



December 6, 1999

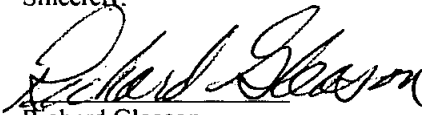
Nancy Boyce
City of San Diego
Real Estate Assets Department
1200 Third Ave Suite 1700
San Diego, CA 92101-4199

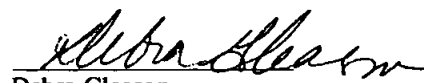
Re: Authorization to perform all obligations of Lessee under the Lease dated October 30, 1995, between The City of San Diego, and Richard and Debra Gleason.

Dear Nancy Boyce,

Please be advised that Jason Boone is authorized by Richard and Debra Gleason, and Mission Bay Sportcenter, a corporation to carry out the obligations of the Lessee regarding all obligations under the lease. This obligation shall expire on November 1, 2005, or sooner, provided Lessee notifies Lessor in writing of it's intention to terminate this authority as of a date certain. Upon termination of this authorization, it shall become null and void and of no further force and effect, and all obligations to perform all clauses under the subject lease, shall revert to Lessee as of the date certain.

Sincerely,


Richard Gleason
Mission Bay Sportcenter


Debra Gleason
Mission Bay Sportcenter

COPY

THE CITY OF SAN DIEGO

RICHARD L. GLEASON AND DEBRA L. GLEASON

Percentage Lease

DOCUMENT NO. 00-18224

FILED OCT 16 1995

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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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 RICHARD L. GLEASON and DEBRA L. GLEASON, hereinafter called "LESSEE."

SECTION 1: USES

- 1.1 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, described in Exhibit "A" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises" or "leased premises."
- 1.2 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of operation and maintenance of a public water sports center and dock facilities providing instruction in beginning through intermediate sailing, water activities, water sports, scuba instruction and charters, and rental, service, and sales of recreational boats and aquatic equipment; food and nonalcoholic beverage sales to the general public, in accordance with the General Development Plan referenced in Section 6.12 hereof; 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.

The use of the premises for any unauthorized purpose shall constitute a substantial default and subject this lease to termination at the sole option of the CITY.

LESSEE covenants and agrees to use the premises throughout the term hereof for 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 thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

CITY also hereby grants to LESSEE a nonexclusive license to use that portion of the public beach northerly of the leased premises, as shown on the attached Exhibit "A", for storage of small boats used in LESSEE'S instructional programs. The boat storage shall not unreasonably block or interfere with public access to the beach. This license may be revoked at any time by the City Manager, without cause, upon sixty (60) days prior written notice to LESSEE.

1.3 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.

1.4 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold, and enjoy the premises. 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.

1.5 Easements and Reservations.

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

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.

- 1.6 Competent Management. Throughout the term of this lease agreement, LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a public sailing center and dock facilities and related activities in a fiscally responsible manner.
- 1.7 Parking. All parking spaces in and around the leased premises shall be open to the general public at all times.

SECTION 2: TERM

- 2.1 Commencement. The term of this agreement shall be ten (10) years commencing on the first day of the calendar month following execution by the City Manager. "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager.
- 2.2 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.
- 2.3 Surrender of Premises. At termination of this lease for any reason, LESSEE shall execute, acknowledge, and deliver to CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the premises. The premises shall be delivered free and clear of all liens and encumbrances and in a decent, safe, and sanitary condition.

If LESSEE fails or refuses to deliver the required deed, 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 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, or delivered to the Office of the City Treasurer, City Operations Building, 1222 First Avenue, Third Floor, San Diego, California.

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

3.2 Rent.

- a. Minimum Rent. The annual minimum rent established for the first three (3) years following the effective date of this lease is Forty-one Thousand Six Hundred Dollars (\$41,600).

If the annual minimum rent is greater than the annual percentage rent on lease year basis, then the annual minimum rent minus any percentage rent paid is required to be paid within thirty (30) days of the anniversary of that lease year.

It is the intent of this provision that LESSEE shall pay the annual minimum rent as a guarantee against the percentage rent requirement and that the greater of the two requirements, minimum or percentage, whichever occurs throughout the term shall prevail on an annual basis.

- b. Minimum Rent Adjustment. Effective at the beginning of the first day of the fourth lease year of this lease and at three (3)-year intervals 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. 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 minimum rents at the prior rate. Any additional rents determined by the adjustment to be due for the year previously paid at the prior rate shall be paid to CITY within thirty (30) days following written notice or within thirty (30) days

following the anniversary of that lease year, whichever is later. 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:

<u>Percentages</u>		<u>Business Activities</u>
Eight Percent	(8%)	Instruction and rentals of boats and aquatic equipment (adults over 18 years of age).
Two Percent	(2%)	Sales of new boats and related accessories; service and repairs of boats and aquatic equipment.
One Percent	(1%)	Sales of used boats.
Two Percent	(2%)	Youth camps (organized group programs for youths 18 years of age and under).
Five Percent	(5%)	Sales of food and nonalcoholic beverages.
Twenty-five Percent (25%)		Of commissions or any other compensation paid to LESSEE or sublessees for the right to install or operate coin-operated vending, game, or service machines or devices on the premises, including telephones, or 10% of the gross income from any such coin-operated machines or devices owned, rented, or leased by LESSEE or sublessees for use on the premises.
Ten Percent (10%)		Of all other authorized activities

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 Section 1.2, Uses, hereof as may be approved in writing by the City

Manager prior to commencement of such other service(s) or operation(s). Provided, however, any activity conducted on the premises without prior approval by the City Manager shall be subject to the requirements of Section 3.7, Unauthorized Use Charge, hereof.

- d. Percentage Rate Adjustment. At least six (6) months prior to the end of the fifth year of the term of this agreement, 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 five-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 Section 3.02e. below. In the event that such adjustment is not made by mutual consent prior to two (2) months before the end of said five-year period, then the parties hereto will refer the matter to appraisal under the terms hereinafter set forth.
- e. Percentage Rate Appraisal. In the event the parties do not agree upon the amount of adjustment to said percentage rates as provided for in the previous section, then the adjustment shall be determined by a qualified professional independent real estate appraiser selected by mutual consent of the parties to this agreement from the list of appraisers approved by CITY. CITY and LESSEE agree to equally share the cost of the mutually selected appraiser. 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 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 or her individual capacity, upon application by either CITY or LESSEE with prior notice thereof to the other party. In the event that the Superior Court judge declines to make the appointment, the parties hereto agree that the third appraiser shall be promptly determined in accordance with the rules of the American Arbitration Association. Said third appraiser shall complete the assignment within sixty (60) days of appointment. Each party shall pay the cost of its own selected appraiser, and both CITY and LESSEE agree to equally share the cost of the third mutually selected or court-appointed appraiser. CITY and LESSEE

agree to accept and be bound by the percentage rates determined by the appraiser selected or appointed to complete the assignment.

In establishing the percentage rates for the items under controversy, the appraiser shall consider CITY'S property as a fee simple absolute estate, and as vacant and available for a full lease term equal to the initial full term of 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 five-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). IN NO EVENT, HOWEVER, SHALL ANY RENT ADJUSTMENT RESULT IN ANY DECREASE IN ANY PERCENTAGE RENTAL RATE. Notwithstanding the foregoing, the City Manager, in his sole discretion, may determine that no market value adjustment is necessary and waive the requirement for the appraisal process for any specific adjustment period.

3.3 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 shall 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. 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.
- b. The percentage rental due CITY, computed and totaled.
- c. The accumulated total of all rents previously paid for the current lease year.
- d. Payment in the amount of 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.).

3.4 Gross Income. "Gross income" or "gross 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.

3.5 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 issue 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 3.5a. hereinabove, 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.

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. 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 ten percent (10%) 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(s) plus interest on such amount as defined in Section 3.6, Delinquent Rent and Audit Fees, hereof, 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(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.

- 3.6 Delinquent Rent and Audit 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 five percent (5%) [being a total of ten percent (10%)], which is hereby mutually agreed by the parties hereto to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payments of rent be less than Twenty-five Dollars (\$25).

In the event CITY audit(s), if applicable, discloses that the rent for the audited period(s) has been underpaid in excess of ten percent (10%) 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 ten percent (10%) 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.

- 3.7 Unauthorized Use Charge. LESSEE shall pay CITY fifteen percent (15%) 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 fifteen percent (15%) charge in this clause and the payment of this charge or any part of it, does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the leased premises.

SECTION 4: ASSIGNMENT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants, and conditions of this lease, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 4.2 Assignment and Subletting. LESSEE shall not assign this lease or any interest therein and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the premises or any part thereof, 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 such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the written consent of the City Manager.

"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 shall require, as a condition to approval of any sublease of the majority portion of the leasehold or any assignment, that the LESSEE pay additional consideration to CITY, as set forth in Section 4.6, Additional Consideration to CITY, hereof, commencing on the effective date of such proposed sublease of the majority portion of the leasehold or assignment, and may further require that this lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current. 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 such persons and entities are of good character and reputation in the community.

- 4.3 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 proceeds of such loan or loans be devoted exclusively to the purpose of developing the leased premises in accordance with Section 6.12, Development Plan, hereof. 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 attorneys' fees and other normal expenses incidental to such construction.

Any subsequent encumbrances on the premises or on any permanent improvements thereon must first have the approval in writing of the City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the premises. Provided, however, after the premises are fully developed in accordance with said Development Plan to the satisfaction of the City Manager, proceeds from refinancing or from such subsequent encumbrances may be used to reduce LESSEE'S equity so long as LESSEE pays additional consideration to CITY as set forth in Section 4.6, Additional Consideration to CITY, hereof, and further that LESSEE understands and specifically agrees that the City Manager shall have the sole and absolute discretion to approve, disapprove, or condition 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, 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.

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 conditions hereof. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have a financial interest in this lease. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

4.4 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 if any such default is not curable within thirty (30) days, and LESSEE shall fail to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Section 4.4a.(1), hereinabove 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 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 of Lender. 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, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

4.5 Eminent Domain. 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 remaining part 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.

4.6 Additional Consideration to CITY. LESSEE acknowledges that CITY expends considerable sums for maintenance of Mission Bay Park areas adjacent to the leasehold. LESSEE further acknowledges that the expenditure of such funds enhances the value of the leasehold. LESSEE and CITY agree that the exact amount of such enhancement is impossible to ascertain. However, CITY desires to be reimbursed to a reasonable extent in consideration for the continued maintenance of adjacent park areas. Therefore, LESSEE and CITY agree that in the event of an assignment or in the event of a refinancing creating an encumbrance against the leasehold after the permanent improvements have been constructed, pursuant to the Development Plan as described in Section 6.12 hereof, LESSEE shall pay to CITY two percent (2%) of the gross amount paid for the leasehold in connection with an approved assignment of the lease, or two percent (2%) of the amount of any increased loan or encumbrance against the property over and above the amount of the encumbrance needed to finance the improvements. The amount upon which the two percent (2%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of noncash consideration, including but not limited to stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY'S consent to any assignment or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this paragraph, together with an acknowledgement from the proposed assignee or refinancing agency as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction, be it an assignment or a refinancing. Any assignment or refinancing in violation of the terms and conditions of this paragraph shall be void. The provisions of this paragraph shall not apply to:

- a. An assignment or transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession, or by operation of law for the benefit of the spouse or descendants (i) of LESSEE (if an individual) or (ii) of LESSEE'S principal owner or chief executive officer (if LESSEE is other than an individual);
- b. Such other assignment for which the City Manager determines that the legal and equitable ownership interests in the leasehold have remained unchanged, such as a change in the legal or fictitious name of the LESSEE without any other change in the equity in beneficial

use of, or legal title to, the leasehold as an asset or the income produced thereby.

SECTION 5: INSURANCE RISKS/SECURITY

5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold the CITY, its agents, officers, 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 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, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

5.2 Insurance.

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

(1) Public liability and property damage insurance in the amount of not less than One Million Dollars (\$1,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises.

(2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.3, Encumbrance, 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.

b. LESSEE'S responsibility to maintain said insurance also includes the following:

- (1) Additional Insured. 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.
- (2) 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.
- (3) 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.
- (4) 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 Subsection (4), 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.

- 5.3 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 5.2, 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.

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 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 whether apparent or latent, in the premises, including the presence of any hazardous wastes.
- 6.2 Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, 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.

- 6.3 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises throughout the term. LESSEE will make all repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with the Development Plan described in Section 6.12, Development Plan, hereof and with all applicable laws.
- 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. 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.
- 6.5 Utilities. LESSEE agrees to order, obtain, and pay for all utilities (except water charges) and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground. Unless LESSEE submeters the leased premises, LESSEE shall pay CITY, in addition to rent herein, the sum of Three Hundred Dollars (\$300) per month for all water used in connection with the premises. Said rate shall be reviewed by CITY at the end of each three (3)-year period of this lease and adjusted by CITY thereafter,

based upon LESSEE'S actual water usage. LESSEE specifically agrees to pay the amount as reasonably determined by CITY. Payments shall be subject to late fees as provided for in Section 3.6 hereof.

6.6 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.

6.7 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.

6.8 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.

- 6.9 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.

6.10 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 lease expiration or termination be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except as otherwise provided in this lease.
- b. If CITY elects not to assume ownership of all or any improvements, 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.

- 6.11. Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY 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.
- 6.12 Development Plan. LESSEE agrees to develop the leased premises in accordance with the General Development Plan approved by the City Manager and filed in the Office of the City Clerk which plan is hereby incorporated by this reference. The general contents and provisions of the Development Plan are described in Section 9.2 hereof. The City Manager or his designee shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk. Failure by LESSEE to comply with the General Development Plan shall constitute a major default and subject this lease to termination by CITY. The City Manager, in his sole discretion, may approve an extension to the date specified for completion in the Development Plan of up to one (1) year without further City Council approval.
- 6.13 Hazardous/Toxic Waste. LESSEE will 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 herein.

In the event of any release of a hazardous substance, 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.

LESSEE agrees to 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.

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 such knowledge or cause for belief. Provided, however, if LESSEE knows or has reasonable cause to believe that such 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 such danger. LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the premises. In addition, LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of CITY.

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. Said 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 said 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 such remediation or removal. LESSEE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

- 6.14 Coastal Commission Approval. LESSEE shall comply with the California Coastal Act, at its sole cost, and apply to the San Diego Coast Regional Commission or other such authorized state body for any necessary coastal development permit authorizing the construction of improvements in the Coastal Zone. If such permit is required, LESSEE will proceed with diligence to obtain it, but if unable to do so within twelve (12) months after the effective date of this lease, this lease will terminate at either

CITY'S or LESSEE'S option expressed by written notice to the other party.

- 6.15 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 such asbestos in accordance with Health and Safety Code Section 25915. LESSEE shall disclose the existence of asbestos on the leased premises, as required by Health and Safety Code Section 25915. LESSEE agrees to indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the leased premises.

SECTION 7: GENERAL PROVISIONS

7.1 Notices

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

City Manager
Attention: Real Estate Assets 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.

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

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

7.4 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, 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 submit to the Project Manager statistical information as requested in the City of San Diego Contract Activity Report indicating the amount of subcontracting provided by firms during the period covered by the report. This information should be accompanied by an invoice from each subconsultant/subcontractor/ vendor/service provider listed in the report.
- b. Equal Employment Opportunity. LESSEE will 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 will not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or place of birth.

Upon request by the City of San Diego, LESSEE will submit a current Work Force Report and, if required, an Equal Employment Opportunity Plan which sets forth the actions that LESSEE will take to achieve the CITY'S goals for the employment of African Americans, American Indians, Asians, Filipinos, Latinos, women, and people with disabilities.

Further, LESSEE will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this lease agreement so that such provisions will be binding upon each subcontractor.

- c. 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 will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this lease agreement from local residents and firms as opportunities occur. LESSEE agrees to hire qualified local residents and firms whenever feasible.

LESSEE understands 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 agreement 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. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties, representations, and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this lease.

The failure or refusal of any party to read the lease or other documents, inspect the premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this lease will be valid unless it is in writing and signed by all parties.

- 7.11 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 such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.

7.12 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) The 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.
- c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

7.13 Disabled Access Compliance. LESSEE agrees to 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 such improvements and alterations shall be at the sole cost of LESSEE.
- e. 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 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.
- 7.15 Schedule of Operations. LESSEE shall be open for business a minimum of 40 hours per week, including Saturday and Sunday, for a minimum of 10 months each calendar year. Hours, days, and months of operation shall be arranged to the mutual satisfaction of the City Manager and LESSEE. The City Manager shall have the right to require LESSEE to temporarily limit and/or discontinue its operations during such times as they may conflict with scheduled activities held in Mission Bay Park. Provided, however, that if the schedule of events exceeds a period of two business days, a proportionate deduction in minimum rent shall be excluded from rents due the CITY.
- 7.16 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.

7.17 Supersedure. It is mutually agreed that this lease, upon execution, supersedes and annuls that certain lease executed on the 5th day of May, 1980, with Richard L. Gleason, Document RR-251760, which is hereafter void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under such agreement.

7.18 Damaged Equipment. LESSEE shall salvage within 24 hours any property, real or personal, of LESSEE'S declared by CITY to be a menace to navigation or a nuisance within Mission Bay and to salvage or cause to be salvaged any sunken vessel or property upon the leased premises, irrespective of ownership. CITY may require that any boats not kept in a clean and operable condition be removed from the leased premises.

7.19 Enforcement of Live-Aboard Regulation. LESSEE shall be responsible for the enforcement, both within and in connection with the leased premises, of the following live-aboard regulation:

No person shall remain overnight on board any watercraft or houseboat in Mission Bay Park unless the watercraft or houseboat has a self-contained toilet on board that does not discharge into the waters of the Bay. No owner of any watercraft or houseboat shall allow it to be occupied overnight in Mission Bay Park for a period of more than ninety (90) days, whether successive or cumulative, during any one calendar year. A watercraft or houseboat is presumed to be occupied overnight when there are one or more persons on board after midnight. The lessees of Mission Bay Park lands are primarily responsible for the enforcement of this subsection on the water abutting their leased premises.

The above Live-Aboard Regulation is presently set forth in the San Diego Municipal Code Section 63.25.71 and is subject to amendment or modification by the City Council. LESSEE also agrees to comply or secure compliance with any such amendment or modification.

7.20 Trash and Refuse. LESSEE shall provide containers on or immediately adjacent to the leased premises to receive trash and refuse generated aboard vessels using LESSEE'S docking or launching facilities. Refuse containers shall be located so as to be conveniently used by occupants of vessels using LESSEE'S facilities and shall be of sufficient size and number to contain the refuse generated aboard all vessels using LESSEE'S facilities. The containers shall be covered and emptied regularly enough to prevent them from overflowing or creating unhealthful, unsightly, or unsanitary conditions. The contents of the containers shall be disposed of by LESSEE or others acting pursuant to

LESSEE'S direction at authorized landfills or other garbage reception areas as provided under law applicable at the time of collection.

7.21 Plastic Food Containers.

- a. LESSEE shall not, after the effective date of this lease, provide to its customers any prepared food in polystyrene foam food packaging, nor shall LESSEE obtain or keep any polystyrene foam food packaging of a type, design, and condition suited for providing prepared food to its customers for consumption off the leased premises.
- b. LESSEE'S food packaging for prepared food to be consumed on the premises or for takeout food shall be biodegradable, and LESSEE shall provide upon demand evidence in the form of paid invoices to indicate the purchase of biodegradable containers in amounts sufficient to indicate compliance with this section. LESSEE'S food packaging for prepared food to be consumed off the premises shall be biodegradable unless LESSEE demonstrates to the satisfaction of CITY that biodegradable food packaging materials are not available for purchase in the quantities required by LESSEE. In the event that biodegradable food packaging materials are not available for purchase in the quantities required by LESSEE, LESSEE may limit its use of such packaging to the amount actually available.
- c. For purposes of this lease, the following definitions are applicable:
 - (1) "Prepared food" means foods or beverages which are prepared on the leased premises by cooking, chopping, slicing, mixing, freezing or squeezing, and which require no further preparation to be consumed.
 - (2) "Food packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws and lids which are not intended for reuse, on or in which any foods or beverages are placed or packaged on the leased premises.
 - (3) "Takeout food" means prepared foods or beverages requiring no further preparation to be consumed and which are purchased in order to be consumed off the leased premises.

7.22 Boat Rentals. For purposes of this lease, "vessels" include ships of all kinds, motorboats, sailboats, personal watercraft, and every structure adapted to be navigated from place to place upon the water for recreation or for the transportation of merchandise or persons. LESSEE shall be permitted to rent vessels to the general public subject to prior written approval from the City Manager as to the number and type of

vessels available for rent. The City Manager may, upon written notice to LESSEE and with reasonable cause, modify any approval previously given. LESSEE shall carry commercial general liability insurance, the amounts and coverages of which shall be based upon the City Manager's assessment of the risk associated with the rental operation.

All vessels for rent which are required by law to be registered with the California Department of Motor Vehicles shall be currently registered as rental vessels and carry proper registration numbers and stickers. All vessels for rent shall be identified by LESSEE through the use of distinctive markings or logos. Each rental vessel shall be equipped with a waterproof map detailing all current regulations and activity zones for Mission Bay, along with all safety equipment required by law. At any time that LESSEE is renting a vessel or vessels, LESSEE shall have at least one operational chase boat and staff to operate it available on the waters of Mission Bay. No rental vessel may be stored on public property outside the leasehold. LESSEE agrees that the City Manager or his designees shall have the authority to immediately terminate any rental activities which are not in conformance with the stipulations of this lease or current boating regulations.

- 7.23 Local Coastal Program. Should a local coastal program (hereinafter the "Local Coastal Program") ever be adopted for the Mission Bay Park segment of the CITY Local Coastal Program, and should the Local Coastal Program provide for the collection of a traffic impact mitigation fee from commercial lessees in Mission Bay Park in order to fund all or a portion of the cost of a beach shuttle or other substantially similar public access improvements. LESSEE agrees to contribute its fair and equitable share, as calculated pursuant to the Local Coastal Program, to such a traffic impact mitigation program; provided that the amount payable by LESSEE shall be reasonable and shall not exceed the amount LESSEE would have paid had the entire amount to be funded by traffic impact mitigation fees been reasonably, equitably, and fairly apportioned among all of the commercial lessees in Mission Bay Park. This section shall not be altered or amended without the prior written approval of the California Coastal Commission or an amendment to California Coastal Permit No. 6-93-75/EL.

SECTION 8: SIGNATURES

8.1 Signature Page.

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.

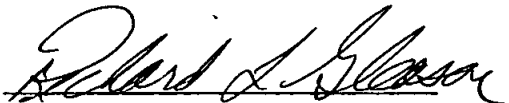
THE CITY OF SAN DIEGO

Date OCT 16 1995

By 

LESSEE: RICHARD L. GLEASON and
DEBRA L. GLEASON

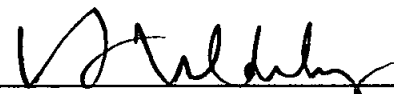
Date 7/25/95

By 
Richard L. Gleason

By 
Debra L. Gleason

APPROVED as to form and legality this 30 day of Oct., 1995.

JOHN W. WITT, City Attorney

By 
Deputy City Attorney

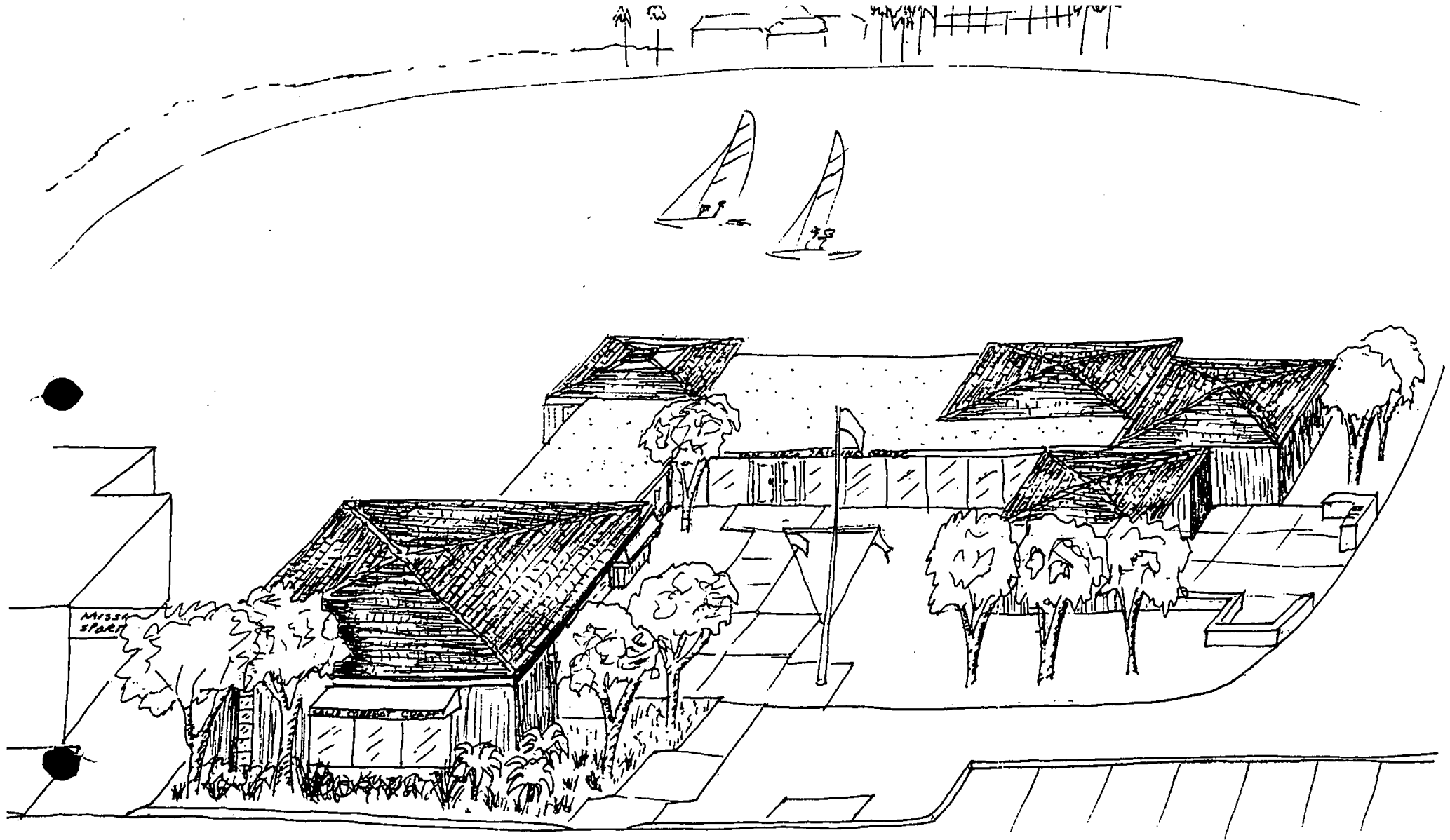
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03-01-95

9.2 General Development Plan.

The General Development Plan consists of:

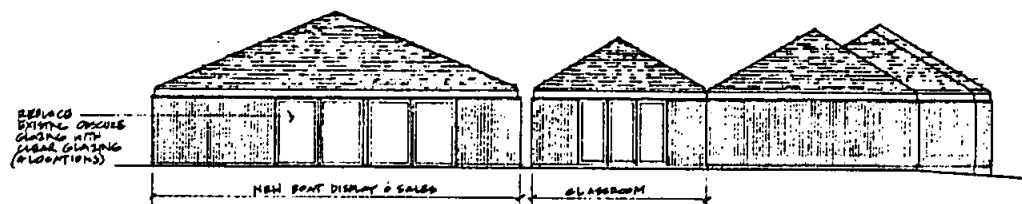
- a. Plot Plan
- b. Development Schedule
- c. Estimated Construction Costs
- d. Financial Plan
- e. Schematic Elevations
- f. Landscape Plan
- g. Others as applicable

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

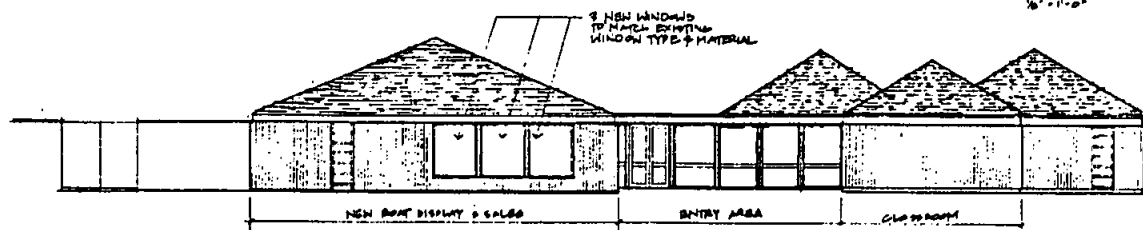


MISSION BAY SPORTCENTER

DEVELOPMENT PLAN



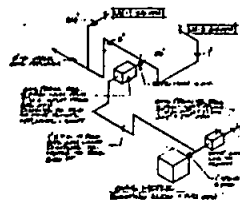
EAST ELEVATION
76' - 11-0"



SOUTH ELEVATION
76' - 11-0"

Paul L. Bishop, AIA Architect of Record	
10274 Adams Avenue • San Diego, California 92124 • 619/574-2800	
THIS DOCUMENT IS THE PROPERTY OF P.L.B. ARCHITECTS. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF P.L.B. ARCHITECTS.	
1/2" = 1'-0"	
MISSION BAY SPORTS CENTER SAN DIEGO SAILING CENTER 1010 Sunset Cliffs Place San Diego, California 92108	
DATE: 7/26/14	SCALE: 1/2" = 1'-0"
DATE: 14-01	15

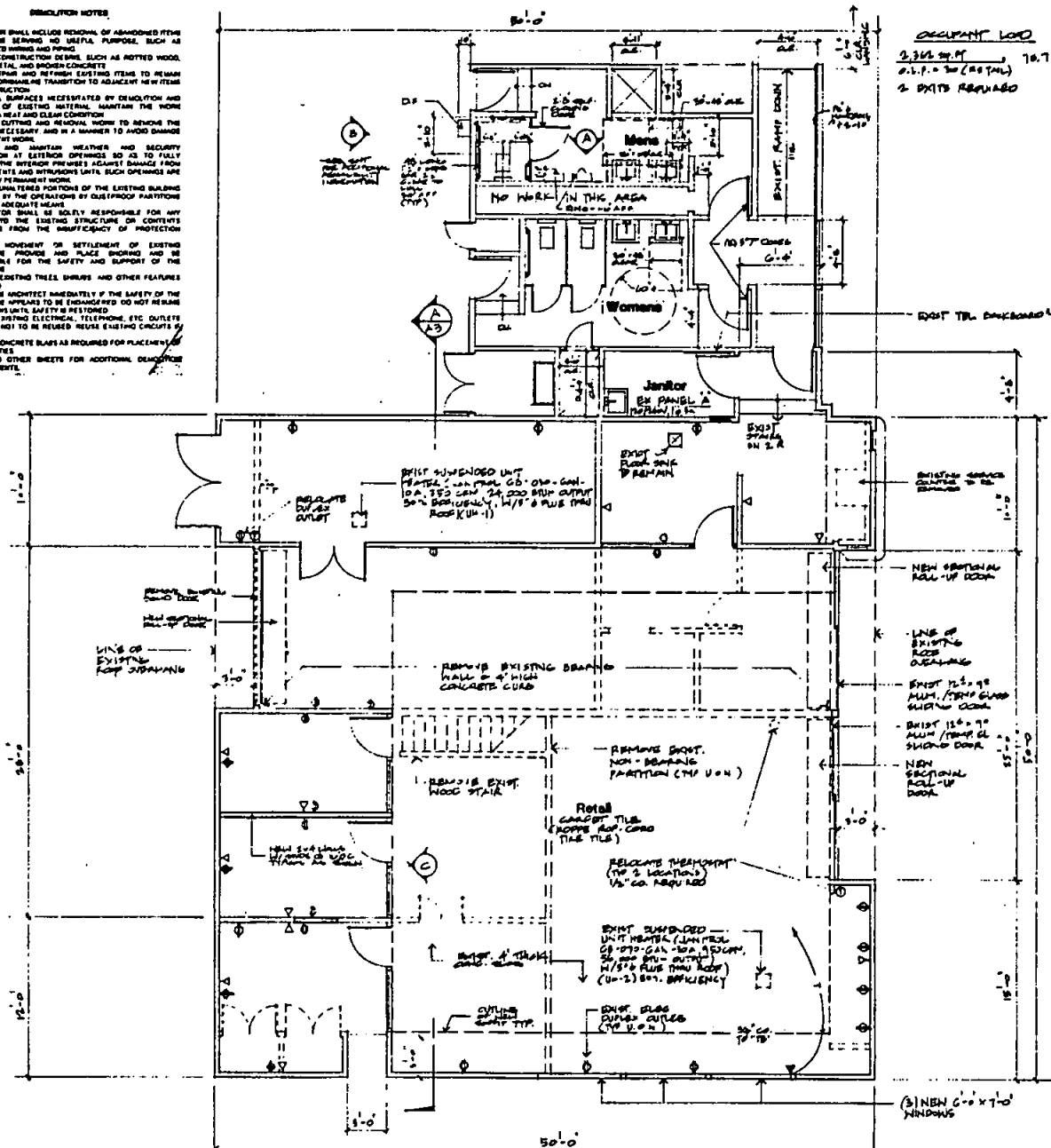
7. BUILDING OCCUPANT SHALL SECURE PROTECTION REQUIRED BY THE FIRE DEPARTMENT FROM THE FIRE PREVENTION BUREAU PRIOR TO OCCUPANCY OF THIS BUILDING.
8. PLANS FOR ALL FIXED FIRE PROTECTION EQUIPMENT SUCH AS SPRINKLER SYSTEMS, SHALL BE AND FIRE ALARM SYSTEMS MUST BE SUBMITTED TO AND APPROVED BY THE FIRE PREVENTION BUREAU BEFORE THIS EQUIPMENT IS INSTALLED.
9. FIRE DAMPERS, ASSEMBLIES, HOLLOWING SLEEVES AND ACCESSORIES, SHALL BE APPROVED BY THE BUILDING INSPECTOR PRIOR TO INSTALLATION.
10. THE INSTALLATION OF AUTOMATIC FIRE SPRINKLER SYSTEMS SHALL COMPLY WITH U.S.C. STANDARD NO 36-1.
11. INTERIOR FINISH SHALL COMPLY WITH U.P.C. APPENDIX 7-A AND U.C. CHAPTER 43.
12. ALL DECORATIVE MATERIALS SHALL BE MAINTAINED IN A FLAME-RETARDANT CONDITION.
13. BUILDING NUMBERS SHALL BE EASILY VISIBLE AND LEGIBLE FROM THE STREET OR ROAD FACING THE PROPERTY.
14. EXIT SIGNS SHALL BE INTERNALLY ILLUMINATED THE WORD "EXIT" IN RED LETTERS OR WHITE 1 INCH HIGH WHITE LETTERS MINIMUM IN EACH STROKE, 1 FOOT LENGTHS MINIMUM ILLUMINUM.
15. PROVIDE EXIT SIGNS IN COMPLIANCE WITH U.P.C. SEC. 12.107 & 12.108 AND U.C. SEC 32.04.
16. PROVIDE OCCUPANT LOAD SIGNS COMPLYING WITH THE FOLLOWING CODE SECTIONS: U.P.C. SEC 23.114, C.A.G. 7.14, SEC. 2.1516.
17. PROVIDE FIRE BLOCKING AT FLOOR, ROOF, CEILING, COVER AND AT MEQUENT OF WALLS OVER 10 FEET IN HEIGHT PER U.C. SEC 25.116.
18. ALL EXIT DOORS SHALL BE OPERABLE FROM THE INSIDE WITHOUT THE USE OF A KEY OR ANY SPECIAL KNOWLEDGE OR EFFORT, NO DEADLOCKS, NO SLUICING BOLTS, ETC. PER U.C. SEC. 23M 10 AND U.P.C. SEC 12.104 b.
19. ALL FIRE ALARM SYSTEMS SHALL BE INSTALLED IN COMPLIANCE WITH THE FOLLOWING CODES: C.A.C. PART 1, 7.34 ARTICLE 2-368 AND U.P. ARTICLE 14.4.
20. THE CONSTRUCTION, REPAIRS, OR DEMOLITION OF A BUILDING SHALL COMPLY WITH U.P.C. ARTICLE 27.



EXISTING GAS PIPING DIAGRAM

- ▽ - Folds
- ⊖ - super error
- ⊗ - subsuper error
- ⊙ - outlier

9. DEMOLITION SHALL INCLUDE REMOVAL OF ASSOCIATED ITEMS AND ITEMS BEING NO USEFUL PURPOSE, SUCH AS:
 - A. REMOVAL OF EXISTING CONCRETE
 - B. REMOVE CONSTRUCTION DEBRIS SUCH AS ROTTED WOOD, RUSTED METAL, AND BROKEN CONCRETE
 - C. REMOVE EXISTING ITEMS THAT ARE ITEMS TO REMAIN WITH A WORKABLE TRANSITION TO ADJACENT NEW ITEMS
 - D. CLEAR ALL SURFACES NECESSARY FOR DEMOLITION AND PREPARE SURFACES FOR NEW ITEMS
 - E. REMOVE ALL ITEMS FROM AREAS IN A HEAT AND COLD CLIMATE
 - F. REMOVE ALL ITEMS FROM AREAS TO REDUCE THE MAXIMUM NECESSARY AND IN A MANNER TO AVOID DAMAGE TO ADJACENT WORK.
10. MAINTAIN EMERGENCY AND SECURITY PROTECTION AT EXTERIOR DEMOLITION SITES AS TO FULLY PROTECT THE EXISTING STRUCTURE FROM DAMAGE FROM THE ELEMENTS AND INTRUSIONS UNITS, SUCH DEMOLITION ARE:
 - A. PROTECT UNLATERAL PORTIONS OF THE EXISTING BUILDING
 - B. PROTECT EXISTING PARTITIONS BY CURTAIN WALL PARTITIONS OR OTHER MEANS
 - C. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO EXISTING STRUCTURE
 - D. CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTION RESULTING FROM THE INEFFECTIVITY OF PROTECTION
 - E. CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTION
 - F. PREVENT MOVEMENT OR SETTLEMENT OF EXISTING STRUCTURE
 - G. CONTRACTOR SHALL BE RESPONSIBLE FOR THE SAFETY AND SUPPORT OF THE EXISTING STRUCTURE
 - H. PROTECT EXISTING TREES, SHRUBS AND OTHER FEATURES TO REMAIN
11. CONTRACT IMMEDIATELY IF THE SAFETY OF THE STRUCTURE APPEARS TO BE ENDANGERED DO NOT REPAIR OR REINFORCE EXISTING STRUCTURE UNTIL THE CONTRACTOR CAP ALL EXISTING ELECTRICAL, TELEPHONE, ETC OUTLETS AND CABLES TO BE REMOVED OR RELOCATED TO A SAFE PLACE, IF POSSIBLE
12. SAFETY CONSTRUCTION PLANS AS REQUIRED FOR PLACEMENT OF NEW UTILITIES
13. MEET FOR OTHER MEETS FOR ADDITIONAL DEMOLITION

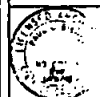


FLOOR PLAN
1/4 scale

1. MANUFACTURED DOORS AND WINDOWS SHALL HAVE AN INFORMATION PLATE LOCATED AND LABELED BY THE MANUFACTURER INDICATING TESTING AND COMPLIANCE WITH INDUSTRY STANDARDS.
2. FLUORESCENT LAMP BALLASTS SHALL BE CERTIFIED TO THE CALIFORNIA ENERGY COMMISSION BY ITS MANUFACTURER TO COMPLY WITH THE EFFICIENCY STANDARDS FOR SUCH APPLIANCE.

1. ALL DOORS SHALL BE OPEN DURING OPERATING PERIODS; NO NEW HVAC EQUIPMENT TO BE INSTALLED AS PART OF THIS WORK.
2. ALL PIPING AND DUCTWORK SHALL BE INSULATED CONSISTENT WITH THE REQUIREMENTS OF SECTIONS 11B, 12B, AND 124 E & F. ALSO TABLE 10.0, UFG.
3. ALL HVAC SYSTEMS SHALL MEET THE REQUIREMENTS PER SECTIONS 11B AND 124 E & F.
4. ALL HVAC EQUIPMENT AND APPURTEANCES SHALL MEET THE REQUIREMENTS PER SECTIONS 11B-11D, 11F, AND 12B-124 E & F.

- 1 THE MAXIMUM CROSS SLOPE OF ALL ASCENDING SURFACE SHALL BE 3%
- 2 ADDITIONAL PAVING SPACE AND ACCESS SHALL BE LAID ON SURFACE SLOPES GREATER THAN 3% IN ANY DIRECTION
- 3 IF A VEHICLE CROSS ON A SLOPE A VEHICLE MUST NOT BE ON THE SURFACE AND MAY NOT BE PART OF THE SURFACE AND SHALL BE 3 METERS (10 FEET) FROM THE SURFACE. FROM THE SURFACE AND VEHICLE SHALL BE 3 METERS (10 FEET) FROM THE SURFACE. SHALL BE 3 METERS (10 FEET) FROM THE SURFACE. SHALL BE 3 METERS (10 FEET) FROM THE SURFACE.

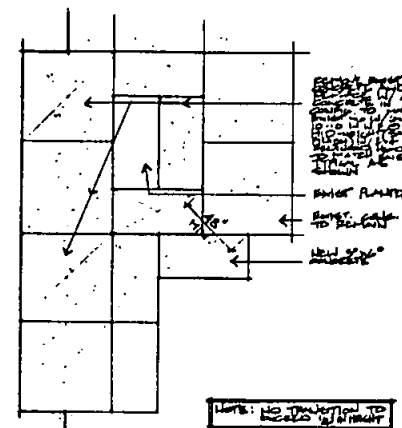
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Tenant Improvement to the
MISSION BAY SPORTS CENTER
SAN DIEGO SAILING CENTER
1010 Santa Clara Place
San Diego, California 92109

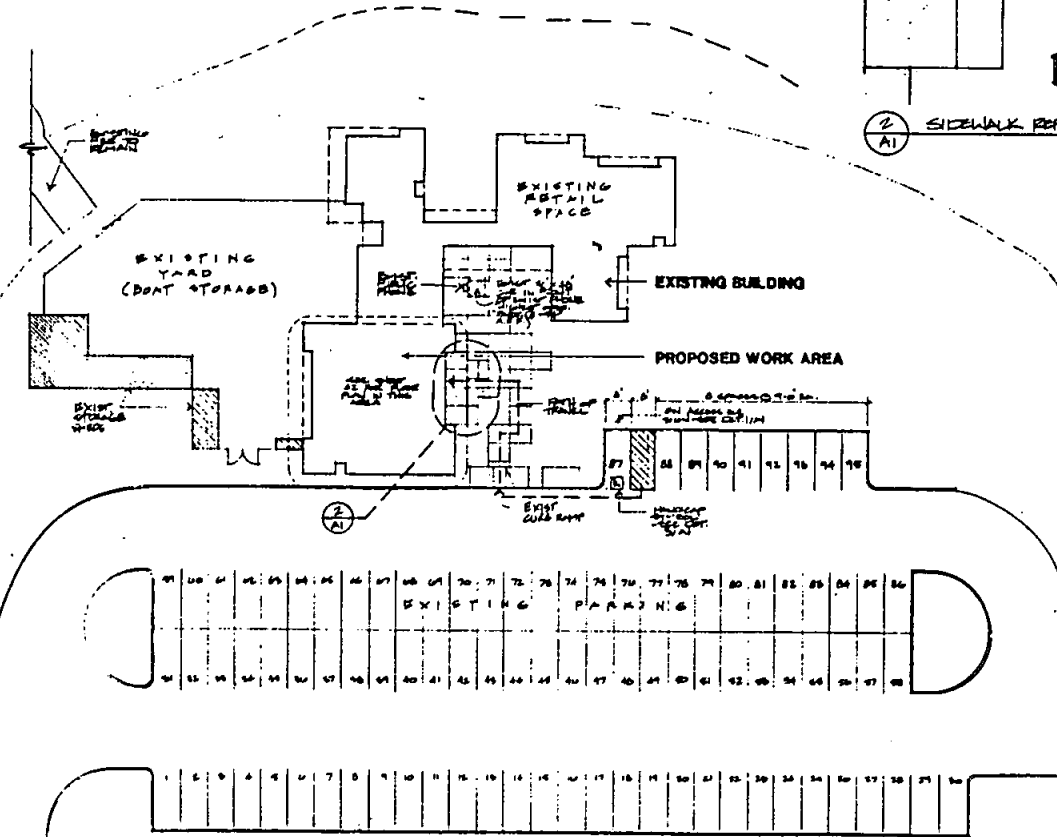
DATE 24 NOV 1974
DSCALE
DCLASS
JOB 44-01
UNIT
A2

Tenant Improvement to the
MISSION BAY SPORTS CENTER
SAN DIEGO SAILING CENTER

MISSION
BAY



2 SIDEWALK REPLACEMENT PLAN



SITE PLAN

LEGAL

THE NORTHERN PORTION OF THE NORTH
HALL OF SANTA CLARA POINT,
MISSION BAY AREA, SAN DIEGO

PROJECT DATA

OCCUPANCY: D-2 (RETAIL)
CONSTRUCTION TYPE: TYPE V-N
TENANT IMPROVEMENT AREA: 2,362 SF.

OWNER: CITY OF SAN DIEGO
TENANT: MCW & DUE GLESSON
1010 SANTA OLGA AVE
SAN DIEGO CA 92109
444-1010

INDEX

- A1 SITE PLAN, LEGEND, PROJECT DATA, INDEX, VICINITY MAP
- A2 FLOOR PLAN, NOTES
- A3 REFLECTED GRADING PLAN, SECTION
- A4 GROUND PLANNING PLAN & DETAIL, INTERIOR ELEVATIONS
- A5 EXTERIOR ELEVATIONS
- A6 PROPOSED LANDSCAPE PLAN

VICINITY MAP

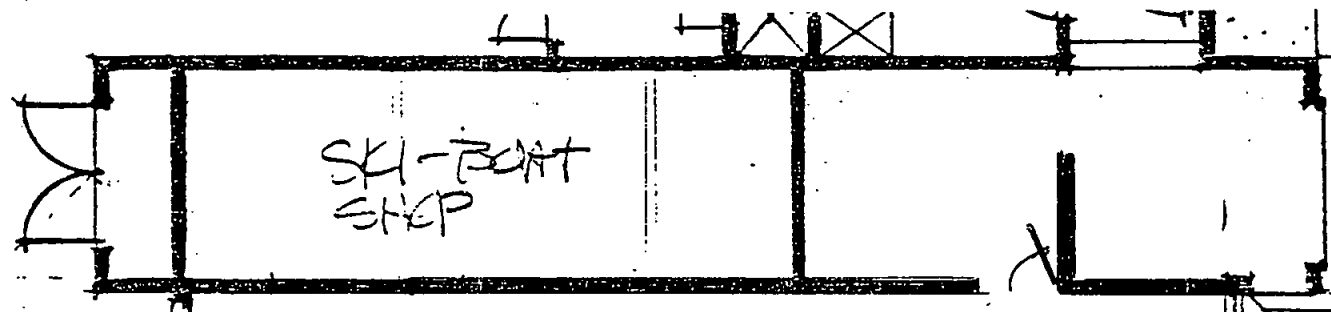


Paul L. Bishop, AIA
Architect & Planner

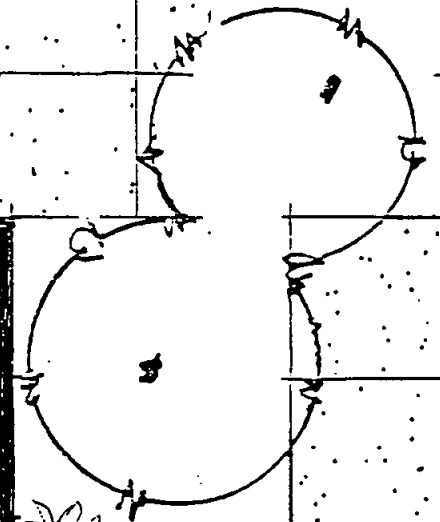
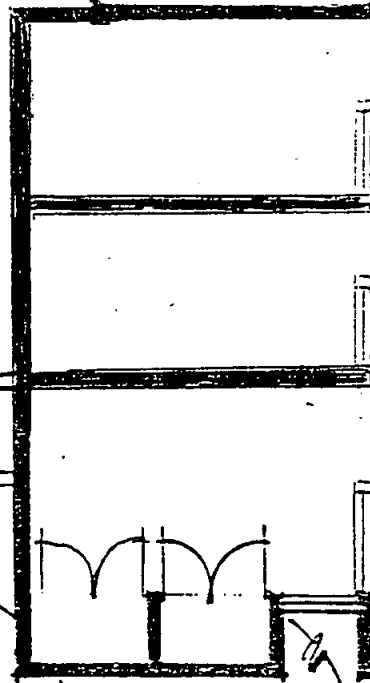
THE COURT OF APPEALS IN NEW YORK CITY HAS REVERSED THE DECISION OF THE TRIAL COURT IN *People v. Williams*, 100 Misc.2d 100, 393 N.Y.S.2d 811 (1976), and has affirmed the conviction of the defendant for the crime of rape in the second degree. The court of appeals found that the evidence was sufficient to support the conviction.

Tenant Improvement to the
N BAY SPORTS CENTER
MIEGO SAILING CENTER
1010 Santa Clara Place
San Diego, California 92108

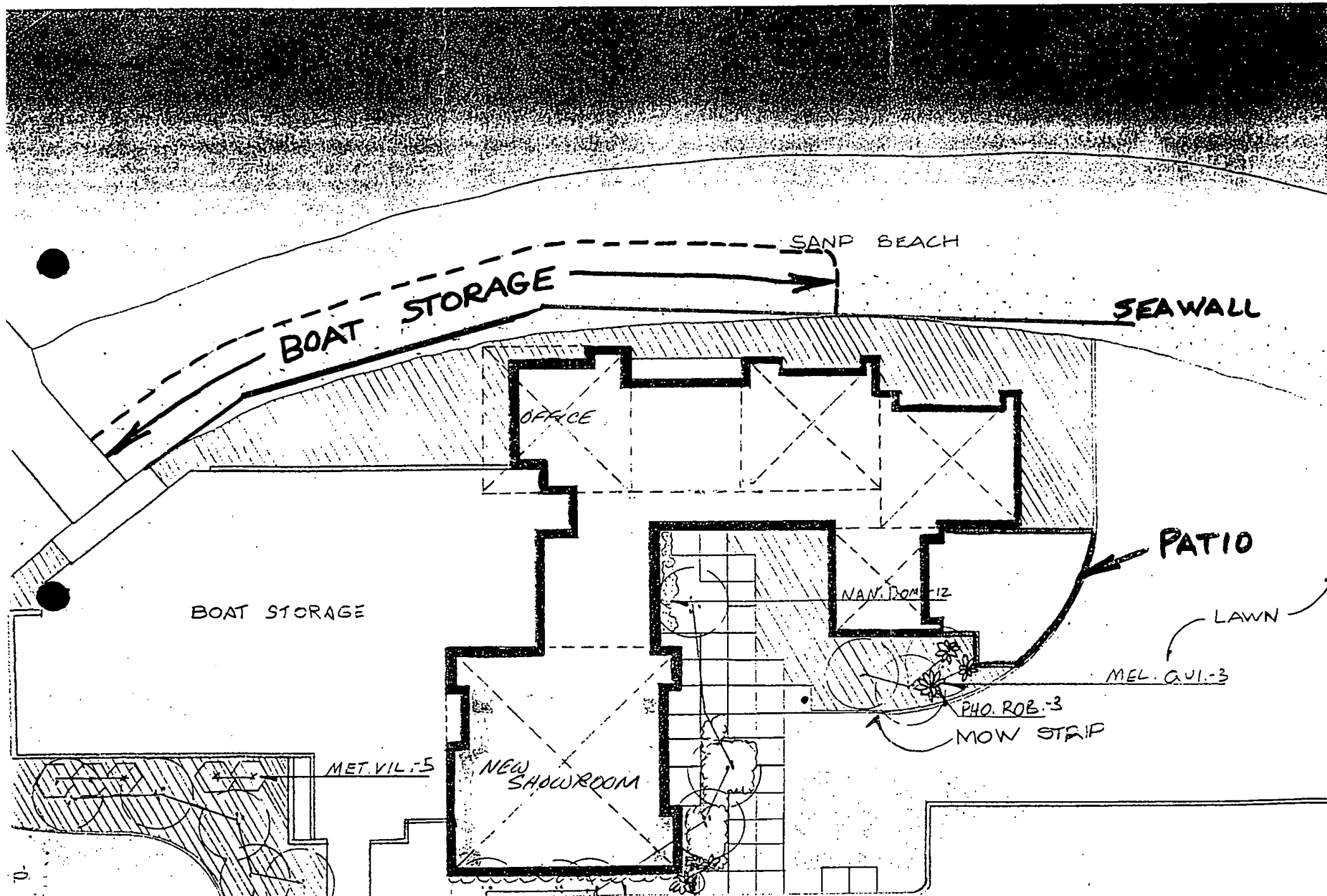
DATE 24 MAR 1994
SCALE
RANGE
94-09
A1



NEW SHOWROOM



NEW WINDOWS



RECEIVED
APR 03 1995
REALESTATEASSETS

MISSION BAY SPORTS CENTER
CONSTRUCTION SCHEDULE

IMPROVEMENT	DESCRIPTION	D.O.C.	EST. COST
Dock	Replace galvanized bracing & hardware, piling bracketts, re- place decking & paint	1994	\$15,000
Showroom	Electrical, windows, siding, drywall, carpet and paint 2,000 sq. ft. area	1997	\$50,000
Concrete Patio	New patio off classroom	1996	\$10,000
Disabled Access	Improve	1997	\$ 2,250
Concrete Courtyard	Enlarge courtyard and even out concrete raised by roots.	1997	\$ 7,000
Landscaping	General upgrade	1996	\$ 5,000
Security Gate	For Dock	1996	\$ 5,000
Paint	Interior	1996	\$ 1,500
New Carpet & Flooring	SDSC & Classroom	1997	\$ 3,500
Paint	Exterior	1998	\$ 7,000
Hoist	New boom, re- condition winch motor	1998	\$10,000
Re-roof	Shingle	2002	\$25,000
			\$141,250

Passed and adopted by the Council of The City of San Diego on
OCT 16 1995 by the following vote:

YEAS: Mathis, Harvey, Kehoe, Warden, Stallings, McCarty, Vargas,
Mayor Golding.

NAYS: None.

NOT PRESENT: Stevens.

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: MAYDELL L. PONTECORVO, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. O- 18224 (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on October 2, 1995 and on October 16, 1995.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

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

(Seal)

By: Maydell L. Pontecorvo, Deputy

(O-96-39)

ORDINANCE NUMBER O- 18224 (NEW SERIES)

ADOPTED ON OCT 16 1995

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO
EXECUTE A 10-YEAR LEASE AGREEMENT WITH
RICHARD L. GLEASON AND DEBRA L. GLEASON FOR
THE OPERATION OF MISSION BAY SAILING CENTER
IN MISSION BAY PARK

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

Section 1. That the City Manager is hereby authorized to
execute, for and on behalf of The City of San Diego, a 10-year
lease agreement with RICHARD L. GLEASON and DEBRA L. GLEASON, for
the operation of Mission Bay Sailing Center located at 1010 Santa
Clara Place in Mission Bay Park, at an initial annual minimum
rent of \$41,600 or various percentages of gross income ranging
from 1 percent to 10 percent, under the terms and conditions set
forth in that lease agreement on file in the office of the City
Clerk as Document No. 00- 18224.

Section 2. This ordinance shall take effect and be in force
on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Chief Deputy City Attorney

HOV:ps
08/18/95
Or.Dept:REA
Job:220259
O-96-39

ORIGINAL

INDEX

PERCENTAGE LEASE

<u>SECTION</u>		<u>PAGE</u>
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SAN DIEGO, CALIFORNIA

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PERCENTAGE LEASE

Approved by Council Resolution
No. R-251760 dated MAY 5 1990

THIS LEASE AGREEMENT is executed by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY" and RICHARD GLEASON, hereinafter called "LESSEE".

I. DEMISED PREMISES. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, described and delineated on Exhibit "A" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises".

- A. PERMITTED USE. Said premises are leased to LESSEE only for the purposes of the operation and maintenance of a public sailing center and dock facilities providing instruction in beginning through intermediate sailing, water activities, water sports; and rental or sales of recreational boats and aquatic equipment, food and non-alcoholic beverage sales to the general public, and for such other related or incidental purposes as may first be approved in writing by the CITY and for no other purpose.
- B. OBLIGATION TO DILIGENTLY USE. LESSEE covenants to use said premises for the above-specified purposes and to diligently conduct the business thereon to produce a reasonable and substantial gross income.
- C. RELATED COUNCIL ACTIONS. By the granting of this lease, the City Council of The City of San Diego is not obligating itself with regard to any other discretionary action relating to development or operation of said premises. Such discretionary action includes, but is not limited to, rezonings, variances, environmental clearances or any other governmental agency approvals which are required.

II. TERM OF AGREEMENT.

- A. COMMENCEMENT AND TERMINATION. The term of this agreement shall be fifteen (15) years commencing on the first day of the month following execution by the City Manager.
- B. SURRENDER OF PREMISES. At the expiration or earlier termination of this lease, LESSEE shall execute, acknowledge and deliver to CITY, within five days after written demand by CITY, a valid and recordable quitclaim deed covering all of the leasehold premises. The leasehold premises shall be delivered free and clear of all liens and encumbrances.

III. CONSIDERATION.

A. RENT.

Beginning on the first day of the term of this agreement, LESSEE shall pay to CITY, monthly in arrears, and prior to the last day of the calendar month following that month in which the revenue subject to rent was earned, a sum of money equal to:

TEN PERCENT (10%) of all gross income as hereinafter defined from the operations on the leased premises.

Provided further, the City Manager and LESSEE may mutually agree in writing to another percentage rate or flat rate of rent for each such other sale, service, or operation not specifically named herein, prior to the commencement of each such other sale, service, or operation as approved by the City Manager.

Provided, however, in the event that the total amount of said percentage rent paid to CITY by LESSEE in any one year ending upon the day prior to the anniversary date of this agreement is less than the sum of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500), hereinafter referred to as "minimum rent, then LESSEE shall pay to CITY within sixty days of said anniversary date, the difference between the amount actually paid and the minimum rent.

B. RENT.

1. Percentage Rent Adjustment. At least four (4) months prior to the end of every fifth year of the term of this agreement the parties hereto shall meet to attempt to agree on a percentage rental rate for the ensuing five-year period. By mutual consent or through arbitration as hereinafter set forth, the parties hereto will adjust the percentage rates of LESSEE'S gross income to be paid CITY effective upon the first day of the succeeding five-year period. Said adjustment will be made to the degree necessary to provide a fair rental to CITY as determined by CITY. In the event that such adjustment is not made by mutual consent prior to sixty days before the end of each said five-year period, then the parties hereto will refer the matter to arbitration under the terms hereinafter set forth.
2. Arbitration of Percentage Rent Adjustment. In the event the parties do not agree upon the amount of adjustment to said percentage rates as provided for in the previous paragraph, then the adjustment shall be determined by a qualified professional independent real estate appraiser selected by mutual consent of the parties to this agreement from the list of appraisers approved by the City Council of CITY. In the event the parties do not reach agreement as to selection of a mutually acceptable appraiser, then CITY and LESSEE will each select a qualified professional independent real estate appraiser who in turn will select

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a third qualified professional independent real estate appraiser who will be employed to set the percentage rates to be applied to LESSEE'S gross income for the ensuing period until the next percentage rent adjustment. In the event a mutually acceptable third appraiser is not agreed upon between the two selected appraisers within ten days, then the two selected appraisers will be discharged and the process repeated until mutuality is achieved and an appraiser is selected to complete the assignment. 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 appointed appraiser. CITY and LESSEE agree to accept and be bound by the percentage rates determined by the appraiser selected to complete the assignment.

In establishing the percentage rates for the items under controversy, the appraiser shall consider the CITY'S property as a fee simple absolute estate, as vacant and available for a full lease term on the open market for its highest and best use or, if this lease has a restricted purpose, then for uses consistent with the authorized purposes of this lease at the commencement of the rental period under arbitration. The appraiser will be guided by prevailing published market percentage rates for similar operations primarily (if available) within the Southern California area.

The date of value of the appraisal shall be on the date of rental adjustment as hereinabove established. In the event the appraisal is not completed in time to permit the percentage adjustment to be made upon the date specified, LESSEE agrees to continue to pay rent in accordance with the then existing lease rates and the adjustment, when determined, will be retroactive to said effective date of rental adjustment as hereinabove established. Any deficiency or overage shall be paid by LESSEE or refunded as applicable by CITY within sixty days after determination of the new percentage rate(s).

- C. GROSS INCOME. Gross Income, 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. The amount of such taxes shall be shown on the books and records elsewhere herein required to be maintained. The aforesaid 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 or their

agents and all gross income received by any sublessee 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 the LESSEE to CITY.

D. FINANCIAL RECORDS MAINTENANCE

1. LESSEE shall keep true, accurate and complete records in a manner and form satisfactory to CITY from which CITY can at all reasonable times determine the nature and amounts of income subject to rental from the operation of the leased premises. Such records shall show all transactions relative to the conduct of the operation, and such transactions shall be supported by documents of original entry such as sales slips, cash register tapes, all sales or rentals of merchandise and services rendered shall be recorded by means of cash register system which automatically issues a customer's receipt or certifies the amount recorded on a sales slip. Said cash register shall have a locked-in total which is constantly accumulating, which total cannot be reset, and at the option of the City, a constantly locked-in accumulating printed transaction counter which cannot be reset, and/or a printed detailed audit tape located within the register. Complete beginning and ending cash register readings shall be made a matter of daily record, purchase invoices and tickets issued, or other means satisfactory to CITY. Together with each rental payment, LESSEE shall render to CITY a detailed statement as to the source of the receipts showing all gross income of the preceding calendar month together with the amount payable to CITY as hereinabove provided and shall accompany same with a remittance of the amount so shown to be due CITY. After the end of each lease year, LESSEE shall cause an audit of the business of LESSEE, its agents, sublessees, concessionaires or licensees operating on said premises to be made by a certified public accountant, and shall, within sixty days after the end of each lease year, furnish a copy thereof to CITY without any cost or expense to CITY. In the event such audit discloses that the percentage rental required for the preceding lease year exceeds the amount of monthly percentage rental paid to CITY by LESSEE during said period, LESSEE shall immediately pay to CITY the amount of such deficiency. Also, in the event said audit discloses that the percentage rental on the annual gross sales for the preceding lease year is less than the amount of minimum annual rent required therefor, LESSEE shall also immediately pay to CITY the amount of such deficiency. In the event that such audit discloses that the percentage rental required for the preceding lease year is less than the amounts of monthly percentage rents paid to CITY during said period, then upon confirmation of said audit findings by CITY through means provided in Subparagraph 3 hereof, the amount of overpayment shall be credited against equal amounts of monthly rents due CITY during the succeeding payments until said overpayment is fully credited. Any such overpayment occurring in the last lease year shall be refunded by CITY within thirty days of confirmation by CITY of said audit findings.

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

E. MINIMUM RENT.

1. Amount and Payment. For that period of this lease agreement beginning upon the aforesaid date that LESSEE is required to pay CITY a percentage of gross income and through the last day of the third year of said term, if the total amount of said percentage of gross income paid to CITY by LESSEE in any one year ending upon the day prior to the anniversary date of the commencement of this agreement (lease year) is less than the sum of \$7,500 herein referred to as "minimum rent", then LESSEE shall pay to CITY within sixty days of said anniversary date a sum of money equal to the difference between the amount actually paid to CITY and the minimum rent. Provided, however, if the anniversary date and the date upon which LESSEE is required to commence payment of a percentage of gross income do not coincide, then said minimum rent and percentage rents for that year shall be prorated to the anniversary date, which shall then become the computation date thereafter.

2. Minimum Rent Adjustment. Prior to the end of the third year of this agreement and prior to the end of each third year thereafter, the minimum rent for the ensuing three-year period shall be adjusted to eighty percent (80%) of the average annual rent paid CITY during the three years preceding the rental review date. If the application of this formula indicates a minimum rent substantially in excess of that which would be a fair rental value based upon a reasonable capitalization of the fair market value of the leased premises, then the City Manager shall have the discretion in the forthcoming period to set a minimum rent figure which represents a fair rental value.

F. DELINQUENT RENT. In the event LESSEE fails to pay the applicable rents when due, then LESSEE shall pay CITY, in addition to the delinquent rent, a sum of money equal to FIVE PERCENT (5%) of said delinquent rent; provided, however, in the event said delinquent rent is still unpaid after fifteen days of becoming delinquent, then LESSEE shall pay CITY, instead of said Five Percent, a sum of money equal to TEN PERCENT (10%) of said delinquent rent. It is the intent of this provision that CITY shall be compensated by such additional sums for loss resulting from rental delinquency including costs to CITY of servicing the delinquent account. The City Manager, at his option, may for good cause waive any such delinquency compensation required herein, upon written application of LESSEE.

G. DEVELOPMENT AS ADDITIONAL CONSIDERATION. LESSEE agrees that as consideration for granting this lease is LESSEE'S obligation to develop the leased premises in accordance with the City's approved Development Plan identified in Section IV, 8, DEVELOPMENT of this agreement.

IV. COVENANTS AND CONDITIONS.

A. CITY COVENANTS.

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

2. Right to Assign and Sublet. When in the opinion of the City Manager, and subject to the approval of the City Council whenever required, if it is deemed consistent with the best interests of the CITY, LESSEE may assign this lease or any interest therein and may sublease any portion thereof to an assignee or sublessee who has, in the opinion of City Manager, the financial capability and overall competence to successfully operate the assigned or subleased premises. The consent of the City Manager and/or City Council will not be unreasonably withheld. This lease and any interest herein shall not be assignable by operation of law without the written consent of the City Manager. Any or all of the following actions will be considered trafficking in the leasehold which is not a permitted activity under this contract and will be considered as contrary to the CITY'S best interests:

- a. Assignment or subleasing by LESSEE for a consideration in excess of a reasonable return on the actual value of the LESSEE'S installed improvements and/or services rendered.
- b. Subleasing of the primary function of the lease or subleasing of a major portion of the leasehold.

If CITY has been notified in writing of the existence of a trust deed or mortgage secured by the leasehold, CITY agrees to give the trustee or beneficiary notice of any sublease or assignment prior to CITY'S approval thereon.

Approval of any assignment or sublease shall be conditioned upon Assignee or Sublessee agreeing in writing that they will assume the rights and obligations thereby assigned or subleased and that they will keep and perform all covenants, conditions and provisions of this agreement which are applicable to the rights acquired.

3. Right to Encumber. CITY does hereby consent and agree that LESSEE may encumber this lease, its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security type instrument to assure the payment of a promissory note or notes of the LESSEE. CITY further agrees that in the event said 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 mortgagee or beneficiary thereof, if reputable, qualified and financially responsible, such as a State or Federal regulated financial institution, as its new tenant under this lease with all the rights, privileges and duties granted and imposed in this lease contract. In

the event said mortgagee or beneficiary desires to assign this lease to its nominee, if nominee is a reputable, qualified and financially responsible person in the opinion of CITY, CITY hereby agrees that upon the filing of an application for consent to such assignment, CITY will give its consent thereto.

B. LESSEE COVENANTS

4. Affirmative Action. LESSEE agrees to take affirmative action to improve employment opportunities of minorities and women. When applicable, LESSEE agrees to abide by the Affirmative Action Program for lessees as it now exists or is hereafter amended. A copy of the program, effective as of the date of this agreement, is on file in the Office of the City Clerk as Document No. 746205 and by this reference is incorporated herein. Minorities are presently defined as Mexican-American, Black, Filipino, American Indian and Asian/Oriental. The goal of this program shall be the attainment of the employment of minorities and women in all areas of employment in a total percentage of employment approximately equal to the total level of minority and women employment as established by the City for its Affirmative Action Program each year.
5. Compliance with Law. LESSEE agrees, at its sole cost and expense, to comply and secure compliance with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the said premises, or the operations conducted thereon, and to faithfully observe and secure compliance with, in the use of the premises, all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force, and to pay before delinquency all taxes, assessments, and fees assessed or levied upon the LESSEE or the leased premises including the land and any buildings, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained by LESSEE or by reason of the business or other activities of LESSEE upon or in connection with the leased premises. LESSEE recognizes and understands that this lease may create a possessory interest subject to property taxation and that the LESSEE may be subject to payment of property taxes levied on such interest. LESSEE further agrees that such tax payment shall not reduce any rent due the CITY hereunder and that any such tax shall be paid by the LESSEE before becoming delinquent. The judgment of any court of competent jurisdiction, or the admission of LESSEE or any sublessee or permittee in any action or proceeding against them, or any of them, whether CITY be a party thereto or not, that LESSEE, sublessee or permittee has violated any such ordinance or statute in the use of the premises shall be conclusive of that fact as between CITY and LESSEE.

6. Construction/Alterations. LESSEE agrees not to construct or install any buildings or structures on said premises or otherwise improve or alter said premises in any manner except in accordance with plans and specifications previously submitted to the City Manager and approved by him in writing. LESSEE shall not make any major structural or architectural design alterations to approved buildings, structures or improvements installed on said premises except in accordance with plans and specifications previously approved in writing by the City Manager. This provision shall not limit or set aside any obligation of LESSEE under this lease to maintain said premises in a decent, safe, healthy and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make any improvements or alterations to said premises or to assume any expense therefor.
7. Construction Bond. LESSEE agrees to file with CITY, prior to commencement of any construction performed upon the premises a faithful performance bond in the amount of 100% of the construction costs of the work to be performed. Said bond may be in cash or may be a corporate surety bond satisfactory to CITY or in a combination of both. Said bond shall insure that the construction commenced by LESSEE shall be completed in accordance with approved plans, or at option of the CITY, that the uncompleted construction be removed and the premises restored to a condition satisfactory to CITY. The surety bond will be filed with CITY and any cash used as a part of the bond may be deposited with CITY to be held in trust for the purpose specified above or may be placed in an escrow or other trust approved by CITY. Upon application by LESSEE, CITY may waive this requirement to file a bond. In the event that LESSEE fails to file any such required bond, this lease may be terminated by CITY.
8. Development. LESSEE agrees to develop the leased premises in accordance with the General Development Plan approved by the City Manager and filed in the Office of the City Clerk. To the extent applicable to the proposed development, said plan shows the design, materials of construction, elevations and colors of all structures, the plot plan of all structures and above-ground improvements, the uses of all facilities, the schedule of development, the estimated construction costs and financing plan and such other factors as are necessary or desirable in the opinion of the City Manager. The City Manager or his designee shall have the authority to authorize changes to the plan

provided that the basic concept may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk. (NOTE: This paragraph may be omitted when purpose stated in Section I, A, is for "any lawfully authorized purpose").

9. Indemnity. LESSEE agrees that CITY, its agents, officers and employees, shall not be liable for any claims, alleged liabilities, penalties, fines or for any damage to the goods, properties or effects of LESSEE, its sublessees or representatives, agents, employees, guests, licensees, invitees, patrons or clientele or of any other person whomsoever, nor for personal injuries to, or deaths of any persons, whether alleged to have been caused by or resulting from any acts or omission of LESSEE or its sublessees in or about the leased premises, or any act or omission of any person or from any defect in any part of the leased premises or from any other cause or reason whatsoever. LESSEE agrees to indemnify and save free and harmless CITY and its authorized agents, officers, and employees against any of the foregoing alleged liabilities and any costs and expenses incurred by CITY on account of any claim or claims therefor.
10. Insurance Coverage. During the entire term of this lease, LESSEE agrees to procure and maintain public liability insurance which names CITY as an additional insured with an insurance company satisfactory to CITY licensed to do business in California to protect against loss from liability imposed by law for damages on account of bodily injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever, resulting directly or indirectly from any act or activities of CITY or LESSEE, its sublessees or any person acting for CITY, or LESSEE or under its control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from acts or activities of CITY, or LESSEE, or its sublessees, or any person acting for CITY or LESSEE, or under its control or direction. Such PD and PL insurance shall also provide for and protect CITY against incurring any legal cost in defending claims for alleged loss. Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this lease in the amount of not less than ONE MILLION DOLLARS (\$1,000,000) COMBINED SINGLE LIMIT LIABILITY. LESSEE agrees to submit a policy of said insurance to the CITY on or before the effective date of this agreement indicating full coverage of the contractual liability imposed by this agreement and stipulating that the insurance company shall not

terminate, cancel or limit said policy in any manner without at least thirty days prior written notice thereof to CITY. If the operation under this agreement results in an increased or decreased risk in the opinion of the City Manager, then LESSEE agrees that minimum limits hereinabove designated shall be changed accordingly upon request by the City Manager. LESSEE agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which the LESSEE may be held responsible for the payment of damages to persons or property resulting from LESSEE'S activities, the activities of its sublessees or the activities of any person or persons for which LESSEE is otherwise responsible.

LESSEE also agrees to procure and maintain during the entire term of this lease, a policy of fire, extended coverage and vandalism insurance on all permanent property of an insurable nature located upon the leased premises. Said policy shall name the CITY as an additional insured and shall be written by an insurance company satisfactory to CITY licensed to transact business in the State of California and shall be in an amount sufficient to cover at least 100% of the replacement costs of said property. LESSEE agrees to submit a certificate of said policy to the CITY on or before the effective date of this lease. Said policy shall contain a condition that it is not to be terminated or cancelled without at least thirty (30) days written notice to CITY by the insurance company. LESSEE agrees to pay the premium for such insurance and shall require that any insurance proceeds resulting from a loss under said policy are payable jointly to CITY and LESSEE and said proceeds shall constitute a trust fund to be reinvested in rebuilding or repairing the damaged property or said proceeds may be disposed of as specified in Section IV, 16, Waste, Damage or Destruction, hereof; provided, however, that within the period during which there is in existence a mortgage or deed of trust upon the leasehold, then and for that period all policies of fire insurance, extended coverage and vandalism shall be made payable jointly to the mortgagee or beneficiary, the named insured, and CITY, and shall be disposed of jointly by the parties for the following purposes:

- a. As a trust fund to be retained by said mortgagee or beneficiary and applied in reduction of the debt secured by such mortgage or deed of trust with the excess remaining after full payment of said debt to be paid over to LESSEE and CITY to pay for reconstruction, repair, or replacement of the damaged or destroyed improvements in progress payments as the work is performed. The balance of said proceeds shall be paid to LESSEE.

Provided, further, however, nothing herein shall prevent LESSEE, at its option and with the approval of said mortgagee or beneficiary, from filing a faithful performance bond in favor of said mortgagee or beneficiary and CITY in an amount equivalent to said insurance proceeds in lieu of surrendering said insurance proceeds to said mortgagee or beneficiary; and CITY.

- b. In the event that this lease is terminated by mutual agreement and said improvements are not reconstructed, repaired or replaced, the insurance proceeds shall be jointly retained by CITY and said mortgagee or beneficiary to the extent necessary to first discharge the debt secured by said mortgage or deed of trust and then to restore the premises in a neat and clean condition. Said mortgagee or beneficiary shall hold the balance of said proceeds for CITY and LESSEE as their interests may appear.

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

11. Labor and Materialmen's Bond. LESSEE agrees to save CITY free and harmless, indemnify it against all claims for labor and materials in connection with improvements, repairs or alterations to the leased premises, and the cost of defending against such claims, including reasonable attorney's fees. In the event that improvements, repairs or alterations are constructed on the leased premises by other than the CITY, and a lien is filed, LESSEE agrees to file with CITY within five days a bond sufficient to pay in full all claims of all persons seeking relief under the lien. The bond shall be acknowledged by LESSEE as principal and by a corporation satisfactory to CITY licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety.
12. Legal Proceedings. LESSEE agrees that should it become necessary for CITY to commence legal proceedings to collect rent, recover possession, or enforce any other provision of this lease, the prevailing party will be entitled to legal costs in connection therewith, including reasonable attorney's fees as determined by the court. The parties agree that the law of the State of California shall be used in interpreting this lease agreement and will govern all disputes under this lease agreement and will determine all rights and obligations hereunder.

Personal service either within or without the State of California shall be sufficient to give personal jurisdiction to any court in which an action is filed for litigation of rights under this lease agreement.

13. Maintenance. LESSEE agrees to assume full responsibility for the operation and maintenance of said premises throughout the term hereof without expense to CITY unless otherwise specified herein, and to perform all repairs and replacements necessary to maintain and preserve said premises in a decent, safe, healthy and sanitary condition in a manner satisfactory to CITY and in compliance with all applicable laws. LESSEE agrees that CITY shall not be required to perform any maintenance, repairs or services or to assume any expense not specifically assumed herein in connection with said premises and LESSEE hereby waives all rights to make repairs or to cause any work to be performed at the expense of CITY as provided for in Section 1941 and 1942 of the California Civil Code.
14. 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, physical handicap or medical condition 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.
15. Utility Costs. LESSEE agrees to order, obtain and pay for all utilities (except water charges) and service and installation charges in connection therewith. All utilities installed by LESSEE shall be installed underground. LESSEE shall pay CITY in addition to rent herein, the sum of \$50 per month for all water used in connection with the premises. Said rate shall be reviewed by CITY at the end of each five (5) year period of this agreement and adjusted by CITY thereafter, based on LESSEE'S actual usage and LESSEE specifically agrees to pay the amount as reasonably determined by CITY.
16. Waste, Damage or Destruction. LESSEE agrees to give notice to the CITY of any fire or other damage that may occur on the leased premises within ten days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash and rubbish in a manner satisfactory to the CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage, or LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to the CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage.

LESSEE agrees that preliminary steps toward performing repairs, restoration or replacement of the premises shall be commenced by LESSEE within thirty 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 requirements for such period or periods that said premises are untenable by reason of such damage.

C. RESTRICTIVE CONDITIONS

17. Administration and Notices. Control and administration of this lease is under the jurisdiction of the City Manager of CITY as to CITY'S interest herein and any communication relative to the terms or conditions or any changes thereto or any notice or notices provided for by this lease or by law to be given or served upon CITY may be given or served by registered letter deposited in the United States mails postage prepaid, and addressed to the City Manager, Attention Property Director, City Administration Building, 202 "C" Street, San Diego, California 92101. Any notice or notices provided for by this lease or by law to be given or served upon LESSEE, Mortgagee, Trustee or Beneficiary may be given or served by depositing in the United States mails, postage prepaid, a letter addressed to said LESSEE at the leased premises or at such other address designated in writing by LESSEE, Mortgagee, Trustee or Beneficiary or may be personally served upon them or any person hereafter authorized by them to receive such notice. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the principals of the parties so served upon personal service or forty-eight hours after mailing in the manner required herein.
18. City Approval and Consent. The approval or consent of the CITY, wherever required in this agreement, shall mean the approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.
19. Eminent Domain. In the event the leased premises or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, then the interests of CITY and LESSEE (or Beneficiary or Mortgagee if there is a Trust Deed or Mortgage then in effect), in the award and the effect of the taking upon this lease agreement shall be as follows:
 - a. In the event of such taking of only a part of the leased premises, leaving the remainder of said premises in such location and in such form, shape and size as to be used effectively and practicably in the opinion of CITY for the conduct thereon of the operations permitted hereunder,

this lease shall terminate and end as to the portion of the leased premises so taken as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the leased premises not so taken and from and after such date the contract rent, or in the event there is a minimum rent specified herein, then the minimum rental required by this lease to be paid by LESSEE to CITY shall be reduced in the proportion to which the value of the leased premises so taken bears to the total value of the demised premises; provided, however, CITY shall have the right, with the consent of LESSEE, to substitute like adjacent property and maintain the rent schedule without diminution.

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

20. 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 days written notice to LESSEE, to have any necessary maintenance work done for and at the expense of LESSEE and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done in order to keep said premises in a decent, safe, healthy and sanitary condition. Further, if at any time the CITY determines that said premises are not in a decent, safe, healthy and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy and sanitary. Said bond shall be in an amount adequate in the opinion of the CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.
21. Holding Over. The occupancy of the demised premises after the expiration of the term of this agreement shall be construed to be a tenancy from month to month, and all other terms and conditions of this agreement shall continue in full force and effect.
22. Merger. The voluntary or other surrender of this lease by LESSEE, or a mutual cancellation thereof, shall not work a merger and shall, at the option of CITY, terminate all or any existing subleases or subtenancies or may, at the option of CITY, operate as an assignment to it of any or all such subleases or subtenancies.
23. Oral Representation. It is specifically understood and agreed hereby that this lease contains the complete expression of the whole agreement between the parties hereto, and that there are no promises, representations, agreements, warranties or inducements, either expressed orally or implied by the said parties, except as are fully set forth herein; and further, that this lease cannot be enlarged, modified or changed in any respect except by written agreement duly executed by and between the said parties.

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

25. Remedies of City.

a. Default by Lessee. In the event that:

- (1) LESSEE shall default in the performance or fulfillment of any covenant or condition herein required to be performed or fulfilled by LESSEE and shall fail to cure said default within thirty days following the service on LESSEE of a written notices from CITY specifying the default complained of; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against him 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 in or to the said premises or in or to further possession thereof and CITY may thereupon enter and take possession of said premises and expel LESSEE and all persons so claiming rights thereto. Provided, however, in the event that any default described in Part a, (1) of this section is not curable within thirty (30) days after the service of a written notice upon LESSEE, CITY shall not terminate this lease pursuant to said default if LESSEE immediately commences to cure said default and diligently pursues such cure to completion.

Provided, further, in the event that there is a deed of trust or mortgage on the leasehold interest, CITY shall not terminate this lease until it first shall have served upon the mortgagee or beneficiary written notice of the default or defaults complained of, and the mortgagee or beneficiary shall have thirty (30) days from service of such notice within which to commence such cure as may be necessary and this lease shall not terminate if said mortgagee or beneficiary shall prosecute said cure with reasonable diligence thereafter, and said thirty-day period shall be extended during the time required for said mortgagee or beneficiary to perfect, through litigation or through foreclosure, its rights to cure.

Provided however, that in the event rent paid to CITY is calculated on the basis of a percentage or percentages of LESSEE'S gross income, and during said period required for mortgagee or beneficiary to perfect a cure of any default or defaults which have been caused by LESSEE'S failure to pay said rent; then in those events if CITY is paid the minimum rent due under this agreement, CITY will not prosecute its right to terminate the mortgagee's or beneficiary's interest. Provided further, that when the mortgagee or beneficiary has secured control of said premises; and before an assignment to a new LESSEE, mortgagee or beneficiary shall cause to be paid to CITY, any amounts due CITY as a result of the gross income of the said premises exceeding that amount necessary for payment of the minimum rent. In computing the gross rent upon which the computation of the CITY rent is based, reasonable administrative expenses of a court appointed receiver may first be deducted.

b. City recourse. If the mortgagee or beneficiary shall be required to perfect its right to cure said default or defaults through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that such default or defaults may be expeditiously corrected:

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

Should said default or defaults be noncurable by LESSEE, then any lender holding a beneficial interest in said leasehold whose qualifications have been approved by CITY for assignment of the leasehold interest shall have the absolute right to substitute itself to the estate of the LESSEE hereunder and to commence performance of this lease and this lease shall not terminate if such mortgagee or beneficiary shall give notice in writing of its selection to so substitute itself and commence performance within said thirty-day period after service upon it of said written notice by CITY of the default. In the event of the election by the mortgagee or beneficiary to so substitute

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

c. Abandonment by Lessee. Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate LESSEE'S right to possession, and CITY may enforce all its rights and remedies under said lease, including, but not limited to, the right to recover the rent as it becomes due under the lease. For purposes of this section, the following do not constitute a termination of LESSEE'S right to possession:

- (1) Acts by CITY of maintenance, or preservation, or efforts to relet the property.
- (2) The appointment of a receiver upon initiative of CITY to protect the CITY'S interest under the lease.

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

26. Reservation of City Rights. CITY hereby reserves all rights, title and interest in any and all gas, oil, minerals and water beneath said leased premises. CITY shall have the right to enter said leased premises for the purpose of making repairs to or developing municipal services. CITY hereby reserves the right to grant and use such easements or establish and use such rights of way over, under, along and across said leased premises for utilities, thoroughfares, or access as it may deem advisable for the public good. Provided, however, CITY shall not unreasonably interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any to

the permanent improvements of LESSEE located on the leased premises resulting from CITY'S exercising the rights retained in this paragraph. Such reimbursement shall include a reduction in the annual rent proportionate to the amount of said physical damage as determined by the City Manager. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to the rights reserved herein.

27. Time is of the Essence. Time is of the essence of each and all of the terms and provisions of this lease and this lease shall inure to the benefit of and be binding upon the parties hereto and any successor of LESSEE as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements in this lease shall extend to and bind any assigns or sublessees of LESSEE.
28. Waiver. The waiver by CITY of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by CITY shall not be deemed to be a waiver of any preceding breach by LESSEE of any term, covenant or condition of this lease, regardless of CITY'S knowledge of such preceding breach at the time of acceptance of such rent. Failure on the part of CITY to require or exact full and complete compliance with any of the covenants, conditions or agreements of this lease shall not be construed as in any manner changing the terms hereof and shall not prevent CITY from enforcing any provision hereof.
29. Standard of Operations. LESSEE shall be open for business a minimum of 40 hours per week including Saturday and Sunday for a minimum of 10 months each calendar year. Hours, days and months of operation shall be arranged to the mutual satisfaction of the City Manager and LESSEE. The City Manager shall have the right to require LESSEE to temporarily limit and/or discontinue its operations during such time as they may be in conflict with scheduled activities held in Mission Bay Park. Provided, however, that if the schedule of events exceed a period of two business days, a proportionate deduction in minimum rent shall be excluded from rents due the City.
30. Parking. All parking spaces in and around the lease area shall be open to the general public at all times.

31. Merchandise and Services. LESSEE shall submit advanced written notification to City Manager of prices and changes thereof for all merchandise and services to be offered by LESSEE in connection with the leased premises. *RHS*
32. Performance Bond. LESSEE shall be required during the Lease term to maintain a Performance Bond equal to three year's minimum rent or \$22,500 with a bonding company acceptable to the City.
33. Purchase of Existing Inventory. LESSEE agrees, concurrent with the execution of this agreement, to pay CITY by certified check the amount of \$15,475 for all of the CITY'S property as described on Exhibit "B" hereof. CITY agrees to deliver a bill of sale for said property.

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

THE CITY OF SAN DIEGO

Date

5-5-80

By

Staine M. Balsh

ASSISTANT TO THE City Manager

LESSEE:

Date

April 8, 1980

By

Richard L. Glendon

By

APPROVED as to form and legality this 19 day of May, 1980

JOHN W. WITT, City Attorney

By

[Signature]

Deputy

REV: 8/13/79

R-251760

THIS ADDENDUM IS ATTACHED TO AND MADE A PART OF THAT CERTAIN LEASE BY
AND BETWEEN THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION, AND Richard
Gleason, LESSEE DATED _____.

SECTION IV PARAGRAPH C 24, OWNERSHIP OF IMPROVEMENTS (continued)

The Lessee, in accordance with this section hereof, has the right to
remove from the demised premises only those fixtures as described below:
(if none, write none)

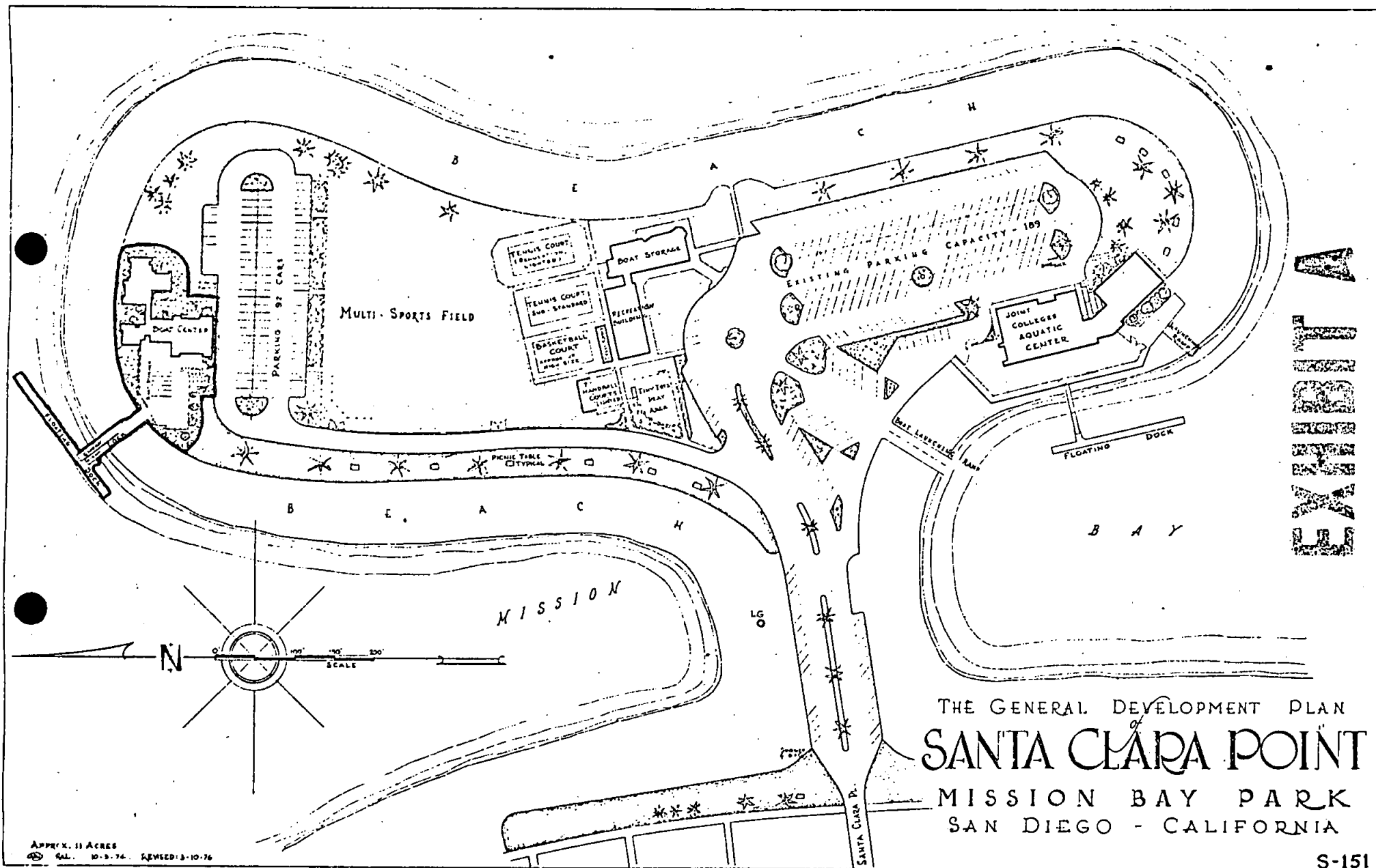
NONE

F.M.B.

ASSISTANT TO THE City Manager's Initials

R.H.

LESSEE'S Initials



INVENTORY - MISSION BAY SAILING CENTER

Boats and Equipment

\$6,800 - 44 Sabots with sails
800 - 1 Boston Whaler 13'4"
500 - 1 Rhodes 19 with sails
750 - 1 Coronado 15 with sails
2,500 - 7 Lido 14's with sails
450 - 2 Lonestar Sailboats with sails
700 - 2 Omega 14's with sails
200 - 1 OK Dinghy with sails
275 - 2 20 HP Mercury outboard engines
75 - 16 Type II life preservers
150 - 68 Type IV life preservers
\$13,200

TOTAL OFFER FOR INVENTORY \$15,475

If any of the listed items are removed prior to the effective date of the lease, appropriate adjustment will be made in the final bill of sale required in Paragraph #33.

Furnishings

\$250 - 4 desks 3' x 6'
100 - 4 swivel office chairs
50 - 1 4 drawer file cabinet
350 - 1 combination refrigerator, stove and sink
900 - 154 stackable chairs
15 - 1 table 2' x 6'
30 - 2 storage cabinets
15 - 3 lecterns
30 - 2 tables 3' x 8'
15 - 1 overhead projector
150 - 1 IBM typewriter
20 - 1 bookcase
* - 1 windspeed/direction instrument
100 - 10 fire extinguishers
40 - 13 trash cans
25 - 6 cylindrical ash cans
25 - 1 paint locker
* All attached fixtures including leveler shades, clocks, chalk boards, projector screens, etc.

\$2,115

Tools

\$50 - 3 ladders
6 - 3 pipe wrenches
6 - 3 crescent wrenches
3 - 3 putty knives
4 - 1 hammer
5 - 6 files
1 - 1 wire brush
3 - 4 wrenches
8 - 8 screwdrivers
2 - 1 vice grips
1 - 1 channel lock pliers
2 - 1 electricians pliers
1 - 1 needle nose pliers
1 - 1 wire cutter
1 - 1 pliers
1 - 1 square
2 - 1 carpenters square

Tools Continued

\$4 - 1 hand saw
2 - 1 hand saber saw
2 - 1 hack saw
20 - 7 "C" clamps
Assorted screws, nuts and bolts

\$125

Janitor Supplies

\$12 - 4 24" push brooms
3 - 1 mop
5 - 1 mop bucket
10 - 2 dust brooms
2 - 2 dust pans
2 - 2 rattail brooms
1 - 1 squeegee

\$35

EXHIBIT B

WJP:jvs
4-1-80

00987

RESOLUTION No. R-251760 (R80-1887)Adopted on MAY 5 1980

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

That the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a Fifteen (15) year Lease Agreement with RICHARD GLEASON for the operation and management of the Mission Bay Sailing Center, located at Santa Clara Point, Mission Bay Park, for a rental of 10% of all gross income versus a guaranteed annual minimum of \$7,500, whichever is greater, under the terms and conditions set forth in that Agreement on file in the office of the City Clerk as Document No. RR-251760.

APPROVED: JOHN W. WITT, City Attorney

By 

Harold O. Valderhaug, Deputy

HOV:ps:730

4/3/80

Or.Dept. Property

Job 15071

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

on May 5, 1980, by the following vote:

YEAS: Cleator, Lowery, Williams, Schnaubelt, Gotch, Stirling, Killea

NAYS: None

NOT PRESENT: Mitchell, Wilson

AUTHENTICATED BY:

PETE WILSON

Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

(SEAL)

By ELLEN BOVARD, Deputy.

I HEREBY CERTIFY that the above and foregoing is a full,
true and correct copy of RESOLUTION NO. R-251760
passed and adopted by the Council of The City of San Diego,
California, on MAY 5 1980.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

(SEAL)

By Ellen Bovard, Deputy.

(Rev. 8/79)
lbc

00989

APR 3 1980

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO				1. CERTIFICATE NUMBER:	
TO: CITY ATTORNEY		2. FROM: (ORIGINATOR) PROPERTY DEPARTMENT		3. DATE March 10, 1980	
4. SUBJECT Lease Agreement - Mission Bay Sailing Center, Mission Bay Park					
5. PREPARATION OF: ☒ RESOLUTION(S) ☐ ORDINANCE(S) ☐ AGREEMENT(S) ☐ DEED(S)					
Authorizing the City Manager to execute a fifteen (15) year lease agreement with Mr. Richard Gleason for the operation and management of the Mission Bay Sailing Center.					
TO COUNCIL 80-212					
Council District 6			REPORT TO COUNCIL		
6. SUPPORTING INFORMATION: (INCLUDE ONLY INFORMATION NOT COVERED ON FORM 1472A, "DOCKET SUPPORTING INFORMATION")					
COST TO CITY: None ACTION REQUESTED BY: Property Director DESCRIPTIVE LOCATION: Mission Bay Sailing Center, Mission Bay Park DOCUMENTS SUBMITTED: Original and six (6) copies of the proposed agreement. TERM: 15 years RENT: 10% of all gross income versus a guaranteed annual minimum of \$7,500 whichever is greater. USE: Sailing Center in Mission Bay Park. ENVIRONMENTAL ASSESSMENT: This activity is a Class I Project categorically exempt from CEQA pursuant to City EIR Guidelines, Sec. VA (15101). HANDLING: DO NOT RECORD. Deliver document(s) to Property Department, Attn: Bill Punch, M. S. 503 for further handling.					
				CHECK IF ITEM IS TO BE LISTED ON CONSENT AGENDA ☐	
7. FOR INFORMATION CONTACT: (NAME & MAIL STA.)		8. TELEPHONE NO.		9. CHECK IF "DOCKET SUPPORTING INFORMATION" ATTACHED ☐	
RANDOLPH/WJP 503		6792			
10. COMPLETE FOR ACCOUNTING PURPOSES:			11. ROUTING AND APPROVALS		
FUND	BUDGETED	UNBUDGETED	ROUTE (✓)	APPROVING AUTHORITY	DATE SIGNED
DEPT. & FUNCTION			✓	DEPARTMENT DIRECTOR	4/1/80
OBJECT ACCOUNT					3-20-80
COST ACCOUNT			X	CLEARING AUTH. Park & Rec	4-2-80
WORK ORDER NO.			X	CLEARING AUTH. EQD	4-2-80
C.I.P. NO.					
AMOUNT					
12. ESTIMATED COST: cc: County Assessor Docket Job #15071 <u>REDI BOOK PAGE NO. 307&308</u>			X	DEPUTY CITY MANAGER	4-3-80
			X	AUDITOR	
			✓	CITY ATTORNEY	
			✓	ORIGINATING DEPARTMENT	Bill Punch 4-4-80
			X	CITY MANAGER	
			✓	CITY CLERK	4/2/80

DATE ISSUED:

REPORT NO. 80-212

ATTENTION: Public Facilities & Recreation Committee, Agenda of

SUBJECT: Proposal Selection - Mission Bay Sailing Center

SUMMARY

Issue - Should the City Manager be authorized to execute a fifteen-year lease agreement with Richard Gleason for the operation of the Mission Bay Sailing Center?

Manager's Recommendation - Authorize execution of the agreement.

Other Recommendations - None.

Fiscal Impact - A minimum of \$7,500 per year will be deposited to the 100 Fund, Revenue Account 75770, Mission Bay Park Rentals.

BACKGROUND

The City of San Diego has conducted instructional sailing programs at the Mission Bay Sailing Center in Mission Bay Park for the past seven years. These programs include beginning through intermediate sailing utilizing both classroom instruction and actual small boat sailing practice. The program has been well received by the citizens and visitors of San Diego and greatly enhances the recreational opportunities in the City. However, the annual budgetary expenditure necessary to continue this program is approximately \$60,000. Therefore, the Public Facilities and Recreation Committee, in its meeting of July 12, 1979, directed that the facility be operated by a qualified lessee who would incur all expenses and pay a rental to the City. It is expected that the overall program will not only be maintained but improved under this arrangement.

On October 10, 1979, the Property Department solicited proposals from the general public for the operation and management of the Mission Bay Sailing Center. Advertisements were placed in the San Diego Union/Tribune, Los Angeles Times, Wall Street Journal and Daily Transcript newspapers and the San Diego Log magazine. One hundred and two packages were forwarded to interested parties as a result of the solicitation. By December 31, 1979, the final date for submission, only three proposals were received. These were submitted by Richard Gleason, Seymour Wulf and San Diego State University.

00992

The proposal from San Diego State was not responsive to the requirements of solicitation in that it offered no rent to the City and did not offer anything for the current inventory of boats and equipment. However, the proposal was included in the evaluation process since SDSU had formerly made application to operate the Center and has demonstrated the ability to offer a comprehensive program of this type to the public at a reasonable cost.

On January 31, 1980, a nominating committee selected by Aquatics and Property Department staff were mailed copies of the proposals and rating sheets to be completed and returned. Members of the committee were selected on the basis of their knowledge, experience and involvement in sailing and business. They were: Malin Burnham, President of John Burnham Company; Dan Fox, County District Attorney; Jim Brown, President, of Silberrad, Inc.; and Bill Rick, Rick Engineering.

By February 21, 1980, all evaluations had been returned by the Committee members. The proposals were evaluated on the basis of the following considerations: rent offered, experience and qualifications, financial capability, service to the public, improvements and offer on inventory.

The following general comments relate to the proposals in the order of the committee's preference:

1. Richard Gleason

Richard Gleason is currently employed as a firefighter in the Lakeside area. His previous employment included jobs such as a Mission Bay Harbor Patrolman, Lifeguard and Lifeguard Instructor (various levels) on a continual basis from 1970 to 1979. Mr. Gleason has completed many aquatic and first aid specialized courses such as: boating safety instructor, boating skills and seamanship, small boat handling and safety, coastal celestial navigation, vessel inspection and safety, marine emergencies seminar, etc. His certificates and licenses include: boating safety instructor, (State of California), water safety instructor (UCSD), first aide instructor (Red Cross), cardiopulmonary resuscitation instructor (Red Cross), scuba (NAUI certified), canoeing and kayaking (Red Cross), and Class III marine operator's license. Mr. Gleason's business experience includes purchasing, refurbishing and selling homes and apartments and management of apartments and condominiums in San Diego and Park City, Utah.

Mr. Gleason has the financial capability and capital to effectively carry out the proposed lease agreement with \$46,000 cash available for this business venture. His proposed schedule of classes, operating hours and prices will effectively continue the program that the City has been offering at the Sailing Center.

This proposal offers to immediately improve the fence around the facility, modify the storage yard and re-stain the exterior of the building and fences at a total cost of \$4,250. Future improvements offered include a new launching ramp, a new concrete slab for the storage yard, new tiling in the building and building modifications at a total estimated cost of \$13,600.

Mr. Gleason is offering the City \$16,500 for its inventory of boats, equipment and supplies. The consideration offered by Mr. Gleason is 10% of all gross income, excepting income from certain City students and recreation groups, with a guaranteed annual minimum of \$7,500. This offer meets the RFP minimum requirements of 10% of all gross income with a guarantee of \$7,500 per year. Mr. Gleason has requested a fifteen year lease term.

2. Seymour Wulf

Seymour Wulf is currently a self-employed businessman who owns and operates several successful businesses. He has a post graduate degree in Business Management and is credentialed as a Business Management Specialist by the California Department of Education. Mr. Wulf will be assisted in the operation by Mark Snell who will be the co-manager. Mr. Snell is the current owner of Bay Catamaran in Mission Bay Park. His duties have included rigging boats, deliveries, sales, organizing regattas, lessons, etc. at Bay Catamaran and Islandia Boat Dock since 1973. Mr. Snell has participated in many championship catamaran races around the United States for several years. He is a member of the San Diego Yacht Club, Pacific Multihull Association, and the San Diego Multihull Association.

Mr. Wulf has the financial capability and capital to effectively carry out the proposed lease agreement with a net worth in the six figure category. His proposed schedule of classes, operating hours and prices will effectively continue the program that the City has been offering at the Center. A possible exception may be the price of sailing lessons (\$65-\$75) which is substantially higher than that of Mr. Gleason (by 45%) and the former City offerings (by 64%).

This proposal offers to immediately improve the landscaping and refinish the exteriors of the building at a total cost of \$5,000. Future improvements are anticipated but not offered at this time. Mr. Wulf is offering the City \$9,250 for its inventory of boats. The consideration offered by Mr. Wulf is 10% of all gross income with a guaranteed annual minimum of \$9,600. A fifteen year lease term is requested.

PROPOSAL

The consensus of City staff and nominating committee members was to rate Richard Gleason's proposal first in every category except rent offered and financial capability. Financial capability was extremely close since Mr. Wulf has a higher net worth but Mr. Gleason has \$46,000 set aside for the business.

Since the continued excellence of the instructional sailing program at this facility is of the greatest importance to the City from several different aspects it is recommended to award the lease to Mr. Richard Gleason. While Mr. Wulf's minimum rental offer was higher than Mr. Gleason's it was felt that this did not offset Mr. Gleason's greater strength in the other areas. In fact some staff

and committee members felt that since both proposers offered the City 10% of all gross income, the actual rental amount would probably exceed the minimum offer of either proposer each year thus making the rental offer of each proposal equal.

The proposed agreement is for a period of fifteen years. The agreement requires the lessee to keep the facility open during City-approved hours to adequately serve the public to the satisfaction of the City Manager. It also requires the lessee to maintain an adequate number of personnel to serve the facility. The agreement further provides that the lessee maintain during the entire lease term, a Performance Bond equal to three years minimum rent or \$22,500 with a bonding company acceptable to the City. All prices for merchandise and services offered by the lessee shall be subject to prior written approval of the City Manager.

ALTERNATIVES

1. Award the lease to Seymour Wulf.
2. Reject the offer and resolicit proposals.

Respectfully submitted,

John P. Fowler
Deputy City Manager

FOWLER/Spotts/WJP

NOMINATING COMMITTEE POINT RESULTS
(Total of 4 Members)

	WULF	GLEASON	STATE
Rent Offered 1-15 Each	39	32	0
Experience & Qualifications 1-10 Each	18	27	30
Financial Capability 1-10 Each	25	21	35
Service to the Public 1-15 Each	35	40	38
Improvements Offered 1-10 Each	16	30	0
Inventory Offer 1-10 Each	21	32	0
Grand Totals	154	182	103



THE CITY OF

SAN DIEGO

CITY ADMINISTRATION BUILDING • 202 C STREET • SAN DIEGO, CALIF. 92101

OFFICE OF THE
CITY MANAGER
236-6363

November 9, 1984

File: Leases - Gleason

CERTIFIED MAIL
P 336 901 201

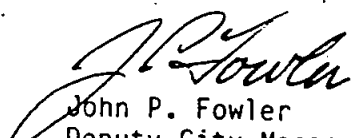
Richard Gleason
1010 Santa Clara Place
San Diego, CA 92109

Re: Minimum Annual Rent Adjustment - Mission Bay Sports Center -
Document RR-251760

In accordance with Article III, Section E. MINIMUM RENT, as amended by letter dated February 19, 1981, your minimum annual rent is subject to periodic adjustments. Therefore, effective January 1, 1984 thru December 31, 1986, your new minimum annual rent shall be \$22,890 (see enclosed calculations).

If you have any questions, please call Cheryl Ferraro, Property Agent, at 236-7073.

Very truly yours,


John P. Fowler
Deputy City Manager

JLS:CAF:sn(1)D9

Enclosure

cc: County Assessor
City Clerk
City Auditor - Roy Quon
Fin. Mgmt. - Jan Beaton
Park & Rec. - Jack Krasovich
Lease Billing Supervisor

DOCUMENT NO. 769065

FILED NOV 16 1984

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

01005

Richard Gleason
Minimum Annual Rent Calculations

<u>Year</u>	<u>Rent</u>
1981	\$15,275.76
1982	24,406.60
1983	36,984.82
1/1/81 - 3/31/82 Audit Deficiency*	3,272.55
4/1/82 - 3/31/83	<u>5,897.99</u>
TOTAL RENT	\$85,837.72
Average Annual Rent (\$85,837.72 ÷ 3)	\$28,612.57
New Minimum Annual Rent Rounded to the Nearest Dollar (80% of \$28,612.57)	<u>\$22,890</u>

*Audit deficiency for 22-month period 6/1/80 - 3/1/82 was \$4,799.77. Since 1980 is not used in this calculation, these seven months were excluded.

CAF:sn(1)D9
11/9/84

01006

DOCUMENT NO. 769151

FILED April 1, 1985
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

(LEAS - RICHARD GLEASON-MISSION BAY SAILING CENTER)

NON-COUNCIL ACTION

Five-Year Percentage Rent Adjustment - Mission
Bay Sports Center, effective 1/1/85 through
12/31/90 - no change in rates.

cc: Property, MS-503, Ferraro
(All copies)

4/1/85

01007



THE CITY OF

SAN DIEGO

CITY ADMINISTRATION BUILDING • 202 C STREET • SAN DIEGO, CALIF. 92101

OFFICE OF THE
CITY MANAGER
236-6363

March 25, 1985

File: Leases - Gleason

CERTIFIED MAIL
P21 8369374

DOCUMENT NO. 769151

Richard Gleason
Mission Bay Sports Center
1010 Santa Clara Place
San Diego, CA 92109

FILED APR 01 1985
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Dear Mr. Gleason:

Re: Five-Year Percentage Rent Adjustment - Mission Bay Sports Center,
Document RR-251760

In accordance with Section III.B.1., Percentage Rent Adjustment, as amended by letter dated February 19, 1981, your percentage rent is subject to adjustment every five years.

After reviewing the rental rates in effect for comparable businesses in the Southern California area, it has been determined that there will be no percentage rent change on your lease agreement.

Therefore, effective January 1, 1985 through December 31, 1990, your percentage rent will remain at 2 percent of boat sales and related accessories, 25 percent of vending machines commissions, and 10 percent of all other operations.

If you have any questions, please call Gloria Cien, Property Agent, at 236-6728.

Very truly yours,

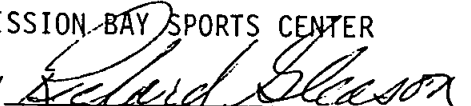

John P. Fowler
Deputy City Manager

JLS:GJC:jw(1)C1

cc: County Assessor
City Clerk
City Auditor - Roy Quon
Financial Management - Debbie Logan
Park & Recreation - Jack Krasovich
Lease Billing Supervisor

Agreed and Accepted:

MISSION BAY SPORTS CENTER

BY 
Richard Gleason

April 1, 1985

01008

DOCUMENT NO. 769295

FILED January 6, 1986

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

(LEAS - RICHARD GLEASON-MISSION BAY SAILING CENTER)

NON-COUNCIL ACTION

5-year water rate adjustment increase of 70% effective
January 1, 1986 and an electric submeter reimbursement
effective April 1986.

cc: Property, MS-503, Ferraro
(All copies)

1-6-86 *en*

01009



THE CITY OF

SAN DIEGO

CITY ADMINISTRATION BUILDING • 202 C STREET • SAN DIEGO, CALIF. 92101

OFFICE OF THE
CITY MANAGER
236-6363

December 31, 1985

File: Leases - Gleason

CERTIFIED MAIL
P 484 636 214

Richard Gleason
1010 Santa Clara Place
San Diego, CA 92109

Dear Mr. Gleason:

Re: Mission Bay Sports Center - Document RR-251760

In accordance with Article IVB.15 of the subject agreement, the water rate which you pay the City is subject to adjustments every five years. Since June 1980, this rate has increased 70 percent. Therefore, effective January 1, 1986, the water charge due the City is increased from \$50 to \$85 per month. Beginning in February and monthly thereafter, you will receive a monthly bill for this charge.

In conjunction with this matter, an electric submeter was installed so that the City could reimburse you for its electrical usage. Beginning in April, 1986, and quarterly thereafter, the City will reimburse you for its share of your electrical bill. Any questions regarding this reimbursement should be directed to Sandy Anderson of the City's Park & Recreation Department at 236-6411.

If you have any questions, please call Cheryl Ferraro at 236-7073.

Very truly yours,


John P. Fowler
Deputy City Manager

JLS:CAF:sn(43-2)

cc: Park & Recreation

DOCUMENT NO. **769295**

FILED **JAN 06 1986**
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

01010



THE CITY OF

SAN DIEGO

CITY ADMINISTRATION BUILDING • 202 C STREET • SAN DIEGO, CALIF. 92101

OFFICE OF THE
CITY MANAGER
236-6363

January 23, 1986

File: Job 218830

Richard Gleason
1010 Santa Clara Place
San Diego, CA 92109

Re: Audit of Richard Gleason, d.b.a. Mission Bay Sports Center

Your letter of January 13, states your objection to the late payment charge of \$677 based upon your having paid according to the invoice due dates, rather than your lease which states that rent is payable monthly in arrears prior to the last day of the following calendar month.

In our system, the lease terms prevail over any other items, including invoices; i.e., the document prevails. We do, however, understand the fact that your payments were made according to the invoice due dates and for that reason we are willing to waive the \$677 late payment charge. Please then only pay Invoice A19182 for \$2,331 and toss Invoice L19183.

Also, since our computer system cannot accommodate your due dates and payment on the last day of the month is acceptable to the City, we are willing to change your due date. Henceforth, your rent is due monthly in arrears on or before the last day of the month following the month in which the revenue was received. Please signify your agreement by dating, signing and returning a copy of this letter in the enclosed envelope.

If you have any questions, please call Cheryl Ferraro, Property Agent, at 236-7073.

John P. Fowler
Deputy City Manager

JLS:CAF:baa(3)43

cc: City Auditor, Roy Quon
Financial Management, Debbie Logan
Lease Billing Supervisor

DOCUMENT NO. **769317**

FILED **FEB 11 1986**

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

THE ABOVE IS ACKNOWLEDGED AND ACCEPTED THIS 31 DAY OF JAN, 1986.

Richard D. Gleason

01011



THE CITY

SAN DIEGO

PROPERTY DEPARTMENT, MAIL STATION 51-A
SECURITY PACIFIC PLAZA, 1200 THIRD AVENUE, SUITE 1700
SAN DIEGO, CALIFORNIA 92101 TELEPHONE: (619) 236-6020

CERTIFIED MAIL
NO. P 191 415 165

June 10, 1987

File: Leases - Gleason

RECEIVED
CITY CLERK'S OFFICE
1987 JUN 15 PM 4:54
SAN DIEGO, CALIF.

Richard Gleason
1010 Santa Clara Place
San Diego, CA 92109

Re: Minimum Annual Rent Adjustment - Mission Bay Sports Center -
Document RR-251760

In accordance with Article III, Section E., MINIMUM RENT, as amended by letter dated February 19, 1981, your minimum annual rent is subject to periodic adjustments. Therefore, effective January 1, 1987 through December 31, 1989, your new minimum rent shall be \$34,222 (see enclosed calculations).

If you have any questions, please call Larry Lamb, Property Agent, at 236-5398.

Very truly yours,

Maureen A. Stapleton
Deputy City Manager

JLS:LDL:baa(1)43

Enclosure

cc: County Assessor
City Clerk
City Auditor
Jan Beaton, Financial Management
Terri Carrol, Park & Rec. Dept.
Lease Billing Supervisor

DOCUMENT NO. 769523

FILED SEP 19 1987

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

01012

MISSION BAY SPORTS CENTER

Minimum Annual Rent Calculations

<u>Period</u>	<u>Rent</u>
1984 - 1985	\$40,921
1985 - 1986	\$44,159
1986 - 1987	<u>\$43,256</u>
Total Rent	\$128,336
Average Annual Rent (\$128,336 ÷ 3)	\$42,778
New Minimum Rent (80% of \$42,778)	\$34,222

RECEIVED
CITY CLERK'S OFFICE
1987 JUN 15 PM 4:54
SAN DIEGO, CALIF.

RESOLUTION No. R-251760

(R80-1887)

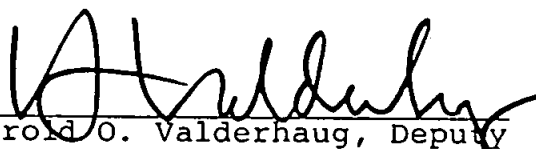
Adopted on MAY 5 1980

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

That the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a Fifteen (15) year Lease Agreement with RICHARD GLEASON for the operation and management of the Mission Bay Sailing Center, located at Santa Clara Point, Mission Bay Park, for a rental of 10% of all gross income versus a guaranteed annual minimum of \$7,500, whichever is greater, under the terms and conditions set forth in that Agreement on file in the office of the City Clerk as Document No. RR-251760.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug, Deputy

HOV:ps:730
4/3/80
Or.Dept. Property
Job 15071



THE CITY OF

SAN DIEGO

CITY ADMINISTRATION BUILDING • 202 C STREET • SAN DIEGO, CALIF. 92101

OFFICE OF THE
CITY MANAGER
236-6363

January 23, 1986

File: Job 218830

Richard Gleason
1010 Santa Clara Place
San Diego, CA 92109

Re: Audit of Richard Gleason, d.b.a. Mission Bay Sports Center

Your letter of January 13, states your objection to the late payment charge of \$677 based upon your having paid according to the invoice due dates, rather than your lease which states that rent is payable monthly in arrears prior to the last day of the following calendar month.

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If you have any questions, please call Cheryl Ferraro, Property Agent, at 236-7073.

John P. Fowler
Deputy City Manager

JLS:CAF:baa(3)43

cc: City Auditor, Roy Quon
Financial Management, Debbie Logan
Lease Billing Supervisor

DOCUMENT NO. **769317**

FILED **FEB 11 1986**

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

THE ABOVE IS ACKNOWLEDGED AND ACCEPTED THIS 31 DAY OF JAN, 1986.

Richard D. Gleason