



THE CITY OF

SAN DIEGO

PROPERTY DEPARTMENT, MAIL STATION 51-A
SECURITY PACIFIC PLAZA, 1200 THIRD AVENUE, SUITE 1700
SAN DIEGO, CALIFORNIA 92101-4199 TELEPHONE: (619) 236-6020
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September 3, 1993

File: Leases - OMBAC

John P. Boyl
Old Mission Beach Athletic Club
P.O. Box 90157
San Diego, CA 92169-2157

Re: Modification to OMBAC Lease Development Plan - City Clerk
Document RR-270978

Due to financial constraints, OMBAC requested to be relieved of the requirement in Item m. of the General Development Plan to construct an additional playing field. City determined that cutbacks in City maintenance personnel would make it difficult for City to maintain an additional playing field at Ocean Beach Athletic Area. City and OMBAC agree to delete the requirement for an additional playing field from the General Development Plan and instead substitute the requirement that OMBAC be responsible for weed and litter control on the undeveloped easterly portion of Ocean Beach Athletic Area, as shown on the attached Exhibit A.

Robert J. Collins

Robert J. Collins, Deputy Director
Property Department

ACKNOWLEDGED AND ACCEPTED:

Chuck Miller
OMBAC

Oct 1 - 1993
DATE

Attachment

RJC:PTC:rc



CITY OF SAN DIEGO	
PROPERTY DEPT.	
☐	DIRECTOR
☐	DEPUTY MANAGER
☒	FILE COPY
☐	CHRON. COPY
☐	ORIGINATOR

July 10, 1991

File: Leases - OMBAC

(Legal Side)

John Patrick Boyl
4370 La Jolla Village Drive, Suite 220
San Diego, CA 92122-1233

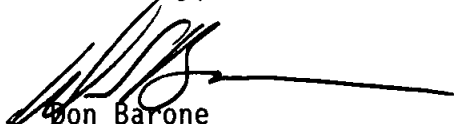
Re: Lease Between the City and the Old Mission Beach Athletic Club
(City Clerk's Document RR-270978)

Dear Mr. Boyl:

In response to your request to modify the General Development Plan of OMBAC's lease referenced above, OMBAC is hereby granted a one year extension (to June 30, 1992) to complete the development of additional field space required by item m. of the Plan. Also, OMBAC is relieved of the obligation to plant trees on 150 feet of frontage on Sunset Cliffs Boulevard.

If you have questions, or would like to discuss this matter further, please call Mary Louise Groarke, Property Agent at 236-6766.

Sincerely,


Don Barone
Property Services Supervisor

DSB:MLG:sb(1)

cc: John Leppert, Assistant to the City Manager
Pete Jungers, District Manager, Coastal Community Park & Recreation
James L. Spotts, Property Director
Rhea Kuhlman, Assistant Property Director

ADDENDUM TO LEASE

In addendum to that certain lease dated May 16, 1988, between the CITY OF SAN DIEGO ("City") and the OLD MISSION BEACH ATHLETIC CLUB ("Lessee"), recorded as City Document RR270978, the following paragraph is to be included at the end of Paragraph 1.02, Uses, of the lease:

Lessee shall submit a report annually to City which explains and describes all of the activities done on the premises and in the community for the benefit of the local community and the public at large. This report shall be submitted within 60 days after the end of each lease year and will cover the previous year as well as set an agenda of activities for the ensuing year.

The parties by signing below agree that this addendum shall be made part of the above-referenced lease.

CITY OF SAN DIEGO

OLD MISSION BEACH ATHLETIC CLUB



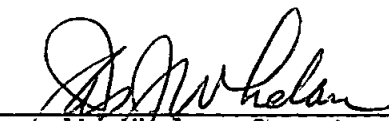
Jack McGrory, Asst. City Manager



Chuck Millenbach, President

Date 4-3-89

Date 3/7/89



Jim Whelan, Secretary

Date 3/7/89

APPROVED AS TO FORM AND LEGALITY BY:

JOHN W. WITT, City Attorney

By 

Deputy City Attorney

MXB:baa(2)108
2-28-89

RR-
DOCUMENT NO. 270978-1
FILED APR 04 1989
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

COPY

OLD MISSION BEACH ATHLETIC CLUB

THE CITY OF SAN DIEGO

Flat Lease

DOCUMENT NO. RP 270978

FILED MAY 16 1988

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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CITY OF SAN DIEGO

FLAT RATE LEASE

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and OLD MISSION BEACH ATHLETIC CLUB, hereinafter called "LESSEE."

SECTION 1: USES

1.01 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, described in Section 9.01, Exhibit "A" - Park Plan, attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises" or "leased premises." These premises are comprised of Building One as described in Section 9.02, Building Plans, and the exact location that this building will be moved to at the direction and approval of CITY. This location is only generally described in Section 9.01, Exhibit A - Park Plan.

1.02 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of recreational equipment storage and recreational meeting rooms and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever. }

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

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

1.04 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or if during the lease

term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom.

1.05 Easements and Reservations.

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

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

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

- 1.07 Rates and Charges. All charges for merchandise and services or facilities on said premises shall be in accordance with the schedule set forth in Section 9.05, Schedule of Rates & Charges, hereof. Any changes in said schedule are subject to prior written approval by the City Manager or his authorized representative. All fees collected by LESSEE from the operation of the premises shall be used to further the purpose of the LESSEE in a manner beneficial to the premises and/or programs offered at the premises.

- 1.08 Political Activities. The leased premises shall be used exclusively for the purposes specified in Section 1, USES, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.

SECTION 2: TERM

- 2.01 Commencement. The term of this agreement shall be 25 years commencing on the first day of the calendar month following execution by the City Manager. "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager.
- 2.02 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 2.03 Surrender of Premises. At termination of this lease for any reason, LESSEE shall execute, acknowledge and deliver to CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the premises. The premises shall be delivered free and clear of all liens and encumbrances, and in a decent, safe and sanitary condition.

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

SECTION 3: RENT

3.01 Rent. Consideration to CITY for granting this lease shall be:

- a. Donation to the City of San Diego of the two 1,076-square-foot buildings described Section 9.02, Building Plans, and now temporary located on the east side of the tennis courts in the Ocean Beach Athletic Area of Mission Bay Park, as depicted in Section 9.01, Exhibit A - Park Map.
- b. Relocation of these buildings to a site west of the tennis courts as depicted on Section 9.01, Exhibit A - Park Map, and performance required by Section 9.03, General Development Plan.

SECTION 4: ASSIGNMENT

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

4.02 Assignment and Subletting. 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.

4.03 Encumbrance. LESSEE may not encumber this lease, its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security instrument.

4.04 Defaults.

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, including any provision or action required by Section 9.03, General Development Plan, and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, shall fail to commence to cure the default(s) within said thirty-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 4.04, a. (1), Defaults, hereof, is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

- b. 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.
- c. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or

right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

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

- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. In the event of a partial taking, if, in the opinion of CITY, the remainder of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the premises taken.
- d. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of or damages to LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.

- e. Transfer. CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.
- f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 5: INSURANCE RISKS/SECURITY

- 5.01 Indemnity. LESSEE shall at all times relieve, indemnify, protect, and save CITY and any and all of its boards, officers, agents, and employees harmless from any and all claims and demands, actions, proceedings, losses, liens, costs, judgments, civil fines, and penalties of any nature whatsoever in regard to or resulting from the use of the premises, including but not limited to expenses incurred in legal actions, death, injury, or damage that may be caused directly or indirectly by:
 - a. any unsafe or defective condition in or on the premises of any nature whatsoever which may exist by reason of any act, omission, neglect, or any use or occupation of the premises;
 - b. any operation, use, or occupation conducted on the premises;
 - c. any act, omission, or negligence on the part of LESSEE, its employees, agents, sublessees, invitees, licensees; or
 - d. any failure by LESSEE to comply or secure compliance with any of the lease terms or conditions.
- 5.02 Insurance. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:
 - a. Public liability and property damage insurance in the amount of not less than ONE MILLION DOLLARS (\$1,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises.

- b. Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover 100 percent of the replacement cost up to 50 percent of CITY'S deductible on its City-wide Fire Insurance Policy as related to the premises. Currently, CITY'S deductible is \$25,000 per occurrence and, therefore, LESSEE would be responsible for maintaining insurance in the amount of \$12,500. LESSEE will be given notice of any change in CITY'S deductible amount so that LESSEE may maintain more or less insurance accordingly. 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. LESSEE is responsible for insuring all his personal or business property.
- c. Conditions. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.
- d. Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- e. Accident Reports. LESSEE shall report to CITY any accident causing more than TEN THOUSAND DOLLARS (\$10,000) worth of property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.

- f. Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

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

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

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

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.01 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this lease. LESSEE further acknowledges that the premises are in the condition called for by this lease, and that LESSEE does not hold CITY responsible for any defects in the premises.
- 6.02 Entry and Inspection. CITY reserves and shall always have the right to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.
- 6.03 Maintenance. Except as hereinafter provided, LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises throughout the term. LESSEE will perform all such repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy and sanitary condition satisfactory to CITY and in compliance with all applicable laws. Appropriate codes and standards of CITY, state and federal agencies shall be observed in all maintenance, repairs and replacements on the premises. CITY is responsible for maintenance of the exterior wall and roof of the premises.
- 6.04 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major

structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.

- 6.05 Utilities. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground.
- 6.06 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.
- 6.07 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.

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

6.09 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 Section 9.03, General Development Plan, which plan is hereby incorporated by this reference. 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.
- 6.13 Failure to Meet Development Schedule. Should LESSEE fail to complete construction in accordance with the schedule of development of the General Development Plan hereof, it is specifically agreed by LESSEE and CITY that CITY will be entitled to terminate this lease.
- 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. LESSEE will proceed with diligence to obtain such permit or exemption from such permit, but if unable to do so within twelve (12) months after the date of this lease, this lease will terminate.

SECTION 7: GENERAL PROVISIONS

7.01 Notices

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

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

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

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

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

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

- 7.04 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age, or physical handicap in LESSEE'S use of the premises, including, but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

- 7.05 Equal Opportunity. LESSEE agrees to abide by CITY'S Affirmative Action Program for LESSEES as it exists or is amended to the extent that the program is applicable to this lease. A copy of the program effective as of the date of this lease is on file in the City Clerk's Office and by this reference is part hereof. The program's goal is the attainment of employment for minorities and women in all areas of employment, in a total percentage as established by CITY for its Affirmative Action Program each year.
- 7.06 Partial Invalidity. If any term, covenant, condition, or provision of this lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.07 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney's fees.
- 7.08 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.09 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.10 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 shall 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 Bylaws. Membership in LESSEE'S organization shall be open to anyone meeting the requirements of its rules and bylaws. All restrictions, rules, bylaws, and fees, if any, and changes thereto proposed by LESSEE'S organization shall be submitted to the City Manager. Bylaws shall be on file in the office of the Property Department prior to CITY execution of this lease.
- 7.13 Corporate Authority. Each individual executing this lease on behalf of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this lease is binding upon the corporation in accordance with its terms and that LESSEE is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify LESSEE to do business in the state where the premises are situated.
- 7.14 LESSEE Right to Negotiate Renewal. Provided LESSEE is not then in default of any provision hereof upon expiration of this agreement, LESSEE shall have the right to negotiate a proposed renewal lease of said premises for a mutually agreeable term upon such conditions and rental as CITY shall then offer. Such right must be exercised by written notice thereof to CITY not less than six (6) months, nor more than twelve (12) months prior to expiration of the lease term. Following such notice and not less than three (3) months prior to said expiration, CITY shall offer LESSEE a renewal lease containing such conditions and rental as CITY is then willing to accept from any other qualified party desiring to lease said premises. In the event such conditions and rental are not accepted by LESSEE, and in the event CITY and LESSEE do not agree as to any other conditions for renewal prior to expiration of this lease, then LESSEE'S right to renew herein shall terminate upon said expiration.
- 7.15 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.

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- 7.16 Relocation Payments. LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this lease.
- 7.17 Rules and Regulations. LESSEE will comply with all rules and regulations adopted for Mission Bay Park and the Ocean Beach Athletic Area including, but not limited to hours of operation.

SECTION 8: SIGNATURES

8.01 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 May 16, 1988 By *Donald Van Winkle*
ASSISTANT TO THE Deputy City Manager

LESSEE: OLD MISSION BEACH ATHLETIC CLUB

Date 5-2-88 By *Chuck Miller*
President
By *A. J. Whelan*
Secretary

APPROVED as to form and legality this 16 day of June, 1988.

JOHN W. WITT, City Attorney

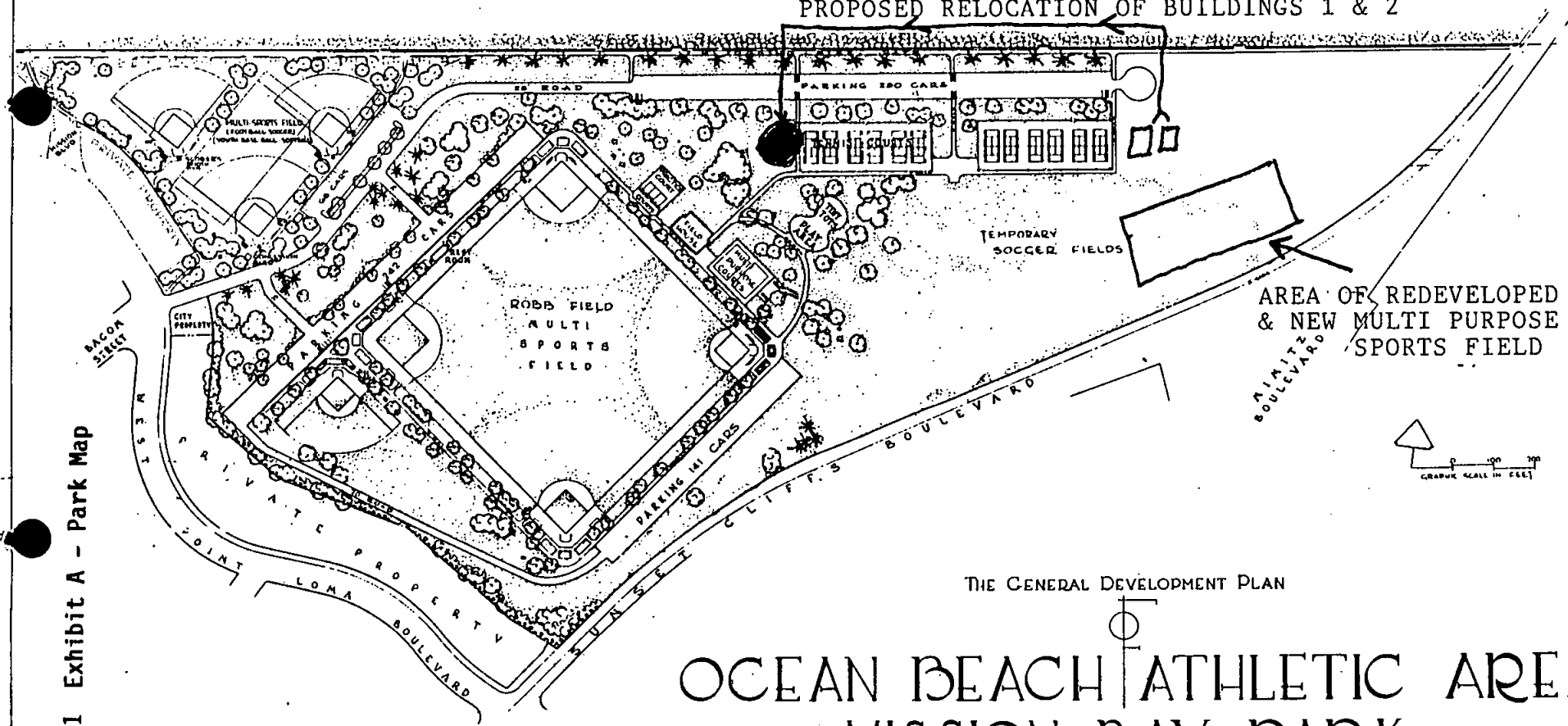
By *W. J. Witt*
Deputy City Attorney

MXB:baa(4)61
4-28-88

R-270978

M A R I N E S T A D I U M

PROPOSED RELOCATION OF BUILDINGS 1 & 2



THE GENERAL DEVELOPMENT PLAN

OCEAN BEACH ATHLETIC AREA MISSION BAY PARK

SAN DIEGO, CALIFORNIA

9.01 Exhibit A - Park Map

PARK CONTAINS 62 ACRES
PREPARED BY THE PARK DESIGN SECTION S TO RLG

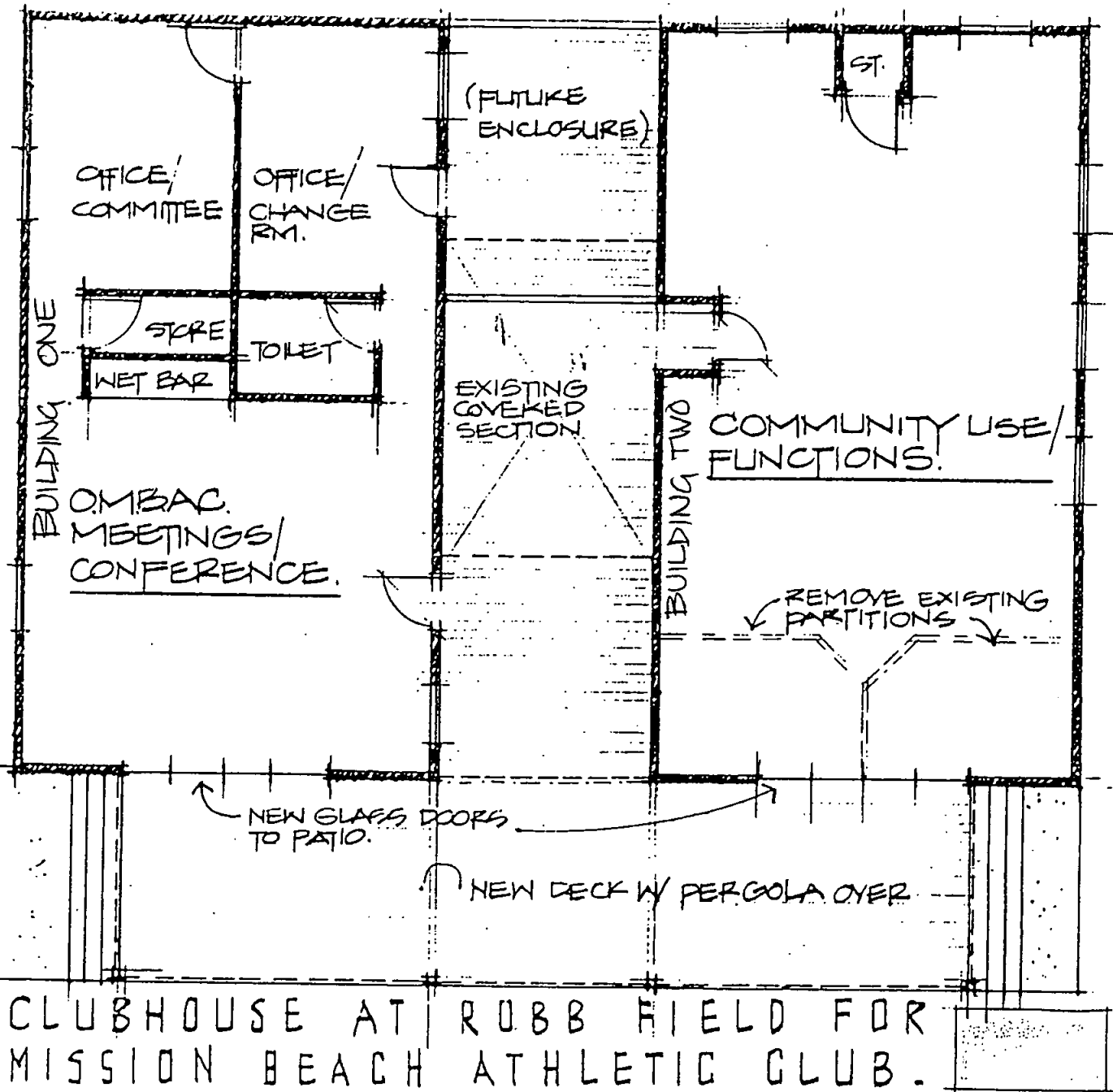
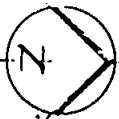
1:500
Pav 1/2" = 1'-0"

APPROVED BY PARK AND RECREATION BOARD 2-70

MB-113

SCHEMATIC DESIGN -- 1 OCTOBER 1987 -- 1/8" = 1'-0"

 DENOTES EXISTING WALLS



9.03

GENERAL DEVELOPMENT PLAN

- a. Lessee will site and set both Building One (premises) and Building Two on a foundation as approved by City, including a skirt for the foundation and construction of the breezeway between the two buildings.
- b. Lessee will be responsible for utility hookups for both buildings.
- c. Lessee will arrange separate meters for electrical. (If this is not feasible, Lessee will pay City annually for estimated electrical usage for premises.
- d. Lessee will be responsible for water and sewage monthly bills for premises.
- e. Lessee agrees not to add heating or air conditioning without prior City approval by Buildings Division and Park & Recreation Department/Coastal Division.
- f. Lessee will properly maintain the interior of premises, a 1,076-square-foot building, and all plumbing in that building.
- g. City will maintain the exterior of the premises.
- h. Lessee will provide City, before City acceptance of buildings, with proof of termite inspection and be responsible for corresponding corrective action as-needed.
- i. City will accept responsibility for termite control, according to City standards after City acceptance of Buildings One and Two.
- j. Lessee will landscape around the buildings according to plans approved by Park & Recreation Department/Coastal Division and Park Development and Open Space Division.
- l. Lessee will have no priority use of improved and additional playing fields beyond normal scheduling.
- out m. Lessee will refurbish one preexisting field in the Ocean Beach Athletic Area as well as undertaking the construction (including irrigation) of additional field space in the unimproved area between existing fields and the flood control channels north of the tennis courts. The renovated and new playing fields will approximate an area of 101,250 square feet and are approximately depicted on Section 9.01, Exhibit A - Park Map. Lessee shall develop and renovate the playing fields between July 1, 1988 and June 30, 1991 including leveling and replanting the existing turfed field and developing an additional turfed field including irrigation to City standards. These fields are depicted in Exhibit B of this lease agreement.
- n. City will maintain fields according to City standards.
- o. LESSEE is to remodel the interior Building Two as directed by the City's Park & Recreation Department so that it may be used for community meetings.
- p. Lessee will plant trees on 150 feet of frontage on Sunset Cliffs Boulevard, east of the tree line as directed by the Park & Recreation Department.

9.04 Corporate Name

Red Mission Beach VCA Athletic Club
CORPORATE NAME

I, James J. Whelan certify that I am the Secretary of the corporation named in the attached agreement; that Chuck Millenbah, who signed this agreement on behalf of the corporation, was then the President of said corporation; that said agreement was duly signed for and on behalf of said corporation by authority of its governing body, pursuant to a resolution duly adopted by its Board of Directors on May 2, 1988 and is within the scope of its corporate powers; and that set out below are the names of the officers and directors of said corporation.

By

James J. Whelan

CORPORATE SEAL

Name
Title

Chuck Millenbah

Name
Title

James J. Whelan
Secretary

Name
Title

Name
Title

BOARD OF DIRECTORS & OFFICERS

Bob Stivers - Board
Terry Curren - Board
Mike Curren - Board
Larry Clark - Board
Jeff Derbes - Treasurer
Bill Kronberger - Board
Chuck Millenbah - President
Jim Whelan - Secretary
Fred Hill - Vice President

9.05 Schedule of Rates & Charges

OMBAC RUGBY

1987-88 Season

Dues \$70.00

Full Time Student \$25.00

RECEIVED
CITY CLERK'S OFFICE

1988 MAY 11 PM 2:00

* SAN DIEGO, CALIF. *

(R-88-2248)

RESOLUTION NUMBER R- 270978

ADOPTED ON MAY 16 1988

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a 25-year lease agreement with OLD MISSION BEACH ATHLETIC CLUB (OMBAC), for the use of a 1,076-square-foot building on Robb Field for the purpose of recreational equipment storage and meeting rooms, in consideration of the donation of two buildings and the development of park improvements, as more particularly described in that lease agreement on file in the office of the City Clerk as Document No. RR- 270978.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
05/04/88
Or.Dept:Prop.
Job:219785
R-88-2248
Form=r.none

Passed and adopted by the Council of The City of San Diego on
May 16, 1988 by the following vote:

YEAS: Roberts, Pratt, Struiksma, Henderson, McCarty, O'Connor.

NAYS: Filner

NOT PRESENT: Wolfsheimer, McColl.

AUTHENTICATED BY:

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

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

(SEAL)

By: ELLEN BOVARD, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true
and correct copy of RESOLUTION NO. R- **270978**, passed
and adopted by the Council of The City of San Diego, California
on **MAY 16 1988**.

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

(SEAL)

By: *Ellen Bovard*, Deputy

Property
51A
RJC/MB

(R-88-2248)

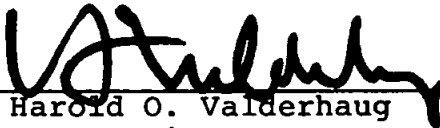
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APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
05/04/88
Or.Dept:Prop.
Job:219785
R-88-2248
Form=r.none

RECEIVED
CITY CLERK'S OFFICE

1988 MAY 11 PM 2:00

SAN DIEGO, CALIF.

201-321-3213

201-321-3213