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THE CITY OF SAN DIEGO

LEO PIERSON

Lease Agreement

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OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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**CITY OF SAN DIEGO
LEASE AGREEMENT**

THIS LEASE AGREEMENT ("Lease") is executed between THE CITY OF SAN DIEGO, a municipal corporation ("CITY"), and LEO PIERSON ("LESSEE").

SECTION 1: USES

1.1 Premises. CITY leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, known as the Morley Field Disc Golf Course in Balboa Park and more specifically described in Exhibit "A" attached to this Lease and by this reference made part of this Lease. The real property is hereinafter called the "Premises."

1.2 Uses. It is expressly agreed that the Premises are leased to LESSEE solely and exclusively for the purposes of operating and maintaining a disc golf course open to the general public, in accordance with the General Development Plan referenced in Section 6.12 of this Lease, and for other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever. Permitted uses shall also include selling prepared and packaged food, nonalcoholic beverages, and disc golf merchandise.

The use of the Premises for any unauthorized purpose shall constitute a material breach of the terms of this Lease and subject this Lease to termination at the sole option of CITY.

LESSEE covenants and agrees to use the Premises throughout the Term (defined in Section 2.1) of this Lease for the above-specified purposes and to diligently conduct the business on the Premises to produce the most gross income that can be reasonably expected. Failure to continuously use the Premises for the purposes, or the use of the Premises for purposes not expressly authorized in this Lease, shall be grounds for termination by CITY.

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

operation of the Premises.

LESSEE shall be solely responsible for processing all land use, development, and construction approvals required for the use and occupancy of the Premises. This Lease shall not be interpreted by any decision maker on any CITY-issued permit or approval to override or dictate the outcome of any findings required for any permit or development approval.

- 1.4 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements in this Lease, shall at all times during the Term peaceably and quietly have, hold, and enjoy the Premises. If CITY for any reason cannot deliver possession of the Premises to LESSEE at the commencement of the Term, or if during the Term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then 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 annual minimum 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 reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the Premises for the purpose of making repairs to or developing municipal resources and services.

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 Premises resulting from CITY exercising the rights reserved in this section. 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, LESSEE shall provide competent management of the Premises to the satisfaction of the City Manager. For the purposes of this section, "competent management" shall mean demonstrated ability in the management and operation of a disc golf course and

related activities in a fiscally responsible manner.

- 1.7 Parking. Parking of vehicles shall be restricted to the existing established parking lot on the Premises, as shown on the attached Exhibit "A." The parking lot shall be open to the general public at no charge, whether or not customers of the disc golf course.

SECTION 2: TERM

- 2.1 Term. The term ("Term") of this Lease shall be ten (10) years commencing on the first day of the calendar month following execution by the City Manager or designee and approval by the City Attorney. "Lease Year" as used in this Lease shall mean the first full twelve (12) calendar months of the Term and each twelve (12)-month period thereafter during the Term.
- 2.2 Holdover. Any holding over by LESSEE after Lease expiration or Lease 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 Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease shall continue in full force and effect; provided, however, CITY shall have the right to increase the 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 in this Lease must be made payable to the City Treasurer and mailed to: Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California, 92112-4165, or hand delivered to: Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, Suite 100, 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 the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

3.2 Rent.

- a. Minimum Rent. The annual minimum rent established for the first two (2) years following the effective date of this Lease is Forty Thousand Dollars (\$40,000).

If the annual minimum rent is greater than the annual percentage rent on a Lease Year basis, then the annual minimum rent minus any percentage rent paid is required to be paid within thirty (30) days of the end of such 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 on the first day of the third Lease Year of this Lease and on each two (2)-year period thereafter during the term, the annual minimum rent shall be eighty percent (80%) of the annual average of actual rents paid or accrued for the two (2) years preceding the adjustment date. It is recognized that the 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 in this Lease. Until the calculations are completed, LESSEE shall continue paying the annual minimum rent 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 such Lease Year, whichever is later. IN NO EVENT SHALL ANY 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:

Percentages

Business Activities

Five Percent (5%) years 1 thru 5

Sales of discs, baskets, golf bags, and other equipment.

Six Percent (6%) years 6 thru 10

Twelve and One-half Percent (12½%) years 1 thru 5
Thirteen and One-half Percent (13½%) years 6 thru 10

Green fees and all other activities except commissions listed below.

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 ten percent (10%) of the gross income from any coin-operated machines or devices owned, rented, or leased by LESSEE or sublessees for use on the Premises.

The City Manager, in his sole discretion, may approve another percentage rate or flat rate of rent for each other incidental service or operation supplementary to the permitted use(s) set forth under Section 1.2, Uses, of this Lease as may be approved in writing by the City Manager prior to commencement of the 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, of this Lease.

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 of the statement, 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 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 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 the Premises or the operation of the Premises shall be regarded as gross income of LESSEE for the purpose of calculating the percentage rent under this Lease 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 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 admission or rental and shall keep an adequate record of the 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 the system is approved by CITY.

- b. Financial Statements. Within sixty (60) days after the end of each Lease Year as previously established in this Lease, LESSEE shall, 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. The statement shall be signed by LESSEE or its authorized agent attesting to the accuracy of the statement, which shall be legally binding upon LESSEE.
- c. Right to Inspect. All LESSEE'S books of account, records, and supporting documentation, as described in Subsection 3.5a. above, will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. The books and records shall be maintained separate from all other accounts not relating to the Premises. CITY, at its discretion, shall have the right to inspect and audit the business of LESSEE, 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. The data will include, if required, a detailed breakdown of LESSEE'S receipts and expenses.

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

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

LESSEE shall pay any deficiency determined by the audit(s) plus interest on the amount as defined in Section 3.6, Delinquent Rent and Audit Fees, of this Lease, within thirty (30) days of notice 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 shall 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 mutually agreed by the parties to this Lease 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 five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit(s) plus ten percent (10%) per year on the amount by which the rent was underpaid, in addition to the unpaid rents as shown to be due CITY, as compensation to CITY for administrative costs and loss of interest as previously described in this Lease. In the event CITY audit(s) discloses that the unpaid rent is less than five percent (5%) of the total rent, and should LESSEE fail to pay the unpaid rent within thirty (30) days after written notice from CITY, an additional fee of ten percent (10%) of the unpaid amount shall be added to the unpaid amount to compensate CITY for costs and losses due to nonpayment. LESSEE agrees to pay these 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 fifty percent (50%) 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 fifty percent (50%) charge in this section and the payment of this charge or any part of it, does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the Premises.

SECTION 4: ASSIGNMENT/DEFAULT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence for all of the terms, covenants, and conditions of this Lease, and, except as otherwise provided in this Lease, all of the terms, covenants, and conditions of this Lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 4.2 Assignment and Subletting. LESSEE shall not assign this Lease or any interest in this Lease and shall not sublet the Premises or any part of the Premises, or any right or privilege appurtenant to this Lease, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the Premises or any part of the Premises, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any assignment or subletting without CITY'S consent shall be void and shall, at the option of CITY, terminate

this Lease. This Lease shall not, nor shall any interest in this Lease, be assignable as to the interest of LESSEE by operation of law, without the written consent of the City Manager.

"Assignment" for the purposes of this section 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 Lease which are applicable to the rights acquired. The City Manager may 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, of this Lease, 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.

- 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 on the Premises 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 the loan or loans be devoted exclusively to the purpose of developing the Premises in accordance with Section 6.12, General Development Plan, of this Lease. 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 the construction.

Any subsequent encumbrances on the Premises or on any permanent improvements on the Premises must first have the approval in writing of the City Manager. 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 the General Development Plan to the satisfaction of the City Manager, proceeds from refinancing or from 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, of this Lease, 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 proposed subsequent encumbrance, including but not limited to amending the Lease to provide then-current rents and provisions.

In the event any 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, the 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 of this Lease. 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.

4.4 Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE fails to make any payment required under this Lease when due and fails to make full payment within three (3) days following written notice from CITY.
- (2) LESSEE defaults in the performance of any covenant or condition required by this Lease to be performed by LESSEE and fails to cure the default within thirty (30) days following written notice from CITY; or if any default is not curable within thirty (30) days, and LESSEE fails to commence to cure the default(s) within the thirty (30)-day period and diligently pursue the cure to completion; or
- (3) LESSEE voluntarily files or has involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (4) LESSEE is adjudicated a bankrupt; or
- (5) LESSEE makes a general assignment for the benefit of creditors;

or

- (6) LESSEE uses the Premises for any unauthorized purpose;

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 of the Premises; and CITY may enter and take possession of the Premises. Provided, however, in the event that any default described in Subsection 4.4a.(2) above is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this Lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues the cure to completion.

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 the notice to cure the default(s) or, if any default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue the cure to completion. The thirty (30)-day period may be extended during the time that mortgagee or beneficiary pursues the 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 under this Lease and to commence performance of this Lease. If the mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty (30)-day period after receiving written notice by CITY of the default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Lease shall not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease with all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.
- c. Abandonment by LESSEE. Even though LESSEE has breached the Lease and abandoned the Premises, this Lease shall continue in effect for so long as CITY does not terminate this Lease, and CITY may enforce all its rights and remedies under this Lease, 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 the defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after the default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

4.5 Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) shall 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 taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both.

Provided, however, LESSEE shall be entitled but limited 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 Balboa Park areas adjacent to the leasehold. LESSEE further acknowledges that the expenditure of these funds enhances the value of the leasehold. LESSEE and CITY agree that the exact amount of the enhancement is impossible to ascertain. However, CITY desires to be reimbursed to a reasonable extent in consideration for the continued maintenance of adjacent areas. Therefore, LESSEE and CITY agree that in the event of an assignment, in the event of a subletting of the majority portion of the leasehold, or in the event of a refinancing creating an encumbrance against the leasehold after the permanent improvements have been constructed, pursuant to the General Development Plan as described in Section 6.12 of this Lease, LESSEE shall pay to CITY two percent (2%) of the gross amount paid LESSEE for the leasehold in connection with an approved assignment of the Lease, two percent (2%) of any amount paid LESSEE in consideration of a sublease of all or a majority portion of the leasehold, or two percent (2%) of the amount of any increased loan or encumbrance against the Premises over and above the amount of the then existing balance(s) of the existing encumbrance(s). 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, majority subletting, 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 section, together with an acknowledgment from the proposed assignee, sublessee, 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, a sublease, or a refinancing. Any assignment, subletting, or refinancing in violation of the terms and conditions of this section shall be void. The provisions of this section 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. Any 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 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 by the leasehold.

SECTION 5: INSURANCE RISKS/SECURITY

5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold CITY, its elected officials, officers, employees, agents, and representatives 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 Lease, 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 CITY, its elected officials, officers, employees, agents, and representatives.

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 Two Million Dollars (\$2,000,000) 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 one hundred percent (100%) of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.3, Encumbrance, of this Lease, 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 insurance also includes the following:

- (1) Additional Insureds. All insurance policies will, by separate endorsement, name "The City of San Diego, its elected officials, officers, employees, agents, and representatives" as additional insureds, protect them 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 certificate of the insurance policy must be provided prior to CITY'S execution 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 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. The 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 b.(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 the 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 Premises within ten (10) days of the 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 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 the damage and to restore the Premises to the condition which existed prior to the damage; or, at CITY'S option, LESSEE agrees to clear and remove from the Premises all debris resulting from the damage and rebuild the Premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to the damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, of this Lease.

LESSEE shall commence preliminary steps toward performing repairs, restoration, or replacement of the Premises within thirty (30) days and shall complete the required repairs, restoration, or replacement within a reasonable time. CITY may determine an equitable deduction in the minimum annual rent requirement for the period or periods that the Premises are untenable by reason

of the 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 its 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 Substances (defined in Section 6.13).
- 6.2 Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, to enter the Premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Premises, or to inspect the operations conducted on the Premises. In the event that entry or inspection by CITY discloses that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, but not the obligation, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE agrees to pay promptly any and all costs incurred by CITY in having necessary maintenance work done, in order to keep the Premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that the 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. The bond shall be in an amount adequate in the opinion of CITY to correct the unsatisfactory condition. LESSEE shall pay the cost of the bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Lease imposed on CITY.
- 6.3 Maintenance. Except as otherwise provided in this section, LESSEE agrees to assume full responsibility and cost for the operation, maintenance, and repair of the Premises throughout the Term, including but not limited to removing litter, emptying trash containers, mowing, weeding, irrigating, and maintaining the rest room. LESSEE shall perform all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws. All applicable codes and standards of CITY, state, and federal agencies shall be observed in all maintenance, repairs, and replacements on the Premises.

CITY shall maintain at its expense the pressurized main waterlines up to each valve. LESSEE shall maintain at its expense the non-pressurized lateral waterlines and sprinkler heads on the Premises. LESSEE shall obtain prior written CITY approval of any alterations to the irrigation system and provide CITY with "as-built" drawings of new improvements.

CITY shall provide one (1) aeration per year of the turf on the Premises at a time mutually agreeable to CITY and LESSEE. CITY shall also furnish and share use of a dumpster with LESSEE near the Premises. LESSEE shall monthly reimburse CITY for one-half (½) the cost of the dumpster and yearly for the full cost of the aeration, as determined by the City Manager.

- 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 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. Except as otherwise provided in this section, LESSEE agrees to order, obtain, and pay for all utilities necessary for operation of the Premises. All utilities shall be installed underground. CITY shall provide reasonable amounts of water for use on the Premises. The City Manager shall have sole and absolute discretion to determine what constitutes a "reasonable amount" of water for purposes of this section. As the Premises are not sub-metered for electricity, LESSEE shall monthly reimburse CITY for the cost of its estimated share of electricity used on the Premises, as determined by the City Manager.
- 6.6 Construction Bond. Whenever there is any construction to be performed on the Premises, LESSEE shall deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.

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

If improvements, alterations, or repairs are made to the Premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of 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 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 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 twenty-four (24) hours notice by CITY, or CITY may then 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 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 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 personal property by LESSEE results in damage to the remaining improvements on the Premises, LESSEE agrees to repair all of the damage at its expense.
- e. Any necessary removal by either CITY or LESSEE which takes place beyond the expiration or termination of this Lease shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to the 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 the Premises upon expiration or termination of this Lease, then CITY shall have the first right to acquire or purchase the personal property.

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

6.12 General Development Plan. LESSEE agrees to develop the Premises in accordance with the General Development Plan approved by the City Manager, which plan is attached to this Lease and by this reference made part of this Lease. The general contents and provisions of the General Development Plan are described in Section 9.2 of this Lease. 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 construction completion in the General Development Plan of up to one (1) year without further City Council approval.

- 6.13 Hazardous/Toxic Substances. LESSEE shall not allow the 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 769704-1 and by this reference is incorporated in this Lease. In the event of any release of a Hazardous Substance, LESSEE shall be responsible for all costs of remediation and removal of the Hazardous 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 the knowledge or cause for belief. Provided, however, if LESSEE knows or has reasonable cause to believe that the Hazardous Substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate the danger. LESSEE 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 Premises 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. The environmental assessment shall be obtained at the sole cost and expense of LESSEE and shall establish what, if any, Hazardous Substances exist on, in, or under the Premises, and in what quantities. If any Hazardous Substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of these Hazardous Substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of the remediation or removal. LESSEE shall cause the remediation and/or removal recommended in the environmental assessment so that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

SECTION 7: GENERAL PROVISIONS

7.1 Notices.

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

Leo Pierson
729 Orange Avenue, #203
Coronado, CA 92118;

and to CITY as follows:

City of San Diego
Real Estate Assets Department
Attention: Real Estate Assets Director
1200 Third Avenue, Suite 1700 (M.S. 51A)
San Diego, CA 92101-9586;

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

- b. Any party entitled or required to receive notice under this Lease may by like notice designate a different address to which notices shall be sent.
- c. Notice served pursuant to the terms of this Section 7.1 shall be effective upon personal service or two (2) days after service by mail.

- 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 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 or designee 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. LESSEE acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), Equal Employment Opportunity Outreach Program, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated in this Lease. LESSEE and all of its subcontractors are individually responsible to abide by its contents.

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 on any basis prohibited by law.

LESSEE submitted and CITY acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that LESSEE will take to achieve CITY'S commitment to equal employment opportunities.

LESSEE agrees to insert the foregoing provisions in all subcontracts for any work covered by this Lease so that these provisions will be binding upon each subcontractor. LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed

by CITY'S Equal Opportunity Contracting Program staff.

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 and debarment from participating in CITY contracts for a period of not less than one (1) year.

- 7.6 Partial Invalidity. If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.7 Legal Fees. In the event of any litigation regarding this Lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.
- 7.8 Number and Gender. Words of any gender used in this Lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.9 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Lease. The numbers of the paragraphs and pages of this Lease may not be consecutive. The lack of consecutive numbers is intentional and shall have no effect on the enforceability of this Lease.
- 7.10 Entire Understanding. This Lease contains the entire understanding of the parties. LESSEE, by signing this Lease, agrees that there is no other written or oral understanding between the parties with respect to the Premises. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each of the parties in this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Lease.

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

- 7.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements, or Leases with consultants, vendors, or lessees shall include a condition that the contract, agreement, or Lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or

LESSEE employs an individual who, within the twelve (12) months immediately preceding the employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.

- 7.12 Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
 - b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) LESSEE'S policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs.
 - (4) The penalties that may be imposed upon employees for drug abuse violations.
 - 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 shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with the 1990 Americans with Disabilities Act and Title 24 of the California Code of Regulations [Building Code] as defined in Section 18910 of the California Health and Safety Code and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.
- 7.14 Best Management Practices. LESSEE shall comply with the Best Management Practices ("BMP") including the Stormwater Pollution Prevention Plan ("SPPP") approved by CITY'S Stormwater Management Program. LESSEE shall submit

for review and approval by the City Manager or designee, within ninety (90) days of the effective date of this Lease, BMP and a SPPP that are satisfactory to CITY that will control erosion and reduce the amount of pollutants and other sediments discharged from the Premises. The BMP and SPPP will be reviewed periodically by CITY. Upon written notice from the City Manager requesting an update of the BMP, LESSEE shall submit updated BMP and a SPPP that are satisfactory to CITY within ninety (90) days of receipt of notice. LESSEE shall implement any necessary changes to the BMP and SPPP as a result of any review by CITY to ensure compliance with any changes in laws or regulations. It is LESSEE'S responsibility to inform employees, contractors, subcontractors, agents, and vendors of the BMP and SPPP.

- 7.15 Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive the expiration or termination of the Lease.
- 7.16 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner.
- 7.17 Supersedure. It is mutually agreed that this Lease, upon its effective date, supersedes and annuls that certain Concession Agreement executed on April 11, 1994, with Leo Pierson, City Clerk Document 00-18053, 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 that agreement.
- 7.18 San Diego's Strong Mayor Form of Governance. All references to "City Manager" in this Lease shall be deemed to refer to "Mayor or designee." This section becomes effective on January 1, 2006, and shall remain in effect for the duration that CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the San Diego City Charter.

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SECTION 8: SIGNATURES

8.1 Signature Page.

This Lease is executed by CITY, acting by and through its City Manager pursuant to City Council Resolution No. 301659, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date 9/13/06

By 
James F. Barwick, Director
Real Estate Assets Department

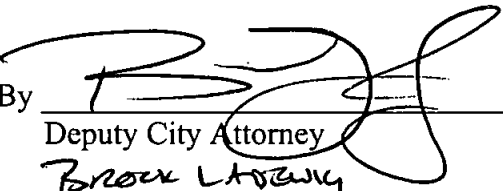
LESSEE: LEO PIERSON

Date 9-8-06

By 
Leo Pierson

APPROVED as to form and legality this 14th day of September, 2006.

MICHAEL J. AGUIRRE, CITY ATTORNEY

By 
Deputy City Attorney
Brown Library

PC/cb
9/05/06
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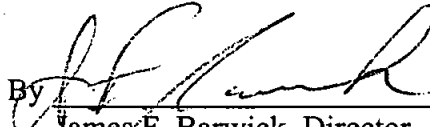
SECTION 8: SIGNATURES

8.1 Signature Page.

This Lease is executed by CITY, acting by and through its City Manager pursuant to City Council Resolution No. 301659, and by LESSEE, acting by and through its lawfully authorized officers.

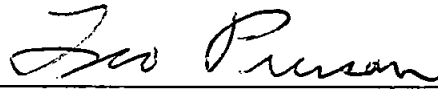
THE CITY OF SAN DIEGO

Date 9/13/06

By 
James F. Barwick, Director
Real Estate Assets Department

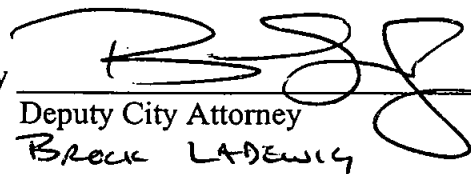
LESSEE: LEO PIERSON

Date 9-8-06

By 
Leo Pierson

APPROVED as to form and legality this 14th day of SEPTEMBER, 2006.

MICHAEL J. AGUIRRE, CITY ATTORNEY

By 
Deputy City Attorney
Brock Ladewig

PC/cb
9/05/06
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SECTION 9: EXHIBITS

9.1 Exhibit "A".

(See Page 29a.)

EXHIBIT "A"

107 CARS

JACARANDA DR

BOCCIE COURT

RR

20 CARS
PERSHING PL

PERSHING DR

17

6

ORGANIZATIONAL
PICNIC
AREA

SENIOR CITIZENS
CLUBHOUSE

KEARN'S
POOL

TINY
TOTS

CASTING
POOL

TINY
TOTS

15

RR

246
CARS

SPORTS FIELD

MORLEY FIELD DISC
GOLF COURSE

ARCHERY
RANGE

14

RR

13

SOCCER

-29a-

PERSHING DR

9.2 General Development Plan Outline.

The General Development Plan consists of:

- a. Description of Improvements
- b. Development Schedule
- c. Estimated Construction Costs

and is attached to this Lease and made part of this Lease.

GENERAL DEVELOPMENT PLAN

Ongoing Capital Improvements for Morley Field Disc Golf Course

- Repair or replace Disc Golf baskets, ground sleeves and tee signs as needed.
- Yearly replace golf flags and Lexan tee sign covers.
- Repair, resurface, enlarge and rebuild tee pads as necessary.
- Repair, repaint and maintain and install new benches as necessary.
- Repair and maintain parking lots as necessary.
- Replace and maintain existing foliage as necessary.
- Replace and repair existing course signage for the public as necessary
- Replace trash cans as necessary
- Estimated cost \$25,000-\$40,000 yearly

Longer term Capital Improvement Proposals to coincide with rate increases proposed for 2006 and 2010

2006-

- Install irrigation clocks on all existing irrigation lines-
3" valve-\$189
solenoid-\$17.41
module (one station)-\$102.06
field transmitter-\$132.30
Total per box in 2004 dollars \$440.77 plus tax plus labor-
Estimated total-\$16,000-\$20,000.

2010-

- Install new pro shop in front of restroom adjacent to hole 1.
A new 40 ft. cargo container retrofitted with electricity for refrigerators and AC. Double the current retail flooring space for added product lines.
Estimated cost \$15,000.

RESOLUTION NUMBER R- 301659DATE OF FINAL PASSAGE JUL 26 2006

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE
A 10-YEAR LEASE AGREEMENT WITH LEO PIERSON TO
OPERATE AND MAINTAIN THE MORLEY FIELD DISC
GOLF COURSE IN BALBOA PARK.

WHEREAS, the City Council's Land Use and Housing Committee has authorized
exclusive negotiations with Leo Pierson, an individual, for a 10-year lease of the Morley Field
Disc Golf Course on Pershing Drive near Redwood Street in Balboa Park, in the City of San
Diego, County of San Diego, as more particularly described in Exhibit A to the proposed lease;
and

WHEREAS, the City and Leo Pierson have negotiated a 10-year lease agreement under
terms that meet or exceed current comparable market rents, as determined by City valuation
staff; and

WHEREAS, the City's Park and Recreation Department concurs with the terms of the
proposed lease; and

WHEREAS, under the terms of the proposed lease agreement, Leo Pierson will assume
maintenance obligations of the City projected to save the City \$10,000 per year; and

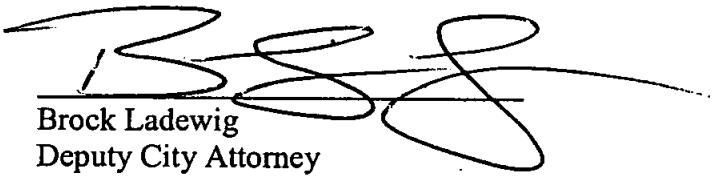
WHEREAS, under the proposed lease agreement, Leo Pierson will provide
approximately \$300,000 in capital improvements to the property; and

WHEREAS, the operation and maintenance of the Morley Field Disc Golf Course
benefits the public health, safety or general welfare; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the Mayor is authorized to execute, for and on behalf of The City of San Diego, a 10-year lease agreement with Leo Pierson, an individual, for operating and maintaining the Morley Field Disc Golf Course located on Pershing Drive near Redwood Street in Balboa Park, San Diego, California, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR- 301659.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

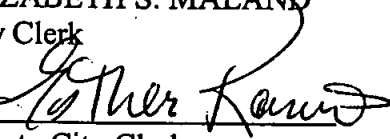
By


Brock Ladewig
Deputy City Attorney

BL:jdf
06/12/06
Or.Dept: READ
R-2006-1074
MMS #3356

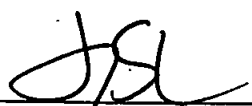
I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUL 18 2006.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 7-26-06

(date)


JERRY SANDERS, Mayor

Vetoed: _____

(date)

JERRY SANDERS, Mayor

Passed by the Council of The City of San Diego July 18, 2006, by the following vote:

YEAS: **PETERS, FAULCONER, ATKINS, YOUNG, MAIENSCHEIN,
FRYE, MADAFFER, HUESO.**

NAYS: **NONE.**

NOT PRESENT: **NONE.**

VACANT: **NONE.**

AUTHENTICATED BY:

JERRY SANDERS

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

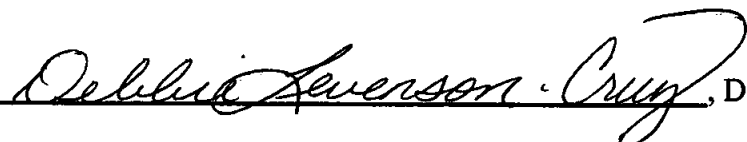
By: Debbie Levenson-Cruz, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-301659 approved by the Mayor of the City of San Diego, California on
July 26, 2006.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By: , Deputy

Storm Water Pollution Prevention Plan

- the blue line represents the 6" storm drain running through the disc golf course. There are 2 inlet drains on our course to access the storm drain.
- the orange lines represent the points of ingress of storm water from above our course and from Pershing Dr.
- the city has designed 3 spots (drainage ramps) where the storm water comes onto the course from the street. We have swaled the ground or dug trenches through the grass to channel the water towards the storm drain inlets.
- Both of our main channels running through the course have a section where the channel widens to 15' and runs through a series of rocks and boulders where the debris in the water is separated out.
- After storms we routinely go through this boulder section and rake out the trash and sticks filtered out of the storm water.
- The red lines represent 2 French drains put in by the city that channel water directly to the storm drains under ground.

Last year we built at our own expense a new 1' curb adjacent to our paved parking lot to channel street runoff water to our "B" channel. This 80' section was built high enough to keep high clearance vehicles from attempting to drive over it and break it down. Our dirt parking lot no longer has rainwater running through it after a storm as it did before. The caused rivulets in the decomposed granite and potentially washed petrochemicals from parked cars in our lot down the storm drains. We've now recovered our dirt lot and channeled the runoff around the lot mitigating future polluting.

-We use no fertilizers, herbicides, or pesticides here at the disc golf course. Also we do not thatch our grass in the fall.

Map 2 shows our watertight sea cargo container that houses our 2 rider mowers. The map also shows the city rest station where we keep our gasoline in the pipe room along with other maintenance equipment.

We fuel our vehicles there at the rest station. We never top off our tanks as our land is full of ruts and very bumpy and a full tank can

cause spillage. Gas is too expensive and our budget too low for any waste. The other equipment is filled with the new leak proof gas containers for the same reason. Spillage during fueling is rarely a problem. The area is fully mulched and runoff after rains is minimal.

As we are a disc golf course only there are no other sources of industrial pollution on this site.

-

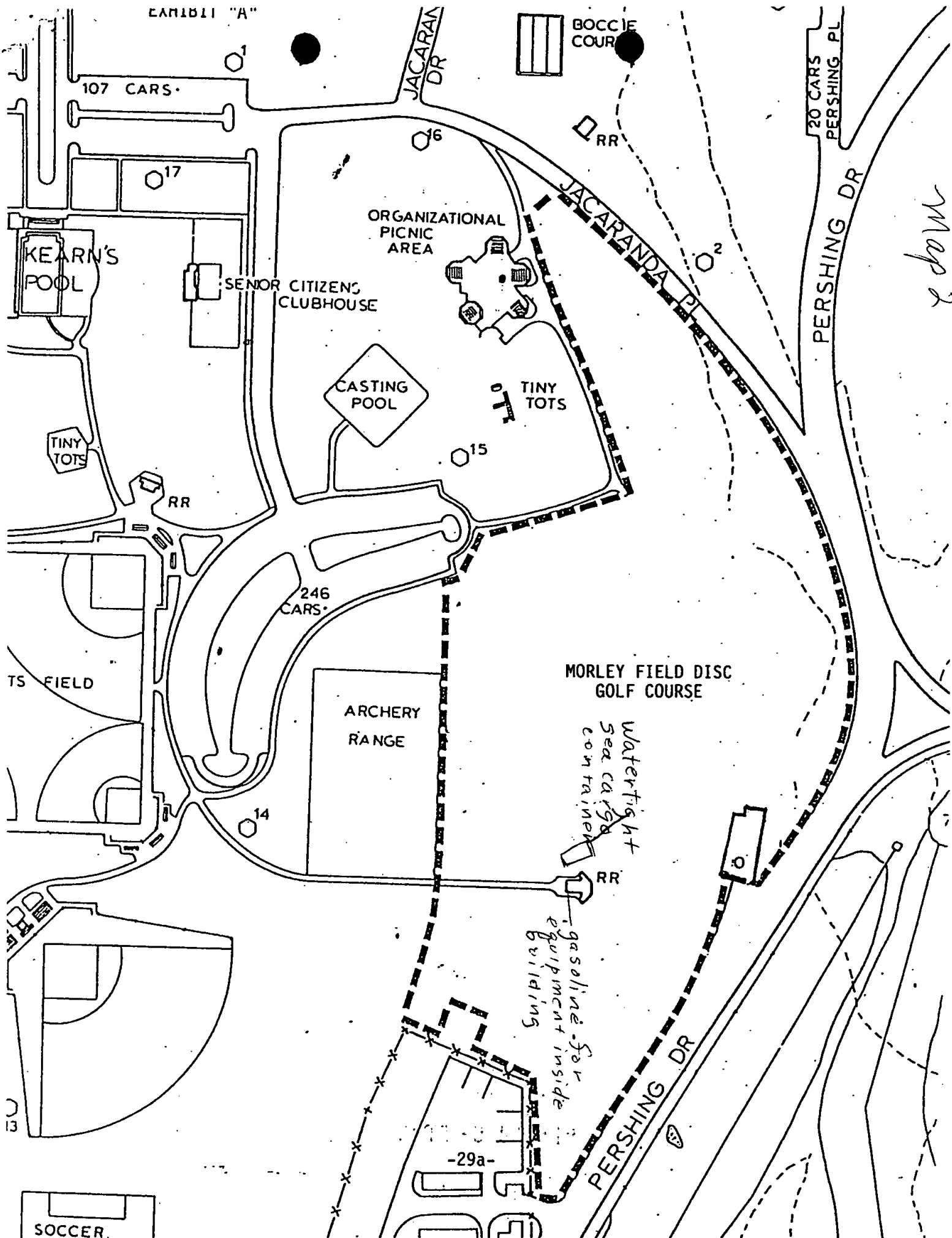
-

A hand-drawn map of Morley Field Disc Golf Course and its surrounding area. The map includes the following features:

- Streets:** JACARANDA DR, PERSHING DR, and JACAL DR.
- Facilities:** KEARN'S POOL, SENIOR CITIZENS CLUBHOUSE, ORGANIZATIONAL PICNIC AREA, CASTING POOL, TINY TOTS, ARCHERY RANGE, MORLEY FIELD DISC GOLF COURSE, and SOCCER.
- Parking:** 107 CARS, 246 CARS, and 20 CARS PERSHING.
- Other:** RR (Railroad), POINT Parking lot, and various numbered points (1, 2, 6, 13, 14, 15, 17, 29a).
- Handwritten Annotations:** A large arrow pointing left labeled "Ocean", and two paths labeled "A" and "B" with arrows indicating direction.

SOCCEP

EXHIBIT "A"



RECEIVED
CITY OF SAN DIEGO

07 JAN -3 PM 4: 14

REAL ESTATE ASSETS DEPT.