tee times for the LESSEE to use for the golf school on a monthly basis.

Both parties agree that either party shall have the authority to discontinue this MEMORANDUM OF UNDERSTANDING with a minimum of not less than 90 days advance written notice.

The City Manager has entered into this MEMORANDUM OF UNDERSTANDING with the intent that the original terms of the lease between the City of San Diego and Vincent/McKee Sports, Inc. (Torrey Pines Club Corporation's previous name), Document RR-2267979, shall remain in force. This MEMORANDUM OF UNDERSTANDING is meant only to clarify operational issues that have arisen in the operation of the golf course and not to modify the terms of the lease.

Date October 30, 1991

THE CITY OF SAN DIEGO
By [Signature]
Park and Recreation Director

Date _____

By [Signature]
Torrey Pines Club Corporation

APPROVED AS TO FORM AND LEGALITY THIS 4 DAY OF November, 1991

JOHN W. WITT, City Attorney

By [Signature]
Deputy

RESOLUTION NUMBER R- **267979**

ADOPTED ON MAR 30 1987

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 twenty-five (25)-year lease agreement with VINCENT/MCKEE for the operation of the Torrey Pines Municipal Golf Course pro shop, driving range and golf carts, at a minimum annual rental of \$200,000 against various percentages of gross income of the pro shop, driving range, cart rentals and golf lessons, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR- **267979**.

BE IT FURTHER RESOLVED, that this authorization is made with the specific condition that the said lease agreement shall not become effective unless and until the City exercises its option to buy out the existing Wansa leasehold and that, if the City does not exercise its right to buy the Wansa lease, and if the City does not obtain possession of the premises by December 31, 1988, the above lease will not commence and this authorization shall terminate, as set forth in Section 2.01 of said proposed lease.

APPROVED: JOHN W. WITT, City Attorney

By 
Harold O. Valderhaug
Deputy City Attorney

HOV:ps
02/09/87
04/06/87 REV.1
Or.Dept:Prop.
Job:218954
R-87-1618
Form=r.none

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

March 30, 1987 by the following votes:

YEAS: Cleator, McColl, Jones, Struiksma, Gotch, Ballesteros.

NAYS: Wolfsheimer.

NOT PRESENT: McCarty, O'Connor.

AUTHENTICATED BY:

MAUREEN O'CONNOR

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

By BARBARA BAXTER

Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. R- 267379 passed and adopted by the Council of The City of San Diego, California, on March 30, 1987.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By Barbara Baxter

Deputy

(R-94-84)

RESOLUTION NUMBER R-282439

ADOPTED ON AUG 02 1993

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized to execute, for and on behalf of The City of San Diego, a Second Amendment to Lease Agreement with TORREY PINES CLUB CORPORATION for the operation and maintenance of Torrey Pines Golf Course, which amendment provides that the lessee shall assume maintenance responsibilities and provide liability insurance for the driving range operations at Torrey Pines Golf Course, and which amendment further provides for a decrease from thirty percent of gross income to eleven percent of gross income in the rent from the driving range operations, and which amendment includes an option to extend the lease term for ten years beyond the current expiration date of 2012, under the terms and conditions set forth in that Second Amendment to Lease Agreement on file in the office of the City Clerk as Document No. RR- 282439.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Chief Deputy City Attorney

HOV:ps
07/19/94
Or.Dept:Prop.
Job:220593
R-94-84
Form=r-t

Passed and adopted by the Council of The City of San Diego on August 2, 1993 by the following vote:

YEAS: Wolfsheimer, Hartley, Stevens, McCarty, Vargas, Mayor Golding.

NAYS: None.

NOT PRESENT: Roberts, Behr, Stallings.

AUTHENTICATED BY:

SUSAN GOLDING
Mayor of The City of San Diego, California

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

(SEAL)

By: RHONDA R. BARNES, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. R- 282439, passed and adopted by the Council of The City of San Diego, California on August 2, 1993.

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

(SEAL)

By: Blanda B. Barnes, Deputy

Lawrence United Corporation

Insurance Agency of Southern California, Inc.

Formerly Robson, Cavnac & Associates

April 18, 1994

Mr. Paul Crawford
City of San Diego
1200 3rd Ave., Ste. 1700
San Diego, CA 92037

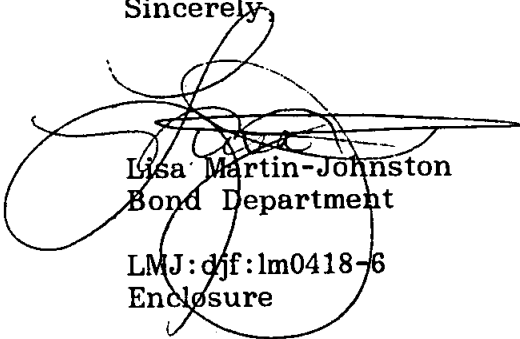
Re: Torrey Pines Club Corporation
Bond #CA110374
Reference #RR-267979

Dear Paul:

Enclosed is an endorsement amending the name for the above-captioned bond from Vincent McKee Sports, Inc. to Torrey Pines Club Corporation.

Should you have any questions, please feel free to call me.

Sincerely,



Lisa Martin-Johnston
Bond Department

LMJ:djf:lm0418-6
Enclosure

RECEIVED

APR 21 1994

REAL ESTATE ASSETS

LAWRENCE



A member of the Lawrence Group
1230 Columbia Street, Suite 400 • P.O. Box 80187 • San Diego, California 92138
(619) 235-6301 • Fax: (619) 233-0340

Merchants



BONDING CO.

— Mutual —

March 28, 1994

Camelback Esplanade • 2425 E. Camelback Rd. • Suite 800 • Phoenix, Arizona 85016 • (602) 955-0022 • Fax (602) 955-2623

ENDORSEMENT

It is hereby understood and agreed that Bond No. CA 110374

VINCENT MCKEE SPORTS INC, written

in the MERCHANTS BONDING COMPANY (MUTUAL), is amended.

FROM: VINCENT MCKEE SPORTS INC

TO: TORREY PINES CLUB CORPORATION

All terms and conditions of said bond, except as above changed, to remain the same.

Signed, sealed and dated this 28th day of MARCH, 19 94

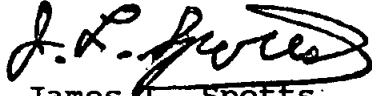
MERCHANTS BONDING COMPANY (MUTUAL)

BY:

Judy L. Pope
JUDY L. POPE ATTORNEY IN-FACT

The City Manager reserves the right to review this policy and in his sole discretion may revoke this exemption at any time. Please contact Bill Svensson, Property Agent, at 236-7073 if you have any questions regarding this exemption.

Sincerely,

A handwritten signature in black ink, appearing to read "J.L. Spotts", with a stylized flourish at the end.

James L. Spotts
Property Director

JLS:CVS:st(1)

cc: Century Club
City Auditor
Park & Recreation



THE CITY OF SAN DIEGO

January 29, 1999

Susan Lough
Torrey Pines Club Corporation
11480 North Torrey Pines Road
La Jolla, CA 92037

Dear Ms. Lough:

Section 5.04, Security Deposit, of your lease (Document RR-267979, as amended) requires the lessee to maintain a \$100,000 faithful performance bond or deposit during the lease term and 90 days thereafter unless released sooner by the City. Due to your company's excellent record for the past 10 years and the substantial yearly expense for you to carry the bond, the City waives the bond requirement but reserves the right to reinstate this requirement upon 30 days prior written notice, if conditions change in the sole opinion of the City Manager.

Sincerely,

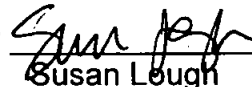


JANE E. VICKERS

Deputy Director

ACKNOWLEDGED AND ACCEPTED:
Torrey Pines Club Corporation

PTC:csn

By 
Susan Lough

Date 2/3/99

File: Lease-Torrey Pines Club Corporation

I:\WPO\1999\CRAWFORD\L-SLOUGH.WPD



Real Estate Assets

1200 Third Avenue, Suite 1700, MS 51A • San Diego, CA 92101-4199
Tel (619) 236-6020 Fax (619) 236-6706

RECEIVED
CITY OF SAN DIEGO

99 FEB -8 PM 2:51

REAL ESTATE ASSETS DEPT.

CITY OF SAN DIEGO
M E M O R A N D U M

FILE: 218954
DATE: July 11, 1988
TO: City Treasurer
FROM: Property Department
SUBJECT: Safekeeping of Documents - Contract Bond CA110374
Torrey Pines Golf Course - Pro Shop

Attached is a contract bond for your safekeeping. This bond is secured in connection with the lease of the above property.

Name of Lessee: Vincent-McKee Sports, Inc.

Amount of Bond: \$100,000

Depositing Department: Property Department

Purpose of Deposit: Safekeeping during term of lease.

Authorized Employee, Treasurer

Accepting Deposit: Alfred L. Perrin

Authorized Employee, Property Department,

Accepting Return of Deposit: _____

Date: _____

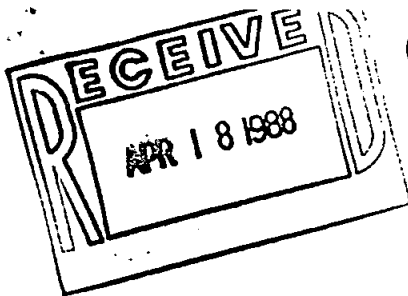
PROPERTY DEPARTMENT

By 

C. V. Svensson, Property Agent
Property Management Division

CVS:baa(1)43

Attachment



THE VALLEY NATIONAL COMPANY

2000 VALLEY BANK CENTER • PHOENIX, ARIZONA 85073
(602) 256-5000 OUTSIDE ARIZONA (800) 528-5363
FAX # (602) 257-9760 TELEX # 62905248

April 14, 1988

Mr. Vincent
Vincent-McKee Sports, Inc.
2010 Jimmy Durante Blvd., Ste 208
Del Mar, CA 92014

Re: Contract Bond - Bond No. CA 110374

Dear Mr. Vincent:

Your office recently requested some sort of indication from the surety to the obligee stating that notice of cancellation notice would also be sent to them. The obligee being the City of San Diego. Enclosed please find an amendatory rider changing the wording on the bond. This rider must be filed with the city to be attached to the original bond. We have also enclosed a photocopy for your records.

If you have any questions, please call me direct.

Sincerely yours,

Katherine Stanton

Katherine Stanton
Bond Department

kes
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Merchants



BONDING CO.
— *Mutual* —

P.O. BOX 37649 • 9630 NORTH 25TH AVENUE • PHOENIX, ARIZONA 85069 • (602) 870-0313 • FAX: (602) 870-1966

ENDORSEMENT

It is hereby understood and agreed that Bond No. CA 110374

Vincent-McKee Sports, Inc. , Contract Bond

in the MERCHANTS BONDING COMPANY (MUTUAL), is amended

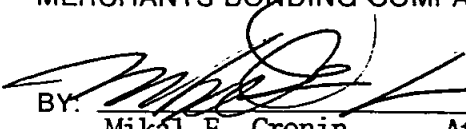
FROM: The Surety's liability shall be terminated and the bond cancelled upon written notice of cancellation by the Surety to the Principal no less than 30 days prior to the cancellation date. Notice shall be by certified mail.

TO: The Surety's liability shall be terminated and the bond cancelled upon written notice of cancellation by the Surety to the Principal and the Owner no less than 30 days prior to the cancellation date. Notice shall be by certified mail.

All terms and conditions of said bond, except as above changed, to remain the same.

Signed, sealed and dated this 14th day of April, 19 88

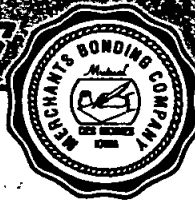
MERCHANTS BONDING COMPANY (MUTUAL)

BY: 

Mikal F. Cronin

Attorney-in-Fact

Merchants



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MERCHANTS BONDING COMPANY (MUTUAL)

BY: 
Mikal F. Cronin Attorney-in-Fact

Merchants



BONDING CO.

— Mutual —

P.O. BOX 37649 • PHOENIX, ARIZONA 85069

CONTRACT BOND

Bond No. CA 110374

KNOW ALL MEN BY THESE PRESENTS:

That Vincent-McKee Sports, Inc.

(hereinafter called Principal), as Principal, and Merchants Bonding Company (Mutual), a corporation of the State of Iowa, with its Home Office in the City of Des Moines, Iowa, and duly authorized and licensed to do business in the State of California (hereinafter called Surety), as

Surety, are held and firmly bound unto City of San Diego, California

(hereinafter called Owner), in the full and just sum of One Hundred Thousand Dollars & No/100-----

Dollars (\$100,000.00-----), to the payment of which sum, well and truly to be made, the Principal and Surety bind themselves, their and each of their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Signed, sealed and dated this 22nd day of March, 1988.

WHEREAS, the Principal has entered in to a certain written agreement, dated the 5th day of August 19 87, with the Owner for Operation of Torrey Pines Municipal

Golf Course Pro Shop, driving range and golf carts per document

RR-267979

which agreement is or may be attached hereto for reference.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That, if the Principal shall well and truly perform and carry out the covenants, terms and conditions of said agreement, then this obligation to be void; otherwise to remain in full force and effect.

The Surety's liability shall be terminated and the bond cancelled upon written notice of cancellation by the Surety to the Principal no less than 30 days prior to the cancellation date. Notice shall be by certified mail.

Witness:

Vincent-McKee Sports, Inc. (Seal)

By: [Signature] (Seal)

(If Individual or Firm)

Attest:

(Seal)

(Seal)

[Signature]
(If Corporation)

Attest:

MERCHANTS BONDING COMPANY (MUTUAL)

Katherine E. Stanton

By [Signature]

Mikal F. Cronin Attorney-in-Fact

Merchants



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CONTRACT BOND

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By: [Signature] (Seal)

(Seal)

(If Individual or Firm)

Attest:

(Seal)

[Signature]
(If Corporation)

Attest:

MERCHANTS BONDING COMPANY (MUTUAL)

Katherine E. Stanton

By [Signature]

Mikal F. Cronin

Attorney-in-Fact