



Real Estate Assets Department
SDC003

Document Type

LEGAL DOCUMENTS



Sub - Category

AGREEMENTS



COPY



THE CITY OF SAN DIEGO

ASSOCIATED STUDENTS OF SAN DIEGO STATE UNIVERSITY

and

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

LEASE

DOCUMENT NO.	RR-303937
FILED	JUL 15 2008
OFFICE OF THE CITY CLERK SAN DIEGO, CALIFORNIA	

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ORIGINAL

**CITY OF SAN DIEGO
PERCENTAGE LEASE**

This lease agreement ("Lease") is effective the 20th day of Aug., 2008, and is executed between the CITY OF SAN DIEGO, a municipal corporation ("CITY"), and the ASSOCIATED STUDENTS OF SAN DIEGO STATE UNIVERSITY, a California nonprofit corporation ("A.S."), and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California public corporation ("REGENTS"). A.S. and REGENTS shall jointly be referred to as "LESSEE."

RECITALS

- A. LESSEE has leased the property known as the Mission Bay Aquatic Center ("MBAC") from CITY pursuant to a lease dated September 24, 1975, approved by City Council Resolution Nos. 214321 and 273710.
- B. LESSEE is a tenant in good standing who has renovated, operated, and maintained the property as a collegiate recreational and instructional waterfront facility during the term of the lease.
- C. LESSEE has complied with the requirements of their Coastal Development Permit by making MBAC available to the general public on a regularly scheduled basis through University Extension classes, youth group programs, and other acceptable public events and programs. This requirement has also been satisfied through use of the facility and access to the aquatic educational activities offered by LESSEE to groups or organizations such as girl scout and boy scout troops, Y-teen groups, boy's clubs, girl's clubs, or other similar groups. These services have traditionally been offered at a reasonable cost to these groups.
- D. LESSEE provides annual subsidies for one of the largest educational waterfront programs in the United States and operates MBAC at no cost to CITY while providing boating, safety and educational opportunities to the students, faculty and staff of San Diego area colleges and universities and other eligible users as approved by the Lease.
- E. LESSEE provides programs to eligible community youth and civic organizations throughout the City of San Diego with equipment and facilities provided by the universities and offers scholarships each year for eligible youth in boating education programs.
- F. LESSEE provides an adaptive water sports program for disabled San Diego citizens that is a model program nationally.

- G. MBAC has been designated by the California Department of Boating and Waterways as a regional boating safety center and is highly regarded in the boating safety community as a national model program in public access boating education.
- H. LESSEE provides equipment and staff in support of many on-the-water community activities such as the San Diego Crew Classic and the YMCA Bay to Bay race.
- I. CITY and LESSEE desire to enter into a new lease to permit LESSEE to continue to provide the above-enumerated beneficial and educational water activities, to install energy efficient upgrades and to make additional improvements to the facility.

SECTION 1: USES

1.1 Premises.

CITY leases to LESSEE and LESSEE leases from CITY all of that City-owned real property situated in the City of San Diego, County of San Diego, State of California, consisting of 0.534 acres, described in Exhibit "A" and by this reference made part of this Lease. The real property is hereinafter called the "Premises."

1.2 Uses.

The Premises are leased to LESSEE solely and exclusively for the purpose of operating and maintaining collegiate, recreational, instructional, educational and competitive aquatic sports programs, including but not limited to, rowing, sailing, water skiing, surfing, scuba diving, wind surfing, kayaking, wake boarding, small boat handling, navigation, and marine sciences and their related maintenance and support activities, and aquatic-oriented group events; and other uses described in Section 1.3 below, as approved in writing by the City Manager and for no other purpose whatsoever. The use of the Premises for any unauthorized purpose shall constitute a substantial default, and if not cured as provided in this Lease, shall subject this Lease to termination at the sole option of CITY. LESSEE shall use the Premises for the above-specified purposes and diligently pursue the purposes throughout the Term (defined in Section 2.1) of this Lease. Failure to continuously use the Premises for the purposes or the use of the Premises for purposes not expressly authorized in this Lease shall be grounds for termination by CITY.

1.3 Eligible Users.

a. Eligible User Definitions.

- (1) Collegiate Users. "Collegiate User" and "Collegiate Users" as used in this Lease include:

- i) Any enrolled student, faculty or staff member from the approved colleges or universities located in the San Diego County area. The list of the approved colleges and universities is attached as Exhibit "B". The list may be updated from time to time upon written request of the LESSEE and approval of the City Manager.

(2) Incidental Users. "Incidental User" and "Incidental Users" as used in this Lease include:

- i) "Alumni" for purposes of this Lease mean persons who present documentary evidence that they are former students or graduates of San Diego County colleges or universities. LESSEE shall assume responsibility for verification of user eligibility with the cooperation from the colleges or universities during any audit.
- ii) Youth organizations provided within LESSEE'S available capacity that are established community, social, religious, cultural, educational or recreational organizations not created for the purpose of enrolling youth in LESSEE'S programs. A summer program of aquatic activities may be offered to these groups conditioned upon the approval of the City Manager, whose approval shall not be unreasonably withheld. If LESSEE submits a schedule of proposed summer programs that includes dates, hours, and number of participants for written approval by April 1 of each Lease Year (defined in Section 2.1) then CITY has thirty (30) days to approve or disapprove the proposed schedule of summer programs, or the proposed schedule will be deemed approved. If LESSEE submits a proposed schedule of summer programs after April 1 of each Lease Year, then the City Manager may approve or disapprove the request within a reasonable period of time. Organizations and groups shall be defined to require at least two or more participants from each participating group and arrangements for participation of the group must be made by and through the responsible adult sponsor of the organization or group. LESSEE shall establish a formal relationship with youth organizations that are acceptable to the City Manager. These organizations will receive all registrations and payments, and will determine membership requirements for their participants. LESSEE will bill the youth organizations for each youth participant.

- iii) Persons who are registered as participants in educational conferences, seminars and workshops conducted at San Diego County area colleges or universities. These Incidental Users shall be eligible to use the MBAC facilities only for the duration of the respective college or university program.
 - iv) Individuals with disabilities enrolled in programs offered on the Premises.
 - v) Members of the general public are permitted to participate as the lowest priority of usage and only within LESSEE'S available capacity after the primary educational purposes of the MBAC have been accommodated.
 - vi) Incidental users as defined above participating in approved special events, subject to compliance with all CITY policy requirements and ordinances applicable to special events in Mission Bay Park.
 - vii) Immediate family members of Collegiate Users.
- b. Eligibility Records. LESSEE shall maintain accurate records of each person using the MBAC facilities or programs and list their status as Collegiate User or Incidental User in each subcategory listed above. In the event of group use, each individual member of the group shall be reflected as an individual user. The records shall be kept on the Premises and shall be accessible at all times should CITY elect to conduct a performance audit.
- c. Discontinuance of Incidental Uses. The City Manager reserves the right to require discontinuance of any incidental use upon one hundred eighty (180) days advance written notice to LESSEE. The City Manager will consult with LESSEE prior to issuing the notice to determine if mitigation measures can resolve the conflict. The final decision on the discontinuance of an incidental use is at the sole discretion of the City Manager.
- d. Leafleting by LESSEE. LESSEE shall not place leaflets on automobile windshields or distribute leaflets in a door-to-door manner in beach areas adjacent to the Premises. LESSEE reserves the right to distribute its publications through other legal means, including, but not limited to, the U.S. Mail, campus mail, bulk newspaper bins, and brochure display areas, provided the distribution has been approved by a duly authorized administrator or manager of LESSEE.

1.4 Related Council Actions.

By entering into 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 Premises.

1.5 Quiet Possession.

LESSEE, performing the covenants and agreements in this Lease, shall at all times during the Term peaceably and quietly have, hold, and enjoy the Premises. If LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S during the Term, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or resulting damage.

1.6 Easements and Reservations.

- a. CITY 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 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.

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 Premises resulting from CITY exercising the rights reserved in this section. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.7 Political Activities.

The Premises shall be used exclusively for the purposes specified in Section 1.2 Uses of this Lease. The Premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. LESSEE shall not be precluded from providing a forum for open public debate by candidates at a "candidate forum" or similar events.

1.8 Public Use.

During the Term of this Lease, the general public shall, consistent with the uses permitted by Section 1.2 Uses, have access to the Premises. LESSEE may develop and promulgate reasonable rules and regulations for the use of the MBAC facilities provided they are consistent with the rights of the general public and are designed to allow LESSEE to use the Premises for the purposes specified in this Lease. LESSEE agrees that all activities conducted on the Premises will be as stated in Section 1.2 Uses of this Lease.

1.9 Public Parkland.

LESSEE is permitted to use the concrete, dock and park areas adjacent to the Premises shown on Exhibit "C" to conduct its approved programs jointly and compatibly with the public, on a non-exclusive basis. LESSEE shall maintain the dock, surrounding landscaping and lawn area west of the Premises shown on Exhibit "C" to CITY standards, at no cost to CITY. In the event the City Manager, in his sole discretion, determines that LESSEE'S use in any way interferes with the public use and need for the dock and adjacent park areas, the City Manager shall consult with LESSEE and LESSEE will institute recommended mitigation measures. In the event the conflict cannot be resolved, LESSEE shall cease the use upon written notice from the City Manager.

1.10 Conflicting Use.

LESSEE shall observe the established guidelines for the use of Mission Bay Park. Should any conflict arise between LESSEE'S use and park and recreation uses, the City Manager and LESSEE shall meet and reconcile the conflict. If CITY and LESSEE are unable to reconcile such conflict, the City Manager's decision will be final.

1.11 Hours of Operation.

A regular schedule of days and hours of operation is attached as Exhibit "D". Should this schedule conflict with use of the Premises and/or Mission Bay Park by the general public any time during the Term, LESSEE shall meet with the City Manager and reconcile the conflict. If CITY and LESSEE are unable to reconcile the conflict, the City Manager's decision will be final.

1.12 Parking.

LESSEE acknowledges that the parking lots located on Santa Clara Point in Mission Bay Park shown on Exhibit "E" are for public parking and are available on a first-come, first-served basis. LESSEE may not designate or reserve any of these parking spaces for its exclusive use, or use these parking spaces for temporary storage or repair work. LESSEE shall provide reasonable advance

notice to the other facilities located on Santa Clara Point of any event that may impact the availability of parking on Santa Clara Point. CITY shall provide LESSEE with a current list of Santa Clara Point facility addresses where official notice is to be sent pursuant to this section.

1.13 Alcoholic Beverages.

LESSEE acknowledges that Section 56.291 of the San Diego Municipal Code prohibits any person from possessing alcoholic beverages on Santa Clara Point.

SECTION 2: TERM

2.1 Term.

The Term of this Lease shall be fifteen (15) years ("Term"). The Term of this Lease is effective following execution by the City Manager, and approval by City Attorney ("Commencement Date"). If the Commencement Date is not the first day of a calendar month, then the Term shall include the partial calendar month from and including the Commencement Date through the last day of the full Term, so that the Term shall expire on the last day of a calendar month. "Lease Year" as used in this Lease shall mean the 12-month period commencing on the first day of the calendar month following the Commencement Date and each succeeding 12-month period thereafter during the Term.

2.2 Option to Extend.

During the three hundred sixty (360) day period prior to the end of the fifteenth Lease Year, CITY may elect to conduct a performance audit and review the performance of LESSEE under this Lease and determine whether LESSEE is in default of the terms of this Lease. Upon completion of the review, and in no event less than one hundred eighty (180) days prior to the end of the fifteenth Lease Year, CITY shall inform LESSEE whether or not LESSEE is in default and, if so, shall specify the nature of the default. If CITY fails to timely notify LESSEE of a default, then it shall be presumed that LESSEE is not in default. If LESSEE is not in default or if CITY notifies LESSEE that LESSEE is in default and LESSEE cures the default within the time provided in this Lease and before the end of the fifteenth Lease Year, then LESSEE shall have the option to extend this Lease on the same terms and conditions for an additional period of ten (10) years by providing written notice to CITY before the end of the fifteenth Lease Year.

2.3 Maintenance Consideration

It is the intention of CITY and LESSEE that the Premises be maintained in its original condition, less normal wear and tear, throughout the Term of this Lease.

To assure that result, and as consideration for the Term received by LESSEE under this Lease, LESSEE shall spend all revenue generated in excess of operating cost for improvement, maintenance and operation of the Premises throughout the Term of the Lease.

2.4 Holdover.

Any holding over by LESSEE after the expiration or earlier termination of this Lease shall not be considered a renewal or extension of this Lease. The occupancy of the Premises after the expiration or earlier termination of this Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease shall continue in full force and effect.

2.5 Surrender of Premises.

At termination of this Lease for any reason, LESSEE shall execute, acknowledge, and deliver to CITY, within thirty (30) days after written CITY demand, a valid and recordable quitclaim deed covering all of the Premises. The Premises shall be delivered free and clear of all liens and encumbrances and in a decent, safe, and sanitary condition. If LESSEE fails or refuses to deliver the required deed, CITY may prepare and record a notice reciting LESSEE'S failure to execute this Lease provision, and the notice will be conclusive evidence of the termination of this Lease and all LESSEE'S rights to the Premises.

SECTION 3: RENT

3.1 Time and Place of Payment.

All rents required under this Lease must be made payable to the City Treasurer and be mailed to:

The Office of the City Treasurer
City of San Diego
P.O. Box 122289
San Diego, California 92112-4165

or hand delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue
First Floor
San Diego, California 92101

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 the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

3.2 Rent.

Rents shall be paid in annual installments on or before August 31, following the end of each fiscal year (June 30) pursuant to Section 3.4. Payment Procedure of this Lease. If the Commencement Date is not July 1, then the accrued rent for the partial Lease Year at the beginning of the Term from the Commencement Date through June 30 shall be prorated on a per diem basis, and paid on or before August 31. If the Commencement Date is not July 1, then the accrued rent for the partial Lease Year at the end of the Term from July 1 through the expiration of the Term shall be prorated on a per diem basis, and paid prior to the end of the Term.

- a. Incidental Users. LESSEE shall pay CITY percentage rent equal to ten percent (10%) of the gross income derived from the following user categories, or Annual Minimum Rent established in accordance with Section 3.3, Annual Minimum Rent, of the Lease:
 - (1) Alumni as defined in Section 1.3.a. (2)i.
 - (2) Immediate family members of Collegiate Users as defined in Section 1.3. a(2) vii.
 - (3) Registered participants of educational conferences, seminars and workshops at area universities as defined in Section 1.3a.(2)iii.
 - (4) Members of the general public as defined in Section 1.3a.(2)v.
- b. Special Events. LESSEE shall procure any necessary permits and pay all fees related to special events. LESSEE shall pay CITY percentage rent equal to ten percent (10%) of the gross income derived for approved special events from the following user categories, or Annual Minimum Rent established in accordance with Section 3.3, Annual Minimum Rent, of the Lease:
 - (1) Alumni as defined in Sections 1.3a.(2)i.
 - (2) Immediate family members of Collegiate Users as defined in Section 1.3. a (2) vii.

- (3) Registered participants of educational conferences, seminars and workshops at area universities as defined in Section 1.3a.(2) iii.
- (4) Members of the general public as defined in Section 1.3a.(2)v.

3.3 Annual Minimum Rent.

Effective September 1 in the sixth Lease Year of this Lease an annual minimum rent "Annual Minimum Rent" shall be established. Annual Minimum Rent shall be equal to eighty percent (80%) of the annual average of actual rents paid or accrued during the three fiscal (3) years preceding the adjustment date. The Annual Minimum Rent shall be adjusted using the same formula at the beginning of each-five year period thereafter during the Term. It is recognized that the adjustment 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 in this Lease. Until the calculations are completed, LESSEE shall continue paying rent at the prior rate. Any additional rents determined by the adjustment to be due for the periods previously paid at the prior rate shall be paid to CITY within thirty (30) days following written notice. In no event shall any such rent adjustment result in a decrease in the rent requirement in effect immediately prior to the adjustment date.

The CITY acknowledges that the gross income from the special events as defined in Section 3.2 b may be subject to significant annual fluctuations during the first five Lease Years. Therefore, the first Annual Minimum Rent adjustment will not include the rent paid or accrued from the special events. The following annual minimum rent adjustments shall include all rents received by CITY as a result of the uses of the Premises by LESSEE.

3.4 Payment Procedure.

On or before August 31 of each year in which the gross income subject to rents was earned, LESSEE shall provide CITY with the statement described in Section 3.6(b) below, together with a payment of rent in the appropriate amount.

3.5 Gross Income.

"Gross Income" as used in this Lease, shall include all income received by LESSEE as a result of the uses of the Premises described in Section 3.2. Gross Income shall not include any federal, state, or municipal taxes collected from the consumer (regardless of whether the amount of the tax 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 of income or

refunds of deposits for cancellations of use of the Premises from the sources described in Section 3.2.

3.6 Inspection of Records.

- a. Records. LESSEE shall, at all times during the Term of his Lease, 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 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
- b. Financial Statements. No later than August 31 of each year, LESSEE shall, at its expense, submit to CITY a statement in which the total Gross Income and the corresponding amounts of rents paid to the CITY for the year are classified according to the categories established for any percentage rental. The statement shall be signed by LESSEE or its authorized agent and attest to the accuracy of the statement, 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 3.6a., will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. The books and records shall be maintained separate from all other accounts not relating to the Premises. CITY, at its discretion, shall have the right to inspect and audit the business of LESSEE, as necessary and appropriate for CITY to determine the amounts of rent due CITY in compliance with the requirements of this Lease. At CITY'S request, LESSEE shall promptly provide, at LESSEE'S expense, any necessary data to enable CITY to fully comply with all requirements of the state or federal government for lease information or reports concerning the Premises. The 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 shall pay CITY'S cost of audit(s):
 - (1) The audit(s) reveal an underpayment of more than five percent (5%) or more than ten thousand dollars (\$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.

CITY will notify LESSEE in writing of the amount of any deficiency or overpayment determined by its audit(s). LESSEE shall pay the deficiency determined by the audit(s) plus interest on the amount as defined in Section 3.7 Delinquent Rent and Audit Fees of this Lease, within thirty (30) days of notice of the deficiency by CITY. CITY will credit any overpayment against incoming rents. Any overpayment determined after the end of this Lease will be refunded by CITY within thirty (30) days of confirmation by the City Manager of the audit(s) findings.

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

3.7 Delinquent Rent and Audit Fees.

If LESSEE fails to pay the rent when due, LESSEE shall pay, in addition to the unpaid rents, ten percent (10%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) [being a total of fifteen percent (15%)], which is mutually agreed by the CITY and LESSEE 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 no event shall the charge for late payments of rent be less than twenty-five dollars (\$25).

If a CITY audit, as 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 the rent was underpaid, in addition to the unpaid rents due CITY, as compensation to CITY for administrative costs and loss of interest as previously described in this Lease. If a CITY audit discloses that the unpaid rent is less than five percent (5%) of the total rent, and should LESSEE fails to pay the unpaid rent within thirty (30) days after written notice from CITY, an additional fee of ten percent (10%) of the unpaid amount shall be added to the unpaid amount to compensate CITY for costs and losses due to the nonpayment. LESSEE shall pay the late charges and agrees that the 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.

3.8 Unauthorized Use Charge.

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

SECTION 4: ASSIGNMENT

4.1 Time is of Essence; Provisions Binding on Successors.

Time is of the essence for all of the terms, covenants, and conditions of this Lease, and, except as otherwise provided in this Lease, all of the terms, covenants, and conditions of this Lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.

4.2 Assignment and Subletting.

LESSEE shall not assign this Lease or any interest in this Lease without the prior written consent of the City Council in each instance. Lessee shall not sublet the Premises or any part of the Premises, or any right or privilege appurtenant to this Lease, or allow any other person, except employees, agents, and guests of LESSEE, to use or occupy the Premises or any part of the Premises, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any assignment or subletting without consent shall be void and shall, at the option of CITY, terminate this Lease. This Lease shall not, nor shall any interest in this Lease, be assignable as to the interest of LESSEE by operation of law, without the written consent of the City Council.

Upon dissolution of A.S., its net assets, other than trust funds, shall be distributed to a successor approved by the President of San Diego State University, the Board of Trustees of California State University, and by REGENTS, and which qualifies as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code. The successor may continue the stipulated programs and activities without necessity for further authorization by CITY. LESSEE shall provide CITY with thirty (30) days advance written notice of any such change.

If A.S. or REGENTS terminates all its right, title and interest in this Lease, the remaining party shall, at its option, assume all rights, title and interest in this Lease as the sole LESSEE, without necessity for further authorization by CITY.

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 assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this Lease which are applicable to the rights acquired. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have an interest in this Lease as a sublessee or assignee. The City Manager's approval will not be unreasonably withheld, provided all persons and entities are of good character and reputation in the community.

4.3 Encumbrance.

LESSEE shall not encumber this Lease, its leasehold estate, and its improvements on the Premises by deed of trust, mortgage, chattel mortgage, or other security instrument during the Term of this Lease.

4.4 Defaults and Remedies.

- a. Default by LESSEE. Any of the following shall constitute an event of default under this Lease:
 - (1) LESSEE fails to perform any covenant or condition required by this Lease to be performed by LESSEE and fails to cure the default within thirty (30) days following written notice of the default from CITY; or if any default is not curable within thirty (30) days, and LESSEE fails to commence to cure the default(s) within the thirty-day period and diligently pursue the cure to completion; or
 - (2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
 - (3) LESSEE shall be adjudicated a bankrupt; or
 - (4) LESSEE shall make a general assignment for the benefit of creditors.
- b. Default by CITY. Any of the following shall constitute an event of default under this Lease:
 - (1) CITY fails to perform its obligations under this Lease within a reasonable time, but in no event later than thirty (30) days after written notice by LESSEE to CITY specifying CITY'S failure to

perform its obligations. If the nature of CITY'S obligation requires more than thirty (30) days for performance, then CITY shall not be in default if CITY commences performance within the thirty (30) day period and thereafter diligently pursues the cure to completion. LESSEE'S obligation to provide written notice to CITY of a default by CITY is limited to those instances where knowledge of CITY'S default is within the actual knowledge of LESSEE.

c. Remedies of CITY. CITY shall have the option of the following courses of action to cure default(s):

- (1) Pursuant to Section 4.4a.(1) of this Lease, CITY may correct the default(s) and may pay the costs of the default(s) from the proceeds of any insurance fund held by CITY, CITY and LESSEE, 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.
- (2) Pursuant to Section 4.4a. of this Lease, CITY may, as alternative, substitute for the terminated LESSEE a new LESSEE. Any reasonable costs incurred by CITY in releasing to a new tenant shall be the responsibility of the terminated LESSEE, and LESSEE shall reimburse CITY for the costs.
- (3) CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this Lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the Premises or to possession of the Premises; and CITY may enter and take possession of the Premises. If any default described in Section 4.4a.(1), 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 the cure to completion.

d. Abandonment by LESSEE. Even though LESSEE has breached the Lease and abandoned the Premises, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all its rights and remedies under this Lease, including but not limited to the right to recover the rent as it becomes due, plus damages.

e. 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 charges is not a waiver of any default preceding the rent payment. CITY and LESSEE agree that the property constituting the Premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any default when as the 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 the default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

4.5 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 will be as follows:

- a. Entire Taking. If the entire Premises is taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. Partial Taking - Remainder Unusable. If a partial taking of the Premises occurs, and in the reasonable 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. Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and in the reasonable opinion of CITY, the remaining part of the Premises is suitable for continued lease operation, this Lease shall terminate in regard to the portion of the Premises taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion of the Premises not taken.
- d. Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both. 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

5.1 Indemnity.

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

5.2 Insurance or Self-Insurance.

- a. LESSEE shall deliver to CITY a current certificate of insurance for a Commercial General Liability/marine liability policy providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Five Million Dollars (\$5,000,000) per occurrence, subject to an annual aggregate of Five Million Dollars (\$5,000,000).
 - 1. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
 - 2. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real

Estate Assets Department.

3. Qualified Insurer(s). All insurance required by the terms of this Lease must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
4. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of LESSEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
5. Continuity of Coverage. All policies shall be in effect throughout the Term and any extended use, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement.
 - a. At least thirty (30) days prior to the expiration of each insurance policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Lease.
 - b. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property.
6. Modification. To assure protection from and against the kind and extent of risk existing on the Premises, CITY, in its discretion (exercised reasonably and in good faith), may require the revision of amounts and coverage at any time during the Term by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements in order to meet the requirements of this Lease. City may require sublessees of LESSEE to maintain commercial general liability insurance coverage in amounts and for risks reasonably required to insure such sublessees' probable exposure to risks associated with its operations.
7. Accident Reports. LESSEE shall report to CITY any accident causing property damage or injury to persons on the Premises. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other

pertinent information.

8. Failure to Comply. Notwithstanding any other provision of this Lease, if LESSEE fails or refuses to obtain or maintain insurance as required by this Lease, or fails to provide proof of insurance, CITY may terminate this Lease immediately upon such breach. Upon such termination, LESSEE shall immediately cease its use of the Premises and commence and diligently pursue the removal of its property from the Premises.
9. All Risk Property Insurance. LESSEE shall obtain and maintain, at its sole cost, All-Risk Property insurance on all insurable property on the leased premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver to CITY a certificate of such insurance.
10. Commercial Automobile Liability. For all of LESSEE's automobiles, including owned, hired and non-owned automobiles, LESSEE shall keep in full force and effect automobile insurance written on an "ISO form CA 00 01 12 90" or a later version of this form or an equivalent form, providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence and \$2 million aggregate. Insurance certificate shall reflect coverage for any automobile [any auto].
11. Workers' Compensation. For all of LESSEE's employees who are subject to this Lease, and to the extent required by applicable state or federal law, LESSEE shall keep in full force and effect a Workers' Compensation policy. That policy shall provide a minimum of \$1 million employers' liability coverage, and LESSEE shall provide an endorsement that the insurer waives the right of subrogation against CITY and its respective elected officials, officers, employees, agents and representatives.

5.3 Waste, Damage, or Destruction.

LESSEE shall give notice to CITY of any fire or other damage that may occur on the Premises within ten (10) days of the fire or damage. LESSEE shall not commit or allow 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 Premises is damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE shall make or cause to be made full repair of the damage and restore the Premises to the condition which existed prior to the damage; or, at CITY'S option, LESSEE shall clear and remove from the Premises all debris resulting from the 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 the damage, using for either purpose the insurance proceeds set forth in Section 5.2. Insurance or Self-Insurance of this Lease. LESSEE shall commence preliminary steps toward performing repairs, restoration, or replacement of the Premises within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

6.1 Acceptance of Premises.

By signing this Lease, LESSEE represents and warrants that it has independently inspected the Premises which it has occupied since September 1975 and accepts the Premises in an "as is" condition. LESSEE agrees it is relying solely on independent inspection, tests, investigations, and observations in making this Lease, and LESSEE does not hold CITY responsible for any defects whether apparent or latent, in the Premises, including the presence of any hazardous substances. This section shall not relieve CITY of any responsibility for clean-up, remediation, liability or damages for any hazardous substances in, on or under the Premises, which occurred prior to LESSEE'S original leasing of the Premises.

6.2 Entry and Inspection.

CITY reserves and shall always have the right, but not the obligation, to enter the Premises for the purpose of viewing and ascertaining the condition of the Premises, or to protect its interests in the Premises, or to inspect the operations conducted on the Premises. If entry or inspection by CITY discloses that the 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 shall promptly pay any and all costs incurred by CITY in having the necessary maintenance work done, in order to keep the Premises in a decent, safe, healthy, and sanitary condition. If LESSEE has failed to cure the condition stated after the notice period, and CITY determines that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without 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. The bond shall be in an amount adequate in the opinion of CITY to correct the unsatisfactory condition. LESSEE shall pay the cost of the bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Lease imposed on CITY.

6.3 Maintenance.

LESSEE shall assume full responsibility and cost for the operation and maintenance of the Premises in a condition satisfactory to the City Manager. LESSEE will make all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws. All revenue generated by the LESSEE on the Premises in excess of operating cost and rent payable to the CITY shall be used exclusively for improvements, maintenance and operation of the Premises.

6.4 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 which approval shall not be unreasonably withheld. 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 the 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. LESSEE shall develop the Premises in accordance with the Development Plan. The contents and provisions of the Development Plan are described in Exhibit "F", Development Plan of this Lease. The City Manager or his designee shall have the authority to authorize changes to the Development Plan.

6.5 Utilities.

LESSEE shall order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the Premises. All utilities shall be installed underground. LESSEE shall provide its own trash receptacles and pick-up service and is not permitted to use the public trash receptacles on Santa Clara Point.

6.6 Construction Bond.

Whenever there is any construction to be performed on the Premises, LESSEE shall deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be 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.

6.7 Liens.

LESSEE shall indemnify CITY and hold it harmless from 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 claims, including reasonable attorneys' fees.

If improvements, alterations, or repairs are made to the Premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall notify CITY of the lien within five (5) days after LESSEE first becomes aware of the existence of the lien and within thirty (30) days of the 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.

6.8 Taxes.

Subject to the provisions of Article XIII, Section 3(d) of the California Constitution and Section 202.2 of the California Revenue and Taxation Code, LESSEE shall pay, before delinquency, all taxes, assessment, 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 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 the leasehold interest, and that LESSEE shall pay all possessory interest taxes. LESSEE agrees that payment for taxes, fees and assessments will not reduce any rent due CITY. CITY shall in no event assume any responsibility for any taxes whatsoever resulting from LESSEE'S use and occupancy of the Premises.

6.9 Signs.

LESSEE shall not 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 unauthorized item is found on the Premises,

LESSEE shall remove the item at its expense within twenty-four (24) hours notice by CITY, or CITY may remove the item at LESSEE'S cost.

6.10 Ownership of Improvements and Personal Property.

- a. Any and all improvements, trade fixtures, structures, and installations or additions to the Premises now existing or constructed on the Premises by LESSEE shall at the expiration or earlier termination of this Lease be deemed to be part of the Premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except as otherwise provided in this Lease.
- b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall notify LESSEE thirty (30) days prior to termination of this Lease or one hundred eighty (180) days prior to expiration of this Lease, and LESSEE shall remove all improvements, structures, and installations as directed by CITY at LESSEE'S sole cost on or before the expiration or earlier termination of this Lease. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE shall 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 prior to the expiration or earlier termination of this Lease. Any 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 the items at LESSEE'S expense.
- d. If any removal of personal property by LESSEE results in damage to the remaining improvements on the Premises, LESSEE shall repair all damage.
- e. Any necessary removal of items referenced in Section 6.10c above, by either CITY or LESSEE which takes place beyond the expiration or earlier termination of this Lease shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to the expiration or termination of this Lease.
- f. If LESSEE desires to dispose of any of its personal property used in the operation of the Premises upon the expiration or earlier termination of this Lease, then CITY shall have the first right to acquire or purchase the personal property.

6.11 Unavoidable Delay.

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

6.12 Hazardous/Toxic Substances.

- a. LESSEE shall not allow the installation of additional underground storage tanks or release of hazardous substances in, on, under, or from the Premises. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated in this Lease.
- b. CITY acknowledges and consents to LESSEE'S storage and use on the Premises of the following:
 - (1) Gasoline and oil for boat motors;
 - (2) An existing underground gasoline storage tank which LESSEE warrants is in full compliance with existing regulations and that the tank is inspected on a regular basis and will be updated in accordance with any regulations imposed over the term of this Lease;
 - (3) Fiberglass resin and related materials for marine repairs; and
 - (4) Paints, solvents, and cleaners related to the maintenance of facilities, boats and other aquatic-related recreational equipment.
- c. If any release of a hazardous substance occurs in, on, or about the Premises, at any time during which LESSEE occupies the Premises, LESSEE shall be responsible for all costs of remediation and removal of

such substances in accordance with all applicable rules and regulations of governmental authorities.

- d. LESSEE shall assume the defense of, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S operations on the Premises, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- e. If LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Premises, LESSEE shall give written notice to the City Manager within ten (10) days of receipt of the knowledge or cause for belief. If LESSEE knows or has reasonable cause to believe that the substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate the danger. LESSEE shall notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the Premises. LESSEE and LESSEE'S sublessees shall not sell any hazardous substance on the Premises without the prior written consent of CITY.
- f. At any time within the twelve (12) months before the expiration or earlier termination of this Lease, LESSEE, at CITY'S sole option, shall cause an environmental assessment of the Premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at the sole cost and expense of LESSEE and shall establish what, if any, hazardous substances exist on, in, or under the Premises, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of the remediation or removal. LESSEE shall cause the remediation and/or removal recommended in the environmental assessment to achieve compliance with environmental law and shall be solely responsible for all costs and expenses incurred.

6.13 Asbestos Disclosure.

CITY discloses to LESSEE that portions of the structural components of the Premises may contain asbestos. LESSEE acknowledges having received notice

from CITY of the presence of asbestos in accordance with Health and Safety Code Section 25915. LESSEE shall disclose the existence of asbestos on the Premises, as required by Health and Safety Code Section 25915. LESSEE shall indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the Premises.

SECTION 7: GENERAL PROVISIONS

7.1 Notices.

- a. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or by United States mail, postage prepaid, addressed as follows:

If to LESSEE:

Regents of the University of California
c/o Director of Real Estate Development, 0982
University of California, San Diego
9500 Gilman Drive
La Jolla, California 92093-0982

University of California, San Diego
Department of Recreation, 0529
Attention: Director of Recreation
9500 Gilman Drive
La Jolla, California 92093-0529

Associated Students of San Diego State University
Attention: Executive Director
5500 Campanile Drive
San Diego, California 92182-7804

If to CITY:

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

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

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

7.2 Compliance with Law.

LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE'S sole cost and expense. LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any law, statute, ordinance, or regulation.

7.3 CITY Approval.

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

7.4 Nondiscrimination.

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

7.5 Compliance with CITY'S Equal Opportunity Contracting Program.

- a. Equal Opportunity Contracting. LESSEE shall comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated into this Lease. LESSEE and all of its subcontractors are individually responsible to abide by its contents.

LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE shall not discriminate against any employee or applicant for employment on any basis prohibited by law.

LESSEE submitted and CITY acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets

forth the actions that LESSEE will take to achieve CITY'S commitment to equal employment opportunities.

LESSEE shall insert the foregoing provisions in all subcontracts for any work covered by this Lease so that the provisions will be binding upon each subcontractor. LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by CITY'S Equal Opportunity Contracting Program staff.

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

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

7.6 Partial Invalidity.

If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.

7.7 Legal Fees.

In the event of any litigation regarding this Lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.

7.8 Number and Gender.

Words of any gender used in this Lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.

7.9 Captions.

The Lease outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Lease. The numbers of the paragraphs and pages of this Lease may not be consecutive. The lack of consecutive numbers is intentional and shall have no effect on the enforceability of this Lease.

7.10 Entire Understanding.

This Lease contains the entire understanding of the parties. LESSEE, by signing this Lease, agrees that there is no other written or oral understanding between the parties with respect to the Premises. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each of the parties in this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Lease. The failure or refusal of any party to read the Lease or other documents, inspect the Premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this Lease will be valid unless it is in writing and signed by all parties.

7.11 CITY Employee Participation Policy.

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

7.12 Drug-free Workplace.

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

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

- (3) Any available drug counseling, rehabilitation, and employees assistance programs.
- (4) The penalties that may be imposed upon employees for drug abuse violations.

7.13 Disabled Access Compliance.

LESSEE shall comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE'S compliance shall include but not necessarily be limited to the following:

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

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

7.14 Standard of Employees.

LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner.

7.15 Supersedure.

This Lease, upon execution, supersedes and annuls the lease between CITY and LESSEE executed on September 24, 1975, Document No. 753233, and as amended on June 12, 1989, Document No. RR-273710; and the Memorandum of Understanding, executed on September 15, 1987, Document No. 769810 and the First Amendment to the Memorandum of Understanding, executed by CITY on February 23, 1993, Document No. 769811, which are hereafter void and of no effect.

7.16 Relocation Payments

LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this Lease.

7.17 Water Quality - Best Management Practices.

The CITY and LESSEE are committed to the implementation of control (best management practices, or BMPs) to manage activities on the Premises in a manner which aids in the protection of the City of San Diego's precious water resources. It is the LESSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of Section 43.03, Stormwater Ordinance.

Therefore, LESSEE shall, at minimum, implement and comply, as applicable, with the BMPs for industrial and commercial facilities adopted under the San Diego Municipal Code Section 43.0307 (a).

It is ultimately the LESSEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, the LESSEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

7.18 San Diego's Strong Mayor Form of Governance.

All references to "City Manager" in this Lease and any subsequent amendments to this Lease shall be deemed to refer to "Mayor." This section becomes effective on January 1, 2006 and shall remain in effect for the duration the City operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to article XV of the City of San Diego City Charter.

7.19 Environmental Finding.

This activity is not a "project" and is exempt from CEQA pursuant to State CEQA Guidelines, Section 15060(c)(3).

SECTION 8: SIGNATURES

8.1 Signature Page.

This Lease is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

CITY OF SAN DIEGO

Date 8/19/08

By: [Signature]
James F. Barwick, Real Estate Assets Director

LESSEE: ASSOCIATED STUDENTS OF SAN
DIEGO STATE UNIVERSITY

Date 7/21/08

By: [Signature]
Name and Title: Executive Director

By: _____
Name and Title: _____

LESSEE: THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA

Date _____

By: [Signature]
Name and Title: Diane M. Griffiths
Secretary and Chief of Staff to The Regents

By: _____
Name and Title: _____

APPROVED AS TO FORM

[Signature]
LLOYD C. LEE
UNIVERSITY COUNSEL OF THE REGENTS
OF THE UNIVERSITY OF CALIFORNIA

APPROVED as to form and legality this 20th day of August, 2008.

MICHAEL J. AGUIRRE, CITY ATTORNEY

By: [Signature]
Deputy City Attorney
[Signature]

SECTION 9: EXHIBITS

9.1 Exhibit "A" – Premises.

EXHIBIT 'A'
LEGAL DESCRIPTION FOR
ASSOCIATED STUDENTS AND FACULTY OF
S.D.S.U. AND REGENTS OF U.C.

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LAND OF FALSE BAY ALSO KNOWN AS MISSION BAY, AND INCLUDING ANY PORTION OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT STATION #999, THE NAD 83 COORDINATES OF SAID STATION BEING NORTH 1861952.14 AND EAST 6261038.58, AS SHOWN ON ROS 16891, AS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE NORTH 34°39'08" WEST 8701.14 FEET TO THE CITY OF SAN DIEGO GPS STATION PT #1904, THE NAD 83 COORDINATES OF SAID STATION BEING NORTH 1869109.87 AND EAST 6256091.18 PER ROS 14492, AS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE SOUTH 26°22'10" WEST 3559.90 FEET TO THE TRUE POINT OF BEGINNING; THE NAD 83 COORDINATES OF SAID POINT BEING NORTH 1865920.39 AND EAST 6254510.02; THENCE

1. SOUTH 42°25'45" EAST 25.00 FEET; THENCE
2. SOUTH 12°57'41" EAST 7.03 FEET; THENCE
3. NORTH 77°02'19" EAST 3.76 FEET; THENCE
4. SOUTH 12°57'41" EAST 16.59 FEET; THENCE
5. SOUTH 77°02'19" WEST 3.76 FEET; THENCE
6. SOUTH 12°57'41" EAST 21.19 FEET; THENCE
7. NORTH 77°02'19" EAST 35.37 FEET; THENCE
8. SOUTH 12°57'41" EAST 103.54 FEET; THENCE
9. SOUTH 77°02'19" WEST 6.64 FEET; THENCE
10. SOUTH 12°57'41" EAST 8.39 FEET; THENCE
11. SOUTH 42°47'03" EAST 22.09 FEET; THENCE
12. NORTH 47°12'55" EAST 11.01 FEET; THENCE.

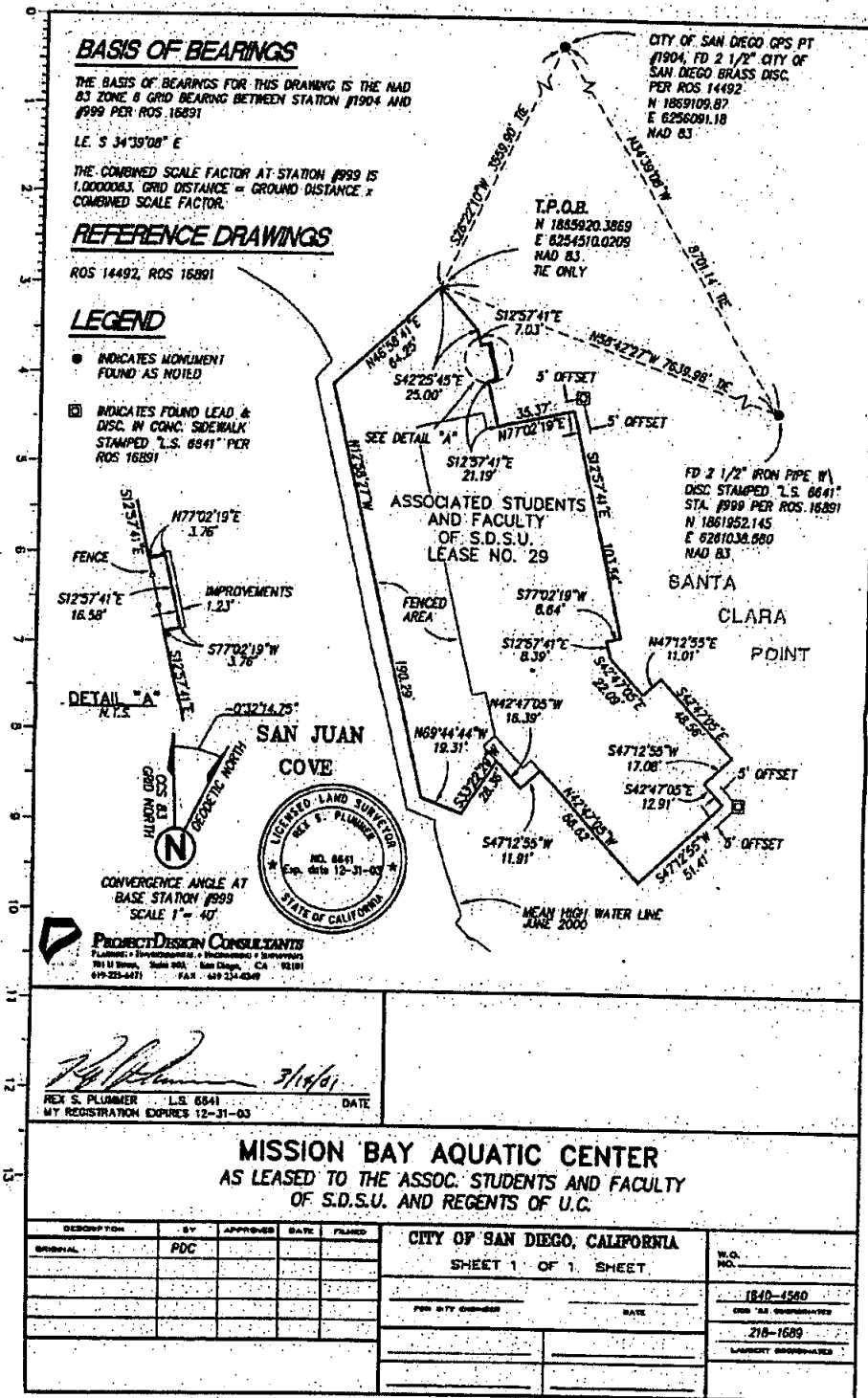
Exhibit "A" – Premises.

- | | | |
|---------------------------------------|----------------------|--|
| 13. | SOUTH 42°47'05" EAST | 48.56 FEET; THENCE |
| 14. | SOUTH 47°12'55" WEST | 17.08 FEET; THENCE |
| 15. | SOUTH 42°47'05" EAST | 12.91 FEET; THENCE |
| 16. | SOUTH 47°12'55" WEST | 51.41 FEET; THENCE |
| 17. | NORTH 42°47'05" WEST | 66.62 FEET; THENCE |
| 18. | SOUTH 47°12'55" WEST | 11.91 FEET; THENCE |
| 19. | NORTH 42°47'05" WEST | 16.39 FEET; THENCE |
| 20. | SOUTH 33°22'29" WEST | 28.36 FEET; THENCE |
| 21. | NORTH 69°44'44" WEST | 19.31 FEET; THENCE |
| 22. | NORTH 12°58'27" WEST | 190.29 FEET; THENCE |
| 23. | NORTH 46°58'41" EAST | 64.25 FEET TO THE TRUE POINT OF BEGINNING. |
| CONTAINING 0.534 ACRES, MORE OR LESS. | | |




 REX S. FLUMMER
 L.S. 6641
 EXPIRATION DATE 12/31/03

Exhibit "A" - Premises.



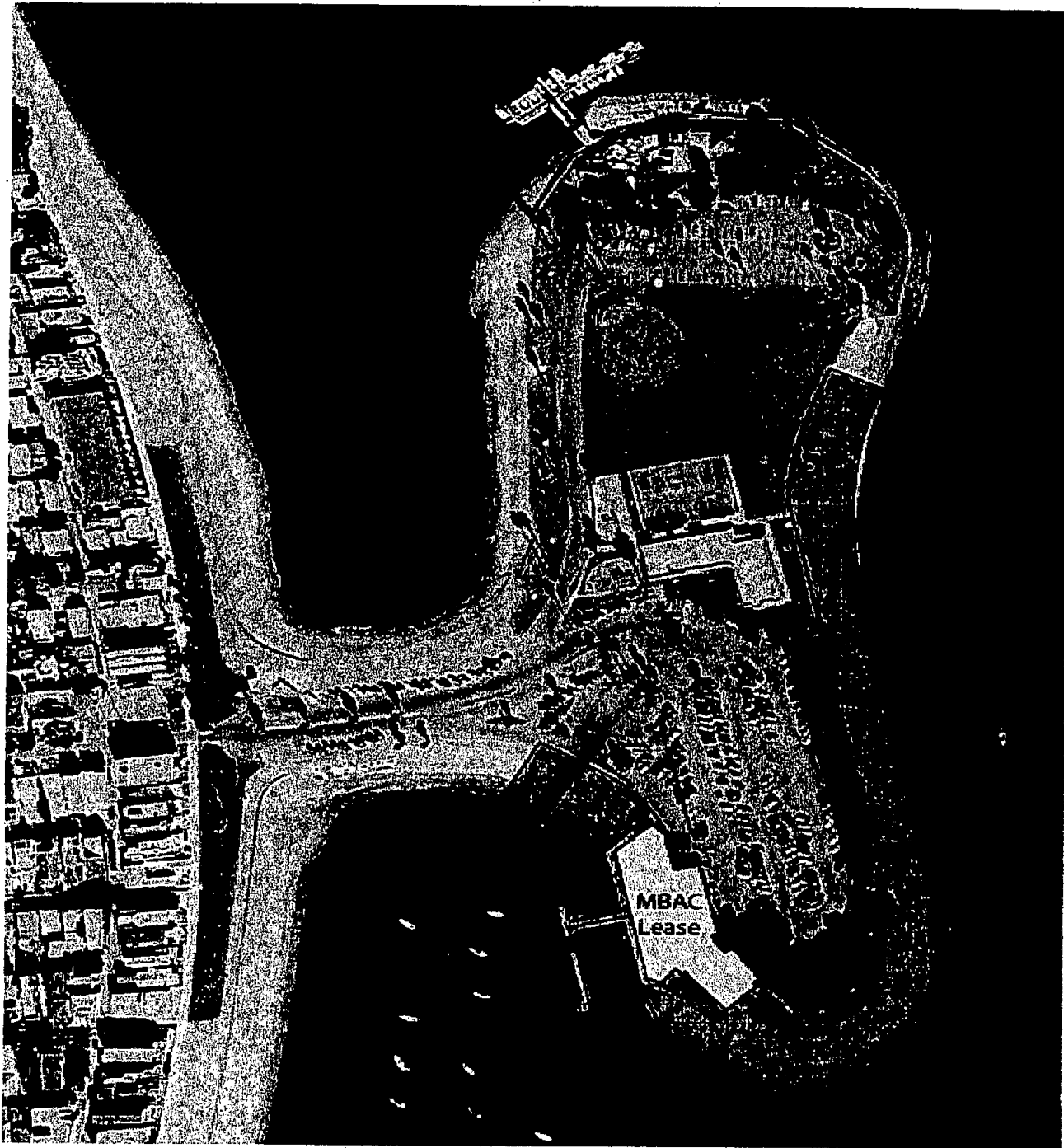
9.2 Exhibit "B" - List of Approved Colleges and Universities.

San Diego County Colleges and Universities

Alliant University
Azusa Pacific in San Diego
Bethel Seminary San Diego
California Institute for Human Science Encinitas
California Pacific University
California State University San Marcos
California Western School of Law
Chapman University College San Diego
Coleman College
Cuyamaca Community College
Design Institute of San Diego
Fashion Institute of Design and Merchandising
Grossmont Community College
Meric College in San Diego
Mesa Community College
Mira Costa Community College
National University
New School of Architecture
Palomar Community College
Platt College
Point Loma Nazarene University
Salk Institute
San Diego Christian College
San Diego City Community College
San Diego Miramar Community College
San Diego State University
Scripps Research Institute
Southwestern Community College
Thomas Jefferson School of Law
United States International University
University of California Riverside in San Diego
University of California San Diego
University of Phoenix in San Diego
University of Redlands in San Diego
University of San Diego
Webster University in San Diego

9.3 Exhibit "C" – Concrete, Dock and Park Areas Adjacent to the Premises.

Exhibit C- Park Land



9.4 Exhibit "D" – Hours of Operation.

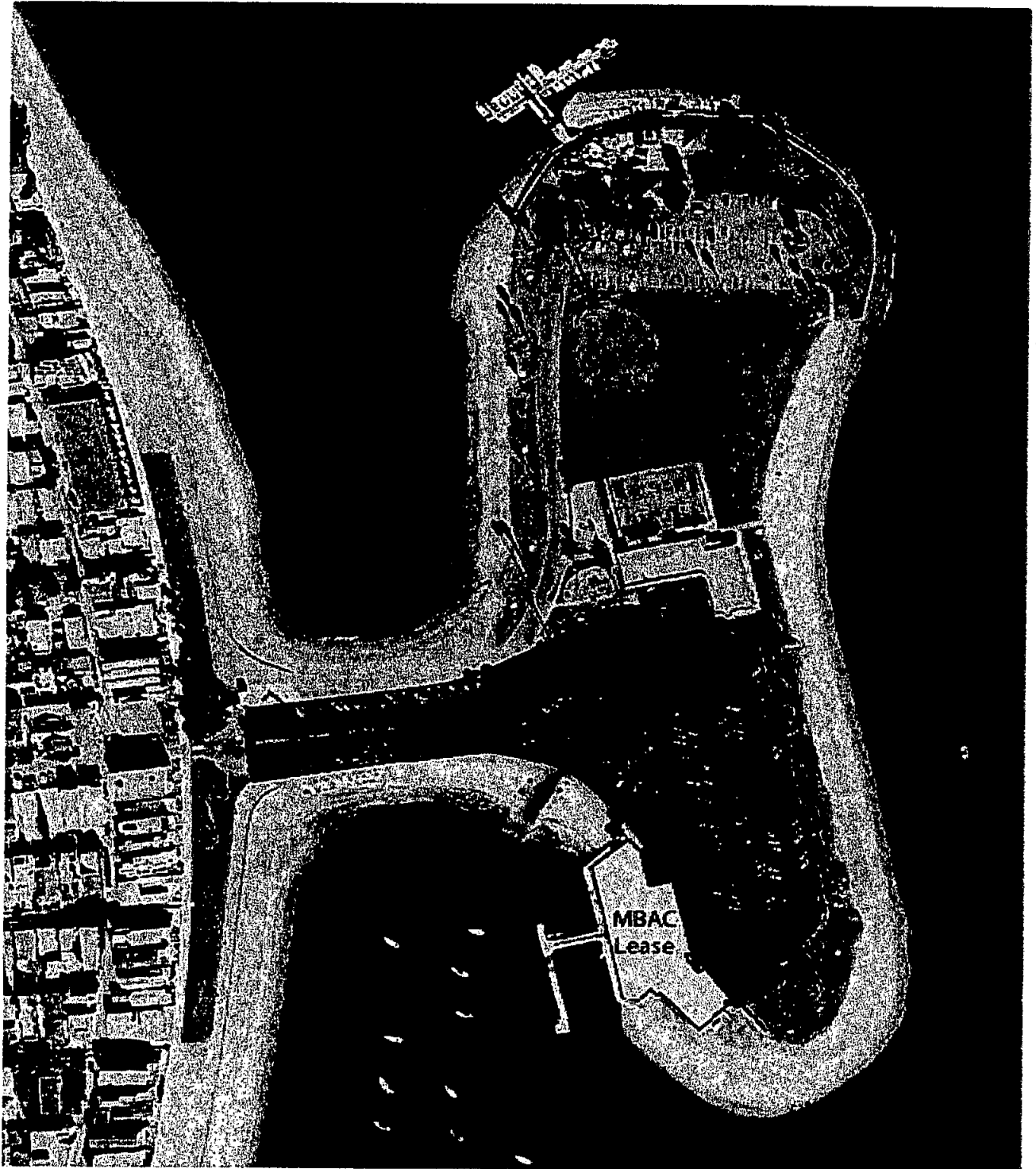
September –May: Tuesday-Sunday, 8:00am-5:00pm

June-August: Monday-Sunday, 8:00am-7:00pm

CLOSED: Memorial Day Weekend, July 4, Labor Day Weekend,
four days for Thanksgiving and two weeks including
Christmas until after New Years Day

9.5 Exhibit "E" – Parking Lot.

Exhibit E- Parking



9.6 Exhibit "F" – Development Plan.

Mission Bay Aquatic Center Family Accessible Restroom Addition

The Mission Bay Aquatic Center is proposing to add a family/accessible restroom that will provide a restroom and shower for adults with children and for persons with disabilities who need assistance and/or privacy (particularly if the assistant is of the opposite sex). We have a large adaptive watersports program for persons with disabilities and this restroom addition will be of a great service to those participants. We also have a large youth program and this will provide a restroom with privacy (especially for children of the opposite sex as the adult) for parents and their children. The new restroom is 72 sq. ft. and will be located adjacent to the existing restrooms in an area that is currently a storage room with a slight expansion requiring an expanded roof area. This addition will not alter the architecture of the current building.

The expanded roof area will also provide a location for the addition of four thermal solar panels to pre-heat the water for our water heater to reduce our natural gas consumption. In addition, as part of the project we will be installing a new high efficiency water heater.

The project will cost \$102,832 and will be funded by a grant from the Department of Boating and Waterways and a grant from the California Solar Initiative's Solar Thermal Pilot Project.

Exhibit "F" – Development Plan.

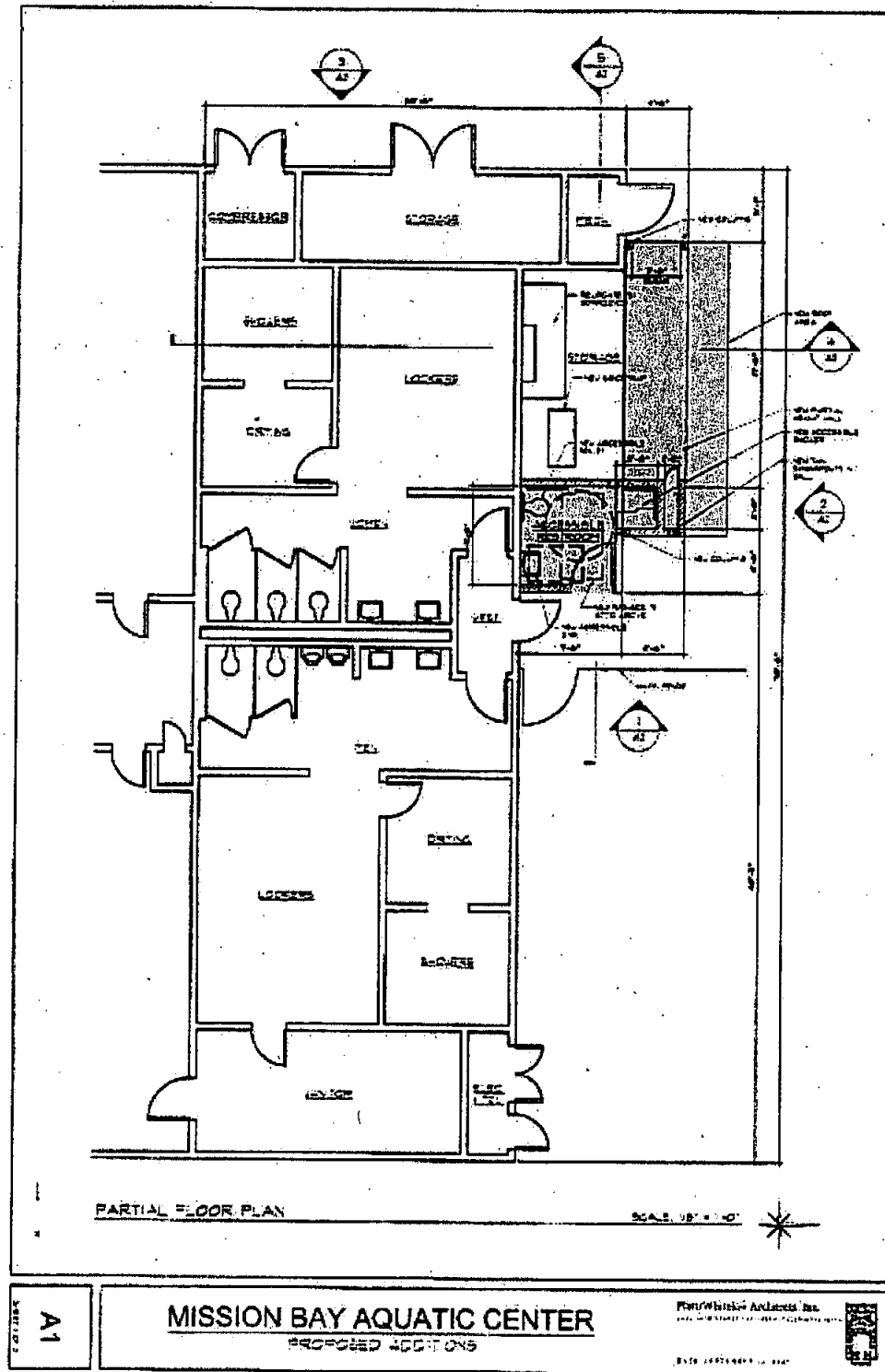


Exhibit "F" - Development Plan.

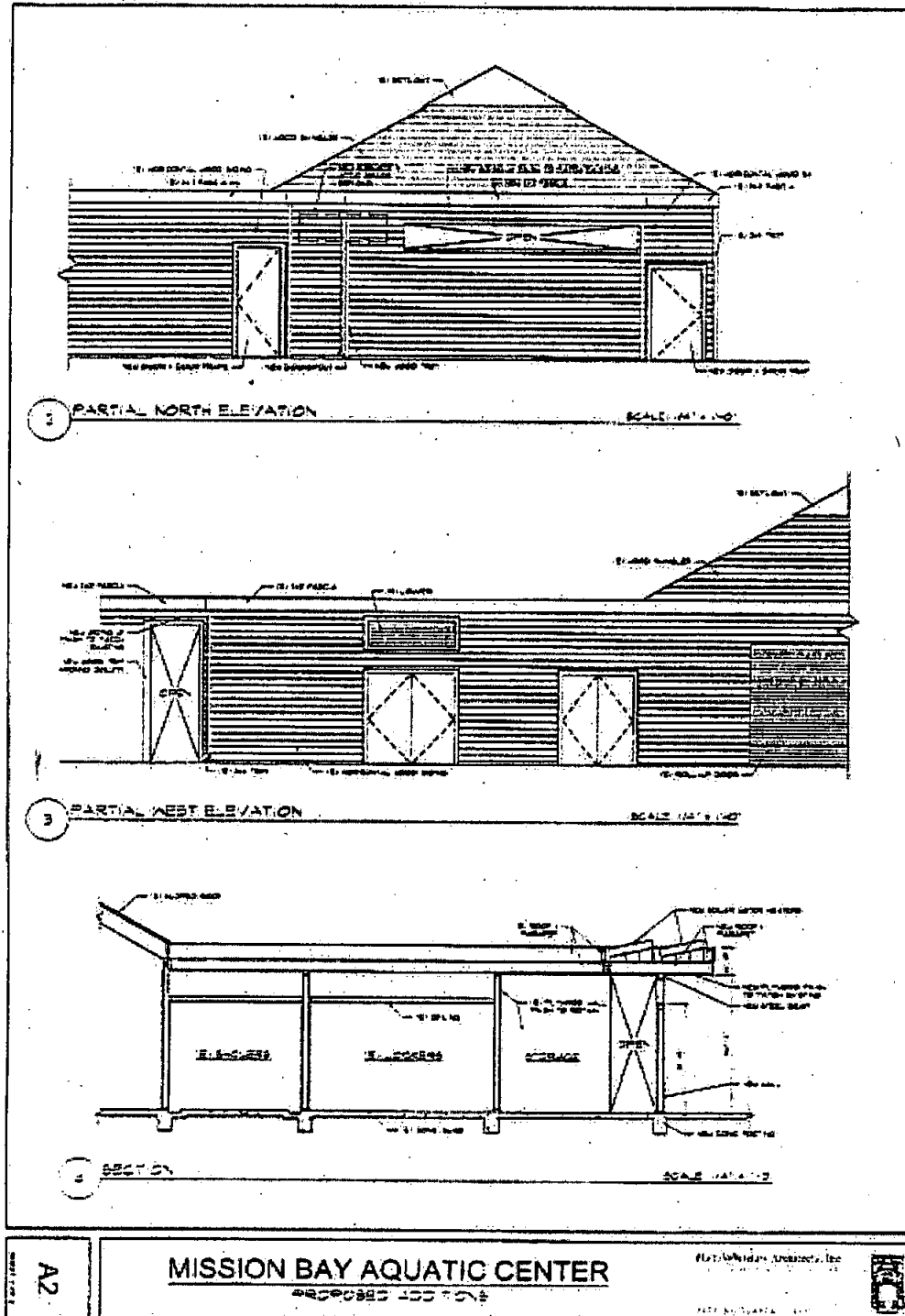


Exhibit "F" – Development Plan.

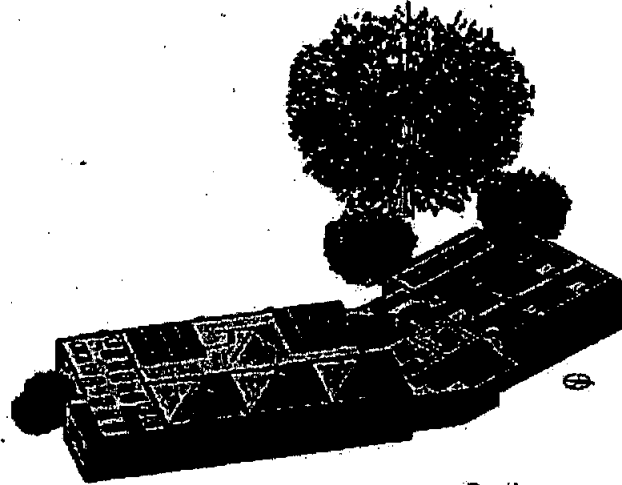


Sullivan Solar Power

Leading the Solar Energy Revolution

7933 Silverton Ave. Ste 706, San Diego, CA 92126, C-10 839077, (858) 271-7758

MISSION BAY AQUATIC CENTER SOLAR PHOTOVOLTAIC GENERATING SYSTEM



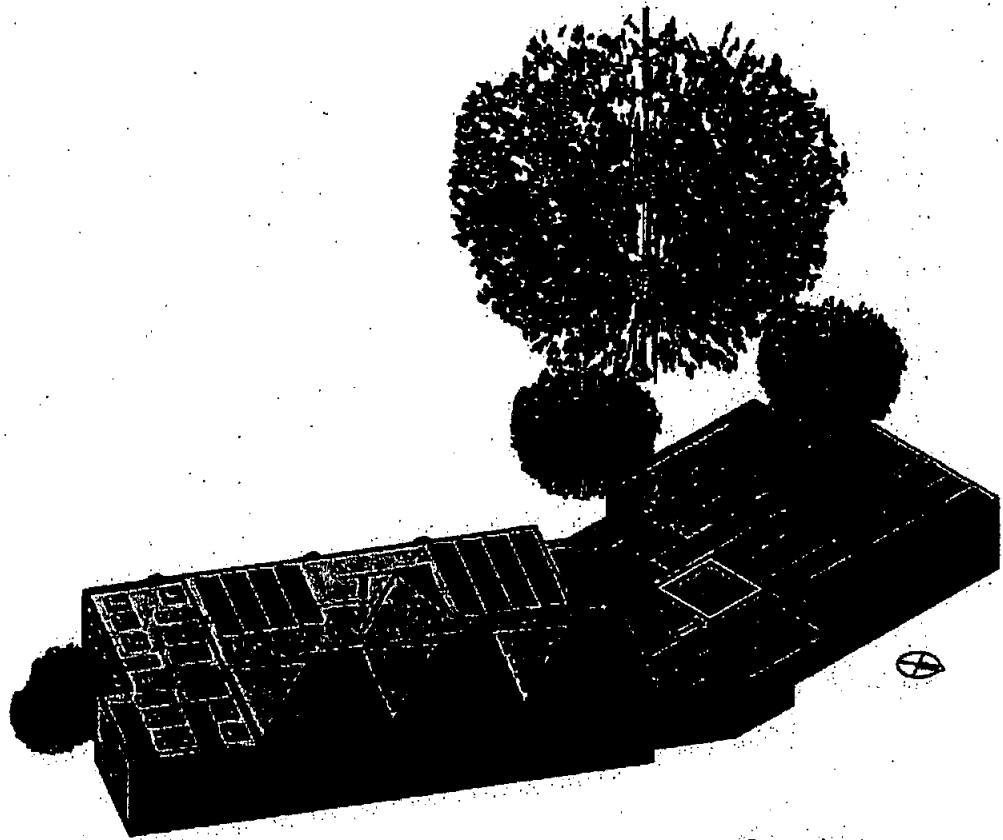
**Southeast
Isometric View**

The Mission Bay Aquatic Center is proposing to install a 41,000 watt solar photovoltaic electric generating system that would generate 95+% of the yearly electrical requirements of the Mission Bay Aquatic Center from the sun and prevent 4.3 million pounds of CO₂ from entering the atmosphere over the minimum 25 year life of the system. This is the equivalent of removing 1000 cars from the road or planting over 3,000 acres of trees to absorb the carbon dioxide produced without this solar generating system.

The 276 Sharp solar panels will be mounted on the flat roof portions of the Mission Bay Aquatic Center with no visual impact or changes to architecture of the Mission Bay Aquatic Center. Please see the attached drawings of the visual perspectives.

The Mission Bay Aquatic Center has obtained a grant from the California Public Utilities Commission's California Solar Initiative in the amount of \$128,098 to assist in the funding of the project. The total project cost is \$318,491. The Mission Bay Aquatic Center is a joint venture of the University of California San Diego and the Associated Students of San Diego State University.

Exhibit "F" – Development Plan.



**Southeast
Isometric View**

Exhibit "F" – Development Plan.

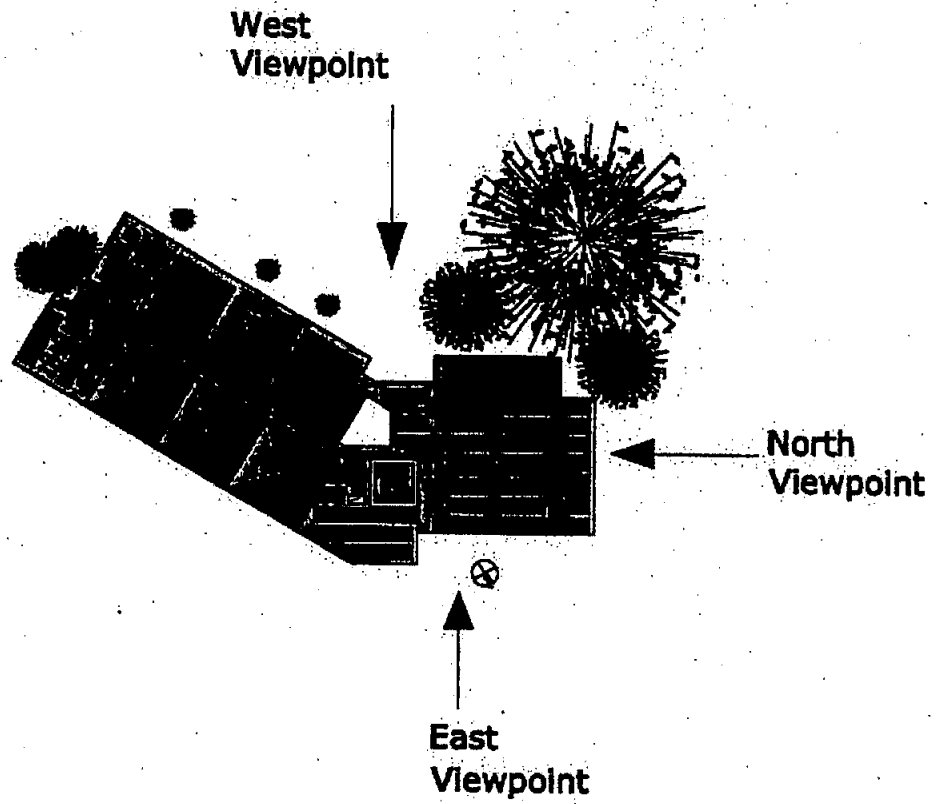
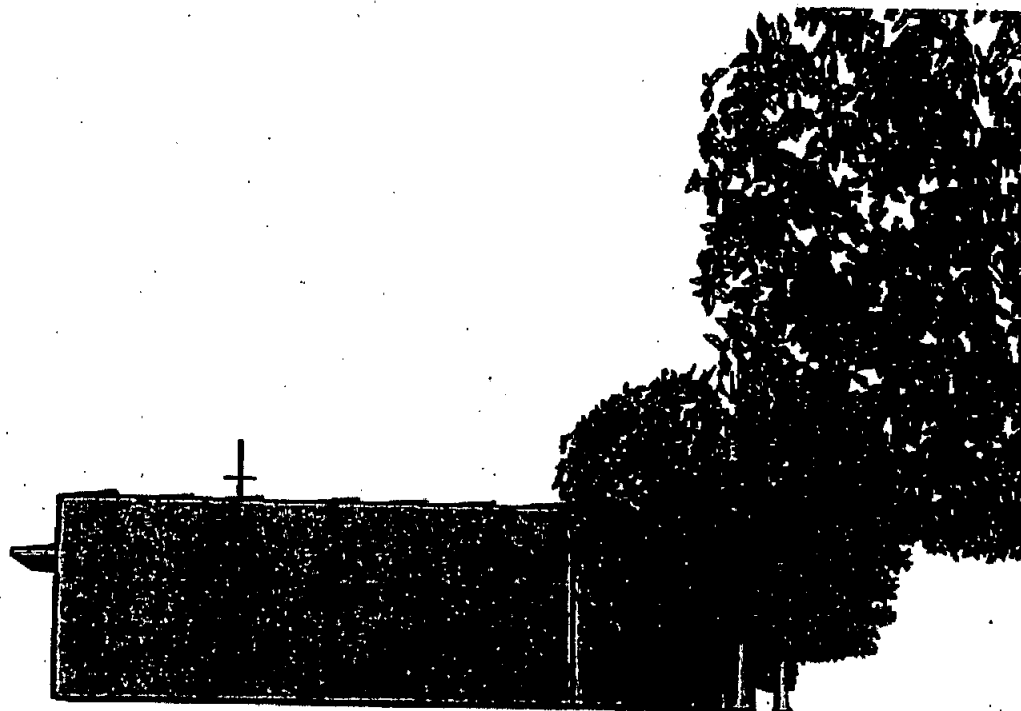


Exhibit "F" – Development Plan.



Looking East

Exhibit "F" – Development Plan.

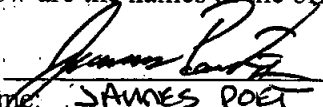


Looking North

9.7 Exhibit "G" - Corporate Name.

CORPORATE NAME

I, JAMES POET, certify that I am the PRESIDENT of the corporation named in the attached Lease; that DAN CORNTH WAITE, who signed this Lease on behalf of the corporation, was then EXEC. DIRECTOR of the corporation; that this Lease was duly signed for and on behalf of the corporation by authority of its governing body, pursuant to a resolution duly adopted by its Board of Directors on AUGUST 11, 2008, and is within the scope of its corporate powers; and that set out below are the names of the officers and directors of the corporation.

By 
Name: JAMES POET
Title: PRESIDENT

CORPORATE SEAL

Name JAMES POET, PRESIDENT
Title _____

Name JOY SALVATIN, EXEC. VICE PRESIDENT
Title _____

Name GRANT GARSKE, VICE PRESIDENT FINANCE
Title _____

Name TIM VELASQUEZ, VICE PRESIDENT UNIV. AFFAIRS
Title _____

9.7 Exhibit "G" - Corporate Name.

CORPORATE NAME

I, Diane M. Griffiths, certify that I am the Secretary of the corporation named in the attached Lease; that DIANE GRIFFITHS, who signed this Lease on behalf of the corporation, was then SECRETARY of the corporation; that this Lease was duly signed for and on behalf of the corporation by authority of its governing body, pursuant to a resolution duly adopted by its Board of Directors on JANUARY 18, 2008, and is within the scope of its corporate powers; and that set out below are the names of the officers and directors of the corporation.

By [Signature]
Name: Diane M. Griffiths
Title: Secretary

CORPORATE SEAL

Name _____
Title _____

Name Richard C. Blum
Title Chairman

Name Russell S. Gould
Title Vice Chairman

Name _____
Title _____

101
7/15

RESOLUTION NUMBER R- **303937**

DATE OF FINAL PASSAGE **JUL 29 2008**

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE
A 15-YEAR LEASE, WITH ONE TEN YEAR OPTION TO
EXTEND, WITH THE ASSOCIATED STUDENTS OF SDSU
AND THE REGENTS OF THE UCSD FOR THE OPERATION
OF THE MISSION BAY AQUATIC CENTER.

WHEREAS, in September 1975, the Associate Students of SDSU and the Regents of the
UCSD [collectively, "Lessee"], entered into a 25-year lease with the City of San Diego [City] for
.534 acres of improved property located at 1001 Santa Clara Place in Mission Bay Park and
known as the Mission Bay Aquatic Center; and

WHEREAS, renovation of the existing 12,500 square foot City owned building was
consideration for the lease; and

WHEREAS, following protracted negotiations, a 15-year lease with an option to extend
an additional 10-years has been agreed upon for the purpose of collegiate and other incidental
aquatic sports programs; and

WHEREAS, the Lessee will invest approximately \$432,500 into the property within one
year on the installation of a solar electric generating system and remodeling the restrooms and
showers to meet ADA requirements; and

WHEREAS, the Lessee will maintain the dock and public parkland adjacent to the
leasehold at no cost to the City and pay rent of 10% on gross revenue from incidental users;
NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor, or his
designee, is authorized to execute a 15-year lease, with one 10-year option to extend, with the

Associated Students of SDSU and the Regents of the UCSD for operation of the Mission Bay Aquatic Center located at 1001 Santa Clara Place in Mission Bay Park.

BE IT FURTHER RESOLVED, that any assignment of the lease shall come before Council.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

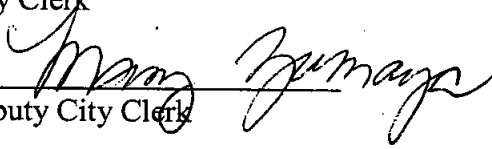
By


Todd Bradley
Deputy City Attorney

TB:bas
06/16/08
Or.Dept: READ
R-2008-1170.REV.
MMS #5893

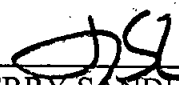
I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUL 15 2008.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 7-29-08

(date)


JERRY SANDERS, Mayor

Vetoed: _____

(date)

JERRY SANDERS, Mayor

Passed by the Council of The City of San Diego on July 15, 2008, by the following vote:

YEAS: PETERS, ATKINS, YOUNG, MAIENSCHIN, FRYE, MADAFFER,
& HUESO.

NAYS: NONE.

NOT PRESENT: NONE.

RECUSED: FAULCONER.

AUTHENTICATED BY:

JERRY SANDERS

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

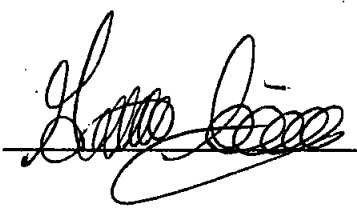
By: GIL SANCHEZ, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-303937, approved by the Mayor of The City of San Diego,
California on July 29, 2008.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By: , Deputy